

City of Glendale Council Meeting Agenda

January 14, 2014 – 6:00 p.m.

Welcome!

We are glad you have chosen to attend this meeting. We welcome your interest and encourage you to attend again.

Form of Government

The City of Glendale has a Council-Manager form of government. Policy is set by the elected Council and administered by the Council-appointed City Manager. The Council consists of a Mayor and six Councilmembers. The Mayor is elected every four years by voters city-wide. Councilmembers hold four-year terms with three seats decided every two years. Each of the six Councilmembers represent one of six electoral districts and are elected by the voters of their respective districts (see map on back).

Voting Meetings and Workshop Sessions

Voting meetings are held for Council to take official action. These meetings are held on the second and fourth Tuesday of each month at 6:00 p.m. in the Council Chambers of the Glendale Municipal Office Complex, 5850 West Glendale Avenue. **Workshop sessions** provide Council with an opportunity to hear presentations by staff on topics that may come before Council for official action. These meetings are generally held on the first and third Tuesday of each month at 1:30 p.m. in Room B3 of the Glendale Municipal Office complex.

Special voting meetings and workshop sessions are called for and held as needed.

Executive Sessions

Council may convene to an executive session to receive legal advice, discuss land acquisitions, personnel issues, and appointments to boards and commissions. Executive sessions will be held in Room B3 of the Council Chambers. As provided by state statute, executive sessions are closed to the public.

Regular City Council meetings are telecast live. Repeat broadcasts are telecast the second and fourth week of the month – Wednesday at 2:30 p.m., Thursday at 8:00 a.m., Friday at 8:00 a.m., Saturday at 2:00 p.m., Sunday at 9:00 a.m. and Monday at 1:30 p.m. on Glendale Channel 11.

If you have any questions about the agenda, please call the City Manager's Office at (623)930-2870. If you have a concern you would like to discuss with your District Councilmember, please call the City Council Office at (623)930-2249



For special accommodations or interpreter assistance, please contact the City Manager's Office at (623)930-2870 at least one business day prior to this meeting. TDD (623)930-2197.

Para acomodacion especial o traductor de español, por favor llame a la oficina del administrador del ayuntamiento de Glendale, al (623) 930-2870 un día hábil antes de la fecha de la junta.

Councilmembers

Cactus District – Ian Hugh
Cholla District – Manuel D. Martinez
Ocotillo District – Norma S. Alvarez
Sahuaro District – Gary D. Sherwood
Yucca District – Samuel U. Chavira



MAYOR JERRY P. WEIERS

Vice Mayor Yvonne J. Knaack – Barrel District

Appointed City Staff

Brenda S. Fischer – City Manager
Michael D. Bailey – City Attorney
Pamela Hanna – City Clerk
Elizabeth Finn – City Judge

Meeting Agendas

Generally, paper copies of Council agendas may be obtained after 4:00 p.m. on the Friday before a Council meeting from the City Clerk Department inside Glendale City Hall. Additionally, the agenda and all supporting documents are posted to the city's website, www.glendaleaz.com

Public Rules of Conduct

The presiding officer shall keep control of the meeting and require the speakers and audience to refrain from abusive or profane remarks, disruptive outbursts, applause, protests, or other conduct which disrupts or interferes with the orderly conduct of the business of the meeting. Personal attacks on Councilmembers, city staff, or members of the public are not allowed. It is inappropriate to utilize the public hearing or other agenda item for purposes of making political speeches, including threats of political action. Engaging in such conduct, and failing to cease such conduct upon request of the presiding officer will be grounds for ending a speaker's time at the podium or for removal of any disruptive person from the meeting room, at the direction of the presiding officer.

How to Participate

Voting Meeting - The Glendale City Council values citizen comments and input. If you wish to speak on a matter concerning Glendale city government that is not on the printed agenda, please fill out a blue Citizen Comments Card. Public hearings are also held on certain agenda items. If you wish to speak on a particular item listed on the agenda, please fill out a gold Public Hearing Speakers Card. Your name will be called when the Public Hearing on the item has been opened or Citizen Comments portion of the agenda is reached. **Workshop Sessions** - There is no Citizen Comments portion on the workshop agenda.

When speaking at the Podium, please state your name and the city in which you reside. If you reside in the City of Glendale, please state the Council District you live in and present your comments in five minutes or less.

Regular Workshop meetings are telecast live. Repeat broadcasts are telecast the first and third week of the month – Wednesday at 3:00 p.m., Thursday at 1:00 p.m., Friday at 8:30 a.m., Saturday at 2:00 p.m., Sunday at 9:00 a.m. and Monday at 2:00 p.m. on Glendale Channel 11.



Council District Boundaries





**GLENDALE CITY COUNCIL MEETING
Council Chambers
5850 West Glendale Avenue
January 14, 2014
6:00 p.m.**

One or more members of the City Council may be unable to attend the Council Meeting in person and may participate telephonically, pursuant to A.R.S. § 38-431(4).

CALL TO ORDER

PLEDGE OF ALLEGIANCE

PRAYER/INVOCATION

CITIZEN COMMENTS

If you wish to speak on a matter concerning Glendale city government that is not on the printed agenda, please fill out a Citizen Comments Card located in the back of the Council Chambers and give it to the City Clerk before the meeting starts. The City Council can only act on matters that are on the printed agenda, but may refer the matter to the City Manager for follow up. Once your name is called by the Mayor, proceed to the podium, state your name and address for the record and limit your comments to a period of five minutes or less.

APPROVAL OF THE MINUTES OF December 10, 2013

PROCLAMATIONS AND AWARDS

PROCLAIM JANUARY 20, 2014 AS DR. MARTIN LUTHER KING, JR. DAY

PRESENTED BY: Office of the Mayor

ACCEPTED BY: Community Members

CONSENT AGENDA

Items on the consent agenda are intended to be acted upon in one motion. If you would like to comment on an item on the consent agenda, please come to the podium and state your name, address and item you wish to discuss.

1. APPROVE LIQUOR LICENSE NO. 3-664, FRY'S FOOD & DRUG #60
PRESENTED BY: Tom Duensing, Executive Director, Financial Services
2. APPROVE LIQUOR LICENSE NO. 3-816, MAX'S
PRESENTED BY: Tom Duensing, Executive Director, Financial Services
3. APPROVE LIQUOR LICENSE NO. 5-11991, DOLLAR ITEM PLUS STORE
PRESENTED BY: Tom Duensing, Executive Director, Financial Services
4. APPROVE LIQUOR LICENSE NO. 5-12081, ZIPPS SPORTS GRILL
PRESENTED BY: Tom Duensing, Executive Director, Financial Services
5. RATIFICATION OF EXPENDITURE OF FUNDS TO BEACON SPORTS CAPITAL PARTNERS, LLC
PRESENTED BY: Jamsheed Mehta, AICP, Executive Director, Transportation Services
6. AUTHORIZATION TO PURCHASE WATER QUALITY MONITORING EQUIPMENT AND LABORATORY SUPPLIES FROM HACH COMPANY
PRESENTED BY: Craig Johnson, P.E., Executive Director, Water Services
7. POSITION RECLASSIFICATIONS
PRESENTED BY: Jim Brown, Executive Director, Human Resources & Risk Management

CONSENT RESOLUTIONS

8. AUTHORIZATION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE FIRE DISTRICT OF SUN CITY WEST FOR HELICOPTER AIR-MEDICAL LOGISTICS OPERATIONS
PRESENTED BY: Mark Burdick, Fire Chief
RESOLUTION: 4760
9. AUTHORIZATION TO ACCEPT A COMMUNITY ORIENTED POLICING SERVICES GRANT FROM THE UNITED STATES DEPARTMENT OF JUSTICE
PRESENTED BY: Debora Black, Police Chief
RESOLUTION: 4761
10. AUTHORIZATION TO EXECUTE THREE LICENSE AGREEMENTS WITH CRICKET COMMUNICATIONS, INC. TO OPERATE WIRELESS COMMUNICATIONS SITES WITHIN PUBLIC RIGHT-OF-WAY AND ON CITY-OWNED PROPERTY
PRESENTED BY: Stuart Kent, Executive Director, Public Works
RESOLUTION: 4762

11. AUTHORIZATION TO ENTER INTO A TEMPORARY CONSTRUCTION LICENSE AGREEMENT WITH COFFMAN SPECIALTIES, INC. RELATED TO CONSTRUCTION OF HOV LANES AT MARYLAND AVENUE AND LOOP 101

PRESENTED BY: Jamsheed Mehta, AICP, Executive Director, Transportation Services
RESOLUTION: 4763

BIDS AND CONTRACTS

12. AUTHORIZATION OF AMENDMENT NO. 3 TO THE CONTRACT WITH SOUTHWEST FABRICATION, LLC TO INCREASE THE ANNUAL SPENDING AUTHORITY FOR BUS SHELTER INSTALLATION AND REPAIR

PRESENTED BY: Jamsheed Mehta, AICP, Executive Director, Transportation Services

13. AUTHORIZATION TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH LITTLEJOHN ENGINEERING ASSOCIATES, INC. FOR DESIGN AND CONSTRUCTION SERVICES FOR THE FISCAL YEAR 2013-14 PAVEMENT MANAGEMENT PROGRAM

PRESENTED BY: Stuart Kent, Executive Director, Public Works

14. AUTHORIZATION TO ENTER INTO AN AGREEMENT WITH ARIZONA PUBLIC SERVICE COMPANY TO RELOCATE OVERHEAD ELECTRIC TRANSMISSION POWER LINES AT 11480 WEST GLENDALE AVENUE

PRESENTED BY: Stuart Kent, Executive Director, Public Works

ORDINANCES

15. ADOPT AN ORDINANCE GRANTING A UTILITY EASEMENT TO ARIZONA PUBLIC SERVICE COMPANY ACROSS A PORTION OF CITY-OWNED PROPERTY AT 11480 WEST GLENDALE AVENUE

PRESENTED BY: Stuart Kent, Executive Director, Public Works
ORDINANCE: 2869

16. ADOPT AN ORDINANCE AMENDING GLENDALE CITY CODE, CHAPTER 33, ARTICLE II, SECTION 33-84 (VOLUNTARY UTILITY BILLING DONATION PROGRAM)

PRESENTED BY: Tom Duensing, Executive Director, Financial Services
ORDINANCE: 2870

17. ADOPT AN ORDINANCE AMENDING GLENDALE CITY CODE, CHAPTER 2, ARTICLE I, SECTION 2-3 (COMMUNITY DEVELOPMENT FEE WAIVER/REBATE)

PRESENTED BY: Brian Friedman, Executive Director, Community & Economic Development
ORDINANCE: 2871

18. ADOPT AN ORDINANCE ESTABLISHING A GENERAL PLAN STEERING COMMITTEE

PRESENTED BY: Jon M. Froke, AICP, Planning Director
ORDINANCE: 2872

RESOLUTIONS

19. AUTHORIZATION TO ENTER INTO A TEMPORARY LICENSE AGREEMENT WITH THE NEW WESTGATE, LLC FOR PARKING ON FEBRUARY 1, 2015

PRESENTED BY: Jamsheed Mehta, AICP, Executive Director, Transportation Services

RESOLUTION: 4764

REQUEST FOR FUTURE WORKSHOP AND EXECUTIVE SESSION

COUNCIL COMMENTS AND SUGGESTIONS

EXECUTIVE SESSION

1. LEGAL MATTERS – PROPERTY & CONTRACTS

- A. Discussion and consultation with the City Attorney in order to consider its position and instruct the City Attorney regarding contracts and other matters relating to the Arizona Coyotes. (A.R.S. § 38-431.03(A)(4))

ADJOURNMENT

Upon a public majority vote of a quorum of the City Council, the Council may hold an executive session, which will not be open to the public, regarding any item listed on the agenda but only for the following purposes:

- (i) discussion or consideration of personnel matters (A.R.S. § 38-431.03(A)(1));
- (ii) discussion or consideration of records exempt by law from public inspection (A.R.S. § 38-431.03(A)(2));
- (iii) discussion or consultation for legal advice with the city’s attorneys (A.R.S. § 38-431.03(A)(3));
- (iv) discussion or consultation with the city’s attorneys regarding the city’s position regarding contracts that are the subject of negotiations, in pending or contemplated litigation, or in settlement discussions conducted in order to avoid or resolve litigation (A.R.S. § 38-431.03(A)(4));
- (v) discussion or consultation with designated representatives of the city in order to consider its position and instruct its representatives regarding negotiations with employee organizations (A.R.S. § 38-431.03(A)(5)); or
- (vi) discussing or consulting with designated representatives of the city in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property (A.R.S. § 38-431.03(A)(7)).

Items Respectfully Submitted,



Brenda S. Fischer, ICMA-CM
City Manager



**MINUTES OF THE
GLENDALE CITY COUNCIL MEETING
Council Chambers
5850 West Glendale Avenue
December 10, 2013
6:00 p.m.**

The meeting was called to order by Mayor Jerry P. Weiers. Vice Mayor Yvonne J. Knaack and the following Councilmembers were present: Norma S. Alvarez, Ian Hugh, Manuel D. Martinez and Gary D. Sherwood.

Absent: Councilmember Samuel U. Chavira

Also present were Brenda Fischer, City Manager; Julie Frisoni, Interim Assistant City Manager; Michael Bailey, City Attorney; and Pamela Hanna, City Clerk.

Mayor Weiers called for the Pledge of Allegiance.

The prayer/invocation was given by Major David Barns, Chaplin from Luke Air Force Base.

CITIZEN COMMENTS

Robert Rebich, an Ocotillo resident, said the casino was a bad financial move for the city. He said there would be significant ongoing costs for the city as well. He said there are many citizens in opposition to this project.

Ray Gonzales, a Goodyear resident, was in favor of the casino and said the Council should work with the Tohono O'Odham nation to bring this long term opportunity to the city. He said the casino would bring others to Glendale who would normally not visit the city.

Arthur Thruston, a Cactus resident, spoke about the casino and campaign contributions to the Councilmembers and said they have a conflict of interest. He said the city and the Council should not be bought by the Indian nations. He said the Council should have known what the Tohono O'Odham nation was all about before they spent millions of dollars in legal fees. He also spoke about the arena and asked how much money the city was getting back every month.

Bill Demski, a Sahuaro resident, said the Council didn't want city money going to a nonprofit organization as it was not city related, and asked how giving money to the Coyotes organization was city related. He also spoke about the salaries of the firefighters and their job duties. He also spoke about the amount of debt the city has and said city employees should not get rich at taxpayers' expense.

Kenneth Sturgis, a Yucca resident, spoke about some postings to the Follow Your Money figures regarding some events occurring at the hockey arena. He said there has been no detailed public report made to the Council or the citizens. He also spoke about the number of public meetings that have been held to discuss this issue. He said the Council needs to be honest with the citizens about the true nature of the city's financial outlook.

Clorinda Lozano, a Peoria resident, said west valley residents are concerned about Glendale. She said a casino will bring entertainment and dining and give residents a choice. The Tohono O'odham nation will pay for all public safety and utilities. She said Glendale will not be paying out of pocket. She said she wants the casino. She said Council's division should be put aside. She said her family members are part of the Tohono O'odham tribe and she thinks having the casino would work out well.

Compliance with Article VII, Section 6(c) of the Glendale Charter

A statement was filed by the City Clerk that the 8 resolutions and 2 ordinances to be considered at the meeting were available for public examination and the title posted at City Hall more than 72 hours in advance of the meeting.

Approval of the minutes of the November 13 and November 26, 2013 City Council Meeting

It was moved by Councilmember Sherwood, and seconded by Councilmember Martinez, to dispense with the reading of the minutes of the November 13 and November 26, 2013 Regular City Council meeting, as each member of the Council had been provided copies in advance, and approve them as written. The motion carried unanimously.

BOARDS, COMMISSIONS AND OTHER BODIES

APPROVE RECOMMENDED APPOINTMENTS TO BOARDS, COMMISSIONS & OTHER BODIES PRESENTED BY: Councilmember Manuel Martinez

This is a request for City Council to approve the recommended appointments to the following boards, commissions and other bodies that have a vacancy or expired term and for the Mayor to administer the Oath of Office to those appointees in attendance.

Aviation Advisory Commission

Victoria Rogen – Vice Chair	Mayoral	Appointment	12/10/2013	11/24/2014
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Parks & Recreation Advisory Commission

Robert Irons	Cholla	Appointment	12/10/2013	04/09/2014
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Planning Commission

Cameron Berryhill

Ocotillo Appointment 12/10/2013 03/25/2015

It was moved by Councilmember Martinez, and seconded by Vice Mayor Knaack, to appoint Victoria Rogen to the Aviation Advisory Commission; Robert Irons to the Parks & Recreation Advisory Commission; and Cameron Berryhill to the Planning Commission, for the terms listed above. The motion carried unanimously.

CONSENT AGENDA

Ms. Brenda Fischer, City Manager, read agenda item numbers 1 through 3.

1. AUTHORIZATION TO ENTER INTO A MONTH-TO-MONTH TOWING AGREEMENT EXTENSION WITH DV TOWING, LLC

PRESENTED BY: Debora Black, Police Chief

This is a request for City Council to authorize the City Manager to enter into a month-to-month extension to the towing agreement with DV Towing, LLC, for no longer than nine months.

2. AUTHORIZATION TO REALLOCATE FUNDS, APPROVE ADDITIONAL FUNDING, AND ENTER INTO AMENDMENT NO. 1 TO THE AGREEMENT WITH INTERGRAPH CORPORATION FOR THE COMPUTER AIDED DISPATCH/RECORDS MANAGEMENT SYSTEM PROJECT ENHANCEMENTS

PRESENTED BY: Debora Black, Police Chief

This is a request for City Council to authorize the City Manager to reallocate \$708,812 in funds initially planned for system maintenance, approve \$450,000 in additional project funding, and to enter into Amendment No. 1 to the agreement with Intergraph Corporation, increasing the not to exceed amount in the existing agreement to \$4,650,000, excluding taxes, for software, services and expenditures to support the application for the Computer Aided Dispatch/Records Management (CAD/RMS) project.

3. AUTHORIZATION FOR EXPENDITURE OF FUNDS AND RATIFICATION OF A RENEWAL CONTRACT WITH ENGELMAN BERGER, P.C. FOR LEGAL REPRESENTATION IN THE GILA RIVER GENERAL STREAM ADJUDICATION

PRESENTED BY: Michael D. Bailey, City Attorney

This is a request for Council to authorize the City Manager to approve the expenditure of funds for legal representation with the law firm of Engelman Berger, P.C. in the Gila River General Stream Adjudication, and ratify the entering into by the City Manager of the renewal contract with Engelman Berger, P.C. for legal representation in the Gila River General Stream Adjudication for the period ending June 30, 2014.

It was moved by Vice Mayor Knaack and seconded by Councilmember Martinez, to approve the recommended actions on Consent Agenda Item Nos. 1 through 3. The motion carried unanimously.

CONSENT RESOLUTIONS

Ms. Pamela Hanna, City Clerk, read consent agenda resolution item numbers 4 through 9 by number and title.

4. AUTHORIZATION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT FOR JOINT LEGAL REPRESENTATION IN THE WHITE MOUNTAIN APACHE TRIBE WATER SETTLEMENT

PRESENTED BY: Michael D. Bailey, City Attorney

RESOLUTION: 4752

This is a request for Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into an intergovernmental agreement with the cities of Avondale, Chandler, and Scottsdale for joint legal representation regarding the settlement of water rights claims by the White Mountain Apache Tribe (WMAT).

RESOLUTION NO. 4752 NEW SERIES WAS READ BY NUMBER AND TITLE ONLY, IT BEING A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF AN INTERGOVERNMENTAL AGREEMENT AND CONTRACT FOR LEGAL SERVICES WITH THE CITIES OF AVONDALE, CHANDLER AND SCOTTSDALE RELATING TO JOINT LEGAL REPRESENTATION IN THE SETTLEMENT EFFORTS RELATING TO WATER RIGHTS CLAIMS OF THE WHITE MOUNTAIN APACHE TRIBE.

5. AUTHORIZATION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH MARICOPA COUNTY DEPARTMENT OF HUMAN SERVICES FOR THE HOME INVESTMENT PARTNERSHIP PROGRAM

PRESENTED BY: Sam McAllen, Executive Director, Neighborhood and Human Services

RESOLUTION: 4753

This is a request for City Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into an intergovernmental agreement (IGA) with the Maricopa County Department of Human Services as the lead agency for Maricopa HOME Consortium. This agreement is a new sub-recipient agreement required by the Department of Housing and Urban Development (HUD). This year's allocation is \$481,541 from the HOME Investment Partnerships Program for the fiscal year (FY) 2013-14.

RESOLUTION NO. 4753 NEW SERIES WAS READ BY NUMBER AND TITLE ONLY, IT BEING A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF AN INTERGOVERNMENTAL AGREEMENT WITH THE MARICOPA COUNTY HUMAN

SERVICES DEPARTMENT CONCERNING THE CITY OF GLENDALE'S HOME INVESTMENT PARTNERSHIP PROGRAM.

6. AUTHORIZATION TO ENTER INTO INTERGOVERNMENTAL AGREEMENTS WITH SALT RIVER PROJECT FOR THE DESIGN OF ELECTRICAL FACILITIES FOR STREET LIGHTING
PRESENTED BY: Jamsheed Mehta, AICP, Executive Director, Transportation Services
RESOLUTION: 4754

This is a request for City Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into two Intergovernmental Agreements (IGAs) with Salt River Project Agricultural Improvement and Power District (SRP) for the design of electrical facilities for two streetlights.

RESOLUTION NO. 4754 NEW SERIES WAS READ BY NUMBER AND TITLE ONLY, IT BEING A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF TWO INTERGOVERNMENTAL AGREEMENTS ENTITLED "CITY OF GLENDALE DISTRIBUTION DESIGN AND CONSTRUCTION CONTRACT" WITH SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT FOR THE DESIGN AND CONSTRUCTION OF ELECTRICAL FACILITIES LOCATED AT: (1) 8648 NORTH 59TH AVENUE; AND (2) 6203 NORTH 67TH AVENUE IN GLENDALE, ARIZONA.

7. AUTHORIZATION TO ENTER INTO A GRANT AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR THE DESIGN OF GLENDALE MUNICIPAL AIRPORT IMPROVEMENTS
PRESENTED BY: Jamsheed Mehta, AICP, Executive Director, Transportation Services
RESOLUTION: 4755

This is a request for City Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into a grant agreement with the Arizona Department of Transportation (ADOT) in the amount of \$270,000 for the design of center apron asphalt rehabilitation and lighting modification improvements at Glendale Municipal Airport (Airport).

RESOLUTION NO. 4755 NEW SERIES WAS READ BY NUMBER AND TITLE ONLY, IT BEING A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE ENTERING INTO AND ACCEPTING A GRANT FROM THE ARIZONA DEPARTMENT OF TRANSPORTATION, FOR THE DESIGN TERMINAL PARKING APRON REHABILITATION AT THE GLENDALE MUNICIPAL AIRPORT.

8. AUTHORIZATION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PEORIA TO TRANSFER OWNERSHIP OF EQUIPMENT FOR THE WEST VALLEY METROPOLITAN MEDICAL RESPONSE SYSTEM
PRESENTED BY: Mark Burdick, Fire Chief
RESOLUTION: 4756

This is a request for City Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into an intergovernmental agreement (IGA) with the City of Peoria to transfer ownership of equipment for the West Valley Metropolitan Medical Response System (MMRS).

RESOLUTION NO. 4756 NEW SERIES WAS READ BY NUMBER AND TITLE ONLY, IT BEING A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PEORIA FIRE DEPARTMENT FOR THE TRANSFER OF OWNERSHIP OF EQUIPMENT FOR THE WEST VALLEY METROPOLITAN MEDICAL RESPONSE SYSTEM.

9. AUTHORIZATION TO ENTER INTO A LICENSE AGREEMENT WITH SPRINT SPECTRUM REALTY COMPANY, L.P. FOR PLACEMENT OF UNDERGROUND FIBER-BASED COMMUNICATIONS NETWORK WITHIN PUBLIC RIGHT-OF-WAY
PRESENTED BY: Stuart Kent, Executive Director, Public Works
RESOLUTION: 4757

This is a request for the City Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into a license agreement with Sprint Spectrum Realty Company, L.P. (Sprint) for placement of an underground optical fiber-based communications network within public right-of-way. This agreement will allow Sprint to expand its network into the City of Glendale.

RESOLUTION NO. 4757 NEW SERIES WAS READ BY NUMBER AND TITLE ONLY, IT BEING A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE CITY MANAGER TO EXECUTE A FIBER LICENSE AGREEMENT FOR AN UNDERGROUND OPTICAL FIBER-BASED COMMUNICATIONS NETWORK IN CITY RIGHT-OF-WAY LOCATED NEAR 8211 WEST BETHANY HOME ROAD WITH SPRINT SPECTRUM REALTY COMPANY, L.P.

It was moved by Vice Mayor Knaack and seconded by Councilmember Sherwood, to approve the recommended actions on Consent Agenda Item Nos. 4 through 9, including the approval and adoption of Resolution No. 4752 New Series, Resolution No. 4753 New Series, Resolution No. 4754 New Series, Resolution No. 4755 New Series, Resolution No. 4756 New Series, and Resolution No. 4757 New Series; The motion carried unanimously.

BIDS AND CONTRACTS

10. AUTHORIZATION TO RATIFY THE ORIGINAL CONTRACTS WITH DELTA DENTAL, EMPLOYERS DENTAL SERVICES, VSP VISION, AND THE HARTFORD LIFE INSURANCE
PRESENTED BY: Jim Brown, Executive Director, Human Resources and Risk Management

This is a request for City Council to ratify contracts for Delta Dental, Employers Dental Services (EDS) HMO Dental, VSP Vision and The Hartford (Life Insurance).

- Delta Dental – The Delta Dental plan ratification of the contract effective July 1, 2011.
- Employers Dental Services Dental – The Employers Dental Services (EDS) dental plan ratification of the contract effective July 1, 2011.
- VSP Vision – The Vision Plan ratification of the contract for VSP Vision effective July 1, 2011.
- The Hartford Life Insurance –The life insurance ratification of the original contract for the Hartford, effective July 1, 2008.

Mr. Brown said all the plans went out for bid and were reviewed and recommended by the benefits committee. The contracts were submitted to legal for review prior to implementation and the contracts were not brought forward for final approval. They are now being brought forward for ratification. Human Resources has developed a system to track these contracts in the future so they will be brought forward for approval prior to implementation.

Councilmember Sherwood asked if these contracts along with the medical plan will be sent out next year for bid. Mr. Brown said they would.

It was moved by Vice Mayor Knaack, and seconded by Councilmember Sherwood, to ratify contracts for Delta Dental, Employers Dental Services (EDS) HMO Dental, VSP Vision and The Hartford (Life Insurance). The motion carried unanimously.

PUBLIC HEARING - ORDINANCES

11. APPROVE REZONING APPLICATION ZON12-05: CASA BONITA – 5432 WEST ESCUDA ROAD (ORDINANCE) (PUBLIC HEARING REQUIRED)

PRESENTED BY: Jon M. Froke, AICP, Planning Director

ORDINANCE: 2867

This is a request by Gabriel Noje, representing David Mateu, for City Council to approve a Rezoning Application for property located approximately 600 feet east and 200 feet south of the southeast corner of 55th Avenue and the Loop 101 Freeway. The request would rezone 2.8 acres from A-1 (Agricultural) to SR-17 (Suburban Residential).

Staff is requesting Council to conduct a public hearing, waive reading beyond the title, and adopt an ordinance for ZON12-05, subject to the stipulations as recommended by the Planning Commission.

Mr. Froke provided background information on this request. He said all the neighborhood issues were worked out and the recommendation is that council approves this item which would allow the construction of three new custom homes on large lots.

ORDINANCE NO. 2867 NEW SERIES, WAS READ BY NUMBER AND TITLE ONLY, IT BEING, AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, REZONING PROPERTY LOCATED AT 5432 WEST ESCUDA ROAD FROM A-1 (AGRICULTURAL) TO SR-17 (SUBURBAN RESIDENTIAL); AMENDING THE ZONING MAP; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Weiers opened the public hearing on Agenda Item No. 11. As there were no comments, Mayor Weiers closed the public hearing.

It was moved by Councilmember Martinez, and seconded by Councilmember Hugh, to approve Ordinance No. 2867 New Series. Motion carried on a roll call vote, with the following Councilmembers voting “aye”: Alvarez, Hugh, Knaack, Martinez, Sherwood, and Weiers. Members voting “nay”: none.

12. APPROVE REZONING APPLICATION ZON13-05: COPPERWING SUD - 11401 WEST GLENDALE AVENUE (ORDINANCE) (PUBLIC HEARING REQUIRED)
PRESENTED BY: Jon M. Froke, AICP, Planning Director
ORDINANCE: 2868

This is a request by Gammage and Burnham PLC, representing the John F. Long Family Revocable Living Trust, for City Council to approve a rezoning application for property located at 11401 West Glendale Avenue. The request would establish an SUD (Special Use District) overlay on 99.3 acres in an M-1 (Light Industrial) zoned property.

Staff is requesting Council to conduct a public hearing, waive reading beyond the title, and adopt an ordinance for ZON13-05, subject to the stipulations as recommended by the Planning Commission.

Mr. Froke provided background information on this request. He said the applicant is proposing a sand and gravel operation, which is a temporary land use and phased over a maximum of 15 years. The site is located approximately 2,000 feet south of Glendale Avenue and the activities would occur below grade so as to be screened from public view, He said land adjacent to this property is also currently being used as a sand and gravel company at this time. He said staff recommendation is to approve this request.

ORDINANCE NO. 2868 NEW SERIES, WAS READ BY NUMBER AND TITLE ONLY, IT BEING, AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, REZONING PROPERTY LOCATED AT 11401 WEST GLENDALE AVENUE TO ESTABLISH A SUD (SPECIAL USE DISTRICT) OVERLAY TO A M-1 (LIGHT INDUSTRIAL) ZONING DISTRICT PROPERTY AMENDING THE ZONING MAP; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Weiers opened the public hearing on Agenda Item No. 12.

Stephen Anderson, appearing on behalf of John F. Long Properties, said they had a unanimous recommendation from the Planning Commission and staff recommendation for approval, which includes Airport staff.

Mayor Weiers closed the public hearing.

Vice Mayor Knaack said she supports the project and thanked everyone for their work on it.

It was moved by Councilmember Hugh, and seconded by Councilmember Martinez, to approve Ordinance No. 2868 New Series. Motion carried on a roll call vote, with the following Councilmembers voting “aye”: Alvarez, Hugh, Knaack, Martinez, Sherwood, and Weiers. Members voting “nay”: none.

RESOLUTIONS

13. AUTHORIZATION TO PAY THE ARIZONA SUPER BOWL HOST COMMITTEE IN SUPPORT OF SUPER BOWL XLIX

PRESENTED BY: Sam McAllen, Executive Director, Neighborhood and Human Services
RESOLUTION: 4758

This is a request for City Council to waive reading beyond the title and adopt a resolution authorizing the payment of Maricopa County Proposition 302 funding received from the Arizona Office of Tourism (AOT) in support of the Arizona Super Bowl Host Committee and Super Bowl XLIX for a total of \$72,000 over two fiscal years.

Mr. McAllen said the \$72,000 will not be using city general funds, but will be paid from Maricopa County Proposition 302 funding. He provided a brief history of Prop 302 for funding to promote tourism in Maricopa County. He said the Super Bowl Host Committee has agreed to accept payment of these funds over a two year period.

RESOLUTION NO. 4758 NEW SERIES WAS READ BY NUMBER AND TITLE ONLY, IT BEING A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, SUPPORTS PAYMENT TO THE ARIZONA SUPER BOWL HOST COMMITTEE IN SUPPORT OF SUPER BOWL XLIX.

It was moved by Vice Mayor Knaack, and seconded by Councilmember Sherwood, to pass, adopt and approve Resolution No. 4758 New Series. The motion carried unanimously.

14. ADOPT A RESOLUTION OF SUPPORT FOR A FINANCIAL POLICY RELATED TO APPROPRIATION AND CASH TRANSFERS

PRESENTED BY: Tom Duensing, Executive Director, Financial Services
RESOLUTION: 4759

This is a request for City Council to waive reading beyond the title and adopt a resolution of support for a financial policy related to appropriation and cash transfers.

Mr. Duensing said transfers are a necessary part of conducting business throughout the fiscal year. He said they are proposing a change to the financial policies related to transfers. He said the new policy is now more consistent with the city charter. It further defines cash transfers between funds and requires additional justification be brought forward to council and city attorney review prior to bringing the transfers forward to Council. It also allows Council to effectively manage contingency and grant transfers. He said contingency transfers are for unforeseen events. Staff would now be able to bring those forward to Council as they occur instead of waiting until the last quarter of the fiscal year.

RESOLUTION NO. 4759 NEW SERIES WAS READ BY NUMBER AND TITLE ONLY, IT BEING A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, SUPPORTING A FINANCIAL POLICY RELATED TO CASH AND BUDGET APPROPRIATION TRANSFERS.

It was moved by Councilmember Sherwood, and seconded by Councilmember Martinez, to pass, adopt and approve Resolution No. 4759 New Series. The motion carried unanimously.

MOTION TO EXCUSE COUNCILMEMBER CHAVIRA

It was moved by Vice Mayor Knaack, and seconded by Councilmember Sherwood, to excuse Councilmember Chavira from tonight's Council meeting. The motion carried unanimously.

REQUEST FOR FUTURE WORKSHOP AND EXECUTIVE SESSION

It was moved by Vice Mayor Knaack, and seconded by Councilmember Sherwood, to hold a City Council Workshop at 1:30 p.m. in the Council Chambers, Room B-3 on Tuesday, December, 17, 2013, to be followed by an Executive Session pursuant to A.R.S. 38-431.03. It was further moved that to vacate the regularly scheduled city council meeting on Tuesday, December 24, 2013, due to scheduled holidays and city closure. Finally, it was moved to hold a regularly scheduled City Council Workshop on Tuesday, January 7, 2014 at 1:30 p.m. in room B-3 of the Council Chambers, to be followed by an Executive Session pursuant to A.R.S. 38-431.03. The motion carried unanimously.

COUNCIL COMMENTS AND SUGGESTIONS

Councilmember Sherwood spoke about an article that was recently in the Arizona Republic, he cautioned the employees and citizens to be careful about their reaction to the article. He said Council will get a first look at the budget numbers at the workshop next week. He said this will be the first realistic look at the numbers. He said the right people are now in place, working together as a team. He said the Council needs to set aside their differences and pay attention to the numbers presented. He said the Council should embrace this

challenge. He said the city still has a few tough years, but he said they can make the best decisions for the citizens. He wished Councilmember Chavira a speedy recovery. He said it has been a long, difficult first year for him on the Council, but he is looking forward to the challenges ahead in 2014. He wished everyone a wonderful holiday.

Councilmember Alvarez agreed with Councilmember Sherwood's comments. She said they need an additional step of transparency, by notifying constituents, holding less executive sessions and make their decisions based on what the public wants. She said communication is important.

Councilmember Martinez said it has been a difficult year, but would not make a blanket statement that staff has not worked together. He said there were some individuals that caused some problems, but they are not here anymore. He said those who have been here for a long time have done, and continue to do, a good job. He said they now have new leadership and he hopes from this point forward, they will make good decisions. He reminded everyone that in the Council, the majority rules. They are not always going to agree and hindsight is a beautiful thing. He said they can second guess, but some decisions will not be agreed to by everyone. He said it comes with the territory. He said he has been on both sides during his tenure on the Council. He said he looks forward to the fresh ideas and new blood the new Councilmembers bring to the table and he looks forward to a good year. He wished everyone and the public a Merry Christmas and a Happy New Year.

Councilmember Hugh congratulated the Mayor on a successful Christmas parade. He said everyone had a great time. He thanked Grand Canyon College for their band. He wished everyone a Merry Christmas and a Happy New Year.

Vice Mayor Knaack said she agrees with Councilmember Sherwood and Councilmember Martinez. She said the parade was wonderful and had a great turnout. She said it was the hometown Glendale parade. She said her years on the Council have been tough, but she is looking to the future. She is pleased with the new staff and sees the city moving in the right direction. She said there is a lot of economic development in the works. She is looking forward to next year. She thanked the public who comes to the meetings and speaks and the others who email and call to express their concerns. She also thanked the staff for their work. She wished everyone a Merry Christmas and a Happy New Year.

Mayor Weiers said one of the Salvation Army churches was broken into. He said they have not been able to recover the money that was stolen. He said he would be out at Tanger Outlets on Saturday to help raise the money that was taken. He wished everyone a Merry Christmas and a Happy New Year.

ADJOURNMENT

The meeting was adjourned at 7:06 p.m.

Pamela Hanna - City Clerk



CITY COUNCIL REPORT

Meeting Date: **1/14/2014**
Meeting Type: **Voting**
Title: **PROCLAIM JANUARY 20, 2014 AS DR. MARTIN LUTHER KING, JR. DAY**
Staff Contact: **Office of the Mayor**

Purpose and Recommended Action

This is a request for City Council to proclaim January 20, 2014 as Dr. Martin Luther King, Jr. Day. This proclamation will be accepted by several members of the community.

Background

The Reverend Dr. Martin Luther King, Jr. was born January 15, 1929 in Atlanta, Georgia. During the 1950's Dr. King became active in the movement for civil rights and worked for racial equality in the United States. Dr. King participated in the Montgomery, Alabama bus boycott and many other peaceful demonstrations that helped create better treatment for African Americans. On August 28, 1963, during the March on Washington, Dr. King gave his "I Have a Dream" speech which helped bring about the passage of the Civil Rights Act of 1964. Because of his commitment to racial equality, Dr. King was awarded the Nobel Peace Prize in 1964. Dr. King and his legacy have had a lasting positive impact on society.

Community Benefit/Public Involvement

Proclaiming January 20, 2014 as Dr. Martin Luther King, Jr. Day benefits the city and the community, as it demonstrates Glendale's long-standing commitment towards creating a society that is more just, peaceful, and understanding.



CITY COUNCIL REPORT

Meeting Date: **1/14/2014**
Meeting Type: **Voting**
Title: **APPROVE LIQUOR LICENSE NO. 3-664, FRY'S FOOD & DRUG #60**
Staff Contact: **Tom Duensing, Executive Director, Financial Services**

Purpose and Recommended Action

This is a request for City Council to approve adding non-transferable sampling privileges to a series 9 (Liquor Store - All Liquor) license for Fry's Food & Drug #60 located at 20220 North 59th Avenue. The Arizona Department of Liquor Licenses and Control application (No. 09070425 S) was submitted by Robert Joseph Nelson.

Staff is requesting Council to forward this application to the Arizona Department of Liquor Licenses and Control with a recommendation of approval.

Background Summary

The location of the establishment is in the Cholla District. The property is zoned C-2 (General Commercial). The population density within a one-mile radius is 11,290. Approval of this application will add sampling privileges to Fry's Food & Drug Store's current series 9 license and will not increase the number of liquor licenses in the area. The current number of liquor licenses within a one-mile radius is as listed below.

Series	Type	Quantity
09	Liquor Store - All Liquor	2
10	Liquor Store - Beer and Wine	1
11	Hotel/Motel	11
	Total	14

The City of Glendale Community and Economic Development, Police, and Fire Departments have reviewed the application and determined that it meets all technical requirements.

Community Benefit/Public Involvement

No public protests were received during the 20-day posting period.



CITY COUNCIL REPORT

Attachments

Finance Department Report

Map

Police Calls for Service Report



FINANCE DEPARTMENT REPORT

Meeting Date: **1/14/2014**
To: **Brenda S. Fischer, City Manager**
From: **Tom Duensing, Executive Director, Financial Services**
Title: **APPROVE LIQUOR LICENSE NO. 3-664, FRY'S FOOD & DRUG #60**

General Information

Request: New, Non-Transferable

License: Series 9S (Liquor Store - All Liquor)

Location: 20220 North 59th Avenue

District: Cholla

Zoned: C-2 (General Commercial)

Applicant: Robert Joseph Nelson

Owner: Fry's Food & Drug

Background

1. Sampling privileges are subject to the following rules which are regulated by the Arizona Department of Liquor Licenses and Control:
 - a. Any open product shall be kept locked by the licensee when the sampling area is not staffed.
 - b. The licensee is otherwise subject to all other provisions of this title. The licensee is liable for any violation of this title committed in connection with the sampling.
 - c. The licensed retailer shall make sales of sampled products from the licensed retail premises.
 - d. The licensee shall not charge any customer for the sampling of any products.
 - e. The sampling shall be conducted under the supervision of an employee of a sponsoring distiller, vintner, brewer, wholesaler or retail licensee.
 - f. Accurate records of sampling products dispensed shall be retained by the licensee.
 - g. Sampling shall be limited to three ounces of beer or cooler-type products, one and one-half ounces of wine and one ounce of distilled spirits per person, per brand, per day.
 - h. The sampling shall be conducted only on the licensed premise.
2. The population density is 11,290 persons within a one-mile radius.

3. The business is over 300 feet from any church or school.
4. This series 9S is a request for sampling privileges attached to the current series 9 license, therefore, the approval of this request will not increase the number of liquor licenses in the area.

Citizen Participation to Date

No protests were received during the 20-day posting period, November 21 through December 11, 2013.

Review/Analysis

In accordance with A.R.S. § 4-201(G), the applicant bears the burden of showing City Council that public convenience requires that the best interest of the community will be substantially served by the issuance of a license. Council, when considering this new, non-transferable series 9S license, may take into consideration the applicant's capability, qualifications, and reliability.

The City of Glendale Community and Economic Development, Police, and Fire Departments have reviewed the application and determined that it meets all technical requirements.

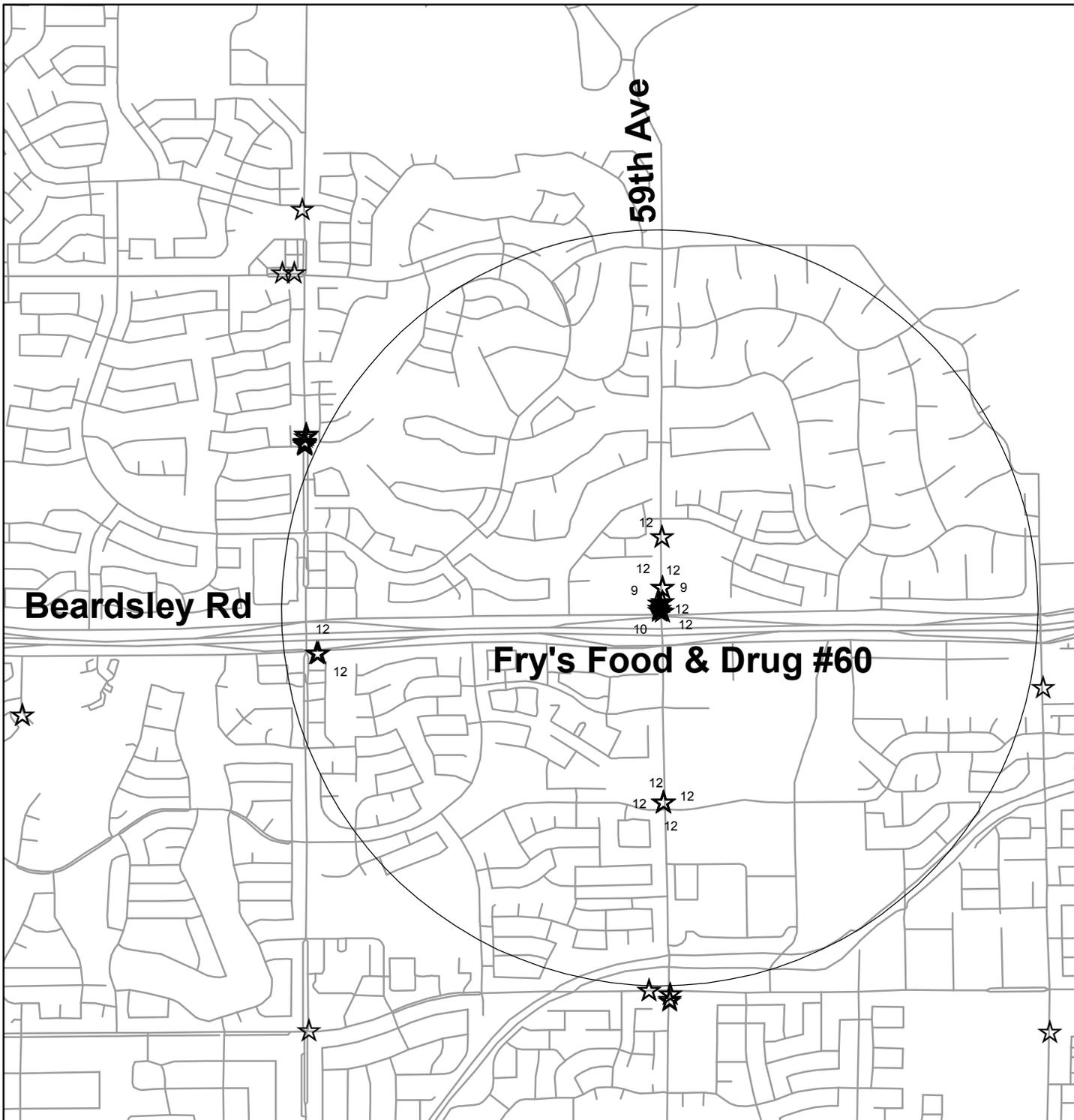
COMMUNITY AND ECONOMIC DEVELOPMENT: Approved the application with no comments.

POLICE DEPARTMENT: Recommended no cause for denial.

FIRE DEPARTMENT: Approved the application with no comments.

Staff Recommendation

It is staff's recommendation to forward this application to the Arizona Department of Liquor Licenses and Control with a recommendation of approval.



BUSINESS NAME: Fry's Food & Drug #60

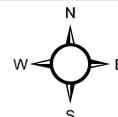
LOCATION: 20220 N. 59th Avenue

APPLICANT: Robert Joseph Nelson

ZONING: C-2

APPLICATION NO: 3-664

**SALES TAX AND LICENSE DIVISION
CITY OF GLENDALE, AZ**



13-139

GLENDALE POLICE DEPARTMENT

Liquor Application Worksheet

Date: 11-21-13

License Type: **Series 9 - Sampling Privileges**

Definition: Allows a spirituous liquor store retailer to provide samples of spirituous liquors to customers, only under the supervision of an employee of a sponsoring distiller, vintner, brewer, wholesaler or retail licensee, in the original unbroken package, to be consumed on the premises.

Application Type: **Sampling Privileges**

Definition: Add "Sampling Privileges" to an existing Series 9 - Liquor Store (All spirituous liquor) license.

Business Name: **Fry's Food & Drug #60**

Business Address: **20220 N. 59th Ave**

Applicant/s Information

Name: **Nelson, Robert Joseph**

Name:

Name:

Name:

Background investigation of applicant/s completed.

Calls for Service History:	Call history for location beginning: 11/21/2012	Other Suites	New ownership call history beginning:
Liquor Related			
Vice Related			
Drug Related			
Fights / Assaults			
Robberies			
Burglary / Theft	14		
911 calls			
Trespassing			
Accidents	1		
Fraud / Forgery			
Threats	1		
Criminal damage			
Other non-criminal*	2		
Other criminal			
Total calls for service	18	N/A	N/A

* Other non-criminal includes calls such as suspicious persons, juveniles disturbing and other information only reports that required Police response or phone call.

GLENDALE POLICE DEPARTMENT

Liquor Application Worksheet

Page 2 of 2

Applicant Background Synopsis:

None of the listed applicant(s) have any known felony convictions within the past five years or any other known criminal history that would lead to police department recommendation for denial.

Current License Holder:

Robert Nelson (Agent)
Smith's Food & Drug Centers Inc (Owner)

There are no known concerns with the current license holder.

Location History:

No significant Calls for Service history at this location.

Special Concerns:

None found

Background investigation complete:

Police Department recommendation has No Cause for Denial.

		Date
Investigating Officer – M. Ervin	<u>M. ERVIN</u>	<u>11-21-13</u>
CID Lieutenant or Commander	_____	_____
Deputy City Attorney	_____	_____
Chief of Police or designee	<u>[Signature]</u>	<u>11/25/2013</u>



CITY COUNCIL REPORT

Meeting Date: **1/14/2014**
Meeting Type: **Voting**
Title: **APPROVE LIQUOR LICENSE NO. 3-816, MAX'S**
Staff Contact: **Tom Duensing, Executive Director, Financial Services**

Purpose and Recommended Action

This is a request for City Council to approve a person-to-person, location-to-location transferable series 6 (Bar - All Liquor) license for Max's located at 6727 North 47th Avenue. The Arizona Department of Liquor Licenses and Control application (No. 06070193) was submitted by Daniel A. Luciano.

Staff is requesting Council to forward this application to the Arizona Department of Liquor Licenses and Control with a recommendation of approval.

Background Summary

The location of the establishment is in the Cactus District. The property is zoned C-3 (Heavy Commercial). The population density within a one-mile radius is 23,226. Max's is currently operating with a series 12 liquor license, therefore, the approval of this license will not increase the number of liquor licenses in the area. The series 12 will be surrendered upon approval of this series 6 license. The number of liquor licenses within a one-mile radius is as listed below.

Series	Type	Quantity
04	Wholesaler	1
06	Bar - All Liquor	4
07	Bar - Beer and Wine	1
09	Liquor Store - All Liquor	4
10	Liquor Store - Beer and Wine	12
12	Restaurant	4
	Total	26

The City of Glendale Community and Economic Development, Police, and Fire Departments have reviewed the application and determined that it meets all technical requirements.

Community Benefit/Public Involvement

No public protests were received during the 20-day posting period.



CITY COUNCIL REPORT

Attachments

Finance Department Report

Map

Police Calls for Service Report



FINANCE DEPARTMENT REPORT

Meeting Date: 1/14/2014
To: Brenda S. Fischer, City Manager
From: Tom Duensing, Executive Director, Financial Services
Title: APPROVE LIQUOR LICENSE NO. 3-816, MAX'S

General Information

Request: Person-to-Person, Location-to-Location Transferable

License: Series 6 (Bar - All Liquor)

Location: 6727 North 47th Avenue

District: Cactus

Zoned: C-3 (Heavy Commercial)

Applicant: Daniel A Luciano

Owner: Max's Sports & Simulcast Wagering Center, LLC

Background

1. The population density is 23,226 persons within a one-mile radius.
2. The business is over 300 feet from any church or school.
3. Max's is currently operating with a series 12 license, therefore, the approval of this license will not increase the number of licenses in the area. The series 12 will be surrendered upon approval of this series 6 license.

Citizen Participation to Date

No protests were received during the 20-day posting period, November 22 through December 12, 2013.

Review/Analysis

In accordance with A.R.S. § 4-201(G), the applicant bears the burden of showing City Council that public convenience requires that the best interest of the community will be substantially served by the issuance of a license. Council, when considering this new, person-to-person, location-to-location transferable series 6 license, may take into consideration the applicant's capability,

qualifications, and reliability.

The City of Glendale Community and Economic Development, Police, and Fire Departments have reviewed the application and determined that it meets all technical requirements.

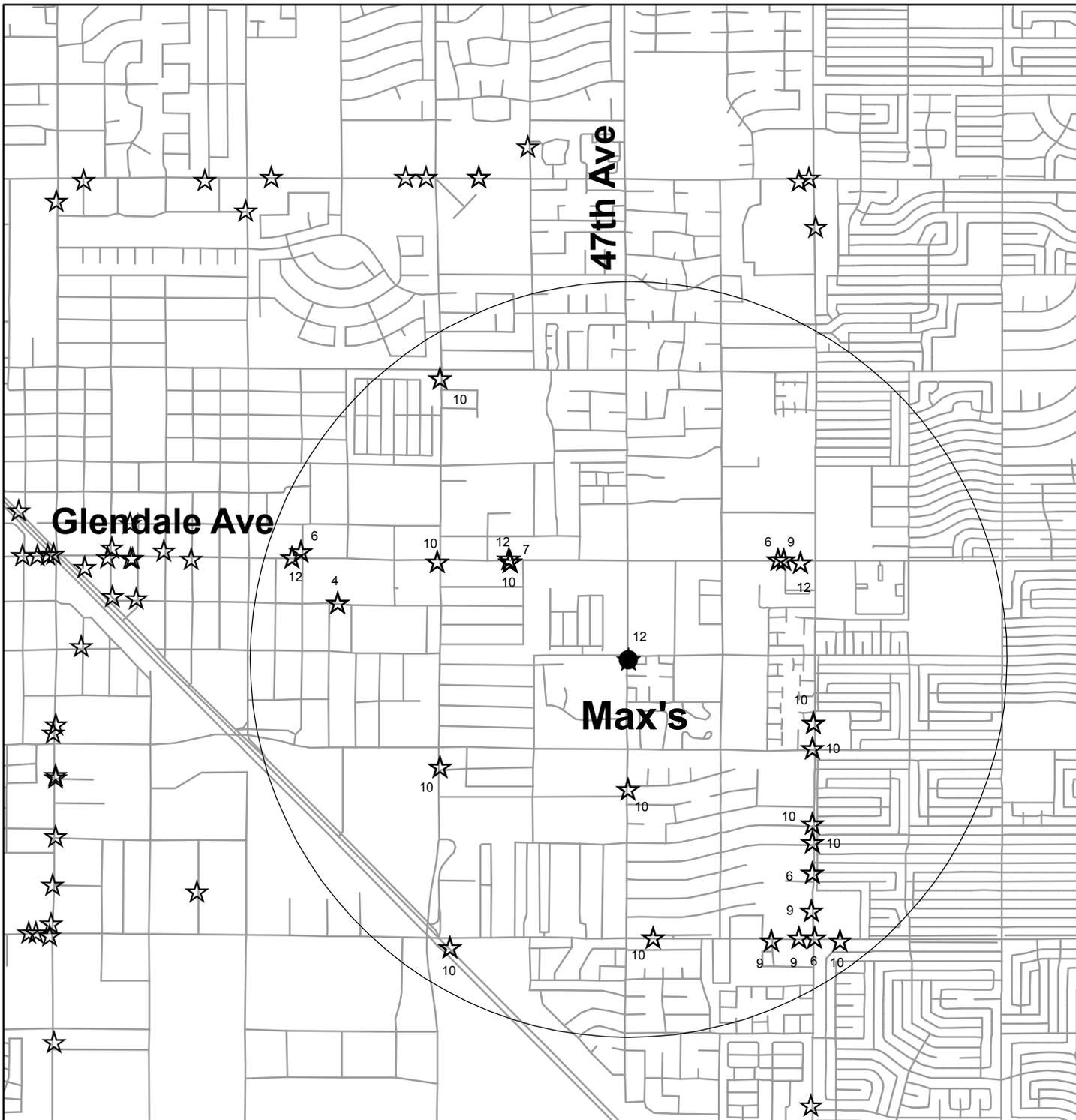
COMMUNITY AND ECONOMIC DEVELOPMENT: Approved the application with no comments.

POLICE DEPARTMENT: Recommended no cause for denial.

FIRE DEPARTMENT: Approved the application with no comments.

Staff Recommendation

It is staff's recommendation to forward this application to the Arizona Department of Liquor Licenses and Control with a recommendation of approval.



BUSINESS NAME: Max's

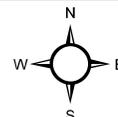
LOCATION: 6727 N. 47th Avenue

APPLICANT: Daniel A Luciano

ZONING: C-3

APPLICATION NO: 3-816

**SALES TAX AND LICENSE DIVISION
CITY OF GLENDALE, AZ**



13-143

GLENDALE POLICE DEPARTMENT

Liquor Application Worksheet

Date: 12-06-13

License Type: **Series 6 Bar (All Spiritous Liquor)**

Definition: Allows for the sale of all types of liquor, on-premise consumption and allows the bar to sell packaged goods to go. Delivery service is allowed.

Application Type: **Person Location Transfer**

Definition: The application process for conveying the ownership of a license from one person to another and moving the license from one premises to another, all within the same county.

Business Name: **Max's**

Business Address: **6727 N. 47th Ave**

Applicant/s Information

Name: **Luciano, Daniel A.**

Name: **Burton, Terry C.**

Name: **Corbin, Michael D.**

Name: **Keller, Bryan J.**

Background investigation of applicant/s completed.

Calls for Service History:	Call history for location beginning: 12/6/2008	Other Suites	New ownership call history beginning:
Liquor Related	4		
Vice Related			
Drug Related			
Fights / Assaults	3		
Robberies			
Burglary / Theft	27		
911 calls			
Trespassing	5		
Accidents			
Fraud / Forgery			
Threats			
Criminal damage	1		
Other non-criminal*	17		
Other criminal	1		
Total calls for service	58	N/A	N/A

* Other non-criminal includes calls such as suspicious persons, juveniles disturbing and other information only reports that required Police response or phone call.

GLENDALE POLICE DEPARTMENT

Liquor Application Worksheet

Applicant Background Synopsis:

None of the listed applicant(s) have any known felony convictions within the past five years or any other known criminal history that would lead to police department recommendation for denial.

Current License Holder:

Daniel Luciano (Agent)
Arizona Foodservice Inc (Owner)

There are no known concerns with the current license holder.

Location History:

No significant Calls for Service history at this location.

Special Concerns:

None found.

Background investigation complete:

Police Department recommendation has No Cause for Denial.

		Date
Investigating Officer – M. Ervin	<u>M. ERVIN</u>	<u>12-10-13</u>
CID Lieutenant or Commander	_____	_____
Deputy City Attorney	_____	_____
Chief of Police or designee		<u>SD13 12/11/2013</u>

GLENDALE POLICE DEPARTMENT

Liquor Application Worksheet

Date: **12-06-13**

License Type: **Series 6 Bar (All Spiritous Liquor)**

Definition: Allows for the sale of all types of liquor, on-premise consumption and allows the bar to sell packaged goods to go. Delivery service is allowed.

Application Type: **Person Location Transfer**

Definition: The application process for conveying the ownership of a license from one person to another and moving the license from one premises to another, all within the same county.

Business Name: **Max's**

Business Address: **6727 N. 47th Ave**

Applicant/s Information

Name: **Moran, Charles E., Jr.**

Name: **Shah, Rajat R.**

Name: **Jacobs, Jeremy M.**

Name: **Montalvo, Gabrielle R. (Manager)**

Background investigation of applicant/s completed.

GLENDALE POLICE DEPARTMENT

Liquor Application Worksheet

Date: 12-06-13

License Type: **Series 6 Bar (All Spiritous Liquor)**

Definition: Allows for the sale of all types of liquor, on-premise consumption and allows the bar to sell packaged goods to go. Delivery service is allowed.

Application Type: **Person Location Transfer**

Definition: The application process for conveying the ownership of a license from one person to another and moving the license from one premises to another, all within the same county.

Business Name: **Max's**

Business Address: **6727 N. 47th Ave**

Applicant/s Information

Name: **Young, James A. (Manager)**

Name:

Name:

Name:

Background investigation of applicant/s completed.



CITY COUNCIL REPORT

Meeting Date: **1/14/2014**
Meeting Type: **Voting**
Title: **APPROVE LIQUOR LICENSE NO. 5-11991, DOLLAR ITEM PLUS STORE**
Staff Contact: **Tom Duensing, Executive Director, Financial Services**

Purpose and Recommended Action

This is a request for City Council to approve a new, non-transferable series 10 (Liquor Store - Beer and Wine) license for Dollar Item Plus Store located at 4935 West Glendale Avenue, Suite 9. The Arizona Department of Liquor Licenses and Control application (No. 10076451) was submitted by Herman Louis Jones.

Staff is requesting Council to forward this application to the Arizona Department of Liquor Licenses and Control with a recommendation of approval.

Background Summary

The location of the establishment is in the Cactus District. The property is zoned C-2 (General Commercial). The population density within a one-mile radius is 20,805. Dollar Item Plus Store is currently operating with an interim permit, therefore, the approval of this license will not increase the number of liquor licenses in the area. The current number of liquor licenses within a one-mile radius is as listed below.

Series	Type	Quantity
04	Wholesaler	1
06	Bar - All Liquor	2
07	Bar - Beer and Wine	1
09	Liquor Store - All Liquor	1
10	Liquor Store - Beer and Wine	8
12	Restaurant	6
14	Private Club	1
	Total	20

The City of Glendale Community and Economic Development, Police, and Fire Departments have reviewed the application and determined that it meets all technical requirements.

Community Benefit/Public Involvement

No public protests were received during the 20-day posting period.



CITY COUNCIL REPORT

Attachments

Finance Department Report

Map

Police Calls for Service Report



FINANCE DEPARTMENT REPORT

Meeting Date: **1/14/2014**
To: **Brenda S. Fischer, City Manager**
From: **Tom Duensing, Executive Director, Financial Services**
Title: **APPROVE LIQUOR LICENSE NO. 5-11991, DOLLAR ITEM PLUS STORE**

General Information

Request: New, Non-Transferable

License: Series 10 (Liquor Store - Beer and Wine)

Location: 4935 West Glendale Avenue, Suite 9

District: Cactus

Zoned: C-2 (General Commercial)

Applicant: Herman Louis Jones

Owner: DIPS, LLC

Background

1. The 60-day deadline for processing this license was December 31, 2013. A letter requesting an extension was sent to the Arizona Department of Liquor Licenses and Control on November 12, 2013.
2. The population density is 20,805 persons within a one-mile radius.
3. The business is over 300 feet from any church or school.
4. Dollar Item Plus Store is currently operating with an interim permit, therefore, the approval of this license will not increase the number of liquor licenses in the area.

Citizen Participation to Date

No protests were received during the 20-day posting period, November 13 through December 3, 2013.

Review/Analysis

In accordance with A.R.S. § 4-201(G), the applicant bears the burden of showing City Council that public convenience requires that the best interest of the community will be substantially served by the issuance of a license. Council, when considering a new, non-transferable series 10 license, may take into consideration the applicant's capability, qualifications, and reliability.

The City of Glendale Community and Economic Development, Police, and Fire Departments have reviewed the application and determined that it meets all technical requirements.

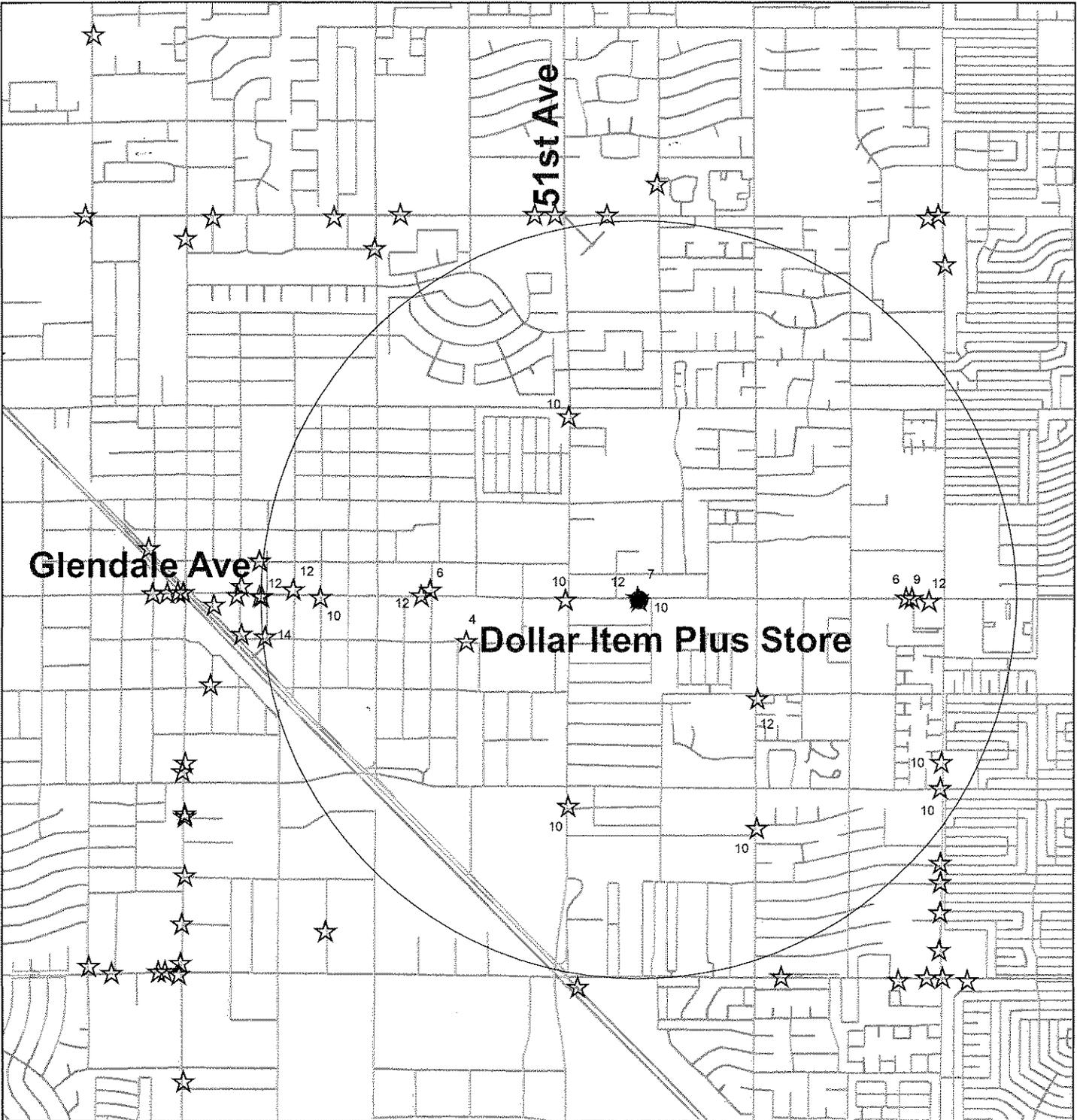
COMMUNITY AND ECONOMIC DEVELOPMENT: Approved the application with no comments.

POLICE DEPARTMENT: Recommended no cause for denial.

FIRE DEPARTMENT: Approved the application with no comments.

Staff Recommendation

It is staff's recommendation to forward this application to the Arizona Department of Liquor Licenses and Control with a recommendation of approval.



BUSINESS NAME: Dollar Item Plus Store

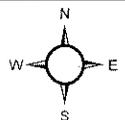
LOCATION: 4935 W. Glendale Avenue #9

APPLICANT: Herman Louis Jones

ZONING: C-2

APPLICATION NO: 5-11991

**SALES TAX AND LICENSE DIVISION
CITY OF GLENDALE, AZ**



13-133

GLENDALE POLICE DEPARTMENT

Liquor Application Worksheet

Date: 11-14-13

License Type: **Series 10 Beer and Wine Store (Beer and Wine only)**

Definition: Allows a retail store to sell beer and wine (no other spirituous liquors), only in the original unbroken package, to be taken away from the premises of the retailer and consumed off the premises.

Application Type: **New License**

Definition: New license

Business Name: **Dollar Item Plus Store**

Business Address: **4935 W. Glendale Ave #9**

Applicant/s Information

Name: **Jones, Herman Louis**

Name:

Name:

Name:

Background investigation of applicant/s completed.

Calls for Service History:	Call history for location beginning: 11/14/2008	Other Suites	New ownership call history beginning: 11/1/2013
Liquor Related			
Vice Related			
Drug Related		1	
Fights / Assaults	2		
Robberies		2	
Burglary / Theft	4	14	
911 calls	2		
Trespassing		2	
Accidents		3	
Fraud / Forgery	7	2	
Threats			
Criminal damage		5	
Other non-criminal*	9	29	
Other criminal		6	
Total calls for service	24	64	0

* Other non-criminal includes calls such as suspicious persons, juveniles disturbing and other information only reports that required Police response or phone call.

GLENDALE POLICE DEPARTMENT
Liquor Application Worksheet

Applicant Background Synopsis:

None of the listed applicant(s) have any known felony convictions within the past five years or any other known criminal history that would lead to police department recommendation for denial.

Current License Holder:

Kenny Hermis Jajou (Agent)
Somerset Market LLC (Owner)

There are no known concerns with the current license holder.

Location History:

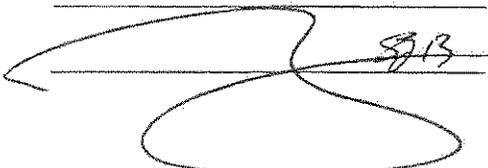
No significant Calls for Service history at this location.

Special Concerns:

None found

Background investigation complete:

Police Department recommendation has No Cause for Denial.

		Date
Investigating Officer – M. Ervin	<u>M. ERVIN</u>	<u>11-19-13</u>
CID Lieutenant or Commander	_____	_____
Deputy City Attorney	_____	_____
Chief of Police or designee	 <u>SJB</u>	<u>11/20/2013</u>



CITY COUNCIL REPORT

Meeting Date: **1/14/2014**
Meeting Type: **Voting**
Title: **APPROVE LIQUOR LICENSE NO. 5-12081, ZIPPS SPORTS GRILL**
Staff Contact: **Tom Duensing, Executive Director, Financial Services**

Purpose and Recommended Action

This is a request for City Council to approve a new, non-transferable series 12 (Restaurant) license for Zipps Sports Grill located at 19420 North 59th Avenue. The Arizona Department of Liquor Licenses and Control application (No. 12079711) was submitted by Harry Todd Goldman.

Staff is requesting Council to forward this application to the Arizona Department of Liquor Licenses and Control with a recommendation of approval.

Background Summary

The location of the establishment is in the Cholla District. The property is zoned C-2 (General Commercial). The population density within a one-mile radius is 11,459. The approval of this license will not increase the number of liquor licenses in the area because this license replaces the previous one held at this location. The current number of liquor licenses within a one-mile radius is as listed below.

Series	Type	Quantity
09	Liquor Store - All Liquor	3
10	Liquor Store - Beer and Wine	1
12	Restaurant	16
	Total	20

The City of Glendale Community and Economic Development, Police, and Fire Departments have reviewed the application and determined that it meets all technical requirements.

Community Benefit/Public Involvement

No public protests were received during the 20-day posting period.



CITY COUNCIL REPORT

Attachments

Finance Department Report

Map

Police Calls for Service Report



FINANCE DEPARTMENT REPORT

Meeting Date: **1/14/2014**
To: **Brenda S. Fischer, City Manager**
From: **Tom Duensing, Executive Director, Financial Services**
Title: **APPROVE LIQUOR LICENSE NO. 5-12081, ZIPPS SPORTS GRILL**

General Information

Request: New, Non-Transferable

License: Series 12 (Restaurant)

Location: 19420 North 59th Avenue

District: Cholla

Zoned: C-2 (General Commercial)

Applicant: Harry Todd Goldman

Owner: Zipps Citadelle, LLC

Background

1. The 60-day deadline for processing this license was January 13, 2014. A letter requesting an extension was sent to the Arizona Department of Liquor Licenses and Control on November 19, 2013.
2. The population density is 11,459 persons within a one-mile radius.
3. The 300 feet from any church or school rule does not apply to this series license.
4. The approval of this license will not increase the number of liquor licenses in the area because this license replaces the previous one held at this location.
5. The previous business at this location was Zendejas, a restaurant operating with the same license type, closed in late 2012 or early 2013.

Citizen Participation to Date

No protests were received during the 20-day posting period, November 20 through December 10, 2013.

Review/Analysis

In accordance with A.R.S. § 4-201(G), the applicant bears the burden of showing City Council that public convenience requires that the best interest of the community will be substantially served by the issuance of a license. Council, when considering this new, non-transferable series 12 license, may take into consideration the applicant's capability, qualifications, and reliability.

The City of Glendale Community and Economic Development, Police, and Fire Departments have reviewed the application and determined that it meets all technical requirements.

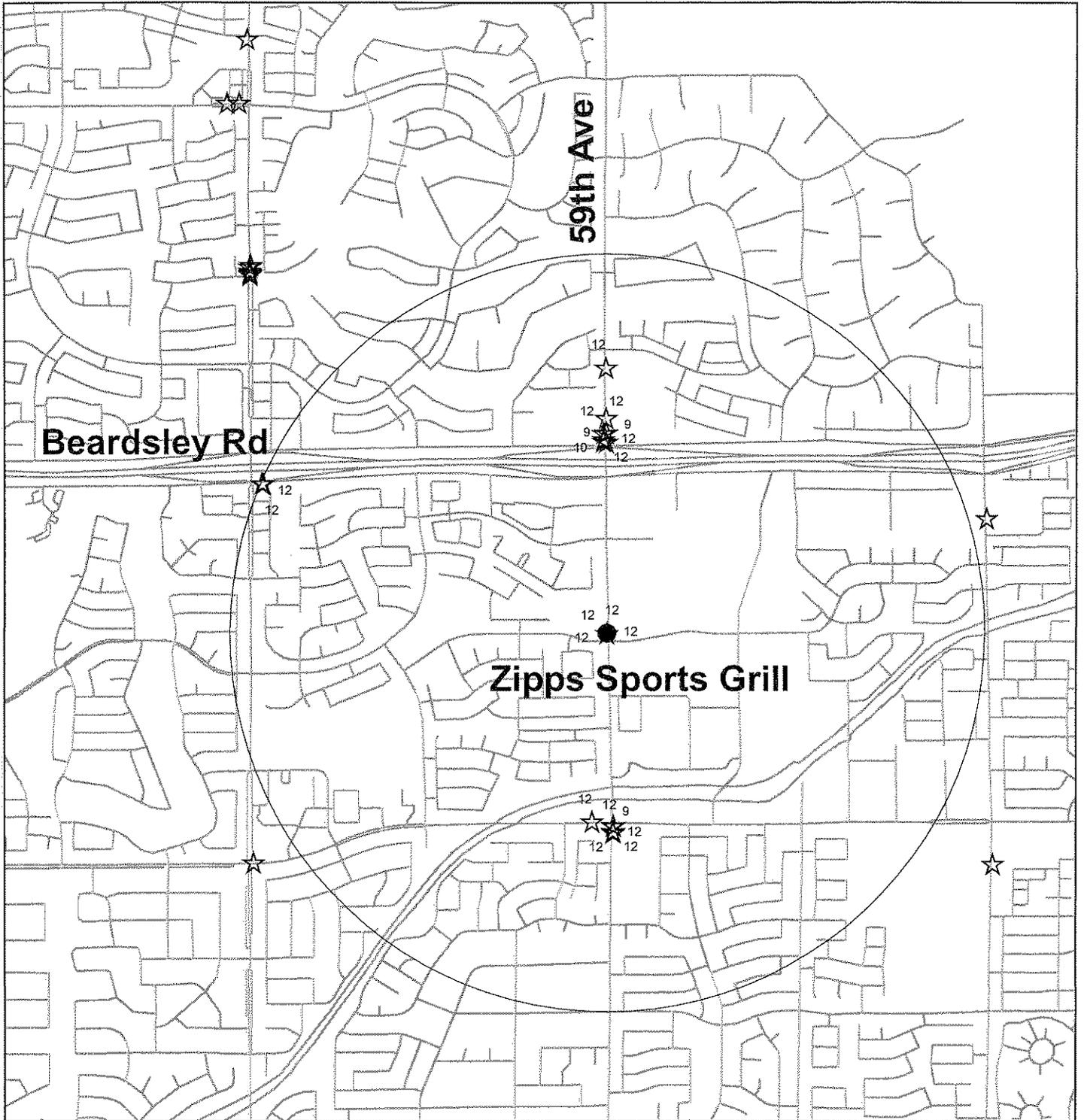
COMMUNITY AND ECONOMIC DEVELOPMENT: Approved the application with no comments.

POLICE DEPARTMENT: Recommended no cause for denial.

FIRE DEPARTMENT: Approved the application with no comments.

Staff Recommendation

It is staff's recommendation to forward this application to the Arizona Department of Liquor Licenses and Control with a recommendation of approval.



BUSINESS NAME: Zipps Sports Grill

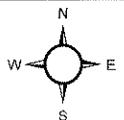
LOCATION: 19420 N. 59th Avenue

APPLICANT: Harry Todd Goldman

ZONING: C-2

APPLICATION NO: 5-12081

**SALES TAX AND LICENSE DIVISION
CITY OF GLENDALE, AZ**



13-137

GLENDALE POLICE DEPARTMENT

Liquor Application Worksheet

Date: 11-21-13

License Type: **Series 12 Restaurant**

Definition: Allows the holder of a restaurant license to sell and serve spirituous liquor solely for consumption on the premises of an establishment which derives at least forty percent (40%) of its gross revenue from the sale of food.

Application Type: **New License**

Definition: New License

Business Name: **Zipps Sports Grill**

Business Address: **19420 N. 59th Ave**

Applicant/s Information

Name: **Goldman, Harry Todd**

Name: **Goldman, Philip Morris**

Name: **Goldman, Mark Andrew**

Name:

Background investigation of applicant/s completed.

Calls for Service History:	Call history for location beginning: 11/21/2008	Other Suites	New ownership call history beginning:
Liquor Related		4	
Vice Related			
Drug Related			
Fights / Assaults	4	7	
Robberies			
Burglary / Theft	4	34	
911 calls		3	
Trespassing		5	
Accidents		3	
Fraud / Forgery		5	
Threats		1	
Criminal damage		3	
Other non-criminal*	6	45	
Other criminal	5	4	
Total calls for service	19	114	N/A - No Interim Permit

* Other non-criminal includes calls such as suspicious persons, juveniles disturbing and other information only reports that required Police response or phone call.

GLENDALE POLICE DEPARTMENT

Liquor Application Worksheet

Applicant Background Synopsis:

None of the listed applicant(s) have any known felony convictions within the past five years or any other known criminal history that would lead to police department recommendation for denial.

Previous License Holder:

Lauren Merrett (Agent)
Zendejas American Grill Inc (Owner)

There are no known concerns with the previous license holder.

Location History:

No significant Calls for Service history at this location.

Special Concerns:

None found.

Background investigation complete:

Police Department recommendation has No Cause for Denial.

		Date
Investigating Officer – M. Ervin	<u>M. ERVIN</u>	<u>11-21-13</u>
CID Lieutenant or Commander	_____	_____
Deputy City Attorney	_____	_____
Chief of Police or designee		<u>11/25/2013</u>



CITY COUNCIL REPORT

Meeting Date: **1/14/2014**
Meeting Type: **Voting**
Title: **RATIFICATION OF EXPENDITURE OF FUNDS TO BEACON SPORTS CAPITAL PARTNERS, LLC**
Staff Contact: **Jamsheed Mehta, AICP, Executive Director, Transportation Services**

Purpose and Recommended Action

This is a request for City Council to ratify the expenditure of \$25,425.43 to Beacon Sports Capital Partners, LLC, who provided representation for Glendale and assisted the city in soliciting and reviewing offers for management of the city-owned Jobing.com Arena.

Background

In May 2009, the Coyotes' former team owner, Coyotes Hockey, LLC, and its affiliated entity, Arena Management Group, LLC, filed for federal bankruptcy protection.

While the city began the process of locating a new team owner that would be committed to keeping the team in Glendale, operations and management of the Jobing.com Arena was necessary. On May 20, 2010, the city executed an Arena Management and Operations Agreement with the National Hockey League (NHL) for the Jobing.com Arena.

In February 2013, after the deadline for a potential buyer for the Coyotes expired on January 31, Council directed staff to solicit an outside service to assist in preparing and receiving proposals from qualified prospective venue managers for the Jobing.com Arena.

On March 26, 2013, City Council ratified the entering into of a representation agreement with Beacon Sports Capital Partners, LLC, to provide representation for Glendale, assist the city in soliciting and reviewing offers, and negotiate a new arena management agreement for the future lease and management of the city-owned Jobing.com Arena.

Analysis

When the representation agreement came forward to Council on March 26, 2013, the Budget and Financial Impacts Section stated that \$100,000 would be identified for the project. As this was an unplanned, unbudgeted expense, the Council Report stated that a budget amendment would be brought to Council during the fourth quarter to identify appropriation authority to cover it.

When the Fiscal Year 2012-13 fourth quarter budget amendments were approved by City Council on June 11, 2013, \$100,000 was transferred from the General Fund Contingency Account to the



CITY COUNCIL REPORT

City Manager's Office Account. However, at that time, only \$75,308.81 in invoices had been received from Beacon Sports. At the time of the budget amendment, the two final invoices, totaling \$50,116.62, had not yet been submitted.

Previous Related Council Action

On June 11, 2013, City Council approved the Fiscal Year 2012-13 budget amendments, including a \$100,000 General Fund Contingency transfer to pay for the representation agreement with Beacon Sports Capital Partners, LLC.

On March 26, 2013, City Council ratified the entering into of an agreement with Beacon Sports Capital Partners, LLC.

Budget and Financial Impacts

A total of \$125,425.43 was paid to Beacon Sports Capital Partners, LLC from April to July 2013. This amount exceeded the original anticipated \$100,000 authorized by the City Council by \$25,425.43.

All invoices were paid in Fiscal Year 2012-13.

Attachments

None



CITY COUNCIL REPORT

Meeting Date: **1/14/2014**
Meeting Type: **Voting**
Title: **AUTHORIZATION TO PURCHASE WATER QUALITY MONITORING EQUIPMENT AND LABORATORY SUPPLIES FROM HACH COMPANY**
Staff Contact: **Craig Johnson, P.E., Executive Director, Water Services**

Purpose and Recommended Action

This is a request for City Council to authorize the purchase of water quality monitoring equipment and laboratory supplies from HACH Company in the amount of \$180,000 annually for use at various water production and wastewater reclamation sites.

Background

The Arizona Department of Environmental Quality issues multiple permits with stringent water quality standards to all municipalities. In order to meet those standards, the city's water treatment plants and reclamation facilities monitor water and wastewater quality through the use of water samplers, monitoring instruments, and laboratory equipment. All the treatment plants utilize HACH water samplers and related equipment. These supplies are necessary to conduct the required testing.

Laboratory supplies from other sources do not have the flexibility required for matching equipment currently in use. HACH Company is the sole manufacturer of reagents and parts for HACH instrumentation, and therefore, the sole-source provider. Materials Management and the City Manager have approved the sole source request. This request is valid for a five-year period at which time the sole source will be reevaluated.

Analysis

The equipment is critical to the continued production of safe drinking water at the treatment plants and improving the water quality of effluent produced at the reclamation facilities.

Previous Related Council Action

Council approval for a five-year period was granted for the purchase of water quality laboratory supplies from HACH Company at the August 26, 2008 voting meeting.

Community Benefit/Public Involvement

Continuous testing allows continued compliance with federal and state regulatory requirements.



CITY COUNCIL REPORT

Budget and Financial Impacts

Funding is available in the FY 2013-14 operating budget for the Water Services Department.

Cost	Fund-Department-Account
\$180,000	2400-17250-524400, Pyramid Peak Plant 2400-17260-524400, Cholla Treatment Plant 2400-17310-524400, Oasis Surface Water Treatment Plant 2360-17160-524400, Arrowhead Reclamation Plant 2360-17170-524400, West Area Plant

Capital Expense? Yes No

Budgeted? Yes No

Requesting Budget or Appropriation Transfer? Yes No

If yes, where will the transfer be taken from?

Attachments

None



CITY COUNCIL REPORT

Meeting Date: **1/14/2014**
Meeting Type: **Voting**
Title: **POSITION RECLASSIFICATIONS**
Staff Contact: **Jim Brown, Executive Director, Human Resources and Risk Management**

Purpose and Recommended Action

This is a request for the City Council to authorize the City Manager to reclassify existing positions within the organization that have experienced a change in duties and/or responsibilities.

Background

As the City seeks out ways to more innovatively provide city services, jobs must adapt to address those changes. Department Heads work closely with the Human Resources and Risk Management Department to conduct job studies and make these changes when necessary. At times this may require a change in job duties and/or responsibilities that places the job in a different job classification. When this occurs, a reclassification of the job is necessary. Reclassifications, while permitted under Human Resources Policy 301, do create a change to Schedule 10 of the Fiscal Year (FY) 2013-14 Budget. Human Resources Policy 301.II.A.2 states the following with regard to position reclassifications:

A position may be reclassified when the essential duties and responsibilities of the position change significantly through the addition or deletion of essential job functions. Positions may be reclassified to a higher or lower classification and pay range as a result of a job study. The decision made by the Human Resources Director is final. Classification decisions are not appealable or grievable.

- a. When a position is reclassified to a class in a higher pay range, the employee shall receive the same salary as before the reclassification, unless the employee's current salary is less than the minimum of the new range, in which case the employee will be placed at the minimum of the new range.
- b. If a position is reclassified or reevaluated and assigned a lower pay range, the employee's pay will not be reduced. However, if the employee's current salary is above the maximum of the new pay range, the salary will be "red-lined," meaning that the employee will not be eligible for any additional increase in salary, including Merit, General Wage Increase or other adjustments, until the pay range maximum (through General Wage Increase) is once again higher than the actual salary.



CITY COUNCIL REPORT

Under previous management, reclassifications were considered to be under the administrative authority of the City Manager; however, moving forward, it has been determined that since this action creates a change to the Council approved Budget Schedule 10 which addresses jobs by titles and allocations, Council must be apprised of the change and vote to approve the position reclassifications as an amendment to Schedule 10 of the budget. This new process provides transparency for both the Council and the public with regard to the city's budget.

As the city moves forward, it is prudent to reassess the current structure and opportunities for realignment to better prepare the city for the future. In Financial Services, the department needs a position to oversee and administer the purchasing functions for the city. The position is being reclassified from a Senior Budget Analyst to a Purchasing and Materials Manager to accomplish these tasks.

Management Partners, Inc. was hired to conduct a comprehensive analysis of the city's organizational structure, including a comparison to other similar municipalities, and report their findings and recommendations to Council. Management Partners, Inc. completed a high-level review of the city's organizational structure and the executive level that identified a need for a second Assistant City Manager position. Assistant City Managers are responsible for balance of departments, offices, special projects and mega-events. This addition will result in a diversification to the span of control and support the City Manager in key strategic planning.

The analysis by Management Partners, Inc. recommended an organizational structure that will sustain the city and create fiscal and operational efficiencies, while supporting Glendale's business goals and objectives. Outcomes from the analysis allow the city to implement industry best management practices for a municipal corporation to improve efficiency and effectiveness of business delivery.

Analysis

The Human Resources and Risk Management Department work closely with Department Heads in conducting job studies to determine whether a job requires reclassification. It is important that job descriptions accurately reflect the duties being performed by employees and that the job classification reflects the level of duties and responsibilities required of the position. This helps ensure that the City provides a clear understanding to employees of what their duties are, helps to identify the appropriate level within the organization the position holds and helps supervisors with directing and assessing the performance of employees. It also assists with any confusion that might arise between the City and employees as to the duties and responsibilities required of a position.



CITY COUNCIL REPORT

The chart below shows positions that are being reclassified and a brief description of the change.

Position Number	Department	Fund #	Fund Name	Previous Title	New Title	Description of Request	Effective Date of Action
00001773	Field Operations	1000	General	Secretary	Asst City Mgr	Per Management Partner's recommendation this position is being reclassified to meet the needs of the citywide reorganization	1/15/2014
00001085	Financial Services	1000	General	Sr Budget Analyst	Purch & Materials Mgr	Department needs position to oversee and administer the purchasing functions for the City.	1/15/2014

Previous Related Council Action

During the January 7, 2014 Workshop meeting, Council provided direction to move forward with the specific project goals and recommendations by Management Partners, Inc.

Council approved position reclassifications at the October 8, 2013 Council meeting.

On June 14, 2013, Council approved the FY 2013-14 Budget which includes a listing of all approved positions in Schedule 10 of the Budget Book.

Community Benefit/Public Involvement

Ensuring that job descriptions appropriately reflect the duties being performed protect the city from potential litigation and help ensure that the citizens are receiving the appropriate level of services necessary.

Budget and Financial Impacts

Based on salary savings, there is no budget impact this fiscal year.

Attachments

None



CITY COUNCIL REPORT

Meeting Date: **1/14/2014**
Meeting Type: **Voting**
Title: **AUTHORIZATION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE FIRE DISTRICT OF SUN CITY WEST FOR HELICOPTER AIR-MEDICAL LOGISTICS OPERATIONS**
Staff Contact: **Mark Burdick, Fire Chief**

Purpose and Recommended Action

This is a request for City Council to waive reading beyond the title and adopt a Resolution authorizing the City Manager to enter into an Intergovernmental Agreement (IGA) with the Fire District of Sun City West (FDSCW) to support the Helicopter Air-Medical Logistics Operations (H.A.L.O.) Program.

Background

The H.A.L.O. Program provides a dedicated aircraft and flight team for emergency medical transportation and other emergency services to Glendale and the West Valley. The City of Glendale originally entered into a public-private agreement (Contract No. C-6067) with PHI Air Medical, L.L.C. (PHI) on June 26, 2007.

The City of Glendale entered into IGAs with partnering cities in order to provide the paramedic crews aboard the aircraft. The original three-year IGA (Contract No. C-7562) with FDSCW to co-staff the H.A.L.O. Program in Glendale will expire on January 25, 2014.

The City of Glendale receives compensation from PHI to cover the cost of the paramedic services provided to the H.A.L.O. Program. In turn, Glendale reimburses the partnering cities for the paramedics provided to the program. The contract rate of reimbursement from PHI increases by five percent each year. The rate of reimbursement specified in this new agreement with FDSCW is commensurate with the PHI contract reimbursement rate.

Analysis

Because the existing agreement with the FDSCW expires on January 25, 2014, this item needs to be brought forward at the January 14, 2014 City Council meeting. Staff is recommending City Council approve this IGA with FDSCW for their continued participation in the H.A.L.O. Program. If approved, this agreement will be in effect through June 25, 2015, and may be renewed for additional 18 month periods upon mutual written agreement.



CITY COUNCIL REPORT

This is a continuation of the services provided through Contract No. C-7562. There is no new or additional impact on departments, staff or service levels.

Previous Related Council Action

On January 25, 2011, City Council authorized an IGA with FDSCW for the H.A.L.O. Program.

Community Benefit/Public Involvement

Through this new agreement, Glendale will continue to receive paramedic services from FDSCW to co-staff the H.A.L.O. Program.

Budget and Financial Impacts

There are no new budgetary implications for this program. Costs continue to be reimbursed by PHI.

Attachments

Resolution

Agreement

RESOLUTION NO. 4760 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF AN INTERGOVERNMENTAL AGREEMENT WITH THE FIRE DISTRICT OF SUN CITY WEST TO SUPPORT THE HELICOPTER AIR-MEDICAL LOGISTICS OPERATIONS (H.A.L.O.) PROGRAM.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

SECTION 1. That it is deemed in the best interest of the City of Glendale and the citizens thereof that an Intergovernmental Agreement with the Fire District of Sun City West to support the Helicopter Air-Medical Logistics Operations (H.A.L.O.) program be entered into, which agreement is now on file in the office of the City Clerk of the City of Glendale.

SECTION 2. That the Mayor or City Manager and the City Clerk be authorized and directed to execute and deliver said agreement on behalf of the City of Glendale.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this ____ day of _____, 2014.

MAYOR

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

REVIEWED BY:

City Manager

iga_halo_sun city west

**Intergovernmental Agreement
Between the City of Glendale and the Fire District of Sun City West
for
Helicopter Air-Medical Logistics Operations
(H.A.L.O.)**

THIS INTERGOVERNMENTAL AGREEMENT ("IGA") is entered into this ____ day of _____, 2014 pursuant to Arizona Revised Statutes § 11-952 between the City of Glendale, an Arizona municipal corporation ("Glendale") and the Fire District of Sun City West, a political subdivision of the State of Arizona ("Sun City West"), for their respective fire departments (hereinafter collectively referred to as the "Departments" and individually as a "Department").

WHEREAS, Glendale has an existing contract with PHI AIR MEDICAL L.L.C., a Louisiana limited liability company ("PHI"), Contract No. 6067 and its first amendment No. 6067-1 which is attached hereto as Exhibit A; and

WHEREAS, Glendale and PHI have agreed to work cooperatively to establish a public-private air medical program to provide air medical transportation and other emergency services to the residents of the City of Glendale and its automatic aid and mutual aid partners; and

WHEREAS, the Departments are parties to the automatic aid agreement for Maricopa County; and

WHEREAS, the Departments desire to provide firefighter paramedic services to support the staffing of one or more medical helicopters in conjunction with the PHI contract; and

WHEREAS, the Departments desire to provide emergency medical, special operations, aerial reconnaissance, command and control and other services to automatic aid and mutual aid jurisdictions and communities within the prescribed response areas of Helicopter Air-Medical Logistics Operations ("H.A.L.O.") medical transport aircraft.

NOW, THEREFORE, the Departments hereby agree to enter into this IGA to cooperatively provide the necessary firefighter paramedics, emergency medical services and special operations personnel services to support the H.A.L.O. program, as needed, according to the terms and conditions set forth below.

I. Purpose.

The purpose of this IGA is to provide fire services personnel to co-staff H.A.L.O. program in Glendale. H.A.L.O. will provide pre-hospital emergency medical and other fire service in the Departments' jurisdictions and in other automatic aid jurisdictions within the state of Arizona (hereinafter referred to as "Fire Department Consortium"). Through this IGA, the Departments intend to provide air medical transport personnel, emergency on scene command and control, EMS and special operations services by maximizing cooperation and integrating the Departments' personnel assets.

II. Organizational Structure.

The Departments shall each provide qualified personnel to staff the H.A.L.O. program. Personnel provided by a Department are hereinafter referred to as "Participating Personnel". Glendale will provide four (4) Participating Personnel and Sun City West shall provide one (1) Participating Personnel. Each Department shall also have at least one qualified back-up person for each Participating Personnel position. The Departments acknowledge and agree that this IGA may be amended to access additional personnel for the program, if required. H.A.L.O. program participation will be limited to automatic aid jurisdictions in Maricopa County. It is agreed that no new IGA will be entered into with any additional department related to the subject of this Agreement, nor will any amendment to this IGA be made regarding an additional department, except upon the consensus of the Departments.

III. H.A.L.O. Personnel.

A. The personnel qualifications and requirements for H.A.L.O. personnel are set forth in the H.A.L.O. Operations Manual, and the Departments agree that all Participating Personnel will comply with such qualifications and requirements.

B. General Orders: Participating Personnel shall be subject to both their "home" department's General Orders and the H.A.L.O. Operations Manual. If a conflict arises between one's "home" department General Orders and the H.A.L.O. Operations Manual, the H.A.L.O. Operations Manual will apply.

C. Discipline/Personnel Review: If, in the reasonable opinion of PHI or any Department, any Participating Personnel do not demonstrate a high degree of aptitude for the type of operations or customer service required for the H.A.L.O. program, including good interpersonal relations, PHI or any Department may make a written request to the Glendale Fire Chief to conduct a prompt review of the performance of the individual and to take appropriate action. Glendale reserves the right to "ground" personnel pending decision of a review board. All such employment actions will be handled by Glendale on a case-by-case basis. If, at anytime, the conduct or performance of Participating Personnel comes into question, Glendale will convene a review board comprised of one representative from each Department, PHI, and the Medical Directors. The review board shall have the authority to disqualify any individual from further participation in the program. The decision of the review board may be appealed, upon written request of the individual, to an appeal board comprised of the Fire Chief, or designee, of each Department and a PHI designee. The action of the board shall not prevent additional disciplinary action by the Departments for violations of General Orders, policies or procedures.

D. Command and Control:

1. All Departments acknowledge that command and control of daily (non-incident) operational issues shall be Glendale's duty and responsibility. Command and control of H.A.L.O. Participating Personnel during incidents will remain the responsibility of the assigned Incident Commander.

2. A H.A.L.O. Operations Manual will be promulgated and maintained by Glendale. This manual will address operational issues including, but not limited to, command, control, training, administration and marketing. Glendale will promptly notify the Departments of any changes in the H.A.L.O. Operations Manual.
3. In the event a Department fails to provide Participating Personnel for a shift, Glendale shall assign qualified personnel from the Glendale Fire Department or from another participating Department.

E. Compensation:

1. Sun City West will provide personnel and be reimbursed at the initial rate of \$41.20 per hour for each hour a H.A.L.O position is occupied by provided Participating Personnel. Incremental payments will be made each month by Glendale. Sun City West shall invoice Glendale monthly, no later than the 10th of each month. Sun City West will only receive payment for time worked in a H.A.L.O. position. Adjustments in the future reimbursement rate will be governed by the contract between PHI and Glendale and will be the same for all Departments.
2. Each Department shall be individually responsible for the payment of wages, including overtime, for its Participating Personnel.
3. Payment by Glendale to a Department is to be made within 30 days of receipt of an invoice.

F. Uniform:

H.A.L.O personnel will wear such uniforms as prescribed in the H.A.L.O. Operations Manual.

IV. Insurance/Indemnification.

A. Each Department will assume responsibility for all liabilities relating to its Participating Personnel and will save harmless, defend and indemnify all other Departments in any actions related to such employment.

B. Each Department will maintain responsibility for all of their own employees' sick leave, vacation, alternative duty assignments, workman's compensation and other associated life insurance requirements. Glendale will only insure Glendale personnel related to the H.A.L.O. project and Sun City West will only insure Sun City West personnel related to the H.A.L.O. project. The Departments further agree that they are not joint employers for the purpose of workers compensation coverage and that any Department's employee assigned to work as Participating Personnel shall remain an employee of such Department. To the extent that employees of one Department performs duties on behalf of another Department, such employee shall be deemed to be an "employee" of both public agencies while performing pursuant to this Agreement solely for purposes of ARIZ. REV. STAT. § 23-1022 and the Arizona Workers' Compensation laws. The primary employer shall be solely liable for any workers'

compensation benefits, which may accrue. Each Party shall post a notice pursuant to the provisions of ARIZ. REV. STAT. § 23-1022 in substantially the following form:

“All employees are hereby further notified that they may be required to work under the jurisdiction or control or within the jurisdictional boundaries of another public agency pursuant to an intergovernmental agreement or contract, and under such circumstances they are deemed by the laws of Arizona to be employees of both public agencies for the purposes of worker’s compensation.”

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

V. Media Releases and Relations.

Any release of information to the media pertaining to H.A.L.O., other than a public records release, will be coordinated by the Glendale Fire Department Public Information Officer (“Glendale PIO”) in cooperation with and with input from the Departments. No Department will distribute any unilateral media releases without prior coordination with the Glendale PIO. A copy of all public record and media releases regarding H.A.L.O. shall be provided to the Glendale PIO. Departments will not reveal any investigative information or operational procedures of the H.A.L.O. project outside the Departments except as required by law or competent authority. If an incident is primarily focused upon or concerned with the actions of a Department’s Participating Personnel, that Department will be responsible for the release of information to the media relative to the incident.

VI. Arizona Department of Health Services Certification.

A. Relative to its Participating Personnel, each Department agrees that it will be responsible to the Arizona Department of Health Services (“ADHS”) for complying with all requirements mandated by ADHS for Emergency Medical Technicians (EMTs). By way of example only, and not by way of limitation, this means each Department, relative to its Participating Personnel, agrees to be responsible to ADHS for the record-keeping, training and testing requirements imposed upon fire departments employing personnel in Arizona.

B. Departments agree to cooperate to assure any issues that arise relative to EMT certification are resolved in a reasonable and efficient manner.

VII. Execution, Duration and Renewal.

A. This IGA will be effective upon the approval and execution by Glendale and Sun City West.

B. This IGA may be executed in counterparts.

C. This IGA will remain in effect through June 25, 2015, subject to the renewal and termination provisions set forth below.

D. This IGA may be renewed for successive additional 18-month periods upon mutual written agreement of the parties.

VIII. General Provisions.

A. Entire Agreement. This IGA embodies the entire understanding of the Departments and supersedes any other agreement or understanding between the parties relating to the subject matter. The Departments agree that should any part of this IGA be held to be invalid or void, the remainder of the IGA shall remain in full force and effect and shall be binding upon the parties.

B. Governing Law. This IGA shall be governed by and construed in accordance with the laws of the State of Arizona.

C. Conflict of Interest. This IGA is subject to the provisions of A.R.S. § 38-511.

D. Termination. Either party may terminate this IGA by giving the other party not less than thirty (30) days prior written notice.

E. Dispute Resolution. In the event of any dispute, claim, question, or disagreement arising from or relating to this IGA or the breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If that fails, the matter shall be submitted to a body consisting of one voting representative from each Department plus a third member mutually agreed upon by the Departments for a majority vote recommendation. The Fire Chief of Glendale has the final authority to decide and resolve the dispute, claim, question or disagreement.

F. The provisions of this Agreement for payment of funds by the Parties shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. The Parties shall be the sole judge and authority in determining the availability of funds under this Agreement and each Party shall keep the other Parties fully informed as to the availability of funds for its program. The obligation of the Parties to make any payment pursuant to this Agreement is a current expense of the Parties, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of the Parties. If the City Councils of the Parties fail to appropriate money sufficient to pay the reimbursements as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of then-current fiscal year and the Parties shall be relieved of any subsequent obligation under this Agreement.

G. Notice: All notices relating to this IGA shall be deemed given when mailed, by certified or registered mail, or overnight courier, to the other Department at the address set forth below or such other address as may be given in writing from time to time:

If to Glendale: Glendale Fire Department
 Attn: Fire Chief
 5800 West Glenn Drive, Suite 350
 Glendale, Arizona 85301

with a copy to: Glendale City Attorney
 5850 West Glendale Avenue, Suite 450
 Glendale, Arizona 85301

If to Sun City West: Sun City West Fire Department
 Attn: Fire Chief
 18818 North Spanish Garden Drive
 Sun City West, Arizona 85375

H. Immigration Compliance: The Departments warrant they will abide by those federal and state immigration laws and regulations applicable to its employees. The Departments retain the legal right to inspect the papers of the Departments to ensure that the Departments are compliant with the warranty under this Section. The Departments may conduct random inspections, and upon request of a Department, the other Department shall provide copies of papers and records demonstrating continued compliance with the warranty under this Section. The Departments agree to keep papers and records available for inspection during normal business hours and will cooperate with the other Department 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. The Departments' warranty and obligations under this Section are continuing throughout the term of this IGA or until such time as the Departments determine that Arizona law has been modified in that compliance with this Section is no longer a requirement. The "E-Verify Program" means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

[SIGNATURES FOR ALL PARTIES FOLLOW]

FIRE DISTRICT OF SUN CITY WEST,
a political subdivision of the State of Arizona

DATE: _____, 2013 _____
Board Chairman

ATTEST:

Board Clerk

CERTIFICATION BY LEGAL COUNSEL

The foregoing Intergovernmental Agreement is in proper form and is within the powers and authority of the Fire District of Sun City West granted under the laws of the State of Arizona.

APPROVED AS TO FORM AND AUTHORITY:

Fire District of Sun City West Attorney

CITY OF GLENDALE

DATE: _____, 2013 _____
Brenda S. Fischer
City Manager

ATTEST:

City Clerk

CERTIFICATION BY LEGAL COUNSEL

The foregoing Intergovernmental Agreement is in proper form and is within the powers and authority of the City of Glendale granted under the laws of the State of Arizona.

APPROVED AS TO FORM AND AUTHORITY:

Glendale City Attorney

EXHIBIT A

Air Ambulance Service Agreement (Contract. No. C-6067)
Between City of Glendale and PHI Air Medical L.L.C.
And
Amendment No. 1 to Air Ambulance Service Agreement (Contract No. C-6067-1)

EXHIBIT A

C-6067-1
06/04/2012

AMENDMENT NO. 1
TO
AIR AMBULANCE SERVICE AGREEMENT
(Contract No. C-6067)

This Amendment No. 1 to the Air Ambulance Services Agreement (this "Amendment") is made this ~~4th~~^{7th} day of ~~May~~^{June}, 2012, by and between the City of Glendale, an Arizona municipal corporation ("City") and PHI AIR MEDICAL, L.L.C., a Louisiana limited liability company authorized to do business in Arizona ("Contractor").

RECITALS

- A. City and Contractor's predecessor in interest, PHI, Inc., previously entered into an Air Ambulance Services Agreement, Contract No. C-6067, dated June 26, 2007 ("Agreement"); and
- B. City and Contractor wish to modify and amend the Agreement by extending the term, subject to and strictly in accordance with the terms of this Amendment.

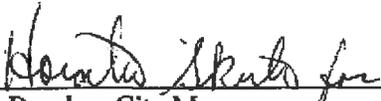
AGREEMENT

In consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Contractor hereby agree as follows:

- 1. **Recitals.** The recitals set forth above are not merely recitals, but form an integral part of this Amendment.
- 2. **Term.** The term of the Agreement is extended for one successive three (3) year period from June 26, 2012 through June 25, 2015, unless otherwise terminated or canceled as provided by the Agreement.
- 3. **Insurance Certificate.** The existing insurance certificate is expiring and a new certificate applying to the extended term is required and must be received by the Glendale Fire Chief before June 26, 2012.
- 4. **Ratification of Agreement.** City and Contractor hereby agree that except as expressly provided herein, the provisions of the Agreement shall be, and remain in full force and effect and that if any provision of this Amendment conflicts with the Agreement, then the provisions of this Amendment shall prevail.

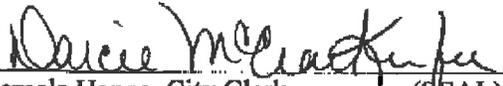
[Signatures to appear on following page.]

CITY OF GLENDALE, an Arizona
municipal corporation



Ed Beasley, City Manager

ATTEST:



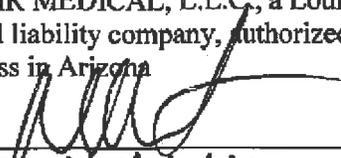
Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:



Craig Tindall, City Attorney

PHI AIR MEDICAL, L.L.C., a Louisiana
limited liability company, authorized to do
business in Arizona



By: David Motzkin
Its: Director, PHI Air Medical

AIR AMBULANCE SERVICES AGREEMENT

This Air Ambulance Services Agreement (this "Agreement") is effective as of June 26, 2007 (the "Effective Date"), by and between PHI INC., a Louisiana corporation ("PHI"), and City of Glendale ("Glendale"), (PHI and Glendale, collectively, the "Parties," individually, a "Party").

RECITALS

- A. WHEREAS, PHI provides air medical transportation services and;
- B. WHEREAS, Glendale has identified the opportunity to improve customer service to its constituents and more effectively deliver emergency services, which are core to its mission and;
- C. WHEREAS, Glendale and PHI have agreed to work cooperatively to establish a public-private air medical program to provide air medical transportation and other emergency services to the residents of the City of Glendale and its automatic aid and mutual aid partners and;

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the Parties agree as follows:

AGREEMENT

1. Services Provided by PHI.

- 1.1 Air Medical Transport Services. As authorized in accordance with this Agreement, PHI shall air transport patients (each, an "Emergency Flight") in accordance with (i) local, State and Federal protocols, (ii) Glendale protocols in existence on the Effective Date which have been furnished to PHI on or before the Effective Date and (iii) Glendale protocols as they may be amended after the Effective Date which have been furnished to PHI and approved by PHI (which approval will not be unreasonably withheld).
- 1.2 Types of Services. PHI will provide helicopter ambulance services as specified in this Agreement.
- 1.3 Flight Service Guidelines. PHI shall provide air ambulance flight services (the "Flight Services") in accordance with the standards set forth by the Commission on Accreditation of Medical Transport Services ("CAMTS"). PHI agrees to obtain CAMTS accreditation for the Program as soon as practical. The Medical Director (as defined below) for the Program working with the assigned PHI Manager of Clinical Standards shall establish standards for appropriate patient care during air transport.

- 1.4 **Program Activities.** PHI shall provide one (1) turbine engine helicopter with service available twenty-four (24) hours a day, three hundred sixty-five (365) days per year, except for maintenance and repair activities, which shall be available on a commercially reasonable basis at cost to PHI. The helicopter shall be based in the City of Glendale Municipal Airport located at 6791 N. Glen Harbor Blvd, Glendale, Arizona. In the event that another site is required, a mutually agreed upon location shall be selected by the Parties. PHI shall use its commercially reasonable efforts to promptly respond to the extent aircraft is available and not then in use or subject to maintenance or repair activities, to all appropriate flight requests. PHI shall provide a total of not less than four (4) pilots and one (1) mechanic (collectively, the "Flight Team"). Each Flight Team member shall be trained to PHI standards. Each Flight Team member shall meet all educational and experience standards recommended by CAMTS. All personnel of PHI providing services pursuant to this agreement are subject to the general approval of Glendale. The pilot in command of the aircraft at the time shall have complete power and authority to make and shall make all decisions concerning the suitability of weather and landing areas, condition of the aircraft for flight, and all other factors affecting flight safety. In accordance with Federal Aviation Regulations and PHI General Operations Manual the pilot in command of the aircraft will at all times maintain "Operational Control" of the Aircraft.
- 1.5 **Medical Director and Medical Direction.** PHI will provide physician Medical Director services for the Program (the "Medical Director") through Banner Good Samaritan Medical Center subject to the approval of Glendale, which approval shall not unreasonably be withheld. The Medical Director shall be an employee or a contractor of PHI under the control of PHI and shall not be deemed an employee, contractor or agent of Glendale. The Medical Director must meet all licensure, education, and certification requirements as set forth by any state or federal oversight body, and CAMTS.
- 1.6 **General Financial Responsibility.** Each Party shall assume full responsibility and oversight for its independently incurred costs and fees associated with the program. Costs and fees incurred as a result of the program not clearly within the responsibility of either party will be negotiated on a case by case basis.
- 1.7 **Billing and Collection Obligations.** PHI shall seek payment for all services relating to the Program by directly billing and collecting from the patients and other persons for whose benefit such services are provided. Compensation received by PHI relative to this agreement shall remain the property of PHI. All patient charges by PHI for services to the public under the terms of this Agreement shall be in accordance with applicable governmental regulations. PHI shall notify City of any changes in the charges for services provided under this Agreement within (5) days after approval. City is not responsible for non-payment of bills by individuals or other responsible parties whom patient care and transportation services have been rendered by PHI. PHI represents that its charges, to patients and other persons served, for services rendered, shall be fair and competitive.

- 1.8 HIPAA. To the extent PHI shall be deemed a "Business Associate" as such term is defined in the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and regulations promulgated there under by the U.S. Department of Health and Human Services ("HIPAA") in connection with PHI's provision of services under this Agreement, PHI shall comply with the terms and conditions of the Business Associate Agreement attached as Schedule A

2. Services Provided by Glendale.

- 2.1 **Clinical Services on Flights.** Glendale will provide at least six (6) paramedics trained to a standard agreed upon by the parties to PHI on a contract basis for the Program at the contract rate of \$58,500.00 (Fifty-eight thousand five hundred) dollars per month. This rate will increase by 5% on each yearly anniversary of the Effective Date of this Agreement. Payments made to Glendale shall be due and payable on the first day of each month, to the order of the City of Glendale, at 5850 W. Glendale Avenue, Glendale Arizona 85301, Att: Finance Department. Payments received after the 15th day of any month shall be assessed a late charge of 15%. Such personnel provided by Glendale shall be employees of Glendale or of Glendale's mutual aid partners and under the control of Glendale. Two (2) of the six (6) paramedics shall be on-duty at all times. .
- 2.2 **Dispatch Services.** Glendale will provide all dispatch and communication services for the program through the Phoenix Regional Dispatch and Deployment Center. Such personnel provided by Glendale shall be either employees or partners of Glendale and under the control of Glendale. These services will be conducted in accordance with the standards established by CAMTS.
- 2.3 **Program Management.** Glendale will designate one or more individuals to act as the supervisor from the Emergency Medical Services Division of the GFD, as provided for herein. Glendale's on duty Battalion Supervisor will work with PHI in an advisory capacity to oversee the daily operations of the Program. Such personnel provided by Glendale shall be either employees or contractors of Glendale and under the control of Glendale.
- 2.4 **Medical Crew Review.** If, in the reasonable opinion of PHI, any personnel provided by Glendale pursuant to this Agreement do not demonstrate a high degree of aptitude for the type of operations or customer service required, including good interpersonal relations, PHI may make written request to Glendale to conduct a prompt review of the performance of the individual and to take appropriate prompt action. All such employment actions will be handled by Glendale on a case-by-case basis in accordance with Glendale policy and

procedure. All Glendale employees shall conform to the rules and requirements jointly approved by Glendale and PHI concerning dress and conduct and other applicable PHI and Glendale policies while providing services pursuant to this Agreement, and in connection with referring/receiving agency personnel interface.

2.5 **First Call Provider.** GFD agrees that PHI will be the first call provider for all air medical transports requests received by, through or from GFD. If at the time of transport request, an aircraft or Flight Team to staff the aircraft is not immediately available, PHI will provide GFD with its best estimate of alternative aircraft response time. If GFD determines that the response time is inappropriate, based upon the condition and needs of the patient, GFD may utilize any other appropriate resource or transport service to meet patient transfer needs. GFD will encourage regional support and utilization of PHI as the regional air medical transport program.

3. **Utilization of Corporate Identity or Likeness.** PHI and Glendale will use their commercially reasonable efforts to participate in mutually beneficial public relations and marketing activities. Neither PHI nor Glendale will utilize the others' markings or identities without express written permission from the other Party. PHI will allow Glendale to place Glendale's identity on aircraft dedicated to this Agreement, provided that PHI will only use Glendale's trade names, trademarks, and logos in accordance with this agreement. All marketing materials of PHI that names or makes reference to Glendale or the Glendale trade names, trademarks and logos must be approved in writing by Glendale prior to distribution.

4. **Relationship of the Parties.** The relationship of the Parties as set forth in this Agreement is that of provider and customer. PHI shall be an independent contractor of Glendale pertaining to Flight Services. Nothing in this Agreement is intended or shall be construed as creating any kind of partnership, joint venture, or agency relationship between the Parties.

5. **Term.** Subject to Section 11.3, this Agreement shall be in effect for a period of Five (5) years, commencing on the Effective Date, and terminating on the fifth (5th) anniversary of the Effective Date (the "Term"). This Agreement may be extended for two (2) successive three (3) year periods upon written intent by Glendale to PHI to do so. This Agreement may be terminated by either Party at will and without cause upon 60 days written notice. The terms of this contract will apply until the date of termination (not the date of notice). In the event of termination of this agreement, PHI agrees to continue to pay Glendale the contract rate of \$58,500.00 per month for a period of twelve months after termination and Glendale agrees to enter into a labor contract with PHI to facilitate the employment of six paramedics by PHI in the Phoenix metropolitan area.

6. **Representations, Warranties and Covenants of PHI.** PHI hereby represents, warrants and covenants as follows:

- 6.1 **Organization.** PHI is a corporation duly organized, validly existing, and in good standing under the laws of the State of Louisiana, and has the power and authority to execute, deliver and perform its obligations under this Agreement. PHI is qualified and authorized to do business in the State of Arizona.
- 6.2 **Authorization.** The execution, delivery and performance of PHI of this Agreement have been authorized by all necessary corporate action on the part of PHI.
- 6.3 **FAA Regulations.** PHI shall comply with all regulations of the Federal Aviation Administration ("FAA") pertaining to air medical transport services being furnished by PHI under this Agreement and, in that connection, PHI represents that each aircraft, pilot and mechanic is properly licensed and certified and meets the minimum requirements as set forth in the applicable FAA regulations. PHI will save, hold harmless, and indemnify Glendale and any affiliated Glendale air medical program participants) from any liability, direct or indirect, including legal defense costs, arising from any act(s) and/or omission(s) of PHI and/or PHI's aviation related contractor(s) in connection with the rights and duties arising from this provision. PHI shall select, manage, and pay the legal defense costs as a part of the indemnity obligation including any settlement and /or judgment amounts awarded.
- 6.4 **Compliance.** In addition to the FAA regulations referenced in Section 7.3, PHI shall comply with all federal, state and local laws and regulations applicable to PHI's operation of the Program and the Flight Services provided by PHI under this Agreement. PHI will save, hold harmless, and indemnify Glendale and any affiliated Glendale air medical program participants from any liability, direct or indirect, including legal defense costs, arising from any act(s) and/or omission(s) of PHI and/or PHI's contractor(s) in connection with the rights and duties arising from this provision. PHI shall select, manage, and pay the legal defense costs as a part of the indemnity obligation including any settlement and/or judgment amounts awarded.

7. Representations, Warranties and Covenants of Glendale. Glendale hereby represents, warrants and covenants as follows:

- 7.1 **Organization.** Glendale is a duly organized municipal fire department validly existing and in good standing under the laws of the State of Arizona, and has the power and authority to execute, deliver and perform its obligations under this Agreement.
- 7.2 **Authorization.** The execution, delivery and performance of Glendale of this Agreement have been authorized by all necessary government action on the part of Glendale.

- 7.3 **Governmental Approvals.** Glendale has obtained, and shall maintain and keep in force, all consents, licenses, permits, approvals and authorization of federal, state and local governmental authorities which may be required to execute, deliver and perform its obligations under this Agreement.

8. PHI Insurance Requirements.

- 8.1 **Policies and Amounts.** PHI shall, during the Term or any extended term, maintain the following minimum insurance coverage:

- (a) All risk ground and flight aircraft hull insurance. Coverage shall be endorsed to waive right of subrogation against Glendale and name Glendale as additional insured to the extent of indemnities assumed by PHI.
- (b) Aircraft liability insurance covering injuries to passengers or third parties and damage to property in an amount not less than \$50,000,000 for any one accident or series of accidents arising out of any one event. Such aircraft insurance excludes medical malpractice coverage and aggravation of injuries to passengers.
- (c) Workers' compensation insurance for its employees at Arizona statutory limits.
- (d) With the exception of Workers' compensation insurance and the incidental medical malpractice protection afforded PHI as an extension of its aircraft liability policy, to the extent of PHI's Indemnification Obligation, Glendale shall be named as additional insured on each and every one of PHI's policies described above to the full limits available, waive subrogation and provide Glendale 60 days' written notice of cancellation.

- 8.2 Glendale shall, during the Term or any extended term, maintain the following minimum insurance coverage and, to the extent of Glendale's Indemnification Obligation, all such policies of insurance shall name PHI as additional insured (except with respect to workers' compensation coverage), waive subrogation (except with respect to workers' compensation coverage), and provide PHI 30 days written notice of cancellation.

- (a) Paramedic errors and omissions liability insurance in amounts of not less than \$4,000,000 single and \$6,000,000 aggregate limits.
- (b) Workers' Compensation insurance for its employees at Arizona statutory limits.

9. Indemnification. The Parties agree to indemnify each other (the "Indemnification Obligations") as follows:

- 9.1 **PHI's Indemnification Obligations.** PHI agrees to defend, protect, indemnify and hold harmless Glendale, its mutual aid partners, subsidiaries, affiliates and subcontractors and their respective directors, officers, agents, employees, representatives and agents, from every kind or character of damages, losses,

liabilities, expenses, demands or claims (collectively, "Losses") arising out of, connected with, incident to, resulting from or relating to, the performance of Flight Services under this Agreement or the operation of the Program after the Effective Date, to the extent and only to the extent such Losses are caused by the negligence or fault of any member of PHI, which obligation shall not be diminished in any regard if such Losses were caused in part by the concurrent or joint negligence, either active or passive, of any of Glendale; provided, however, that, in the event of joint or concurrent negligence or fault of Glendale and PHI, PHI's indemnification obligation shall be limited to PHI's allocable share of such joint or concurrent negligence or fault.

- 9.2 **Glendale's Indemnification Obligations.** Glendale agrees to defend, protect, indemnify and hold harmless PHI, its subsidiaries, affiliates and subcontractors and their respective directors, officers, agents, employees, representatives and agents (collectively "PHI") for Losses, to the extent and only to the extent such losses are directly related to the performance of paramedic services and caused by the negligence or fault of any member of Glendale or its mutual aid partners, which obligation shall not be diminished in any regard if such Losses were caused in part by the concurrent or joint negligence, either active or passive, of any of PHI; provided, however, that, in the event of joint or concurrent negligence or fault of Glendale and PHI, Glendale's indemnification obligation shall be limited to Glendale's allocable share of such joint or concurrent negligence or fault.
- 9.3 **Limitations.** Neither PHI nor Glendale shall indemnify the other Party for any Losses resulting from the willful or negligent acts of the other Party or members of its organization. In no event, whether as a result of contract, tort, strict liability or otherwise, shall either Party be liable to the other for any punitive, special, indirect, incidental or consequential damages, including without limitation loss of profits, loss of use or loss of contract. The Indemnification Obligations shall not be reduced nor limited by any insurance coverage or insurance proceeds an Indemnified Party may have for its own account with respect to a claim.
- 9.4 **Procedures.** PHI or Glendale shall promptly notify the other Party of the existence of any claim, or the threat of any claim, to which the Indemnification Obligations might apply. The Indemnitor shall select, manage, and pay the legal defense costs as a part of the indemnity obligation including any settlement and/or judgment amounts awarded. Each indemnitee shall have the right, at its option and sole expense, to participate in the defense or claim without relieving the indemnitor of any obligation hereunder. The Indemnitee shall cooperate and comply with all reasonable requests that the Indemnitor may make in connection with the defense and any settlement of a claim.
- 9.5 **Duration.** The Indemnification Obligations shall continue after the termination of this Agreement, and all rights associated with the Indemnification Obligations shall inure to the benefit of the successors or assigns of PHI and Glendale.

10. Miscellaneous.

- 10.1 **Force Majeure.** Neither Party shall be liable to the other Party for failure to perform its respective obligations under this Agreement if and to the extent that such failure results from causes beyond the non-performing Party's reasonable control, including without limitation such causes as strikes, lockouts, riots, fires, floods or other weather conditions, natural disasters, acts of God, acts of public enemy, or any regulations, orders or requirements of any duly authorized governmental body or agency (collectively, "Force Majeure"). If either Party is unable to perform as a result of Force Majeure, it shall promptly notify the other Party in writing of the beginning and estimated ending of each such period. If any period of Force Majeure continues for thirty (30) days or more, the Party not so failing in performance shall have the right to terminate the Agreement upon written notice to the other Party. Notwithstanding anything contained herein to the contrary, PHI shall use its commercially reasonable efforts to provide a backup helicopter and associated flight services as required by this Agreement and the RFP during the period of Force Majeure.
- 10.2 **Default.** A material breach by either Party of any representation, warranty or covenant contained in this Agreement or the failure of either Party to comply with any material terms or conditions set forth in this Agreement shall constitute an event of default ("Default").
- 10.3 **Termination.** This Agreement shall terminate and, except as otherwise set forth herein, shall be of no further force and effect ninety (90) days after the non-defaulting Party provides the defaulting Party with written notice of a Default (the "Cure Period"), unless the non-defaulting Party cures the Default prior to the expiration of the Cure Period. Further, this Agreement may be terminated by reason of Force Majeure, as set forth in Section 10.1 above.
- 10.4 **Severability.** In the event that any provision of this Agreement is determined to be unlawful or contrary to public policy, such provision shall be severed here from, shall be deemed null and void, but shall in no way affect the remaining provisions outlined herein.
- 10.5 **Proprietary Information.** PHI shall cause its employees, agents and affiliates to hold as confidential all patient information and all information relating to Glendale's business, and the terms and conditions of this Agreement. Glendale shall cause its employees, agents and affiliates to hold confidential all information relating to PHI's business and the terms and conditions of this Agreement, except as otherwise reasonably necessary for Glendale's routine business functions as a Business Associate.

- 10.6 Assignment. Neither Party shall assign this Agreement, in whole or in part, without the prior written consent of the other.
- 10.7 Waiver. The waiver by one Party of any breach or failure of the other Party to perform any covenant or obligation contained in this Agreement shall not constitute a waiver of any subsequent breach or failure.
- 10.8 Entire Agreement. This Agreement and any exhibits or schedules attached thereto or referred to herein, represent the entire agreement between the Parties, with respect to the subject matter hereof, all other prior agreements being merged herein, and this Agreement shall not be modified except in writing signed by the Party against whom such modification is sought to be enforced.
- 10.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.
- 10.10 Notice. All notices relating to this Agreement shall be deemed given when mailed, by certified or registered mail, or overnight courier, to the other Party at the address set forth below or such other address as may be given in writing from time to time:

To Glendale City Clerk:
5850 West Glendale Avenue.
Glendale, Arizona 85301

With a copy to:

Glendale City Attorney
5850 West Glendale Avenue.
Glendale, Arizona 85301

If to PHI: Petroleum Helicopters, Inc.
 Attn: Mike McCann, Chief Financial Officer
 2001 S.E. Evangeline Thruway
 Lafayette, LA 70508
 Telephone: (337) 272-4427
 Facsimile: (337) 235-1357

Copy to: PHI Air Medical
 Attn: Howard Ragsdale
 2800 N. 44th Street, Suite 800
 Phoenix, AZ 85008
 Telephone: (602) 273-9349
 Fax: (602) 224-1601

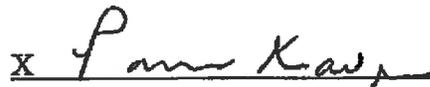
10.11 Recitals. The recitals contained in the first portion of this Agreement are made an integral part of this Agreement.

IN WITNESS HEREOF, the Parties, through their respective undersigned authorized officers, have duly executed this Agreement as of the day and year first written above.

PHI Inc.:

The City of Glendale:

X 
TITLE Director

X 
TITLE Assistant City Manager

Approved as to form:


Glendale City Attorney

SCHEDULE A Business Associate Agreement

ATTEST

City Clerk

12



CITY COUNCIL REPORT

Meeting Date: **1/14/2014**
Meeting Type: **Voting**
Title: **AUTHORIZATION TO ACCEPT A COMMUNITY ORIENTED POLICING SERVICES GRANT FROM THE UNITED STATES DEPARTMENT OF JUSTICE**
Staff Contact: **Debora Black, Police Chief**

Purpose and Recommended Action

This is a request for City Council to waive reading beyond the title and adopt a Resolution authorizing the City Manager to accept a Community Oriented Policing Services (COPS) grant in the amount of \$1,250,000 from the United States Department of Justice (DOJ) COPS Hiring Program for 10 new full-time police officers.

Background

COPS is a DOJ program responsible for advancing community policing nationwide. Since 1995, COPS has funded over \$14 billion in grants to advance community policing. This year, the DOJ awarded more than \$125 million in COPS grant funding to 263 cities and counties across the United States.

The COPS Hiring Program offers grants to state, local and tribal law enforcement agencies to hire or rehire community policing officers. The program provides salaries and benefits for officers for three years. Grantees were selected based on their fiscal needs, local crime rates, and community policing plans.

Analysis

The Glendale Police Department was selected for a COPS Hiring Program grant to hire 10 new full-time officers. The grant will provide salaries and benefits for officers for a three-year period, up to \$125,000 per officer. The city is responsible for any additional salary, benefits, and equipment. Also, as part of the grant obligation, the Glendale Police Department must retain the officers hired under this grant for a minimum of 12 months following the grant period. Prior to filling the 10 positions using the grant funds, all sworn vacancies in the Police Department must be filled.

Previous Related Council Action

In 2008 the city was awarded two COPS Technology grants in the total amount of \$1,286,038.



CITY COUNCIL REPORT

Community Benefit/Public Involvement

This grant award will allow the Police Department to hire and retain 10 new officers essential to maintaining the Department's community policing focused efforts. This grant award also encourages the recruitment of military veterans for the positions, as well as job growth in the community.

Budget and Financial Impacts

The COPS grant requires a local match of 25% of the award or \$312,500, plus any additional salary and benefits in excess of the award amount. The city is also responsible for one-time and ongoing equipment and miscellaneous costs. The one-time costs are approximately \$471,000 and the ongoing costs are approximately \$568,759 per year during the grant period. The grant-required retention of the officers for a minimum of 12 months following the grant period is approximately \$1,078,222.

The total cost to the city is approximately \$3,255,498, after the match requirement, one-time and ongoing costs, and the cost for the mandatory 12 month retention after the grant period ends.

Attachments

Resolution

Agreement

RESOLUTION NO. 4761 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, ACCEPTING THE COMMUNITY ORIENTED POLICING SERVICES (COPS) GRANT OFFER IN THE AMOUNT OF \$1,250,000 FROM THE U.S. DEPARTMENT OF JUSTICE COPS HIRING PROGRAM ON BEHALF OF THE GLENDALE POLICE DEPARTMENT; AND AUTHORIZING THE HIRING OF 10 ADDITIONAL POLICE OFFICERS.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

SECTION 1. That the City Council of the City of Glendale hereby accepts the Community Oriented Policing Services (COPS) grant offer in the amount of \$1,250,000 from the U.S. Department of Justice COPS Hiring Program on behalf of the Glendale Police Department.

SECTION 2. That the City Council of the City of Glendale hereby authorizes the hiring of 10 new full-time officers in accordance with the U.S. Department of Justice COPS Hiring Program.

SECTION 3. That the City Manager, or her designee, is hereby authorized and directed to execute any and all documents necessary for the acceptance of said grant.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this ____ day of _____, 2014.

MAYOR

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

REVIEWED BY:

City Manager

U. S. Department of Justice
Office of Community Oriented Policing Services
2013 COPS Hiring Program Grant Terms and Conditions

By signing the Award Document to accept this COPS Hiring Program (CHP) grant, the grantee agrees to abide by the following grant terms and conditions:

1. **Grant Owner's Manual.** The grantee agrees to comply with the terms and conditions in the 2013 COPS Hiring Program Grant Owner's Manual; COPS statute (42 U.S.C. §. 3796dd, et seq.); 28 C.F.R. Part 66 or 28 C.F.R. Part 70 as applicable (governing administrative requirements for grants and cooperative agreements); 2 C.F.R. Part 225 (OMB Circular A-87), 2 C.F.R. Part 220 (OMB Circular A-21), 2 C.F.R. Part 230 (OMB Circular A-122), and 48 C.F.R. Part 31.000 et seq. (FAR 31.2) as applicable (governing cost principles); OMB Circular A-133 (governing audits); representations made in the CHP grant application; and all other applicable program requirements, laws, orders, regulations, or circulars.
2. **Assurances and Certifications.** The grantee acknowledges its agreement to comply with the Assurances and Certifications forms that were signed as part of its CHP application.
3. **Allowable Costs.** The funding under this project is for the payment of approved full-time entry-level salaries and fringe benefits over three years (for a total of 36 months of funding), up to a maximum federal share of \$125,000 per officer position for career law enforcement officer positions hired and/or rehired on or after the official grant award start date. Any salary and fringe benefit costs higher than entry-level that your agency pays a CHP-funded officer must be paid with local funds.

Your agency is required to use CHP grant funds for the specific hiring categories awarded. Funding under this program may be used for the following categories:

- a. Hiring new officers, which includes filling existing officer vacancies that are no longer funded in your agency's budget;
- b. Rehiring officers laid off by any jurisdiction as a result of state, local, or Bureau of Indian Affairs (BIA) budget cuts; and/or
- c. Rehiring officers who were, at the time of grant application, scheduled to be laid off (by your jurisdiction) on a specific future date as a result of state, local, or BIA budget cuts.

If your agency's local fiscal conditions have changed and your agency needs to change one or more of the funded hiring categories, your agency should request a post-award grant modification and receive prior approval before spending CHP funding under the new category.

The Financial Clearance Memorandum (FCM), included in your award package, specifies the amount of CHP funds awarded to your agency. You should carefully review your FCM, which contains the final officer salary and fringe benefit categories and amounts for which your agency was approved. Please note that the salary and fringe benefit costs requested in your CHP application may have been adjusted or removed. Your agency may only be reimbursed for the approved cost categories that are documented within the FCM, up to the amounts specified in the FCM. **Your agency may not use CHP funds for any costs that are not identified as allowable in the Financial Clearance Memorandum.**

Only actual allowable costs incurred during the grant award period will be eligible for reimbursement and drawdown. If your agency experiences any cost savings over the course of the grant (for example, your grant application overestimated the total entry-level officer salary and fringe benefits package), your agency may not use that excess funding to extend the length of the grant beyond 36 months. Any funds remaining after your agency has drawn down for the costs of approved salaries and fringe benefits incurred for each awarded position during the 36-month funding period will be deobligated during the closeout process, and should not be spent by your agency.

4. **Local Match.** Grantees are required to contribute a local match of at least 25 percent towards the total cost of the approved grant project, unless waived in writing by the COPS Office. The local match must be a cash match from funds not previously budgeted for law enforcement purposes and must be paid during the grant award period. The local match contribution must be made on an increasing basis during each year of the three-year grant period, with the federal share decreasing accordingly.

5. **Supplementing, Not Supplanting.** State, local, or BIA funds budgeted to pay for sworn officer positions irrespective of the receipt of CHP grant funds may not be reallocated to other purposes or refunded as a result of a CHP grant being awarded. Non-federal funds must remain available for and devoted to that purpose, with CHP funds supplementing those non-federal funds. Funding awarded cannot be obligated until after the grant award start date. This means that CHP funds cannot be applied to any agency cost or obligation incurred prior to the award start date. In addition, your agency must take active and timely steps pursuant to its standard procedures to fully fund law enforcement costs already budgeted as well as fill all locally-funded vacancies resulting from attrition during the life of the grant.

6. **Retention.** At the time of grant application, your agency committed to retaining all sworn officer positions awarded under the CHP grant with state and/or local funds for a minimum of 12 months following the conclusion of 36 months of federal funding for each position, over and above the number of locally-funded sworn officer positions that would have existed in the absence of the grant. Your agency cannot satisfy the retention requirement by using CHP-funded positions to fill locally-funded vacancies resulting from attrition.

7. **Extensions.** Your agency may request an extension of the grant award period to receive additional time to implement your grant program. Such extensions do not provide additional funding. Grants may be extended a maximum of 36 months beyond the initial award expiration date. Any request for an extension beyond 36 months will be evaluated on a case-by-case basis. Only those grantees that can provide a reasonable justification for delays will be granted no-cost extensions. Reasonable justifications may include difficulties in filling COPS-funded positions, officer turnover, or other circumstances that interrupt the 36-month grant funding period. An extension allows your agency to compensate for such delays by providing additional time to complete the full 36 months of funding for each position awarded. **Extension requests must be received prior to the end date of the award.**

8. **Modifications.** During the CHP grant award period, it may become necessary for an agency to modify its CHP grant award due to changes in an agency's fiscal or law enforcement situation. Modification requests should be submitted to the COPS Office when an agency determines that it will need to shift officer positions awarded in one hiring category into a different hiring category, reduce the total number of positions awarded, shift funds among benefit categories, and/or reduce the entry-level salary and fringe benefit amounts. For example, an agency may have been awarded CHP grant funding for ten new, additional full-time sworn officer positions, but due to severe fiscal distress/constraints, the agency determines it is unable to sustain all ten positions and must reduce its request to five full-time positions; or an agency may have been awarded CHP grant funding for two new, additional sworn officer positions, but due to fiscal distress/constraints the agency needs to change the hiring category from the new hire category to the rehire category for officers laid off or scheduled for lay-off on a specific future date post-

U. S. Department of Justice
Office of Community Oriented Policing Services
2013 COPS Hiring Program Grant Terms and Conditions

application. Grant modifications under CHP are evaluated on a case-by-case basis. The COPS Office will only consider a modification request after an agency makes final, approved budget and/or personnel decisions. An agency may implement the modified grant award following written approval from the COPS Office. Please be aware that the COPS Office will not approve any modification request that results in an increase of federal funds.

9. **Evaluations.** The COPS Office may conduct monitoring or sponsor national evaluations of the COPS Hiring Program. The grantee agrees to cooperate with the monitors and evaluators.
10. **Reports.** To assist the COPS Office in the monitoring of your award, your agency will be responsible for submitting quarterly programmatic progress reports and quarterly Federal Financial Reports using Standard Form 425 (SF-425).
11. **Federal Civil Rights Laws.** As a condition of receipt of federal financial assistance, you acknowledge and agree that you will not (and will require any subgrantees, contractors, successors, transferees, and assignees not to), on the ground of race, color, religion, national origin (which includes providing limited-English proficient persons meaningful access to your programs), sex, disability or age, unlawfully exclude any person from participation in, deny the benefits of, or employment to any person, or subject any person to discrimination in connection with any programs or activities funded in whole or in part with federal funds. These civil rights requirements are found in the non-discrimination provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Omnibus Crime Control and Safe Streets Act of 1968, as amended (42 U.S.C. § 3789d); Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); the Age Discrimination Act of 1975 (42 U.S.C. §6101, et seq.); Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681 et seq.); and the corresponding DOJ regulations implementing those statutes at 28 C.F.R. Part 42 (subparts C, D, E, G, and I). You also agree to comply with Executive Order 13279 Equal Treatment for Faith-Based Organizations and its implementing regulations at 28 C.F.R Part 38, which requires equal treatment of religious organizations in the funding process and non-discrimination of beneficiaries by Faith-Based Organizations on the basis of belief or non-belief.
12. **Equal Employment Opportunity Plan (EEO).** All recipients of funding from the COPS Office must comply with the federal regulations pertaining to the development and implementation of an Equal Employment Opportunity Plan (28 C.F.R. Part 42 subpart E).
13. **Grant Monitoring Activities.** Federal law requires that law enforcement agencies receiving federal funding from the COPS Office must be monitored to ensure compliance with their grant conditions and other applicable statutory regulations. The COPS Office is also interested in tracking the progress of our programs and the advancement of community policing. Both aspects of grant implementation—compliance and programmatic benefits—are part of the monitoring process coordinated by the U.S. Department of Justice. Grant monitoring activities conducted by the COPS Office include site visits, office-based grant reviews, alleged noncompliance reviews, financial and programmatic reporting, and audit resolution. As a CHP grantee, you agree to cooperate with and respond to any requests for information pertaining to your grant.
14. **Employment Eligibility.** The grantee agrees to complete and keep on file, as appropriate, a Bureau of Citizenship and Immigration Services Employment Eligibility Verification Form (I-9). This form is to be used by recipients of federal funds to verify that persons are eligible to work in the United States.
15. **Community Policing.** Community policing activities to be initiated or enhanced by your agency were identified and described in your CHP grant application. Your agency developed a community policing plan for the CHP grant with specific reference to a crime or disorder problem and the following elements of community policing: a) problem solving—your agency's plan to assess and respond to the problem identified; b) community partnerships and support, including related governmental and community initiatives that complement your agency's proposed use of CHP funding; and c) organizational transformation—how your agency will use the funds to reorient its mission to community policing or enhance its involvement in and commitment to community policing.
- The COPS Office defines community policing as a philosophy that promotes organizational strategies, which support the systematic use of partnerships and problem-solving techniques, to proactively address the immediate conditions that give rise to public safety issues such as crime, social disorder, and fear of crime. CHP grants must be used to initiate or enhance community policing activities. All newly hired, additional or rehired officers (or an equal number of redeployed veteran officers) funded under CHP must implement your agency's approved community policing plan, which you described in your grant application.
16. **Community Policing Self Assessment Tool (CP-SAT).** The COPS Office will require your agency to complete the Community Policing Self Assessment Tool (CP-SAT) twice within the grant period, at the beginning and again towards the end of your grant period.
17. **Contracts With Other Jurisdictions.** Grantees that provide law enforcement services to another jurisdiction through a contract must ensure that officers funded under this grant do not service the other jurisdiction, but will only be involved in activities or perform services that exclusively benefit the grantee's own jurisdiction.
18. **False Statements.** False statements or claims made in connection with COPS grants may result in fines, imprisonment, or debarment from participating in federal grants or contracts, and/or any other remedy available by law.
19. **Additional High-Risk Grantee Requirements.** The recipient agrees to comply with any additional requirements that may be imposed during the grant performance period if the awarding agency determines that the recipient is a high-risk grantee (28 C.F.R. Parts 66 and 70).
20. **System for Award Management (SAM) and Universal Identifier Requirements.**

The Office of Management and Budget requires federal agencies to include the following standard award term in all grants and cooperative agreements made on or after October 1, 2010:

A. Requirement for System for Award Management (SAM) Registration

Unless you are exempted from this requirement under 2 C.F.R. Part 25.110, you as the recipient must maintain the currency of your information in the SAM until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

U. S. Department of Justice
Office of Community Oriented Policing Services
2013 COPS Hiring Program Grant Terms and Conditions

B. Requirement for Data Universal Numbering System (DUNS) Numbers

If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.
2. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

C. Definitions

For purposes of this award term:

1. *System for Award Management (SAM)* means the federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site at www.sam.gov.
2. *Data Universal Numbering System (DUNS) number* means the nine- or thirteen-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866.705.5711) or the Internet at <http://fedgov.dnb.com/webform>.
3. *Entity*, as it is used in this award term, means all of the following, as defined at 2 C.F.R. Part 25, subpart C:
 - a. A governmental organization, which is a state, local government, or Indian Tribe;
 - b. A foreign public entity;
 - c. A domestic or foreign non-profit organization;
 - d. A domestic or foreign for-profit organization; and
 - e. A federal agency, but only as a subrecipient under an award or subaward to a non-federal entity.
4. *Subaward*:
 - a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
 - b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. ___210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
 - c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.
5. *Subrecipient* means an entity that:
 - a. Receives a subaward from you under this award; and
 - b. Is accountable to you for the use of the federal funds provided by the subaward.

21. **Reporting Subaward and Executive Compensation.** The Office of Management and Budget requires federal agencies to include the following standard award term in all grants and cooperative agreements made on or after October 1, 2010:

a. Reporting of first-tier subawards.

1. *Applicability.* Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).
2. *Where and when to report.*
 - i. You must report each obligating action described in paragraph a.1. of this award term to www.fsrs.gov.
 - ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
3. *What to report.* You must report the information about each obligating action that the submission instructions posted at www.fsrs.gov specify.

b. Reporting Total Compensation of Recipient Executives.

1. *Applicability and what to report.* You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—
 - i. the total federal funding authorized to date under this award is \$25,000 or more;
 - ii. in the preceding fiscal year, you received—
 - (A) 80 percent or more of your annual gross revenues from federal procurement contracts (and subcontracts) and federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. Part 170.320 (and subawards); and
 - (B) \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts) and federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. Part 170.320 (and subawards); and
 - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at www.sec.gov/answers/excomp.htm.)
2. *Where and when to report.* You must report executive total compensation described in paragraph b.1 of this award term:
 - i. As part of your registration profile at www.sam.gov.
 - ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

U. S. Department of Justice
Office of Community Oriented Policing Services
2013 COPS Hiring Program Grant Terms and Conditions

1. *Applicability and what to report.* Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—
- i. in the subrecipient's preceding fiscal year, the subrecipient received—
 - (A) 80 percent or more of your annual gross revenues from federal procurement contracts (and subcontracts) and federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. Part 170.320 (and subawards); and
 - (B) \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts) and federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. Part 170.320 (and subawards); and
 - ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at www.sec.gov/answers/execomp.htm.)
2. *Where and when to report.* You must report subrecipient executive total compensation described in paragraph c.1. of this award term:
- i. To the recipient.
 - ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

- i. Subawards, and
- ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:

1. *Entity* means all of the following, as defined in 2 C.F.R. Part 25:
 - i. A governmental organization, which is a state, local government, or Indian Tribe;
 - ii. A foreign public entity;
 - iii. A domestic or foreign non-profit organization;
 - iv. A domestic or foreign for-profit organization;
 - v. A federal agency, but only as a subrecipient under an award or subaward to a non-federal entity.
2. *Executive* means officers, managing partners, or any other employees in management positions.
3. *Subaward*:
 - i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
 - ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. ____210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
 - iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
4. *Subrecipient* means an entity that:
 - i. Receives a subaward from you (the recipient) under this award; and
 - ii. Is accountable to you for the use of the federal funds provided by the subaward.
5. *Total compensation* means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 C.F.R. Part 229.402(c)(2)):
 - i. *Salary and bonus.*
 - ii. *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - iii. *Earnings for services under non-equity incentive plans.* This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - iv. *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.
 - v. *Above-market earnings on deferred compensation that is not tax-qualified.*
 - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.



CITY COUNCIL REPORT

Meeting Date: **1/14/2014**
Meeting Type: **Voting**
Title: **AUTHORIZATION TO EXECUTE THREE LICENSE AGREEMENTS WITH CRICKET COMMUNICATIONS, INC. TO OPERATE WIRELESS COMMUNICATIONS SITES WITHIN PUBLIC RIGHT-OF-WAY AND ON CITY-OWNED PROPERTY**
Staff Contact: **Stuart Kent, Executive Director, Public Works**

Purpose and Recommended Action

This is a request for the City Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to execute three license agreements between the City of Glendale and Cricket Communications, Inc. (Cricket) to operate wireless communication sites within public right-of-way and on city-owned property.

Background

Cricket contacted the city to request permission to maintain its existing network facilities in Glendale. Cricket has facilities at four sites within the city's right-of-way or on city-owned property. The following three sites are due for license renewal: 5901 West Bell Road, located on an Arizona Public Service transmission pole; 7987 North 53rd Avenue, located on a Salt River Project transmission pole; and, at 9802 North 59th Avenue within Sahuaro Ranch Park. The city entered into 10-year license agreements for these sites, which have expired, and Cricket has been paying month-to-month since that time.

Staff has developed guidelines to standardize the fees charges for wireless cell site license agreements, as shown in the following table. These guidelines are followed in negotiating new licenses and the renewal of licenses for the various wireless companies as they expire. The fees are consistent for each site and are based upon industry standard, geographical location and comparable rates being charged to competitive wireless carriers by other municipalities both locally and nationally.

CATEGORY	DESCRIPTION	FEE RANGE
A	Utility company owned transmission poles (i.e. SRP, APS) within public right-of-way and require minimal space for additional facilities or enclosures. There are currently 11 sites within this category.	\$10,000-\$18,000
B	City-owned traffic signal poles within public right-of-way and require minimal space for additional facilities or enclosures. There are currently two sites within this category.	\$13,000-\$18,000



CITY COUNCIL REPORT

C	City parks; wireless facilities are placed on existing field light poles, mono poles, or mono palm trees. Additional space required for equipment and enclosures. There are currently three sites within this category.	\$35,000-\$40,000
D	Other city-owned property; wireless facilities are placed on existing flag poles, mono poles, or mono palm trees. Additional space required for equipment and enclosures. There are currently three sites within this category.	\$25,000-\$30,000

Analysis

- These license agreement renewals fall within Categories A and C of the guidelines and are being charged accordingly. They do not change the total number of sites within these categories.
- Cricket's infrastructure investment in the West Valley allows them to meet their current and future clients' connection needs and the growing demand for cellular service.
- There will be no impact to any city departments, staff, or service levels.
- There are no costs incurred as a result of this action.
- There will be no additional construction needed as a result of this action.
- The new license agreements are each for a five year term with no more than four consecutive five year renewals.

Previous Related Council Action

On March 12, 2003, the city entered into a 10-year license agreement with Cricket to operate a wireless communication sites at 9802 North 59th Avenue.

On January 9, 2002, the city entered into 10-year license agreements with Cricket to operate wireless communication sites at 5901 West Bell Road and 7987 North 53rd Avenue.

Community Benefit/Public Involvement

Cricket's infrastructure investment in the West Valley allows them to meet their current and future clients' connection needs and the growing demand for cellular service.

Budget and Financial Impacts

The current value on each of the two agreements within public right-of-way is \$13,908 per year. The new license agreements have a value of \$15,000 each for the first year, with a 3% annual



CITY COUNCIL REPORT

increase for subsequent years. The revenue generated from each agreement during the first five years, including the annual increases, is projected at \$82,344 per site.

The current value of the agreement on city owned property within Sahuaro Ranch Park is \$37,000 per year. The new license agreement has a value of \$40,000 for the first year, with a 3% annual increase for subsequent years. The revenue generated from this agreement during the first five years, including the annual increases, is projected at \$220,000.

The total value of all three agreements during the first five years is projected at \$384,688. All revenue will be deposited into the General Fund.

Attachments

Resolution

Agreements (3)

Maps (3)

RESOLUTION NO. 4762 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE CITY MANAGER TO EXECUTE THREE LICENSE AGREEMENTS WITH CRICKET COMMUNICATIONS, INC., FOR WIRELESS COMMUNICATION SITES LOCATED ON CITY RIGHT-OF-WAY IN GLENDALE, ARIZONA.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

SECTION 1. That the City Manager or her designee is hereby authorized to execute and deliver three License Agreements for Wireless Communications Site on City Right-of-Way for the following locations:

1. 5901 West Bell Road;
2. 9802 North 59th Avenue; and
3. 7987 North 53rd Avenue.

SECTION 2. That said agreements are on now on file with the City Clerk.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this _____ day of _____, 2014.

MAYOR

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

REVIEWED BY:

City Manager

l_cricket wireless

**LICENSE AGREEMENT
FOR WIRELESS COMMUNICATIONS SITE
IN CITY RIGHT-OF-WAY**

This License Agreement for use of a City Right-of-Way ("Agreement") is executed to be effective the ___ day of _____, 2014 ("Effective Date"), by and between the City of Glendale, an Arizona municipal corporation ("City"), and Cricket Communications, Inc., a Delaware corporation ("Licensee").

WHEREAS, the City is the owner of certain right-of-way ("City Right-of-Way") located between the Car Wash and Bell Road, including a small portion of which is to be licensed ("License Area") for which Licensee describes as site PHX035 for use pursuant to this Agreement, as more particularly described in the ("Site Plan") as Exhibit A attached hereto; and

WHEREAS, R&R Properties Limited Partnership, an Arizona limited partnership is the owner of certain real property located at 5901 W. Bell Road in Glendale, Arizona, on which the Car Wash ("Car Wash Property") is located and which adjacent to the City Right-of-Way; and

WHEREAS, the Arizona Public Service, an Arizona corporation ("APS") is the owner of a utility pole located on the City Right-of-Way, which is designated by APS as the first pole west of the southwest corner of 59th Avenue and Bell Road (the "Pole"); and

WHEREAS, the Parties entered into a previous License Agreement on January 9, 2002, designated by the City as C-4447, pursuant to which the Licensee, as successor-in-interest to Cricket Arizona Property Company, installed and operated wireless communication antennas and related equipment specified in Section 1 below (collectively referred to as the "Communication Equipment") in the License Area and constructed certain improvements to the License Area and the Car Wash Property, as depicted in the Site Plan; and

WHEREAS, the City is willing to renew its grant of a license to the Licensee to use the License Area for the operation of the Communication Equipment, and the transmission and reception of communication signals, in accordance with the terms of this Agreement, subject to the approval of the Glendale City Council in connection with the public hearing requirements of A.R.S. § 9-551 *et seq.*, and all as implemented by the City's Project Manager, whose approval shall not be unreasonably withheld.

THEREFORE, in consideration of the following mutual covenants, terms and conditions, it is hereby agreed as follows:

1. LICENSE AREA.

A. The License Area includes and is limited to the following areas depicted in the Site Plan, which is attached hereto as Exhibit A:

i) The Pole located in the City Right-of-Way, to be used solely for not more than three panel antennas (“the Antennae”) that are to be attached to the Pole at 55 feet above ground level. The Antennae will be consistent in size, placement and design as approved by the City’s Planning Department. Any reference to the Pole herein shall include any replacement Pole to be constructed by the Licensee and/or APS.

ii) An underground conduit and cable route for a ground signal conduit and cable along the route described in the Site Plan, or as otherwise approved by the City, from the base of the Pole to the Licensee’s ground equipment located on the Car Wash Property.

iii) An underground conduit and cable route for an electrical service conduit and cable along the route described in the Site Plan, or as otherwise approved by the City, from the nearest available power source to the ground equipment located on the Car Wash Property.

iv) An underground conduit and cable route for a telephone service conduit and cable along the route described in the Site Plan, or as otherwise approved by the City, from the nearest available telephone service to the ground equipment located on the Car Wash Property.

2. CITY’S REPRESENTATIONS AND WARRANTIES.

A. The City represents and warrants to the Licensee that: (i) the City, and its duly authorized signatory, have full right, power and authority to execute this Agreement on behalf of the City; and (ii) the City has good and unencumbered title to the License Area free and clear of any liens or mortgages, except those disclosed to the Licensee that will not interfere with Licensee’s right to use the License Area; and (iii) the City’s execution and performance of this Agreement will not violate any laws, ordinances, covenants, mortgages, licenses or other agreements binding on the City.

B. The Licensee has studied and inspected the License Area and accepts the same “AS IS” without any express or implied warranties of any kind, other than those warranties contained in subsection (A) immediately above, including any warranties or representations by the City as to its condition or fitness for any particular use. The Licensee has inspected the License Area and obtained information and professional advice as the Licensee has determined to be necessary related to this Agreement.

3. GRANT OF LICENSE; TERM.

The City grants to the Licensee the right to use the License Area, subject to the following provisions and conditioned upon the Licensee’s timely and complete performance of all its obligations hereunder:

- A. As a condition precedent to this License taking effect, Licensee shall obtain the approval of all property owners, including APS, to use and occupy any property needed to install and operate its Communication Equipment. Nothing in this Agreement will be construed as granting the Licensee the authority to use any property that is owned by any person or entity other than the City.
- B. The initial term of this Agreement shall be for a period of five (5) years (the "Initial Term"), commencing on the Effective Date and ending on January 8, 2018, unless sooner terminated as stated herein. The City and Licensee may agree to renew this Agreement for four (4) successive five-year Renewal Terms on the same provisions. There is no automatic renewal of this Agreement. In order to renew this Agreement, Licensee must notify the City in writing of its intent to renew this Agreement at least thirty (30) days prior to the expiration of the Initial Term or any Renewal Term.
- C. The Licensee shall vacate the License Area upon the expiration or termination of this Agreement. If Licensee continues to occupy the License Area after the expiration or termination of this Agreement without the City's consent, holding over will not operate as a renewal or extension of this Agreement, and the Licensee must pay the City a fee in an amount that is double the amount of license fee that would otherwise be due under Section 4 for such hold-over period.
- D. The Agreement supersedes any negotiation, correspondence, course of performance or dealing, or other statements or acts by or between the parties. Notwithstanding any provision in this Agreement to the contrary, Licensee's rights in the License Area are limited to solely the rights created by this Agreement, which create only a revocable license in the License Area. The Licensee has no real property interest in the License Area.
- E. Licensee's rights hereunder are subject to all covenants, restrictions, easements, agreements, reservations and encumbrances upon, and all other conditions of title to the License Area. Notwithstanding the preceding sentence, the City shall provide to the Licensee peaceable use and enjoyment of the License Area in accordance with the terms of this Agreement. Licensee's rights under this Agreement are further subject to all present and future building restrictions, regulations, zoning laws, ordinances, resolutions and orders of any local, state or federal agency, now or later having jurisdiction over the License Area or the Licensee's use of the License Area.
- F. Licensee's sole remedy for any breach or threatened breach of this Agreement by the City is an action for damages.

4. RENT; FEES; COSTS.

- A. The Licensee shall pay, without notice and free from all claims, deductions and setoffs against the City, a license fee in the amount of **\$15,000.00 per year**, plus all applicable taxes, for the period covering the Effective Date through the first anniversary of the Effective Date of this Agreement.
- B. The license fee will increase by three percent (3%) annually on the anniversary of the Effective Date.

- C. The license fee is due on the first day of the anniversary date month of the Effective Date of this Agreement. For example, if the Effective date of this Agreement is August 15, 2013, the license fee for 2014 shall be due on August 1, 2014. Licensee shall pay the license fee due for the current year in advance on the first business day of each anniversary month. If the Effective Date is not on the first day of a month, the Licensee's fees will be prorated accordingly.
- D. If the Licensee fails to pay any fees in full on or before the due date, the Licensee is responsible for interest on the unpaid principal balance at the rate of 18% per annum from the due date until payment is made in full.

5. UTILITIES.

Licensee is responsible for obtaining and paying for all utilities necessary to operate the Communication Equipment.

6. USE RESTRICTIONS.

- A. Subject to the interference provisions set forth below, Licensee shall at all times use reasonable efforts to minimize any impact that its use of the License Area will have on other uses of the License Area and the City Right-of-Way.
- B. Licensee shall not remove, damage or alter in any way any improvements or personal property of the City upon the License Area or City Right-of-Way without the City's prior written approval. Licensee shall repair any damage or alteration to the City's property caused by Licensee's use of the Licensed Area to the same condition that existed before the damage or alteration.
- C. Whenever the Licensee performs construction activities within the License Area, the Licensee shall obtain all necessary construction permits and promptly, upon completion of construction, restore the remaining License Area to the condition existing prior to construction to the satisfaction of the City's Project Manager. If the Licensee fails to restore the License Area as required, the City may take all reasonable actions necessary to restore the License Area, and the Licensee, within twenty (20) days of demand and receipt of an invoice, together with reasonable supporting documentation, will pay all of the City's reasonable costs of restoration.
- D. Licensee shall use the License Area solely for constructing, installing, operating, maintaining, repairing, modifying and removing the Communication Equipment. Licensee has the right to modify, supplement, upgrade, replace, remove, refurbish, or relocate the equipment related to the Communication Equipment, including without limitation the utility lines, transmission lines, equipment shelter(s), electronic equipment, antennas, coax, microwave dishes, and supporting equipment, within the License Area (including all riser/conduit space and utility/access easements) only, at any time during the term of this Agreement, provided that Licensee complies with all applicable laws and regulations, design/architectural guidelines and height restrictions. City agrees to cooperate with Licensee in all respects in connection with the foregoing. Licensee may operate the Communication Equipment at any frequency for which it has all requisite

Permits, provided that Licensee must comply with any existing non-interference provisions set forth in this Agreement. Prior to exercising the foregoing rights, Licensee shall obtain the prior written consent of City, which consent will not be unreasonably withheld, conditioned or delayed.

- E. Licensee shall have a non-exclusive right for ingress and egress, seven (7) days a week, twenty-four (24) hours a day, for the construction, installation, operation, maintenance, modification and removal of the Communication Equipment. In no event shall the City's use of the License Area be unreasonably interrupted by the Licensee's work. Prior to entering upon the License Area, the Licensee shall give the City's Project Manager or designee at least forty-eight (48) hours advance notice in the manner provided in Section 21 of this Agreement or, in the event of emergency repairs, any prior notice as is practical.
- F. Licensee shall, at all times, have on call and at the City's disposal an active, qualified and experienced representative to supervise the Communication Equipment, who is authorized to act for the Licensee in matters pertaining to all emergencies and the day-to-day operation of the Communication Equipment. The Licensee shall provide the City's Project Manager or designee with the names, addresses and 24-hour telephone numbers of designated persons in writing.
- G. Licensee shall keep the License Area maintained, orderly and clean at all times.
- H. Licensee's use of the Licensed Area is subject and subordinate to, and shall not adversely affect, the City's use of the Licensed Area. The City reserves the right to further develop, maintain, repair or improve the License Area provided it does not unreasonably interfere with the Licensee's use of the License Area or the Communication Equipment.
- I. Licensee shall not install any signs in the License Area other than required safety or warning signs or other signs necessary for the use of the License Area as requested or approved by the City. Licensee bears all costs pertaining to the erection, installation, maintenance and removal of all of its signs.

7. HAZARDOUS WASTE.

Licensee shall not produce, generate, dispose of, transport, treat, use or store any hazardous waste, hazardous substance, pollutant or contaminant upon or about the License Area in violation of the Arizona Hazardous Waste Management Act, A.R.S. Sec. 49-901 *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. 2601 *et seq.*, or any other federal, state or local law pertaining to hazardous waste, hazardous substances, pollutants or contaminants. Licensee shall not use the License Area in a manner that violates with any regulations, permits or approvals issued by any federal or state agency. The Licensee shall defend, indemnify and hold the City harmless against any loss or liability incurred by reason of release or threatened release of any hazardous waste, hazardous substance, pollutant or contaminant on or affecting the License Area attributable to the extent such release or threatened release is caused in any way by the Licensee. Licensee shall immediately notify the City and, if applicable, any federal or state agency of any release or threatened release of a hazardous waste, hazardous substance, pollutant or contaminant at any time such release or threat of release is discovered or found to

exist upon the License Area. Licensee shall promptly and without a request by the City provide the City's Environmental Program Manager with copies of all written communications between the Licensee and any governmental agency concerning environmental inquiries, reports or conditions in the License Area.

8. LICENSEE'S IMPROVEMENTS; GENERAL REQUIREMENTS.

- A. The following provisions govern all improvements, repairs, installation and other construction, removal, demolition or similar work of any description by the Licensee related to the Communication Equipment or the License Area (collectively referred to as the "Licensee's Improvements"):
- i) In no event, including termination of this Agreement, is the City obligated to compensate the Licensee in any manner for any of Licensee's Improvements or other work performed by the Licensee during or related to this Agreement. The Licensee shall timely pay for all labor, materials and work and all professional and other services related to Licensee's Improvements and defend, indemnify and hold harmless the City against the same.
 - ii) All work performed by Licensee must be in a workmanlike manner, and be diligently pursued to completion. All work must be performed in conformance with all building codes and similar requirements. Licensee's Improvements shall be commensurate with high quality industry standards as approved by the City. The City's approval shall not be unreasonably withheld, conditioned or delayed.
 - iii) Licensee acknowledges that as of the Effective Date of this Agreement, the City has not approved or promised to approve any plans for the Licensee's Improvements, except for those improvements already in place or to the extent expressly stated in this Agreement.
 - iv) Licensee shall make no structural or grading alterations, or similar structural modifications or additions or other significant construction work to the License Area without having first received the written consent of the City. The City's consent shall not be unreasonably withheld, conditioned or delayed. Review shall include all improvements, equipment, fixtures, paint and other construction work of any description as described in all plans delivered by the Licensee to the City. All such plans and construction are subject to inspection and final approval by the City as to materials, design, function and appearance.
 - v) Licensee shall keep as-built records of the Licensee's Improvements and furnish copies of records to the City, at no cost to the City, upon completion of improvements and any changes to the same. Licensee shall participate as a member of the Blue Stake Center under A.R.S. § 40-360.21, *et seq.*, regarding underground facilities, and submit proof of participation to the Project Manager upon request.
 - vi) All changes to utility facilities shall be limited to the License Area and shall be undertaken by the Licensee only with the written consent of the City. The City's consent shall not be unreasonably withheld, conditioned or delayed.

- vii) All of the Licensee's Improvements shall be designed so as to present uniformity of design, function, appearance and quality throughout and consistency with other improvements located in the License Area.
 - viii) Licensee shall properly mark and sign all excavations and maintain barriers and traffic control in accordance with applicable laws, regulations and best management practices.
- B. The following procedure governs the Licensee's submission to the City of all plans for the License Area and the Licensee's Improvements, including any proposed changes by the Licensee of previously approved plans:
- i) Licensee shall coordinate with the City as necessary on significant design issues prior to submission of plans.
 - ii) Upon execution of this Agreement, the City and the Licensee shall each designate a project manager to coordinate the parties' participation in designing and constructing Licensee's Improvements. The City's designee will serve as project manager for the City. Each project manager shall devote time and efforts to the project as may be necessary for timely, good faith and convenient coordination among all persons involved with the project and compliance with this Agreement. The City's project manager will not be exclusively assigned to this Agreement or the Licensee's Improvements.
 - iii) No final plans shall be deemed approved until the Licensee delivers to the City a formal certification by an engineer licensed in Arizona, acceptable to the City's project manager. The engineer shall certify that all of the Licensee's Improvements are properly designed to be safe and shall function as designed and as required by this Agreement. The certification shall be accompanied by and refer to any supporting information, documentation and analysis as the City's project manager may reasonably require.
 - iv) No plans are considered approved until stamped "APPROVED" and dated by the City's project manager.
 - v) Licensee acknowledges that the City's project manager's authority with respect to the License Area is limited to the administration of the requirements of this Agreement. Licensee is responsible to secure all zoning approvals, design revisions or other governmental approvals and to satisfy all governmental requirements pertaining to the project and may not rely on the City or City's project manager to initiate or suggest any particular process or course of action.
 - vi) The City's issuance of building permits shall not constitute approval of any plans unless the plans have been approved as stated in subsection (iv) above. The City's project manager shall be reasonably available to coordinate and assist the Licensee in working through issues that may arise in connection with such plan approvals and requirements.

- vii) The Licensee shall, in the submittal of all plans, allow adequate time for all communications and plan revisions necessary to obtain approvals and shall schedule its performances and revise its plans as necessary to timely obtain all approvals and make payment of all applicable fees.
- viii) Any delay in City's review of or marking Licensee's plans with changes necessary to approve the plans, or approve the revised plans in accordance with the City's normal plan-review procedures, will not be considered an approval of the plans but shall operate to extend Licensee's construction deadlines. The City agrees to use reasonable efforts to review, comment on or approve Licensee's plans in a prompt and timely manner and in conformance with established policies and procedures.
- ix) The Licensee shall provide the City with two (2) complete sets of detailed plans and specifications of the work as completed.
- x) The parties shall use reasonable efforts to resolve any design and construction issues to their mutual satisfaction but, in the event of an impasse for any reason, final decision authority regarding all design and construction issues shall rest with the City in its reasonable discretion.

9. LICENSEE'S INITIAL CONSTRUCTION.

No later than six (6) months after the Effective Date, the Licensee shall install the Communication Equipment in the License Area in accordance with all of the specifications contained in the attached Exhibit A. Equipment already in place from previous authorization will also be reflected in Exhibit A.

10. MAINTENANCE.

- A. The Licensee shall, at its own cost, make improvements to and maintain the Communication Equipment in the License Area during the term of this Agreement.
- B. In the event that it becomes technologically and financially feasible to do so, Licensee, at its sole expense, shall use reasonable efforts to minimize the visual and operational impacts of the Communication Equipment as required by any City ordinance, resolution, Code provision, permit, or other rule applicable to the installation or use of the License Area.

11. CO-LOCATION.

- A. Subject to subsection (B) below, the Licensee shall, at all times, use reasonable efforts to cooperate with the City or any third parties with regard to the possible co-location of additional equipment, facilities or structures in and around the License Area and City Right-of-Way ("Co-location"). If a Co-location is feasible, the City may, in its sole discretion, negotiate a Co-location license agreement with any third party on terms as the City considers appropriate, provided such Co-location is not inconsistent with the rights and obligations of the parties under this Agreement. Licensee's consent in connection

with the final determination of Co-location of a third party is not required. Any rent or fees paid by an additional Co-locator belong solely to the City.

- B. Prior to Co-location in or around the License Area, the City shall, if practicable, give the Licensee thirty (30) days' notice of the proposed Co-location so that the Licensee can determine if the Co-location will interfere with its Communication Equipment. If the Licensee determines that interference is likely, the Licensee shall, within the notice period, give the City a detailed written explanation of the anticipated interference, including supporting documentation as may be reasonably necessary for the City to evaluate the Licensee's position. The City and the Licensee shall promptly use reasonable efforts to resolve any interference problems before the City permits Co-location. If a subsequent licensee is permitted to operate near the License Area, and the subsequent licensee's operations materially interfere with Licensee's Communication Equipment, then the City shall direct the subsequent licensee to remedy the interference within seventy-two (72) hours. If the interference is not resolved within this period, then the City will direct the subsequent licensee to cease its operation until the interference is resolved. These same procedures apply to any interference caused by Licensee with respect to any Co-location existing and as configured prior to the installation of Licensee's Communication Equipment.

12. ASSIGNMENT.

- A. Licensee may assign this Agreement, upon thirty (30) days written notice to the City, to any person or entity controlling, controlled by or under common ownership with the Licensee or Licensee's parent company, or to any person or entity that acquires the Licensee's business and assumes all obligations of the Licensee under this Agreement. Assignments to person other than those controlling, controlled by or under common ownership with the Licensee or Licensee's parent company require City approval. For assignments requiring City approval, the City may, as a condition of its approval, postpone the effective date of the assignment and require any potential transferee to submit evidence, including documentation of the assignee's financial condition, to the City to adequately demonstrate the assignee's ability to fully perform under the terms of this Agreement. The effective date of the assignment shall be postponed until the City approves such assignment, which approval shall not be unreasonably withheld, conditioned or delayed.
- B. The Licensee may, upon notice to the City, mortgage or grant a security interest in this Agreement and the Communication Equipment, and may assign this Agreement and the Communication Equipment to any mortgagees, deed of trust beneficiaries or holders of security interests, including their successors or assigns ("Mortgagees"), so long as the Mortgagees agree to be bound by the terms of this Agreement. If Mortgagees so agree, the City shall execute such consent to leasehold or other financing as may be reasonably required by Mortgagees. In no event will Licensee grant or attempt to grant a security interest in any of the real property underlying the License Area.
- C. Subject to subsections (A) and (B) above, Licensee shall not assign or sublease any of its interest under this Agreement, nor permit any other person to occupy the License Area.

13. SECURITY DEPOSIT.

- A. Amount of Security Deposit. Concurrent with the licensee's execution of this Agreement, licensee agrees to deliver to the licensor a security deposit in the amount of Five Thousand and No/100 Dollars (\$5,000.00) The licensor shall hold the Security Deposit as security for the performance of the licensee's obligations under the lease.
- B. Use of Security Deposit Licensor may (but is not required to) , without prejudice to any other remedy Licensor has, apply all or part of the Security Deposit to:
- i) Any Rent, including Base Rent, or other sum in default;
 - ii) Any amount that licensor may spend or become obligated to spend in exercising licensor's unconditional rights pursuant to Cell Site Removal, Restoration or to remove any and all portions of the Cell Site that remain on the Premises by the earlier of thirty (30) days following cessation of licensee's operations at the Premises, or the Expiration Date of this lease; and
 - iii) Any expense, loss, or damage that licensor may suffer because of licensee's default.
- C. Refund of Security Deposit licensee must remove, to the licensor's satisfaction, all elements of the Cell Site and all associated improvements of every kind and nature constructed, erected or placed by licensee on the Premises by the earlier of the thirty (30) days following cessation of licensee's operations at the premises, or expiration date of this lease in order to secure refund of any portion of its Security Deposit.

14. REGULATORY AGENCIES, SERVICES, FINANCIALS AND BANKRUPTCY.

- A. The Licensee shall upon request provide to the City:
- i) All relevant petitions, applications, communications and reports submitted by the Licensee to the Arizona Corporation Commission, inclusive of any requirements under A.R.S. § 40-441 *et seq.*, or other state or federal authority having jurisdiction that directly relates to Licensee's communications equipment in the License Area;
 - ii) Licensing documentation concerning all services of whatever nature being offered or provided by the Licensee over facilities in the License Area. Copies of responses from regulatory agencies to the Licensee shall be available to the City upon request. To the extent permitted by Arizona's Public Records Law, A.R.S. § 39-121 *et seq.*, the City will treat all documentation and information obtained pursuant to this Section 14 as proprietary and confidential.
- B. The Licensee shall provide the City copies of any petition, application, communications or other documents related to any filing by the Licensee of bankruptcy, receivership or trusteeship.

15. TERMINATION BY CITY.

- A. The City may terminate this Agreement for any of the following reasons upon thirty (30) days written notice to Licensee:
 - i) Failure of Licensee to perform any of its obligations under this Agreement, after Licensee fails to cure default within the notice and cure period.
 - ii) The taking of possession for a period of ten (10) days or more of substantially all of Licensee's personal property in the License Area by or pursuant to lawful authority of any legislative act, resolution, rule, order or decree or any act, resolution, rule, order or decree of any court or governmental board, agency, officer, receiver, trustee or liquidator.
 - iii) The filing of any lien against the License Area due to any act or omission of the Licensee that is not discharged within thirty (30) days of receipt of actual notice by the Licensee.
- B. The City may place the Licensee in default of this Agreement by giving the Licensee fifteen (15) days written notice of the Licensee's failure to timely pay the rent required under this Agreement or any other charges required to be paid by the Licensee pursuant to this Agreement. If Licensee does not cure the default within the 15-day notice period the City may terminate this Agreement or exercise any other remedy allowed by law or equity.
- C. If the Licensee, through any fault of its own, at any time fails to maintain all insurance coverage required by this Agreement, the City may, upon written notice to the Licensee, immediately terminate this Agreement or secure the required insurance at Licensee's expense.
- D. Failure by a party to take any authorized action upon default by the other party does not constitute a waiver of the default nor of any subsequent default by the other party. Acceptance of rent and other fees by the City for any period after a default by the Licensee is not considered a waiver or estoppel of the City's right to terminate this Agreement for any subsequent failure by the Licensee to comply with its obligations.
- E. Upon the termination of this Agreement for any reason, all rights of the Licensee terminate, including all rights of the Licensee's creditors, trustees and assigns and all others similarly situated as to the License Area.

16. TERMINATION BY EITHER PARTY OR BY LICENSEE.

- A. This Agreement may be terminated for any of the following reasons:
 - i) By either party, upon issuance by a court of competent jurisdiction of an injunction in any way preventing or restraining the Licensee's use of any portion of the License Area and remaining in force for a period of thirty (30) consecutive days.

- ii) By either party, upon the inability of the Licensee to use any substantial portion of the License Area for a period of thirty (30) consecutive days due to the enactment or enforcement of any law or regulation or because of fire, earthquake or similar casualty, or Acts of God or the public enemy.
 - iii) By either party, upon ninety (90) days written notice, if the Licensee is unable to obtain or maintain any license, permit or governmental approval necessary for the construction, installation or operation of the Communication Equipment or the Licensee's business.
 - iv) By Licensee, upon ninety (90) days written notice, if the License Area or the Communication Equipment is unacceptable under the Licensee's design or engineering specifications for the communication system to which the Communication Equipment belongs.
 - v) By Licensee, if the Licensed Area or Communication Equipment are destroyed or damaged to such an extent that in Licensee's party's reasonable judgment, the use of the Communication Equipment is substantially and adversely affected.
- B. In order to exercise the termination provisions above the party exercising termination must not itself be in default under the terms of this Agreement beyond any applicable grace or cure period and, if not otherwise stated above, provide reasonable written notice to the other party.

17. INDEMNIFICATION.

The Licensee shall defend, indemnify and hold harmless the City and its elected or appointed officials, agents, boards, commissions and employees (hereinafter referred to collectively as the "City" in this Section) from all loss, damages or claims of whatever nature, including attorney's fees, expert witness fees and costs of litigation, that arise out of any act or omission of the Licensee or its agents, employees and invitees (hereinafter referred to collectively as "Licensee" in this Section) in connection with the Licensee's operations in the License Area and that result directly or indirectly in the injury to or death of any person or the damage to or loss of any property, or that arise out of the failure of Licensee to comply with any provision of this Agreement. The City shall in all instances, except for loss, damages or claims resulting from the sole negligence or fault of the City, be indemnified by Licensee against all losses, damages or claims. The City shall give the Licensee prompt notice of any claim made or suit instituted that may subject the Licensee to liability under this Section, and Licensee shall have the right to compromise and defend the same to the extent of its own interest. The City shall have the right, but not the duty, to participate in the defense of any claim or litigation with attorneys of the City's selection and at the City's sole cost without relieving the Licensee of any obligations under this Agreement. Licensee's obligations under this Section survive any termination of this Agreement or the Licensee's activities in the License Area.

18. INSURANCE.

A. The Licensee shall procure and at all times maintain the following types and amounts of insurance for its operations in the License Area:

- i) Commercial general liability and property damage insurance in the minimum amount of \$1,000,000 combined single limit, \$2,000,000 aggregate. The coverage amounts set forth may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated.
- ii) Such other insurance as the City's Project Manager deems necessary for the Licensee's operations.

B. Insurance shall:

- i) Be from a company rated at least A- by AM Best;
- ii) Name the City as an additional insured on the insurance policy and maintain coverage through the term of the Agreement;
- iii) Require written notice to the City prior to cancellation;
- iv) Include contractual liability coverage for the obligation of indemnity assumed in this Agreement, subject to standard policy provisions and exclusions; and
- v) Be primary and non-contributory with respect to all other available sources, as relates to Licensee's negligence.

C. Licensee shall provide appropriate certificates of insurance to the City for all insurance policies required by this Section. Absence of City request for proof of initial or renewal coverage does not waive any insurance requirements under this paragraph.

19. DAMAGE OR DESTRUCTION.

The City has no obligation to reimburse the Licensee for the loss of or damage to fixtures, equipment or other personal property of the Licensee, except for loss or damage caused by the negligence or fault of the City or its officers, employees or agents. The Licensee may insure such fixtures, equipment or other personal property for its own protection if it so desires.

20. SURRENDER OF POSSESSION.

Upon the expiration or termination of this Agreement, the Licensee's right to occupy the License Area and exercise the privileges and rights granted under this Agreement shall cease, and it shall surrender and leave the License Area in good condition, normal wear and tear excepted. Unless otherwise provided, all trade fixtures, equipment, and other personal property installed or placed by the Licensee on the License Area shall remain the property of the Licensee, and the Licensee may, at any time during the term of this Agreement, and for an additional period of ninety (90) days after its expiration, remove the same from the License Area so long as Licensee is not in default of any of its obligations, and repairs, at its sole cost,

any damage caused by the removal. Any property not removed by the Licensee within the 90-day period becomes a part of the License Area, and ownership vests in the City, or the City may, at the Licensee's expense, have the property removed. Licensee's indemnity under this Agreement applies to any post termination removal operations.

21. NOTICE.

- A. Except as otherwise provided, all notices required or permitted to be given under this Agreement may be personally delivered or mailed by certified mail, return receipt requested, postage prepaid, to the following addresses:

TO THE CITY: City of Glendale
5850 West Glendale Avenue
Glendale, AZ 85301
Attention: Cricket License Project Manager

WITH A COPY TO: City of Glendale
5850 West Glendale Avenue
Glendale, AZ 85301
Attention: City Attorney

TO THE LICENSEE: Cricket Communications, Inc.
Attn: Property Manager
5887 Copley Drive
San Diego, CA 92111

WITH A COPY TO: Leap Wireless International
Attn: Legal Dept. – Real Estate
5887 Copley Drive
San Diego, CA 92111

- B. Any notice given by certified mail is considered to be received on the date delivered or refusal to accept. Either party may designate in writing a different address for notice purposes pursuant to this Section.
- C. Pursuant to paragraph 6(E) of this Agreement, all notices of Licensee's intent to enter the License Area shall be provided to the project manager, or designee at telephone numbers to be provided to Licensee by separate correspondence upon execution of this Agreement.

22. SEVERABILITY.

If any provision of this Agreement is declared invalid by a court of competent jurisdiction the remaining terms remain effective so long as the elimination of any invalid provision does not materially prejudice either party with regard to its respective rights and obligations. In the event of material prejudice the adversely affected party may terminate this Agreement.

23. TAXES AND LICENSES.

- A. The Licensee shall pay any leasehold tax, possessory-interest tax, sales tax, personal property tax, transaction privilege tax, use tax or other exaction assessed or assessable as a direct result of its occupancy of the License Area under authority of this Agreement, including any tax assessable on the City. If laws or judicial decisions result in the imposition of a real property tax on the interest of the City as a direct result of Licensee's occupancy of the License Area, the tax shall also be paid by the Licensee on a proportional basis for the period this Agreement is in effect.
- B. The Licensee shall, at its own cost, obtain and maintain in full force and effect during the term of this Agreement all licenses and permits required for all activities authorized by this Agreement.

24. LITIGATION.

This Agreement is governed by the laws of the State of Arizona. If any litigation or arbitration between the City and the Licensee arises under this Agreement, the successful party is entitled to recover its reasonable attorney's fees, expert witness fees and other costs incurred in connection with the litigation or arbitration.

25. RULES AND REGULATIONS.

The Licensee shall at all times comply with all federal, state and local laws, ordinances, rules and regulations which are applicable to its operations and the License Area, including all laws, ordinances, rules and regulations adopted after the Effective Date. The Licensee shall display to the City, upon request, any permits, licenses or other reasonable evidence of compliance with the law.

26. RIGHT OF ENTRY RESERVED.

- A. The City may, at any time, enter upon the License Area for any lawful purpose, so long as the action does not unreasonably interfere with the Licensee's use or occupancy of the License Area. The City shall have access to the Communication Equipment itself only in emergencies or upon reasonable notice to the Licensee.
- B. Without limiting the generality of the foregoing, the City and any furnisher of utilities and other services shall have the right, at their own cost, to maintain existing and future utility, mechanical, electrical and other systems and to enter upon the License Area at any time to make repairs, replacements or alterations that may, in the opinion of the City, be necessary or advisable and from time to time to construct or install over, in or under the License Area systems or parts and in connection with maintenance, use the License Area for access to other parts in and around the License Area. Exercise of rights of access to repair, to make alterations or commence new construction will not unreasonably interfere with the use and occupancy of the License Area by the Licensee.
- C. Exercise of any of the foregoing rights by the City or others pursuant to the City's rights does not constitute an eviction of the Licensee, nor are grounds for any abatement of rent or any claim for damages.

27. CONFLICTS OF INTEREST.

This Agreement may be cancelled for conflicts of interest as described under A.R.S. § 38-511.

28. DISPUTE RESOLUTION.

Any dispute that arises under this Agreement shall be subject to the Dispute Resolution procedure contained in Exhibit B, which is attached hereto, incorporated by reference and an enforceable part of this Agreement.

29. PROHIBITIONS.

Licensee, to its current actual knowledge without the duty of inquiry and on behalf of any subcontractor performing work at the License Area on Licensee's behalf, certifies, to the extent applicable under A.R.S. §§ 35-391 *et. seq* and 35-393 *et. seq*, that neither has "scrutinized" business operations, as defined in the preceding sections, in the countries of Sudan or Iran.

30. MISCELLANEOUS.

This Agreement constitutes the entire agreement between the parties concerning the subject matter stated and supersedes all prior negotiations, understandings and agreements between the parties concerning those matters. This Agreement shall be interpreted, applied and enforced according to the fair meaning of its terms and not be construed strictly in favor of or against either party, regardless of which party may have drafted any of its provisions. No provision of this Agreement may be waived or modified except by a writing signed by the party against whom the waiver or modification is sought to be enforced. Electronic signature blocks do not constitute a signature for purposes of this Agreement. This Agreement may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument. The terms of this Agreement are binding upon and inure to the benefit of the parties' successors and assigns.

[The remainder of this page left intentionally blank.]

EXECUTED to be effective as of the date specified above.

CITY OF GLENDALE,
an Arizona municipal corporation

Brenda S. Fischer
City Manager

ATTEST:

Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

Michael D. Bailey
City Attorney

CRICKET COMMUNICATIONS, INC.,
a Delaware corporation

Ron Bittner
Sr. Director of Site Development

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this _____ day of _____, 2013,
by _____, in his or her capacity as the
_____ on behalf of Cricket Communications, Inc., a Delaware
corporation.

In witness whereof I hereunto set my hand and official seal.

Notary Public

My Commission Expires:

EXHIBIT A

(see attached)

APPROVED PLAN
COMMUNITY DEVELOPMENT
CITY OF GLENDALE

10/16/01
12/16/01

cricket communications
Lucant Technologies
CROWN CASTLE
FM GROUP INC
AIR-ZONA SYSTEMS ENGINEERING, INC.

cricket®

communications

BILL OF MATERIALS

ITEM NO. QUANTITY UNIT DESCRIPTION

1.00 1.00 PERMITS AND FEES

2.00 1.00 PERMITS AND FEES

3.00 1.00 PERMITS AND FEES

4.00 1.00 PERMITS AND FEES

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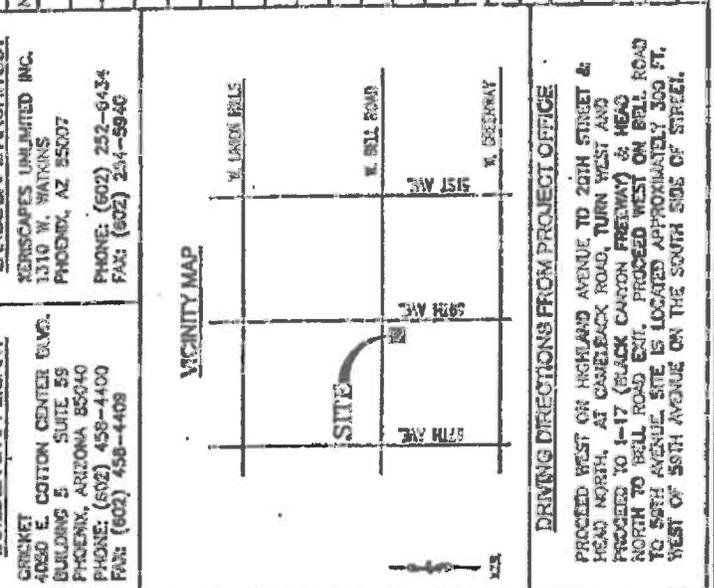
INDEX OF DRAWINGS

NUMBER	NAME OF SHEET
T-1	TITLE SHEET
C-1	TOPOGRAPHIC SITE SURVEY
C-2	TOPOGRAPHIC SITE SURVEY
LS-1	LANDSCAPE PLAN
A-1	REFERENCE SITE PLAN
A-2	ENLARGED SITE PLAN
A-3	ELEVATIONS
A-4	ANTENNA DETAILS
A-5	SITE DETAILS
S-1	ARTERIA DETAILS
S-2	CONCRETE PAD DETAILS
S-3	WAVEGUIDE BRIDGE DETAILS
S-4	UTILITY RACK DETAILS
E-1	ELEC. LEGEND AND SPECS
E-2	ENLARGED ELEC. SITE PLAN
E-3	1-LINE AND PANEL SCHEDULE
E-4	ELECTRICAL DETAILS
E-5	ELECTRICAL DETAILS
E-6	ELECTRICAL DETAILS
E-7	ELECTRICAL DETAILS

LAND OWNER	TOWER OWNER	CONSTRUCTION
ARIZONA PUBLIC SERVICE 10025 NORTH 21ST AVENUE CONTACT: DAVE CARLTON PHONE: (602) 371-6514 FAX: (602) 371-6588	LAND USE SERVICES 2345 E. UNIVERSITY DR. #2 MESA, ARIZONA 85213 CONTACT: RALPH ANDERSON PHONE: (602) 321-4903 FAX: (480) 964-0578	DOUG PETERSON 2111 EAST HIGHLAND AVE. PHOENIX, ARIZONA 85016 PHONE: (602) 848-5801 FAX: (602) 848-5880

LANDSCAPE ARCHITECT	BUILDER & APPLICANT
LANDSCAPE ARCHITECT KERRSCAPES UNLIMITED INC. 1310 W. WATKINS PHOENIX, AZ 85007 PHONE: (602) 252-6434 FAX: (602) 254-5940	CRICKET 4060 E. COITON CENTER BLVD. BUILDING 5 SUITE 59 PHOENIX, ARIZONA 85040 PHONE: (602) 458-4400 FAX: (602) 458-4408

REGISTERED ARCHITECT
MICHAEL T. FRIES
PHX-035.C
APR 28 2001
16880 NORTH 59TH AVE
GLENDALE, AZ 85308



DRIVING DIRECTIONS FROM PROJECT OFFICE

PROCEED WEST ON HIGHLAND AVENUE TO 20TH STREET & HEAD NORTH, AT CAMEBACK ROAD, TURN WEST AND PROCEED TO I-17 (BLACK CANYON FREEWAY) & HEAD NORTH TO BELL ROAD EXIT. PROCEED WEST ON BELL ROAD TO 59TH AVENUE. SITE IS LOCATED APPROXIMATELY 300 FT. WEST OF 59TH AVENUE ON THE SOUTH SIDE OF STREET.

APPROVALS
CONSTRUCTION
SITE ACQUISITION
CRICKET
LUCENT
RADIO FREQUENCY
ZONING

SITE INFORMATION

GEODETIC COORDINATES (NAD 83)
 LATITUDE: 33°38'19.0" N
 LONGITUDE: 112°11'15.2" W
 GROUND ELEVATION: 1278.7' AMSL
 ZONING OF SUBJECT PARCEL: C-2
 TOTAL SQUARE FOOTAGE OF LEASED AREA: 148.5 SQ. FT.
 TYPE OF SITE: NEW PANEL ANTENNAS MOUNTED ON EXISTING UTILITY POLE WITH NEW EQUIPMENT COMPOUND SET AT BASE OF POLE.

FOR PERMIT ONLY

EXHIBIT B

DISPUTE RESOLUTION

1. Disputes.

- 1.1 Commitment. The parties commit to resolving all disputes promptly, equitably, and in a good-faith, cost-effective manner.
- 1.2 Application. The provisions of this Exhibit will be used by the parties to resolve all controversies, claims, or disputes ("Dispute") arising out of or related to this Agreement-including Disputes regarding any alleged breaches of this Agreement.
- 1.3 Initiation. A party may initiate a Dispute by delivery of written notice of the Dispute, including the specifics of the Dispute, to the Representative of the other party as required in this Agreement.
- 1.4 Informal Resolution. When a Dispute notice is given, the parties will designate a member of their senior management who will be authorized to expeditiously resolve the Dispute.
 - a. The parties will provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any Dispute in order to assist in resolving the Dispute as expeditiously and cost effectively as possible;
 - b. The parties' senior managers will meet within 10 business days to discuss and attempt to resolve the Dispute promptly, equitably, and in a good faith manner, and
 - c. The Senior Managers will agree to subsequent meetings if both parties agree that further meetings are necessary to reach a resolution of the Dispute.

2. Arbitration.

- 2.1 Rules. If the parties are unable to resolve the Dispute by negotiation within 30 days from the Dispute notice, and unless otherwise informal discussions are extended by the mutual agreement, the Dispute will be decided by binding arbitration in accordance with Construction Industry Rules of the AAA, as amended herein. Although the arbitration will be conducted in accordance with AAA Rules, it will not be administered by the AAA, but will be heard independently.
 - a. The parties will exercise best efforts to select an arbitrator within five business days after agreement for arbitration. If the parties have not agreed upon an arbitrator within this period, the parties will submit the selection of the arbitrator to one of the principals of the mediation firm of Scott & Skelly, LLC, who will then select the arbitrator. The parties will equally share the fees and costs incurred in the selection of the arbitrator.
 - b. The arbitrator selected must be an attorney with at least 15 years' experience with commercial construction legal matters in Maricopa County, Arizona, be independent, impartial, and not have engaged in any business for or adverse to either Party for at least 10 years.
- 2.2 Discovery. The extent and the time set for discovery will be as determined by the arbitrator. Each Party must, however, within 10 days of selection of an arbitrator deliver to the other Party copies of all documents in the delivering party's possession that are relevant to the dispute.

- 2.3 Hearing. The arbitration hearing will be held within 90 days of the appointment of the arbitrator. The arbitration hearing, all proceedings, and all discovery will be conducted in Glendale, Arizona unless otherwise agreed by the parties or required as a result of witness location. Telephonic hearings and other reasonable arrangements may be used to minimize costs.
 - 2.4 Award. At the arbitration hearing, each Party will submit its position to the arbitrator, evidence to support that position, and the exact award sought in this matter with specificity. The arbitrator must select the award sought by one of the parties as the final judgment and may not independently alter or modify the awards sought by the parties, fashion any remedy, or make any equitable order. The arbitrator has no authority to consider or award punitive damages.
 - 2.5 Final Decision. The Arbitrator's decision should be rendered within 15 days after the arbitration hearing is concluded. This decision will be final and binding on the Parties.
 - 2.6 Costs. The prevailing party may enter the arbitration in any court having jurisdiction in order to convert it to a judgment. The non-prevailing party will pay all of the prevailing party's arbitration costs and expenses, including reasonable attorney's fees and costs.
3. **Services to Continue Pending Dispute.** Unless otherwise agreed to in writing, Consultant must continue to perform and maintain progress of required Services during any Dispute resolution or arbitration proceedings, and City will continue to make payment to Consultant in accordance with this Agreement.
 4. **Exceptions.**
 - 4.1 Third Party Claims. City and Consultant are not required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defense of a third party who is not obligated by contract to arbitrate disputes with City and Consultant.
 - 4.2 Liens. City or Consultant may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice, but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Arizona Law, including, without limitation, an action under A.R.S. § 33-420, without the necessity of initiating or exhausting the procedures of this Exhibit.
 - 4.3 Governmental Actions. This Exhibit does not apply to, and must not be construed to require arbitration of, any claims, actions or other process filed or issued by City of Glendale Building Safety Department or any other agency of City acting in its governmental permitting or other regulatory capacity.
 - 4.4 Injunctive Relief. Any actions for injunctive relief shall be excluded from this Dispute Resolution and arbitration process.

LICENSE AGREEMENT
FOR WIRELESS COMMUNICATIONS SITE
IN SAHUARO RANCH PARK

This License Agreement ("this Agreement") is executed to be effective the ____ day of _____, 2014 ("Effective Date"), between the City of Glendale, an Arizona municipal corporation (the "City"), and Cricket Communications, Inc., a Delaware corporation ("Licensee").

WHEREAS, the City is the owner of certain real property known as Sahuaro Ranch Park located at 9802 N. 59th Avenue, Glendale, Arizona (the "Park"), including a small portion thereof which is to be licensed for use pursuant to this Agreement; and

WHEREAS, Pursuant to a License Agreement dated March 12, 2003 ("License Agreement"), Licensee, as successor-in-interest to Cricket Arizona Property Company, has installed and operates wireless communication antennas and related equipment specified in Section 1 below and Exhibit A attached hereto (collectively referred to as the "Communication Equipment") in the License Area and to construct certain improvements to the License Area to which the Licensee refers to as PHX 075, as depicted in the site plan attached hereto as Exhibit B (the "Site Plan"); and

WHEREAS, the License Agreement has expired and City and Licensee wish to continue their relationship under this Agreement.

THEREFORE, in consideration of the following mutual covenants, terms and conditions, it is hereby agreed as follows:

1. LICENSE AREA.

The License Area includes and is limited to the following areas depicted in the Site Plan:

- A. The light pole near the left field line of the Southwest baseball field located approximately 60 feet west of the left field fair/foul pole (the "Pole"), to be used solely for not more than three panel antennas (the "Antennas") attached to the pole at approximately 50 feet. The antennas will be consistent in size, placement and design as approved by the Planning Department. Any reference to the Pole herein shall include any replacement pole to be constructed by the Licensee and/or its contractors.
- B. Approximately 216 square feet of land located approximately 50 feet to the southeast of the Pole, to be used solely for locating up to four utility cabinets housing electronic switching and equipment related to the use of the Antennas (the "Cabinets") as approved in Exhibit B by the Planning Department. The cabinets, new or replacements, shall never extend above the approved wall enclosure.

- C. An underground conduit and cable route for a ground signal conduit and cable along the route described in the Site Plan or as otherwise approved by the City, from the Cabinets to the base of the Pole.
- D. An underground conduit and cable route for an electrical service conduit and cable along the route described in the Site Plan, or as otherwise approved by the City, from the Cabinets to the electrical supply in the public right-of-way or the Park.
- E. An underground conduit and cable route for a telephone service conduit and cable along the route described in the Site Plan, or as otherwise approved by the City, from the Cabinets to the telephone supply in the public right-of-way or the Park.

2. CITY'S REPRESENTATIONS AND WARRANTIES.

- A. The City represents and warrants to Licensee that: (1) the City has full right, power and authority to execute this Agreement; (2) the City has good and unencumbered title to the License Area free and clear of any liens or mortgages, except those disclosed to the Licensee that will not interfere with Licensee's right to use the License Area; and (3) the City's execution and performance of this Agreement will not violate any laws, ordinances, covenants, restrictions, easements, agreements, reservations, mortgages, licenses or other agreements binding on the City for the Licensed Area.
- B. The Licensee has studied and inspected the License Area and accepts the same "AS IS" without any express or implied warranties of any kind, other than those warranties contained in subsection (A) immediately above, including any warranties or representations by the City as to its condition or fitness for any particular use. The Licensee has inspected the License Area and obtained such information and professional advice as the Licensee has determined to be necessary related to this Agreement.

3. GRANT OF LICENSE; TERM.

The City grants to Licensee the right to use the License Area subject to the following provisions and conditioned upon Licensee's timely and complete performance of all of its obligations hereunder:

- A. The initial term of this Agreement shall be for a period of five (5) years (the "Initial Term"), commencing on the Effective Date and ending on March 12, 2018, unless sooner terminated as stated herein.
- B. The City and the Licensee may agree to renew this License for four successive five-year year Renewal Terms on the same terms and conditions provisions. There is no automatic renewal of this License. In order to renew this License,

Licensee must notify the City in writing of its intent to renew this Agreement at least thirty (30) days prior to the expiration of the Initial Term or any Renewal Term.

- C. Licensee shall not hold-over or continue to occupy the License Area at the conclusion of the Initial Term or any subsequent Renewal Period without the express written consent of the City. In any circumstance whereby Licensee continues to occupy the License Area after the expiration or termination of this Agreement, such holding over will not be deemed to operate as a renewal or extension of this Agreement, and Licensee shall pay the City fees in an amount that is double the amount of the license fee otherwise due under Section 4 for such hold-over period.
- D. Notwithstanding any provision in this License to the contrary, and notwithstanding any negotiation, correspondence, course of performance or dealing, or other statements or acts by or between the parties, Licensee's rights in the License Area are limited to the rights created by this Agreement, which creates only a revocable license in the License Area. The City and the Licensee do not by this instrument intend to create a lease, easement or other real property interest. The Licensee shall have no real property interest in the License Area. Licensee's sole remedy for any breach or threatened breach of this Agreement by the City shall be an action for damages. Licensee's rights hereunder are subject to all covenants, restrictions, easements, agreements, reservations and encumbrances upon, and all other conditions of title to, the License Area. Notwithstanding the preceding sentence, the City shall provide to Licensee peaceable use and enjoyment of the License Area in accordance with the terms of this Agreement. Licensee's rights hereunder are further subject to all present and future building restrictions, regulations, zoning laws, ordinances, resolutions and orders of any local, state or federal agency, now or hereafter having jurisdiction over the License Area or Licensee's use thereof.

4. RENT; FEES; COSTS.

- A. The Licensee shall pay, without notice and free from all claims, deductions and setoffs against the City, a license fee in the amount of **\$40,000.00 per year**, plus all applicable taxes, for the period covering the Effective Date through the first anniversary of the Effective Date of this Agreement.
- B. The license fee will increase by three percent (3%) annually on the anniversary of the Effective Date.
- C. The license fee is due on the first day of the anniversary date month of the Effective Date of this Agreement. For example, if the Effective date of this Agreement is August 15, 2013, Rent for 2014 shall be due on August 1, 2014. Licensee shall pay the fee due for the current year in advance on the first business day of each anniversary month. If the Effective Date is not on the first day of a month, the Licensee's fees will be prorated accordingly.

- D. If the Licensee fails to pay any fees in full on or before the due date, the Licensee is responsible for interest on the unpaid principal balance at the rate of 18% per annum from the due date until payment is made in full.
- E. Licensee shall ensure that the ball field lights attached to the Pole are refocused by a licensed electrician certified to work on the stadium lighting.

5. UTILITIES.

Licensee shall pay for all utilities necessary to operate the Communication Equipment, which utilities shall be separately metered from any of the City's utilities in the Park. The City shall be responsible for all utility charges for the lights on the Pole; provided that if Licensee's design of the Communication Equipment does not permit separate circuits for the lights on the Pole, Licensee shall be responsible for all utility charges for the Pole.

6. USE RESTRICTIONS.

Licensee's use and occupation of the License Area shall conform to all of the following provisions:

- A. Licensee acknowledges that the License Area is located near recreational areas within a heavily used community park. Licensee shall at all times use its best efforts to minimize any impact that its use of the License Area will have on other uses of the Park.
- B. Licensee shall not remove, relocate, modify or alter in any way any improvements or personal property of the City upon or within the License Area without the City's prior written approval. If installation of the Communication Equipment requires any temporary disabling of the lights on the Pole, Licensee shall disable the lights for no more than one day and at a time agreed upon by the City. Licensee shall repair any damage, modification or alteration to the City's property caused by Licensee's use of the Licensed Area to the same condition that existed before the damage or alteration occurred.
- C. Whenever the Licensee performs construction activities within the Licensed Area, the Licensee shall obtain all necessary construction permits and promptly, upon completion of construction, restore the remaining Licensed Area to the condition existing prior to construction to the satisfaction of the City's Project Manager. If the Licensee fails to restore the Licensed Area as required, the City may take all reasonable actions necessary to restore the Licensed Area, and the Licensee, within twenty (20) days of demand and receipt of an invoice, together with reasonable supporting documentation, will pay all of the City's reasonable costs of restoration.

- D. Licensee shall use the License Area solely for installing, operating, maintaining, repairing, modifying and removing the Communication Equipment. The Communication Equipment is limited to the equipment and facilities listed in Section 1 above and Exhibit A attached hereto, equivalent or smaller replacement equipment, and such other items as may be approved by the City, in its sole discretion, in writing.
- E. Licensee shall have non-exclusive rights for ingress and egress, seven (7) days a week, twenty-four (24) hours a day, on foot or motor vehicle for the construction, installation, operation, maintenance, modification and removal of the Communication Equipment. In no event shall the City's softball field lighting, parking lot use or other uses or events in the Park, including the License Area, be unreasonably interrupted by the Licensee's work. Prior to entering upon the License Area, the Licensee shall give the City's Parks and Recreation Director at least five business day's advance notice in the manner provided in Section 21 of this Agreement or, in the event of emergency repairs, such prior notice as is practical. Vehicular access shall be limited to the area depicted on the Site Plan. The following additional restrictions shall apply during events at the Park:
- (1) Except in emergencies, Licensee shall not perform work in the License Area.
 - (2) Access shall be limited to no more than three workers, who must hand carry their tools, toolboxes and other materials from their parked vehicles without using hand trucks or other devices.
 - (3) Licensee shall not interfere in any way with the event.
- F. Licensee shall at all times have on call and at the City's disposal an active, qualified, competent and experienced representative to supervise the Communication Equipment, who shall be authorized to act for the Licensee in matters pertaining to all emergencies and the day-to-day operation of the Communication Equipment. Such person need not be stationed at the Licensed Area. Licensee shall provide the City's Project Manager or designee with the names, addresses and 24-hour telephone numbers of such persons in writing.
- G. Licensee shall operate the License Area in a first-class manner; shall furnish prompt, clean and courteous service; and shall keep the License Area attractively maintained, orderly, clean and sanitary at all times. Licensee shall not employ any persons in or about the License Area who shall fail to be clean, courteous, efficient and neat in appearance.
- H. The Antennas shall match the color of the Pole. Licensee shall ensure that the Communication Equipment is properly designed so as not to create a risk of damage to the City's property.

- I. There shall be no guaranteed number of parking places available for the License Area. Licensee's employee's may park in the parking lot to the south of the License Area on a "first come, first served" basis or in such other areas as are designated by the City.
- J. Licensee acknowledges that the Licensee's use of the License Area shall be subject and subordinate to the City's operation of the Park, which will necessarily directly and indirectly affect Licensee and the License Area. Licensee's use of the License Area shall not be permitted by Licensee to in any way adversely affect the City's use or operation of the Park, including the License Area. Subject to Section 11(B), the City reserves the right to further develop, maintain, repair or improve the Licensed Area, as long as such activity does not interfere with Licensee's rights under this License.
- K. Licensee shall not install, operate or allow the use of equipment, methodology or technology that may interfere with the optimum effective use or operation of the City's fire, emergency or other communication equipment, methodology or technology (*i.e.*, voice or other data receiving and/or transmitting equipment) that is presently in use or may be in use in the future. If such interference occurs, Licensee shall immediately discontinue using such equipment, methodology or technology that causes the interference until corrective measures are taken. Any such corrective measures shall be made at no cost to the City. If the City installs any fire, emergency or communication equipment in the Park, Licensee will take reasonable corrective measures to avoid interference problems between Licensee's Communication Equipment and the City's equipment. The City and Licensee shall promptly use their best reasonable efforts to resolve any interference problems; provided that if the interference problems are unavoidable, the City's right to use the City's own equipment remains paramount to any use of the License Area by Licensee.
- L. Licensee shall not install any signs in the Park, including the License Area, other than required safety warning signs or such other signs as are requested or approved by the City. Licensee shall bear all costs pertaining to the erection, installation, maintenance and removal of all of its signs.

7. USE OF HAZARDOUS MATERIAL PROHIBITED.

Licensee shall not produce, generate, dispose of, transport, treat, use or store any hazardous waste, hazardous substance, pollutant or contaminant upon or about the Park, including the Licensed Area, in violation of the Arizona Hazardous Waste Management Act, A.R.S. Sec. 49-901 *et seq.* the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. 2601 *et seq.*, or any other federal, state or local law pertaining to hazardous waste, hazardous substances, pollutants or contaminants. The preceding sentence does not apply to proper and lawful use and disposal of properly maintained "gel-cel" batteries supplying backup electrical power to the Communication Equipment. Licensee shall not use the Park, including the License Area, in a manner that violates with any regulations, permits or approvals issued

by any federal or state agency. The Licensee shall defend, indemnify and hold the City harmless against any loss or liability incurred by reason of release or threatened release of any hazardous waste, hazardous substance, pollutant or contaminant on or affecting the Park, including the License Area, attributable to the extent such release or threatened release is caused in by the Licensee. Licensee shall immediately notify the City and, if applicable, any federal or state agency of any release or threatened release of a hazardous waste, hazardous substance, pollutant or contaminant at any time such release or threat of release is discovered or found to exist upon the Park. Licensee shall promptly and without a request by the City provide the City's Environmental Program Manager with copies of all written communications between the Licensee and any governmental agency concerning environmental inquiries, reports or problems in the Park.

8. LICENSEE'S IMPROVEMENTS; GENERAL REQUIREMENTS.

The following provisions shall govern all improvements, repairs, installation and other construction, removal, demolition or similar work of any description by the Licensee related to the Communication Equipment or the License Area (collectively referred to as the "Licensee's Improvements"):

- A. All of Licensee's Improvements shall be designed, installed and purchased at Licensee's sole expense. In no event, including termination of this Agreement for any reason, shall the City be obligated to compensate the Licensee in any manner for any of Licensee's Improvements or other work undertaken by the Licensee during or related to this Agreement. The Licensee shall timely pay for all such labor, materials and work and all professional and other services related to Licensee's Improvements and shall defend, indemnify and hold harmless the City against all such claims.
- B. All work performed in the License Area by Licensee shall be performed in a workmanlike manner, as reasonably determined by the City, and shall be diligently pursued to completion and in conformance with all building codes and similar requirements. All of Licensee's Improvements shall be high quality, safe, fire resistant, modern in design and attractive in appearance, all as approved by the City. The City's approval shall not be unreasonably withheld, conditioned or delayed.
- C. All of Licensee's Improvements (except for the Communication Equipment) shall become fixtures and part of the City's real property.
- D. Licensee acknowledges that as of the Effective Date, the City has not approved or promised to approve any plans for Licensee's Improvements, except for those improvements already in place or to the extent expressly stated in this Agreement.
- E. Licensee shall diligently pursue the installation of all approved Licensee's Improvements and shall complete installation of all Licensee's Improvements no later than six months after such Improvements are approved by the City.

- F. Licensee shall make no structural or grading alterations, modifications or, additions or other significant construction work to its own equipment or facilities within the License Area without having first received the written consent of the City. Such consent shall not be unreasonably withheld, conditioned or delayed. The City shall review and approve all improvements, equipment, fixtures, paint and other construction work of any description as described in all plans delivered by the Licensee to the City. All such plans and construction are subject to inspection and final approval by the City as to colors, materials, site plan, design, function and appearance.
- G. All changes to utility facilities shall be limited to the License Area and shall be undertaken by the Licensee only with the written consent of the City. Such consent shall not be unreasonably withheld, conditioned or delayed.
- H. All of the Licensee's Improvements shall be designed so as to present uniformity of design, function, appearance and quality throughout and consistency with other improvements located in the Park.
- I. Licensee shall properly mark and sign all excavations and maintain barriers and traffic control in accordance with all applicable laws, regulations and best management practices.
- J. The following procedure shall govern Licensee's submission to the City of all plans for the License Area and Licensee's Improvements, including any proposed changes by the Licensee of previously approved plans:
 - (1) Licensee shall coordinate with the City as necessary on significant design issues prior to submission of plans.
 - (2) Upon execution of this Agreement, the City and the Licensee shall each designate a project manager to coordinate the parties' participation in designing and constructing Licensee's Improvements. Each project manager shall devote such time and efforts to the project as may be necessary for timely, good faith and convenient coordination among all persons involved with the project and compliance with this Agreement. The City's project manager will not be exclusively assigned to this License or the Licensee's Improvements.
 - (3) No plans shall be deemed approved until stamped "APPROVED" and dated by the City's project manager.
 - (4) No final plans shall be deemed approved until Licensee delivers to the City a formal certification by an engineer licensed in Arizona acceptable to the City's project manager, certifying that all of the Licensee's Improvements are properly designed to be safe and function as designed

and as required by this Agreement. Such certification shall be accompanied by and refer to any backup information and analysis as the City may reasonably require.

- (5) Licensee acknowledges that the City's project manager's authority with respect to the License Area is limited to the administration of the requirements of this Agreement. Licensee shall be responsible to secure all zoning approvals, design revisions or other governmental approvals and to satisfy all governmental requirements pertaining to the project. The Licensee shall not rely on the City or the City's project manager to initiate or suggest any particular process or course of action for obtaining such approvals.
- (6) The City's issuance of building permits shall not constitute approval of any plans for purposes of this Agreement. The City's project manager shall be reasonably available to coordinate and assist the Licensee in working through issues that may arise in connection with any plan approvals and requirements.
- (7) In preparing plans for submittal and approval to the City, Licensee shall include such periods of time that are necessary to conduct all communications and plan revisions to obtain any required City approvals.
- (8) The City agrees to review, comment on and approve any original or revised plans in accordance with the City's normal plan review time frames and procedures. Licensee, however, will not be given any priority or special consideration over the City's other customers. Any failure by the City to timely process such plans shall not be deemed to be an approval of any plans submitted by Licensee, but may operate to extend Licensee's construction deadlines.
- (9) The parties shall use their best reasonable efforts to resolve any design and construction issues to their mutual satisfaction. In the event of an impasse for any reason, final decision authority regarding all design and construction issues shall rest with the City in its reasonable discretion.
- (10) Licensee shall provide the City with two complete sets of detailed plans and specifications of the work as completed.

9. MAINTENANCE.

Licensee shall, at its own cost, maintain the Communication Equipment, its Improvements and all other portions of the License Area during the term of this Agreement, except that Licensee is not obligated to maintain the City's lights on the Pole.

10. CO-LOCATION.

- A. Subject to subsection (B) below, the Licensee shall at all times use its best efforts to cooperate with the City and any third parties in the co-location of additional communication equipment, facilities or structures in the Park. If such co-location is feasible, the City may, in its sole unreviewable discretion, negotiate a co-location agreement with any third party. The City agrees that such co-location agreement will not be inconsistent or interfere with the rights and obligations of the parties under this Agreement. Licensee's consent to or approval of the co-location of communication equipment, facilities or structures in the Park of a third party or of the co-location agreement is not required. Any rent or fees paid by the third party pursuant to the Co-location license agreement shall belong solely to the City.
- B. Prior to permitting the installation of any third party's co-located communication equipment, facilities or structures in the Park, the City shall give the Licensee thirty (30) days' notice of the proposed co-located equipment, facilities or structures so that the Licensee can determine if the additional equipment will interfere with the Communication Equipment. If the Licensee determines that such interference will occur, Licensee shall, within the 30-day notice period, give the City a detailed written explanation of the anticipated interference, including such supporting documentation as may be reasonably necessary for the City to evaluate the Licensee's position. The City and the Licensee shall promptly use their best reasonable efforts to resolve any interference problems before the City allows the third party to co-locate its equipment, facilities or structures.

11. ASSIGNMENT.

- A. Licensee may only assign this License, upon thirty (30) days' written notice to the City, to any entity controlling, controlled by or under common ownership with the Licensee, or to any entity that, after first receiving all necessary F.C.C. and State regulatory agency approvals, acquires the Licensee's radio communications business and assumes all obligations of the Licensee under this Agreement. All other assignments require the City's prior approval. For assignments requiring City approval, the City may, as a condition of approval, postpone the effective date of the assignment and require that any potential transferee submit biographical and financial information to the City at least sixty (60) days prior to any transfer of Licensee's interest. After reviewing all materials submitted by the proposed assignee, City, in its sole unreviewable discretion, approve or reject the proposed assignment. Any purported assignment that is not approved by the City is null and void and such assignee will not assume Licensee's rights and benefits under this Agreement.
- B. Licensee may, upon notice to the City, mortgage or grant a security interest in this Agreement and the Communication Equipment, and may assign this Agreement and the Communication Equipment to any mortgagees, deed of trust beneficiaries

or holders of security interests, including their successors or assigns ("Mortgagees"), provided such Mortgagees agree to be bound by the terms of this Agreement. In such event, the City shall execute such consent to leasehold or other financing as may be reasonably required by Mortgagees. In no event will the Licensee grant or attempt to grant a security interest in any of the real property underlying the License Area.

- C. Subject to subsections (A) and (B) above, Licensee shall not assign or sublease any of its interest under this Agreement, nor permit any other person to occupy the License Area.

12. SECURITY DEPOSIT.

- A. Amount of Security Deposit. Concurrent with the licensee's execution of this Agreement, licensee agrees to deliver to the licensor a security deposit in the amount of Twenty Thousand and No/100 Dollars (\$20,000.00) The licensor shall hold the Security Deposit as security for the performance of the licensee's obligations under the lease.
- B. Use of Security Deposit Licensor may (but is not required to) , without prejudice to any other remedy Licensor has, apply all or part of the Security Deposit to:
 - (1) Any Rent, including Base Rent, or other sum in default;
 - (2) Any amount that licensor may spend or become obligated to spend in exercising licensor's unconditional rights pursuant to Cell Site Removal, Restoration or to remove any and all portions of the Cell Site that remain on the Premises by the earlier of thirty (30) days following cessation of licensee's operations at the Premises, or the Expiration Date of this lease; and
 - (3) Any expense, loss, or damage that licensor may suffer because of licensee's default.
- C. Refund of Security Deposit licensee must remove, to the licensor's satisfaction, all elements of the Cell Site and all associated improvements of every kind and nature constructed, erected or placed by licensee on the Premises by the earlier of the thirty (30) days following cessation of licensee's operations at the premises, or expiration date of this lease in order to secure refund of any portion of its Security Deposit.

13. RECORDS RE: REGULATORY AGENCIES, SERVICES, FINANCIALS, AND BANKRUPTCY.

- A. The Licensee shall upon request provide to the City:
 - (1) All relevant petitions, permits, applications, authorizations, communications and reports submitted by the Licensee to the F.C.C., or

any other Federal or State regulatory commission or agency having jurisdiction that directly relates to the Licensee's operations and/or communications equipment in the Licensed Area;

(2) All documentation concerning all services of whatever nature being offered or provided by the Licensee over facilities or equipment in the Licensed Area. Copies of responses from regulatory agencies to the Licensee shall be provided to the City upon receipt. To the extent permitted by Arizona's Public Records Law (A.R.S. Sec. 39-121 et.seq.), the City shall treat all documentation and information obtained pursuant to this Subsection as proprietary.

B. The Licensee shall also provide the City, without request, copies of any petition, application, communications or other documents related to any filing by the Licensee of bankruptcy, receivership or trusteeship.;

C. The Licensee shall provide updated 10Q financial reports, for review by the City's Chief Financial Officer ("CFO") on an annual basis upon City's written request. The financial reports will be presented in an acceptable accounting standard format approved by the CFO.

14. DEFAULT; TERMINATION BY CITY.

A. The City may terminate this Agreement by giving Licensee 30 day's written notice after the happening of any of the following events:

(1) The failure of Licensee to perform any of its obligations under this Agreement, provided that Licensee fails to cure its default within said 30-day notice period;

(2) The taking of possession for a period of 10 days or more of substantially all of the personal property used in the License Area belonging to Licensee by or pursuant to lawful authority of any legislative act, resolution, rule, order or decree or any act, resolution, rule, order or decree of any court or governmental board, agency, officer, receiver, trustee or liquidator;

(3) The filing of any lien against the Park because of any act or omission of Licensee that is not discharged within 30 days of receipt of actual notice by Licensee.

B. The City may place Licensee in default of this Agreement by giving Licensee 15 days' written notice of Licensee's failure to timely pay the rent provided for herein or any other charges required to be paid by Licensee pursuant to this Agreement. During said 15-day notice period, Licensee shall cure said default;

otherwise, the City may elect to terminate this Agreement or to exercise any other remedy allowed by law or equity.

- C. If Licensee, through any fault of its own, at any time fails to maintain all insurance coverage required by this Agreement, the City shall have the right, upon written notice to Licensee, to immediately terminate this Agreement or to secure the required insurance at Licensee's expense.
- D. Failure by the City to take any authorized action upon default by Licensee of any of its obligations hereunder shall not constitute a waiver of said default nor of any subsequent default by Licensee. Acceptance of rent and other fees by the City under the terms hereof for any period after a default by Licensee of any of its obligations shall not be deemed a waiver or estoppel of the City's right to terminate this Agreement for any subsequent failure by Licensee to comply with its obligations.
- E. Upon the termination of this Agreement for any reason, all rights of the Licensee shall terminate, including all rights of the Licensee's creditors-trustees and assigns, and all others similarly situated as to the License Area.

15. TERMINATION.

Either party may terminate this Agreement at any time that it is not in default in its obligations by giving the other party written notice after the happening of any of the following events:

- A. Issuance by a court of competent jurisdiction of an injunction in any way preventing or restraining Licensee's use of any portion of the License Area and the remaining in force of such injunction for a period of 30 consecutive days.
- B. The inability of Licensee to use any substantial portion of the License Area for a period of 30 consecutive days due to the enactment or enforcement of any law or regulation or because of fire, earthquake or similar casualty, or Acts of God or the public enemy.
- C. Upon 90 days' written notice, if Licensee is unable to obtain or maintain any license, permit or governmental approval necessary to the construction, installation or operation of the Communication Equipment or Licensee's business.
- D. Upon 90 days' written notice, if the License Area or the Communication Equipment is unacceptable under Licensee's design or engineering specifications for the communication system to which the Communication Equipment belongs, or is unacceptable for either party's other reasonable business purposes.
- E. The License Area or the Communication Equipment are destroyed or so damaged that, in either party's reasonable judgment, such damage substantially and

adversely affects the use of the Communication Equipment. In such event, Licensee shall be entitled to a refund of any prepaid rent.

16. INDEMNIFICATION.

Licensee shall defend, indemnify and hold harmless the City and its elected or appointed officials, agents, boards, commissions and employees (hereinafter referred to collectively as the "City" in this Section) from all loss, damages or claims of whatever nature, including attorney's fees, expert witness fees and costs of litigation, that arise out of any act or omission of Licensee or its agents, employees and invitees (hereinafter referred to collectively as "Licensee" in this Section) in connection with Licensee's operations in the Park and that result directly or indirectly in the injury to or death of any person or the damage to or loss of any property, or that arise out of the failure of Licensee to comply with any provision of this Agreement. The City shall in all instances, except for loss, damages or claims resulting from the sole negligence of the City, be indemnified by Licensee against all such loss, damages or claims, regardless of whether the loss, damages or claims are caused in part by the negligence of the City. The City shall give Licensee prompt notice of any claim made or suit instituted that may subject Licensee to liability under this Section, and Licensee shall have the right to compromise and defend the same to the extent of its own interest. The City shall have the right, but not the duty, to participate in the defense of any claim or litigation with attorneys of the City's selection without relieving Licensee of any obligations hereunder. Licensee's obligations hereunder shall survive any termination of this Agreement or Licensee's activities in the Park.

17. INSURANCE.

Licensee shall procure and at all times maintain the following types and amounts of insurance for its operations in the Park:

- A. Commercial general liability and property damage insurance in the amount of \$1,000,000 combined single limit and catastrophic umbrella insurance in the amount of \$2,000,000 combined single limit in excess of the \$1,000,000 underlying coverage.
- B. Comprehensive automobile liability insurance for all owned, non-owned and hired vehicles in the amount of \$ 1,000,000 per person and \$2,000,000 per accident for bodily injury and property damage per occurrence.
- C. Such other insurance as the City' Project Manager determines to be necessary for Licensee's operations.

Such insurance shall be in a form, from a company and with deductibles acceptable to the City's Project Manager; shall name the City as an additional insured; and shall require 30 days' written notice to the City before modification or termination. The insurance must also include contractual liability coverage for the obligation of indemnity assumed in this Agreement. Licensee shall provide appropriate certificates of insurance to the City for all insurance policies required by this Section.

18. DAMAGE OR DESTRUCTION.

- A. If the License Area or any of Licensee's Improvements, insurable or uninsurable, are damaged or destroyed (except damage or destruction caused by Licensee as set forth in Subsection B) to such an extent Licensee is prevented from continuing operations, each party shall have the right, in its sole discretion and without cause, to terminate this Agreement by giving the other party written notice of such termination.
- B. If the License Area or any of Licensee's Improvements are damaged or destroyed by any cause whatsoever attributable in whole or in part to any act or omission of Licensee or its agents, employees or invitees, Subsection A shall not apply and this Agreement shall continue in full force or effect. Licensee shall promptly repair or rebuild the License Area or Licensee's Improvements used by the City, including the Pole, and Licensee shall reimburse the City, on demand, for all costs of such work.
- C. There shall be no obligation on the part of the City to reimburse Licensee for the loss or damage to fixtures, equipment or other personal property of Licensee, except for such loss or damage as is caused by the sole negligence of the City . Licensee, for its own protection, may separately insure such fixtures, equipment or other personal property as it so desires.

19. SURRENDER OF POSSESSION.

Upon the expiration or termination of this Agreement, Licensee's right to occupy the License Area and exercise the privileges and rights herein granted shall cease, and it shall surrender and leave the License Area in good condition, normal wear and tear excepted. Unless otherwise provided herein, all trade fixtures, equipment, and other personal property installed or placed by Licensee on the License Area shall remain the property of Licensee, and Licensee shall have the right at any time during the term of this Agreement, and for an additional period of 60 days after its expiration, to remove the same from the License Area; provided that Licensee is not in default of any of its obligations hereunder and that Licensee shall repair, at its sole cost, any damage caused by such removal. Any property not removed by Licensee within said 60-day period shall become a part of the Park, and ownership thereto shall vest in the City; or the City may, at the Licensee's expense, have the property removed.

20. NOTICE.

Except as otherwise provided, all notices required or permitted to be given under this Agreement May be personally delivered or mailed by certified mail, return receipt requested, postage prepaid, to the following addresses:

TO THE CITY: City of Glendale
Attention: Construction Engineering Manager
5850 W. Glendale Avenue, Suite 315
Glendale, AZ 85301

WITH A COPY TO: City of Glendale
Attention: City Attorney
5850 West Glendale Avenue, Suite 450
Glendale, AZ 85301

TO LICENSEE: Cricket Communications, Inc.
Attention: Property Manager
5887 Copley Drive
San Diego, CA 92111

WITH A COPY TO: Cricket Communications, Inc.
Attention: Legal Department – Real Estate
5887 Copley Drive
San Diego, CA 92111

Any notice given by certified mail shall be deemed to be received on the next business day after the date of mailing. Either party may designate in writing a different address for notice purposes pursuant to this Section.

21. SEVERABILITY.

Should any provision of this Agreement be declared invalid by a court of competent jurisdiction, the remaining terms shall remain effective, provided that elimination of the invalid provision does not materially prejudice either party with regard to its respective rights and obligations.

22. TAXES AND LICENSES.

- A. Licensee shall pay any leasehold tax, possessory-interest tax, sales tax, personal property tax, transaction privilege tax or other exaction assessed or assessable as a result of its occupancy of the License Area under authority of this Agreement, including any such tax assessable on the City. In the event that laws or judicial decisions result in the imposition of a real property tax on the interest of the City, such tax shall also be paid by Licensee for the period this Agreement is in effect.
- B. Licensee acknowledges that it may be a "prime lessee," as defined in A.R.S. Sec. 42- 1901, and that it may be subject to excise tax liability under this Agreement pursuant to A.R.S., Title 42, Chapter 13 as a prime lessee of a government property improvement. Licensee further acknowledges that any failure by Licensee to pay taxes due under A.R.S., Title 42, Chapter 13, after notice and an opportunity to cure, shall constitute a default that could result in divesting of any interest in or right to occupancy of the License Area.

- C. Licensee shall, at its own cost, obtain and maintain in full force and effect during the term of this Agreement all licenses and permits required for all activities authorized by this Agreement.

23. LITIGATION.

This Agreement shall be governed by the laws of the State of Arizona. In the event of any litigation or arbitration between the City and Licensee arising under this Agreement, the successful party shall be entitled to recover its attorney's fees, expert witness fees and other costs incurred in connection with such litigation or arbitration.

24. RULES AND REGULATIONS.

Licensee shall at all times comply with all federal, state and local laws, ordinances, rules and regulations which are applicable to its operations and the Park including all laws, ordinances, rules and regulations adopted after the Effective Date. Licensee shall display to the City, upon request, any permits, licenses or other evidence of compliance with such laws.

25. RIGHT OF ENTRY RESERVED.

- A. The City shall have the right at all times to enter upon the License Area for any lawful purpose, provided such action does not unreasonably interfere with Licensee's use or occupancy of the License Area and that the City shall have access to the: Communication Equipment itself only with a 24-hour notice, except in emergency situations.
- B. Without limiting the generality of Subsection A, the City and any furnisher of utilities and other services shall have the right, at their own cost, to maintain existing and future utility, mechanical, electrical and other systems and to enter upon the License Area at all times to make such repairs, replacements or alterations there to that may, in the opinion of the City, be deemed necessary or advisable and from time to time to construct or install over, in or under the License Area such systems or parts thereof and, in connection with such maintenance, use the License Area for access to other parts of the Park; provided that in the exercise of such right of access, repair, alteration or new construction, the City shall not unreasonably interfere with the use and occupancy of the License Area by Licensee.
- C. If any of Licensee's Improvements shall obstruct the access of the City or any utility company furnishing utility service to any of the existing utility, mechanical, electrical and other systems in the Park, and thus shall interfere with the inspection, maintenance or repair of any such system, Licensee shall promptly provide necessary access, as directed by the City or utility company, to the system for inspection, maintenance or repair.

- D. Exercise of any of the foregoing rights by the City or others pursuant to the City's rights shall not constitute an eviction of Licensee, nor be made the grounds for any abatement of rent or claim for damages.

26. MISCELLANEOUS.

This Agreement constitutes the entire agreement between the Parties concerning the matters contained herein and supersedes all prior negotiations, understandings and agreements between the parties concerning such matters. This Agreement shall be interpreted, applied and enforced according to the fair meaning of its terms and shall not be construed strictly in favor of or against either party, regardless of which party may have drafted any of its provisions. No provision of this Agreement may be waived or modified except by a writing signed by the party against whom such waiver or modification is sought to be enforced. The terms of this Agreement shall be binding upon and inure to the benefit of the parties' successors and assigns.

[The remainder of this page left intentionally blank.]

EXECUTED to be effective on the date specified above.

CITY OF GLENDALE,
an Arizona municipal corporation

Brenda S. Fischer
City Manager

ATTEST:

Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

Michael D. Bailey
City Attorney

CRICKET COMMUNICATIONS, INC.,
a Delaware corporation

Ron Bittner
Sr. Director of Site Development

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by _____, in his or her capacity as the _____ on behalf of Cricket Communications, Inc., a Delaware corporation.

In witness whereof I hereunto set my hand and official seal.

Notary Public

My Commission Expires:

EXHIBIT A

(see attached)

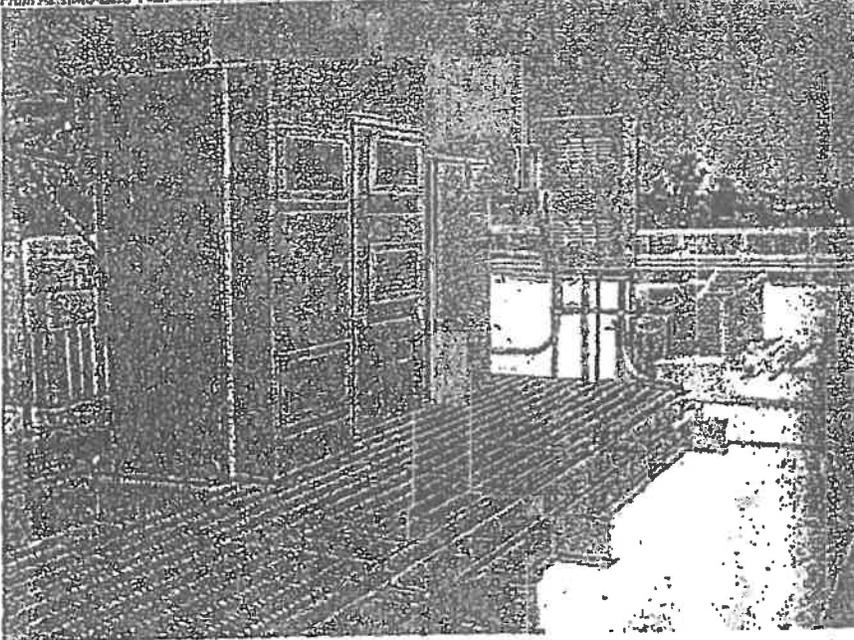
cricket
Comfortable Wireless™

Another Leap Innovation™ **FOR GLENDALE CITY LICENSE AGREEMENT**

The following is the proposed Cricket equipment for SAGUGRO RANCHI PARK (P12X-075).

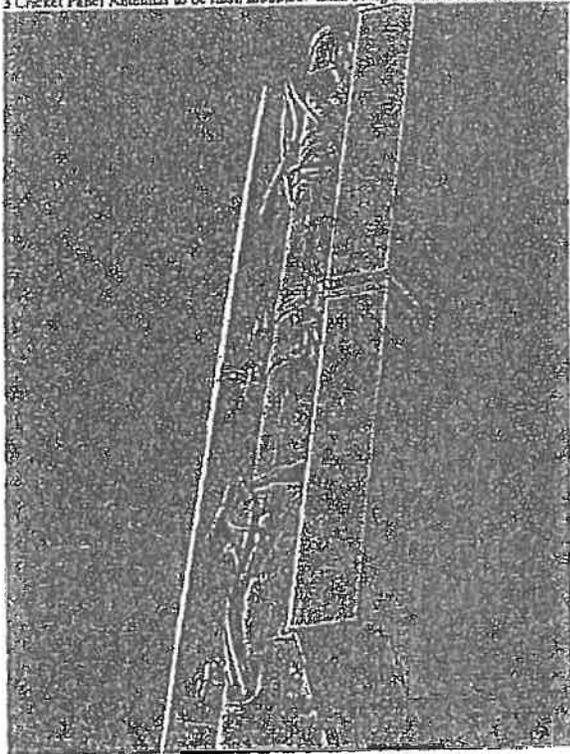
(The Photographs represent the equipment to be used. However, they do not depict the actual equipment layout. The actual equipment layout is expressly provided for in Section 3 of this Agreement and the Planning Department approved Plans.)

From Right-to-Left: Teko Facility, Battery Cabinet, Power Cabinet, Modular Cell (76 inches in height), and Future Mod Cell not shown.



A concrete slab will be use rather than a platform that is depicted in this photo.

3 Cricket Panel Antennas to be flush mounted: Each being 34 inches in length, 3 inches in thickness, and 6 inches in width.



CRICKET
COMMUNITY DEVELOPMENT

LUCAS
COMMUNITY DEVELOPMENT

CROWNE
COMMUNITY DEVELOPMENT

LAW
COMMUNITY DEVELOPMENT

COMMUNITY DEVELOPMENT INC.
COMMUNITY DEVELOPMENT

REVISIONS

NO.	DATE	DESCRIPTION
1	11/15/01	ISSUED FOR PERMITS
2	11/15/01	ISSUED FOR PERMITS
3	11/15/01	ISSUED FOR PERMITS

SHEET NUMBER
PHX-0756

PROJECT NAME
SAHUARO BASEBALL PARK

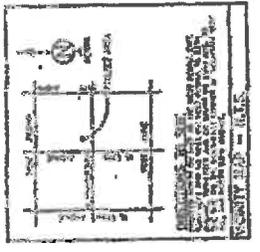
OWNER
K. DEAN & SONS, INC.
GLENDALE, AZ, 85302

DATE
11/15/01

PROJECT NUMBER
C1

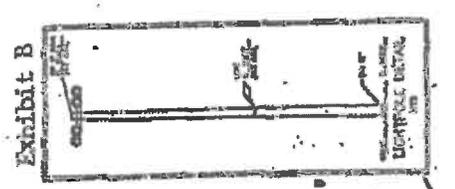
GENERAL NOTES:

1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
2. ALL UTILITIES SHOWN ARE BASED ON RECORD DRAWINGS AND FIELD SURVEY.
3. THE CONTRACTOR SHALL VERIFY THE LOCATION AND DEPTH OF ALL UTILITIES PRIOR TO CONSTRUCTION.
4. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.
5. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS.
6. THE CONTRACTOR SHALL MAINTAIN ALL EXISTING UTILITIES AND STRUCTURES UNLESS OTHERWISE NOTED.
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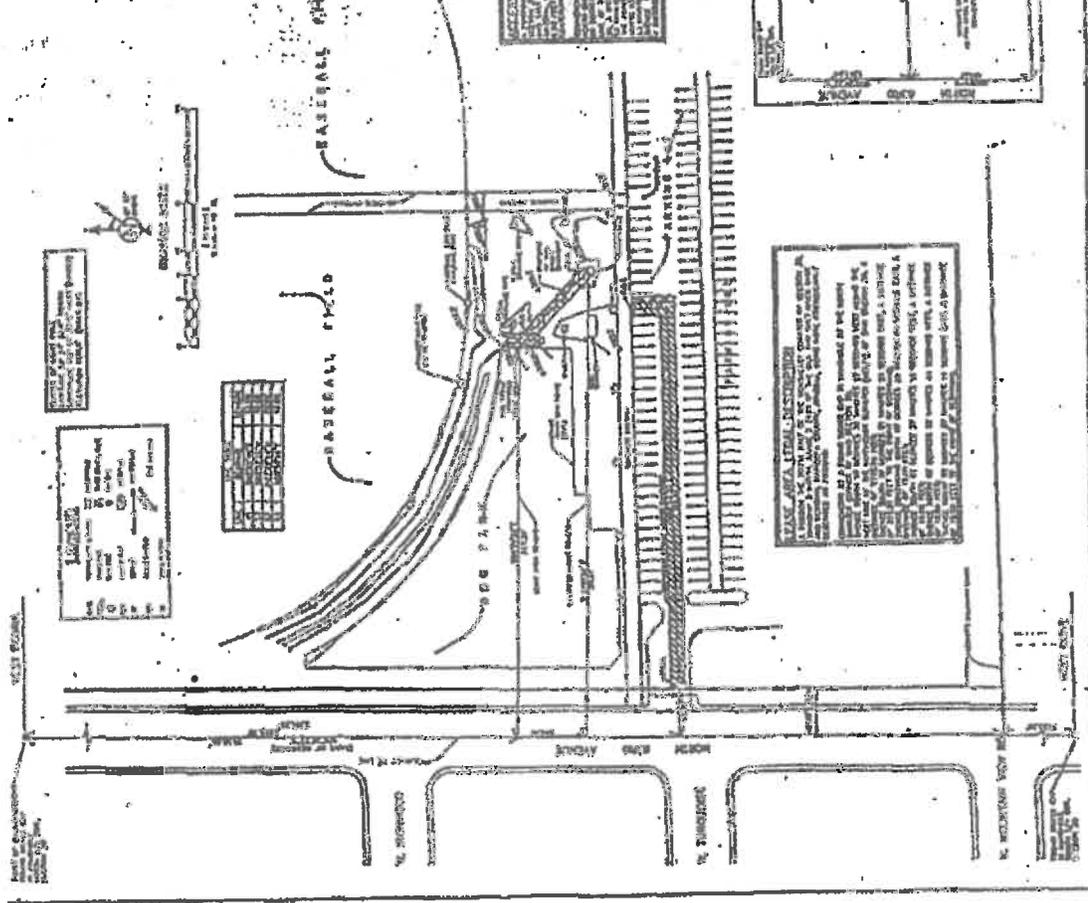
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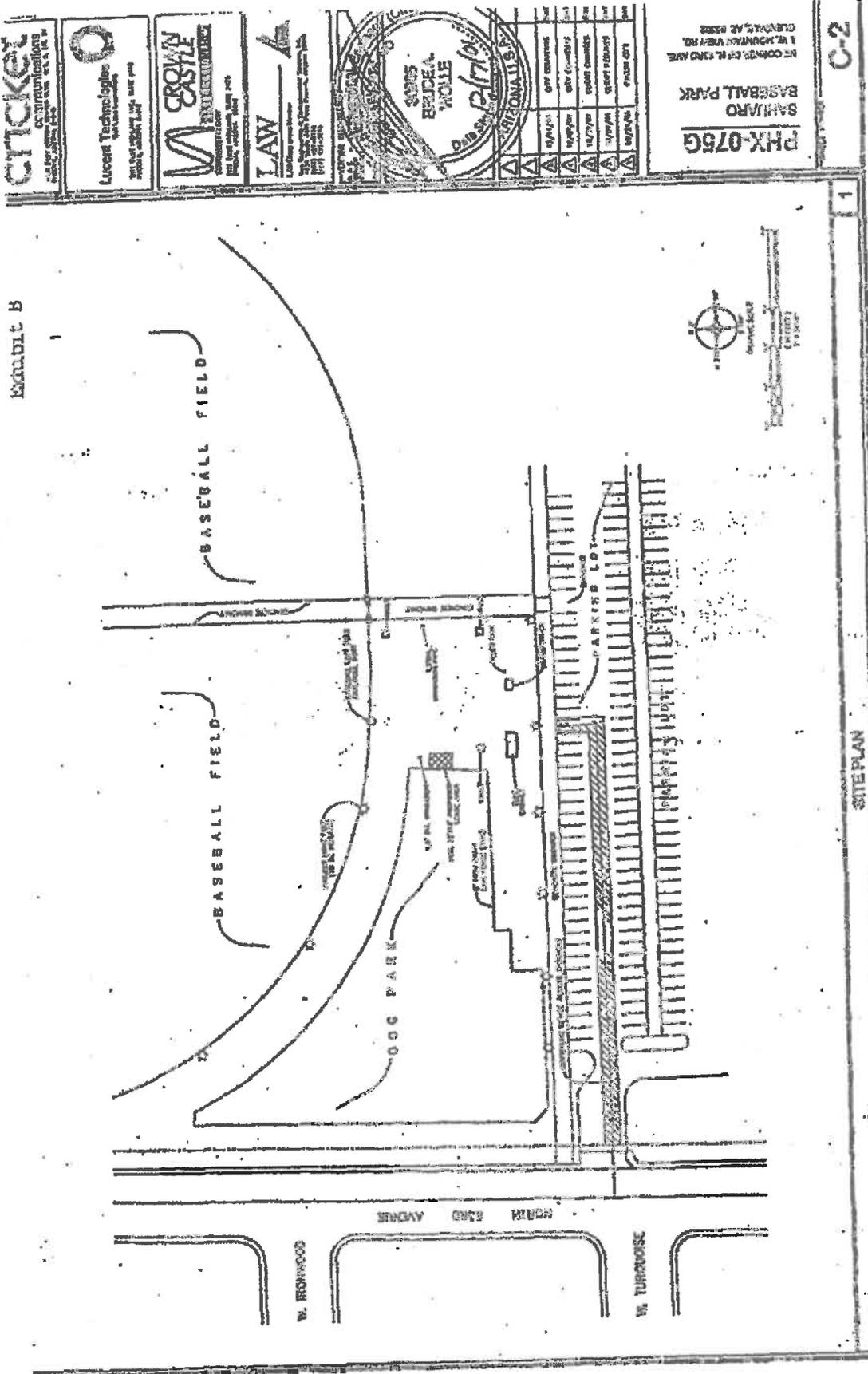
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CITY OF GLENDALE
DEC 18 2001
PLANNING DEPARTMENT

APPROVED PLAN
COMMUNITY DEVELOPMENT
CITY OF GLENDALE

EXHIBIT B



CITY OF GLENDALE
 DEC 18 2001
 PLANNING

APPROVED PLAN
 COMMUNITY DEVELOPMENT
 CITY OF GLENDALE

SITE PLAN

C-2

PHX-075G
 SAHUARO
 BASEBALL PARK
 17100 N. 17TH AVENUE
 GLENDALE, AZ 85302

CRICKET
 COMMUNICATIONS
 1000 N. 17TH AVENUE, SUITE 100
 GLENDALE, AZ 85302

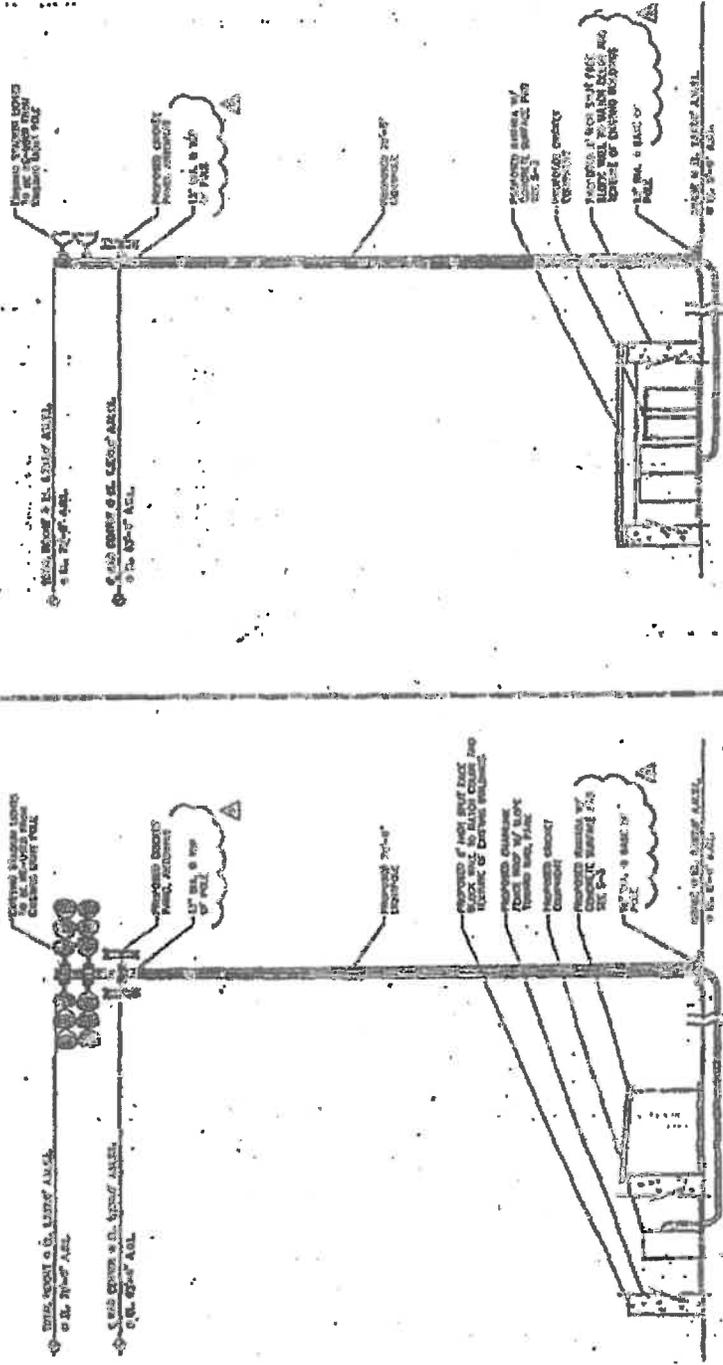
Lucent Technologies
 1000 N. 17TH AVENUE, SUITE 100
 GLENDALE, AZ 85302

CROWN CASTLE
 COMMUNICATIONS
 1000 N. 17TH AVENUE, SUITE 100
 GLENDALE, AZ 85302

LAW
 1000 N. 17TH AVENUE, SUITE 100
 GLENDALE, AZ 85302

SAHARA BRIDEAL WOLLE
 1000 N. 17TH AVENUE, SUITE 100
 GLENDALE, AZ 85302

Exhibit B



cricket communications
 10000 W. 10th Ave., Suite 100, Denver, CO 80202
 (303) 751-1000

Law
 LAW OFFICES OF JAMES M. GIBSON
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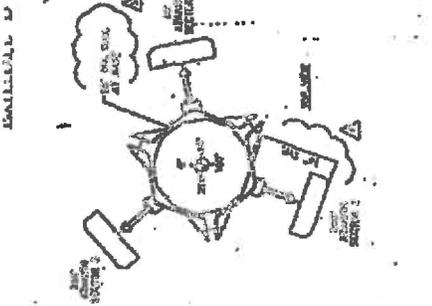
PHX-075G
 SAHUKRO
 BASEBALL PARK
 NE CORNER OF W. 10TH AVE. & N. BROADWAY
 DENVER, CO 80202

1	FOUNDATION	CONCRETE
2	WALLS	CONCRETE
3	FLOORING	CONCRETE
4	CEILING	CONCRETE
5	ROOFING	CONCRETE
6	MECHANICAL	CONCRETE
7	ELECTRICAL	CONCRETE
8	PLUMBING	CONCRETE
9	PAINT	CONCRETE
10	LANDSCAPING	CONCRETE
11	FENCE	CONCRETE
12	DRIVEWAY	CONCRETE
13	SIDEWALK	CONCRETE
14	PORCH	CONCRETE
15	STAIRS	CONCRETE
16	DECK	CONCRETE
17	PATIO	CONCRETE
18	TERRACE	CONCRETE
19	BALCONY	CONCRETE

CITY OF GLENDALE
 DEC 1 8 2001
 PLANNING DEPARTMENT

APPROVED PLAN
 COMMUNITY DEVELOPMENT
 CITY OF GLENDALE

A-1



SCALE: N.T.S. 1/2

ANTENNA LAYOUT

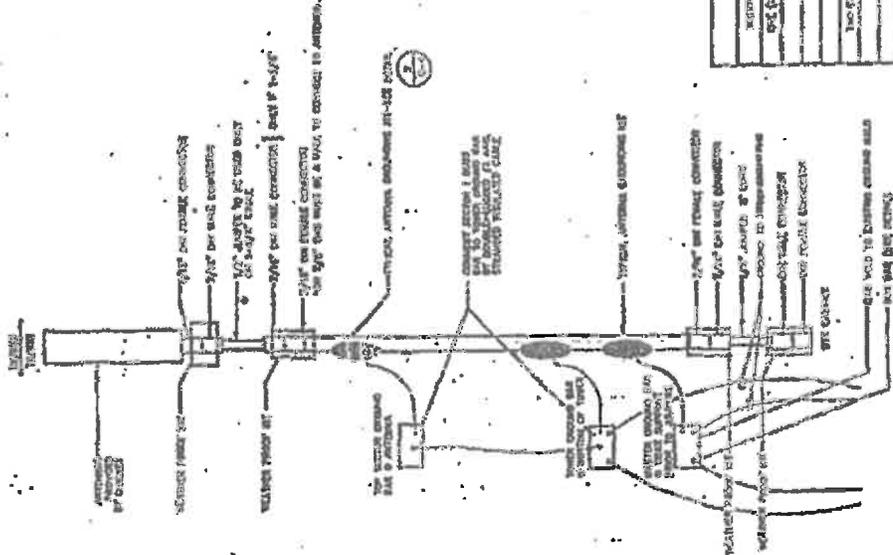
ITEM	DESCRIPTION	QUANTITY	UNIT
1	ANTENNA FEEDER	1	EA
2	ANTENNA SUPPORT	1	EA
3	ANTENNA MOUNTING	1	EA
4	ANTENNA BRACKET	1	EA
5	ANTENNA HOOK	1	EA
6	ANTENNA RING	1	EA
7	ANTENNA CLAMP	1	EA
8	ANTENNA WEDGE	1	EA
9	ANTENNA WASHER	1	EA
10	ANTENNA NUT	1	EA
11	ANTENNA BUSHING	1	EA
12	ANTENNA GROMMET	1	EA
13	ANTENNA GASKET	1	EA
14	ANTENNA O-RING	1	EA
15	ANTENNA SEAL	1	EA
16	ANTENNA GROUT	1	EA
17	ANTENNA CONCRETE	1	EA
18	ANTENNA FOUNDATION	1	EA
19	ANTENNA PILING	1	EA

ANTENNA AND COAXIAL CABLE SCHEDULE

ITEM	DESCRIPTION	QUANTITY	UNIT
1	ANTENNA FEEDER	1	EA
2	ANTENNA SUPPORT	1	EA
3	ANTENNA MOUNTING	1	EA
4	ANTENNA BRACKET	1	EA
5	ANTENNA HOOK	1	EA
6	ANTENNA RING	1	EA
7	ANTENNA CLAMP	1	EA
8	ANTENNA WEDGE	1	EA
9	ANTENNA WASHER	1	EA
10	ANTENNA NUT	1	EA
11	ANTENNA BUSHING	1	EA
12	ANTENNA GROMMET	1	EA
13	ANTENNA GASKET	1	EA
14	ANTENNA O-RING	1	EA
15	ANTENNA SEAL	1	EA
16	ANTENNA GROUT	1	EA
17	ANTENNA CONCRETE	1	EA
18	ANTENNA FOUNDATION	1	EA
19	ANTENNA PILING	1	EA

SCALE: N.T.S. 1

ANTENNA CONNECTIONS



NOTES:
 1. ALL ANTENNAS, COAXIAL CABLES, AND OTHER ELECTRICAL EQUIPMENT SHALL BE PROTECTED BY AN OVERCURRENT PROTECTIVE DEVICE (OCPD) LOCATED AT THE POINT OF ENTRY TO THE ANTENNA FEEDER.
 2. ANTENNAS SHALL BE PROTECTED FROM LIGHTNING BY A LIGHTNING ROD SYSTEM.
 3. ALL ANTENNAS SHALL BE PROTECTED FROM VIBRATION BY AN ANTIVIBRATION SYSTEM.
 4. ALL ANTENNAS SHALL BE PROTECTED FROM CORROSION BY AN ANODE PROTECTION SYSTEM.

cricket
CONSTRUCTION

Lucent Technologies
CONNECTIONS

WILSON
CONNECTIONS

LAW

30305
BRUCEA
WALLE

12/7/01

PHX-075G

SANBARO

BASEBALL PARK

1000 N. 10TH AVENUE
PHOENIX, AZ 85003

A-2

CITY OF GLENDALE
 DEC 18 2001
 PLANNING DEPARTMENT

APPROVED PLAN
 COMMUNITY DEVELOPMENT
 CITY OF GLENDALE

EXHIBIT B

(see attached)

EXHIBIT B

DISPUTE RESOLUTION

1. Disputes.

- 1.1 Commitment. The parties commit to resolving all disputes promptly, equitably, and in a good-faith, cost-effective manner.
- 1.2 Application. The provisions of this Exhibit will be used by the parties to resolve all controversies, claims, or disputes ("Dispute") arising out of or related to this Agreement-including Disputes regarding any alleged breaches of this Agreement.
- 1.3 Initiation. A party may initiate a Dispute by delivery of written notice of the Dispute, including the specifics of the Dispute, to the Representative of the other party as required in this Agreement.
- 1.4 Informal Resolution. When a Dispute notice is given, the parties will designate a member of their senior management who will be authorized to expeditiously resolve the Dispute.
 - a. The parties will provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any Dispute in order to assist in resolving the Dispute as expeditiously and cost effectively as possible;
 - b. The parties' senior managers will meet within 10 business days to discuss and attempt to resolve the Dispute promptly, equitably, and in a good faith manner, and
 - c. The Senior Managers will agree to subsequent meetings if both parties agree that further meetings are necessary to reach a resolution of the Dispute.

2. Arbitration.

- 2.1 Rules. If the parties are unable to resolve the Dispute by negotiation within 30 days from the Dispute notice, and unless otherwise informal discussions are extended by the mutual agreement, the Dispute will be decided by binding arbitration in accordance with Construction Industry Rules of the AAA, as amended herein. Although the arbitration will be conducted in accordance with AAA Rules, it will not be administered by the AAA, but will be heard independently.
 - a. The parties will exercise best efforts to select an arbitrator within five business days after agreement for arbitration. If the parties have not agreed upon an arbitrator within this period, the parties will submit the selection of the arbitrator to one of the principals of the mediation firm of Scott & Skelly, LLC, who will then select the arbitrator. The parties will equally share the fees and costs incurred in the selection of the arbitrator.
 - b. The arbitrator selected must be an attorney with at least 15 years' experience with commercial construction legal matters in Maricopa County, Arizona, be independent, impartial, and not have engaged in any business for or adverse to either Party for at least 10 years.
- 2.2 Discovery. The extent and the time set for discovery will be as determined by the arbitrator. Each Party must, however, within 10 days of selection of an arbitrator deliver to the other Party copies of all documents in the delivering party's possession that are relevant to the dispute.

- 2.3 Hearing. The arbitration hearing will be held within 90 days of the appointment of the arbitrator. The arbitration hearing, all proceedings, and all discovery will be conducted in Glendale, Arizona unless otherwise agreed by the parties or required as a result of witness location. Telephonic hearings and other reasonable arrangements may be used to minimize costs.
- 2.4 Award. At the arbitration hearing, each Party will submit its position to the arbitrator, evidence to support that position, and the exact award sought in this matter with specificity. The arbitrator must select the award sought by one of the parties as the final judgment and may not independently alter or modify the awards sought by the parties, fashion any remedy, or make any equitable order. The arbitrator has no authority to consider or award punitive damages.
- 2.5 Final Decision. The Arbitrator's decision should be rendered within 15 days after the arbitration hearing is concluded. This decision will be final and binding on the Parties.
- 2.6 Costs. The prevailing party may enter the arbitration in any court having jurisdiction in order to convert it to a judgment. The non-prevailing party will pay all of the prevailing party's arbitration costs and expenses, including reasonable attorney's fees and costs.
3. **Services to Continue Pending Dispute.** Unless otherwise agreed to in writing, Consultant must continue to perform and maintain progress of required Services during any Dispute resolution or arbitration proceedings, and City will continue to make payment to Consultant in accordance with this Agreement.
4. **Exceptions.**
- 4.1 Third Party Claims. City and Consultant are not required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defense of a third party who is not obligated by contract to arbitrate disputes with City and Consultant.
- 4.2 Liens. City or Consultant may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice, but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Arizona Law, including, without limitation, an action under A.R.S. § 33-420, without the necessity of initiating or exhausting the procedures of this Exhibit.
- 4.3 Governmental Actions. This Exhibit does not apply to, and must not be construed to require arbitration of, any claims, actions or other process filed or issued by City of Glendale Building Safety Department or any other agency of City acting in its governmental permitting or other regulatory capacity.
- 4.4 Injunctive Relief. Any actions for injunctive relief shall be excluded from this Dispute Resolution and arbitration process.

C-

**LICENSE AGREEMENT
FOR WIRELESS COMMUNICATIONS SITE
IN CITY RIGHT-OF-WAY**

This License Agreement for use of a City Right-of-Way ("Agreement") is executed to be effective the ____ day of _____, 2014 ("Effective Date"), by and between the City of Glendale, an Arizona municipal corporation ("City"), and Cricket Communications, Inc., a Delaware corporation ("Licensee").

WHEREAS, the City is the owner of certain right-of-way ("City Right-of-Way") located between the Manistee Manor and Northern Avenue, including a small portion of which is to be licensed ("License Area") for which Licensee describes as site PHX074 for use pursuant to this Agreement, as more particularly described in the ("Site Plan") as Exhibit A attached hereto; and

WHEREAS, the Disciples House of Glendale, Inc., an Arizona non-profit corporation is the owner of certain real property located at 7987 N. 53rd Avenue in Glendale, Arizona, on which the Manistee Manor ("the Manistee Property") is located and which adjacent to the City Right-of-Way; and

WHEREAS, the Salt River Project Agricultural Improvement and Power District ("SRP") is the owner of a utility pole located on the City Right-of-Way, which is designated by SRP as Pole No. 50 (the "Pole"); and

WHEREAS, the Parties entered into a previous License Agreement on January 9, 2002, designated by the City as C-4446, pursuant to which the Licensee, as successor-in-interest to Cricket Arizona Property Company, installed and operated wireless communication antennas and related equipment specified in Section 1 below (collectively referred to as the "Communication Equipment") in the License Area and constructed certain improvements to the License Area and the Manistee Property, as depicted in the Site Plan; and

WHEREAS, the City is willing to renew its grant of a license to the Licensee to use the License Area for the operation of the Communication Equipment, and the transmission and reception of communication signals, in accordance with the terms of this Agreement, subject to the approval of the Glendale City Council in connection with the public hearing requirements of A.R.S. § 9-551 *et seq.*, and all as implemented by the City's Project Manager, whose approval shall not be unreasonably withheld.

THEREFORE, in consideration of the following mutual covenants, terms and conditions, it is hereby agreed as follows:

1. LICENSE AREA.

A. The License Area includes and is limited to the following areas depicted in the Site Plan, which is attached hereto as Exhibit A:

i) The Pole located in the City Right-of-Way, to be used solely for not more than three panel antennas (“the Antennae”). The Antennae were constructed as an extension of the Pole, at a height not more than nine (9) feet higher than the pre-construction height of the Pole. The Antennae will be consistent in size, placement and design as approved by the City’s Planning Department. Any reference to the Pole herein shall include any replacement Pole to be constructed by the Licensee and/or SRP.

ii) An underground conduit and cable route for a ground signal conduit and cable along the route described in the Site Plan, or as otherwise approved by the City, from the base of the Pole to the Licensee’s ground equipment located on the Manistee Property.

iii) An underground conduit and cable route for an electrical service conduit and cable along the route described in the Site Plan, or as otherwise approved by the City, from the nearest available power source to the ground equipment located on the Manistee Property.

iv) An underground conduit and cable route for a telephone service conduit and cable along the route described in the Site Plan, or as otherwise approved by the City, from the nearest available telephone service to the ground equipment located on the Manistee Property.

2. CITY’S REPRESENTATIONS AND WARRANTIES.

A. The City represents and warrants to the Licensee that: (i) the City, and its duly authorized signatory, have full right, power and authority to execute this Agreement on behalf of the City; and (ii) the City has good and unencumbered title to the License Area free and clear of any liens or mortgages, except those disclosed to the Licensee that will not interfere with Licensee’s right to use the License Area; and (iii) the City’s execution and performance of this Agreement will not violate any laws, ordinances, covenants, mortgages, licenses or other agreements binding on the City.

B. The Licensee has studied and inspected the License Area and accepts the same “AS IS” without any express or implied warranties of any kind, other than those warranties contained in subsection (A) immediately above, including any warranties or representations by the City as to its condition or fitness for any particular use. The Licensee has inspected the License Area and obtained information and professional advice as the Licensee has determined to be necessary related to this Agreement.

3. GRANT OF LICENSE; TERM.

The City grants to the Licensee the right to use the License Area, subject to the following provisions and conditioned upon the Licensee’s timely and complete performance of all its obligations hereunder:

- A. As a condition precedent to this License taking effect, Licensee shall obtain the approval of all property owners, including SRP, to use and occupy any property needed to install and operate its Communication Equipment. Nothing in this Agreement will be construed as granting the Licensee the authority to use any property that is owned by any person or entity other than the City.
- B. The initial term of this Agreement shall be for a period of five (5) years (the "Initial Term"), commencing on the Effective Date and ending on January 8, 2018, unless sooner terminated as stated herein. The City and Licensee may agree to renew this Agreement for four (4) successive five-year Renewal Terms on the same terms and conditions. There is no automatic renewal of this Agreement. In order to renew this Agreement, Licensee must notify the City in writing of its intent to renew this Agreement at least thirty (30) days prior to the expiration of the Initial Term or any Renewal Term.
- C. The Licensee shall vacate the License Area upon the expiration or termination of this Agreement. If Licensee continues to occupy the License Area after the expiration or termination of this Agreement without the City's consent, holding over will not operate as a renewal or extension of this Agreement, and the Licensee must pay the City fees in an amount that is double the amount of fees that would otherwise be due under Section 4 for such hold-over period.
- D. The Agreement supersedes any negotiation, correspondence, course of performance or dealing, or other statements or acts by or between the parties. Notwithstanding any provision in this Agreement to the contrary, Licensee's rights in the License Area are limited to solely the rights created by this Agreement, which create only a revocable license in the License Area. The Licensee has no real property interest in the License Area.
- E. Licensee's rights hereunder are subject to all covenants, restrictions, easements, agreements, reservations and encumbrances upon, and all other conditions of title to the License Area. Notwithstanding the preceding sentence, the City shall provide to the Licensee peaceable use and enjoyment of the License Area in accordance with the terms of this Agreement. Licensee's rights under this Agreement are further subject to all present and future building restrictions, regulations, zoning laws, ordinances, resolutions and orders of any local, state or federal agency, now or later having jurisdiction over the License Area or the Licensee's use of the License Area.
- F. Licensee's sole remedy for any breach or threatened breach of this Agreement by the City is an action for damages.

4. RENT; FEES; COSTS.

- A. The Licensee shall pay, without notice and free from all claims, deductions and setoffs against the City, a license fee in the amount of **\$15,000.00 per year**, plus all applicable taxes, for the period covering the Effective Date through the first anniversary of the Effective Date of this Agreement.
- B. The license fee will increase by three percent (3%) annually on the anniversary of the Effective Date.

- C. The license fee is due on the first day of the anniversary date month of the Effective Date of this Agreement. For example, if the Effective date of this Agreement is August 15, 2013, the fee for 2014 shall be due on August 1, 2014. Licensee shall pay the fees due for the current year in advance on the first business day of each anniversary month. If the Effective Date is not on the first day of a month, the Licensee's fees will be prorated accordingly.
- D. If the Licensee fails to pay any fees in full on or before the due date, the Licensee is responsible for interest on the unpaid principal balance at the rate of 18% per annum from the due date until payment is made in full.

5. UTILITIES.

Licensee is responsible for obtaining and paying for all utilities necessary to operate the Communication Equipment.

6. USE RESTRICTIONS.

- A. Subject to the interference provisions set forth below, Licensee shall at all times use reasonable efforts to minimize any impact that its use of the License Area will have on other uses of the License Area and the City Right-of-Way.
- B. Licensee shall not remove, damage or alter in any way any improvements or personal property of the City upon the License Area or City Right-of-Way without the City's prior written approval. Licensee shall repair any damage or alteration to the City's property caused by Licensee's use of the Licensed Area to the same condition that existed before the damage or alteration.
- C. Whenever the Licensee performs construction activities within the License Area, the Licensee shall obtain all necessary construction permits and promptly, upon completion of construction, restore the remaining License Area to the condition existing prior to construction to the satisfaction of the City's Project Manager. If the Licensee fails to restore the License Area as required, the City may take all reasonable actions necessary to restore the License Area, and the Licensee, within twenty (20) days of demand and receipt of an invoice, together with reasonable supporting documentation, will pay all of the City's reasonable costs of restoration.
- D. Licensee shall use the License Area solely for constructing, installing, operating, maintaining, repairing, modifying and removing the Communication Equipment. Licensee has the right to modify, supplement, upgrade, replace, remove, refurbish, or relocate the equipment related to the Communication Equipment, including without limitation the utility lines, transmission lines, equipment shelter(s), electronic equipment, antennas, coax, microwave dishes, and supporting equipment, within the License Area (including all riser/conduit space and utility/access easements) only, at any time during the term of this Agreement, provided that Licensee complies with all applicable laws and regulations, design/architectural guidelines and height restrictions. City agrees to cooperate with Licensee in all respects in connection with the foregoing. Licensee may

operate the Communication Equipment at any frequency for which it has all requisite Permits, provided that Licensee must comply with any existing non-interference provisions set forth in this Agreement. Prior to exercising the foregoing rights, Licensee shall obtain the prior written consent of City, which consent will not be unreasonably withheld, conditioned or delayed.

- E. Licensee shall have a non-exclusive right for ingress and egress, seven (7) days a week, twenty-four (24) hours a day, for the construction, installation, operation, maintenance, modification and removal of the Communication Equipment. In no event shall the City's use of the License Area be unreasonably interrupted by the Licensee's work. Prior to entering upon the License Area, the Licensee shall give the City's Project Manager or designee at least forty-eight (48) hours advance notice in the manner provided in Section 21 of this Agreement or, in the event of emergency repairs, any prior notice as is practical.
- F. Licensee shall, at all times, have on call and at the City's disposal an active, qualified and experienced representative to supervise the Communication Equipment, who is authorized to act for the Licensee in matters pertaining to all emergencies and the day-to-day operation of the Communication Equipment. The Licensee shall provide the City's Project Manager or designee with the names, addresses and 24-hour telephone numbers of designated persons in writing.
- G. Licensee shall keep the License Area maintained, orderly and clean at all times.
- H. Licensee's use of the Licensed Area is subject and subordinate to, and shall not adversely affect, the City's use of the Licensed Area. The City reserves the right to further develop, maintain, repair or improve the License Area provided it does not unreasonably interfere with the Licensee's use of the License Area or the Communication Equipment.
- I. Licensee shall not install any signs in the License Area other than required safety or warning signs or other signs necessary for the use of the License Area as requested or approved by the City. Licensee bears all costs pertaining to the erection, installation, maintenance and removal of all of its signs.

7. HAZARDOUS WASTE.

Licensee shall not produce, generate, dispose of, transport, treat, use or store any hazardous waste, hazardous substance, pollutant or contaminant upon or about the License Area in violation of the Arizona Hazardous Waste Management Act, A.R.S. Sec. 49-901 *et seq.* the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. 2601 *et seq.*, or any other federal, state or local law pertaining to hazardous waste, hazardous substances, pollutants or contaminants. Licensee shall not use the License Area in a manner that violates with any regulations, permits or approvals issued by any federal or state agency. The Licensee shall defend, indemnify and hold the City harmless against any loss or liability incurred by reason of release or threatened release of any hazardous waste, hazardous substance, pollutant or contaminant on or affecting the License Area attributable to the extent such release or threatened release is caused in any way by the Licensee. Licensee shall immediately notify the City and, if applicable, any federal or state agency of any release or threatened release of a hazardous waste, hazardous substance,

pollutant or contaminant at any time such release or threat of release is discovered or found to exist upon the License Area. Licensee shall promptly and without a request by the City provide the City's Environmental Program Manager with copies of all written communications between the Licensee and any governmental agency concerning environmental inquiries, reports or conditions in the License Area.

8. LICENSEE'S IMPROVEMENTS; GENERAL REQUIREMENTS.

- A. The following provisions govern all improvements, repairs, installation and other construction, removal, demolition or similar work of any description by the Licensee related to the Communication Equipment or the License Area (collectively referred to as the "Licensee's Improvements"):
- i) In no event, including termination of this Agreement, is the City obligated to compensate the Licensee in any manner for any of Licensee's Improvements or other work performed by the Licensee during or related to this Agreement. The Licensee shall timely pay for all labor, materials and work and all professional and other services related to Licensee's Improvements and defend, indemnify and hold harmless the City against the same.
 - ii) All work performed by Licensee must be in a workmanlike manner, and be diligently pursued to completion. All work must be performed in conformance with all building codes and similar requirements. Licensee's Improvements shall be commensurate with high quality industry standards as approved by the City. The City's approval shall not be unreasonably withheld, conditioned or delayed.
 - iii) Licensee acknowledges that as of the Effective Date of this Agreement, the City has not approved or promised to approve any plans for the Licensee's Improvements, except for those improvements already in place or to the extent expressly stated in this Agreement.
 - iv) Licensee shall make no structural or grading alterations, or similar structural modifications or additions or other significant construction work to the License Area without having first received the written consent of the City. The City's consent shall not be unreasonably withheld, conditioned or delayed. Review shall include all improvements, equipment, fixtures, paint and other construction work of any description as described in all plans delivered by the Licensee to the City. All such plans and construction are subject to inspection and final approval by the City as to materials, design, function and appearance.
 - v) Licensee shall keep as-built records of the Licensee's Improvements and furnish copies of records to the City, at no cost to the City, upon completion of improvements and any changes to the same. Licensee shall participate as a member of the Blue Stake Center under A.R.S. § 40-360.21, *et seq.*, regarding underground facilities, and submit proof of participation to the Project Manager upon request.
 - vi) All changes to utility facilities shall be limited to the License Area and shall be undertaken by the Licensee only with the written consent of the City. The City's consent shall not be unreasonably withheld, conditioned or delayed.

- vii) All of the Licensee's Improvements shall be designed so as to present uniformity of design, function, appearance and quality throughout and consistency with other improvements located in the License Area.
 - viii) Licensee shall properly mark and sign all excavations and maintain barriers and traffic control in accordance with applicable laws, regulations and best management practices.
- B. The following procedure governs the Licensee's submission to the City of all plans for the License Area and the Licensee's Improvements, including any proposed changes by the Licensee of previously approved plans:
- i) Licensee shall coordinate with the City as necessary on significant design issues prior to submission of plans.
 - ii) Upon execution of this Agreement, the City and the Licensee shall each designate a project manager to coordinate the parties' participation in designing and constructing Licensee's Improvements. The City's designee will serve as project manager for the City. Each project manager shall devote time and efforts to the project as may be necessary for timely, good faith and convenient coordination among all persons involved with the project and compliance with this Agreement. The City's project manager will not be exclusively assigned to this Agreement or the Licensee's Improvements.
 - iii) No final plans shall be deemed approved until the Licensee delivers to the City a formal certification by an engineer licensed in Arizona, acceptable to the City's project manager. The engineer shall certify that all of the Licensee's Improvements are properly designed to be safe and shall function as designed and as required by this Agreement. The certification shall be accompanied by and refer to any supporting information, documentation and analysis as the City's project manager may reasonably require.
 - iv) No plans are considered approved until stamped "APPROVED" and dated by the City's project manager.
 - v) Licensee acknowledges that the City's project manager's authority with respect to the License Area is limited to the administration of the requirements of this Agreement. Licensee is responsible to secure all zoning approvals, design revisions or other governmental approvals and to satisfy all governmental requirements pertaining to the project and may not rely on the City or City's project manager to initiate or suggest any particular process or course of action.
 - vi) The City's issuance of building permits shall not constitute approval of any plans unless the plans have been approved as stated in subsection (iv) above. The City's project manager shall be reasonably available to coordinate and assist the Licensee in working through issues that may arise in connection with such plan approvals and requirements.

- vii) The Licensee shall, in the submittal of all plans, allow adequate time for all communications and plan revisions necessary to obtain approvals and shall schedule its performances and revise its plans as necessary to timely obtain all approvals and make payment of all applicable fees.
- viii) Any delay in City's review of or marking Licensee's plans with changes necessary to approve the plans, or approve the revised plans in accordance with the City's normal plan-review procedures, will not be considered an approval of the plans but shall operate to extend Licensee's construction deadlines. The City agrees to use reasonable efforts to review, comment on or approve Licensee's plans in a prompt and timely manner and in conformance with established policies and procedures.
- ix) The Licensee shall provide the City with two (2) complete sets of detailed plans and specifications of the work as completed.
- x) The parties shall use reasonable efforts to resolve any design and construction issues to their mutual satisfaction but, in the event of an impasse for any reason, final decision authority regarding all design and construction issues shall rest with the City in its reasonable discretion.

9. LICENSEE'S INITIAL CONSTRUCTION.

No later than six (6) months after the Effective Date, the Licensee shall install the Communication Equipment in the License Area in accordance with all of the specifications contained in the attached Exhibit A. Equipment already in place from previous authorization will also be reflected in Exhibit A.

10. MAINTENANCE.

- A. The Licensee shall, at its own cost, make improvements to and maintain the Communication Equipment in the License Area during the term of this Agreement.
- B. In the event that it becomes technologically and financially feasible to do so, Licensee, at its sole expense, shall use reasonable efforts to minimize the visual and operational impacts of the Communication Equipment as required by any City ordinance, resolution, Code provision, permit, or other rule applicable to the installation or use of the License Area.

11. CO-LOCATION.

- A. Subject to subsection (B) below, the Licensee shall, at all times, use reasonable efforts to cooperate with the City or any third parties with regard to the possible co-location of additional equipment, facilities or structures in and around the License Area and City Right-of-Way ("Co-location"). If a Co-location is feasible, the City may, in its sole discretion, negotiate a Co-location license agreement with any third party on terms as the City considers appropriate, provided such Co-location is not inconsistent with the rights and obligations of the parties under this Agreement. Licensee's consent in connection

with the final determination of Co-location of a third party is not required. Any rent or fees paid by an additional Co-locator belong solely to the City.

- B. Prior to Co-location in or around the License Area, the City shall, if practicable, give the Licensee thirty (30) days' notice of the proposed Co-location so that the Licensee can determine if the Co-location will interfere with its Communication Equipment. If the Licensee determines that interference is likely, the Licensee shall, within the notice period, give the City a detailed written explanation of the anticipated interference, including supporting documentation as may be reasonably necessary for the City to evaluate the Licensee's position. The City and the Licensee shall promptly use reasonable efforts to resolve any interference problems before the City permits Co-location. If a subsequent licensee is permitted to operate near the License Area, and the subsequent licensee's operations materially interfere with Licensee's Communication Equipment, then the City shall direct the subsequent licensee to remedy the interference within seventy-two (72) hours. If the interference is not resolved within this period, then the City will direct the subsequent licensee to cease its operation until the interference is resolved. These same procedures apply to any interference caused by Licensee with respect to any Co-location existing and as configured prior to the installation of Licensee's Communication Equipment.

12. ASSIGNMENT.

- A. Licensee may assign this Agreement, upon thirty (30) days written notice to the City, to any person or entity controlling, controlled by or under common ownership with the Licensee or Licensee's parent company, or to any person or entity that acquires the Licensee's business and assumes all obligations of the Licensee under this Agreement. Assignments to person other than those controlling, controlled by or under common ownership with the Licensee or Licensee's parent company require City approval. For assignments requiring City approval, the City may, as a condition of its approval, postpone the effective date of the assignment and require any potential transferee to submit evidence, including documentation of the assignee's financial condition, to the City to adequately demonstrate the assignee's ability to fully perform under the terms of this Agreement. The effective date of the assignment shall be postponed until the City approves such assignment, which approval shall not be unreasonably withheld, conditioned or delayed.
- B. The Licensee may, upon notice to the City, mortgage or grant a security interest in this Agreement and the Communication Equipment, and may assign this Agreement and the Communication Equipment to any mortgagees, deed of trust beneficiaries or holders of security interests, including their successors or assigns ("Mortgagees"), so long as the Mortgagees agree to be bound by the terms of this Agreement. If Mortgagees so agree, the City shall execute such consent to leasehold or other financing as may be reasonably required by Mortgagees. In no event will Licensee grant or attempt to grant a security interest in any of the real property underlying the License Area.
- C. Subject to subsections (A) and (B) above, Licensee shall not assign or sublease any of its interest under this Agreement, nor permit any other person to occupy the License Area.

13. SECURITY DEPOSIT.

- A. Amount of Security Deposit. Concurrent with the licensee's execution of this Agreement, licensee agrees to deliver to the licensor a security deposit in the amount of Five Thousand and No/100 Dollars (\$5,000.00) The licensor shall hold the Security Deposit as security for the performance of the licensee's obligations under the lease.
- B. Use of Security Deposit Licensor may (but is not required to) , without prejudice to any other remedy Licensor has, apply all or part of the Security Deposit to:
- i) Any Rent, including Base Rent, or other sum in default;
 - ii) Any amount that licensor may spend or become obligated to spend in exercising licensor's unconditional rights pursuant to Cell Site Removal, Restoration or to remove any and all portions of the Cell Site that remain on the Premises by the earlier of thirty (30) days following cessation of licensee's operations at the Premises, or the Expiration Date of this lease; and
 - iii) Any expense, loss, or damage that licensor may suffer because of licensee's default.
- C. Refund of Security Deposit licensee must remove, to the licensor's satisfaction, all elements of the Cell Site and all associated improvements of every kind and nature constructed, erected or placed by licensee on the Premises by the earlier of the thirty (30) days following cessation of licensee's operations at the premises, or expiration date of this lease in order to secure refund of any portion of its Security Deposit.

14. REGULATORY AGENCIES, SERVICES, FINANCIALS AND BANKRUPTCY.

- A. The Licensee shall upon request provide to the City:
- i) All relevant petitions, applications, communications and reports submitted by the Licensee to the Arizona Corporation Commission, inclusive of any requirements under A.R.S. § 40-441 *et seq.*, or other state or federal authority having jurisdiction that directly relates to Licensee's communications equipment in the License Area;
 - ii) Licensing documentation concerning all services of whatever nature being offered or provided by the Licensee over facilities in the License Area. Copies of responses from regulatory agencies to the Licensee shall be available to the City upon request. To the extent permitted by Arizona's Public Records Law, A.R.S. § 39-121 *et seq.*, the City will treat all documentation and information obtained pursuant to this Section 14 as proprietary and confidential.
- B. The Licensee shall provide the City copies of any petition, application, communications or other documents related to any filing by the Licensee of bankruptcy, receivership or trusteeship.

15. TERMINATION BY CITY.

- A. The City may terminate this Agreement for any of the following reasons upon thirty (30) days written notice to Licensee:
 - i) Failure of Licensee to perform any of its obligations under this Agreement, after Licensee fails to cure default within the notice and cure period.
 - ii) The taking of possession for a period of ten (10) days or more of substantially all of Licensee's personal property in the License Area by or pursuant to lawful authority of any legislative act, resolution, rule, order or decree or any act, resolution, rule, order or decree of any court or governmental board, agency, officer, receiver, trustee or liquidator.
 - iii) The filing of any lien against the License Area due to any act or omission of the Licensee that is not discharged within thirty (30) days of receipt of actual notice by the Licensee.
- B. The City may place the Licensee in default of this Agreement by giving the Licensee fifteen (15) days written notice of the Licensee's failure to timely pay the rent required under this Agreement or any other charges required to be paid by the Licensee pursuant to this Agreement. If Licensee does not cure the default within the 15-day notice period the City may terminate this Agreement or exercise any other remedy allowed by law or equity.
- C. If the Licensee, through any fault of its own, at any time fails to maintain all insurance coverage required by this Agreement, the City may, upon written notice to the Licensee, immediately terminate this Agreement or secure the required insurance at Licensee's expense.
- D. Failure by a party to take any authorized action upon default by the other party does not constitute a waiver of the default nor of any subsequent default by the other party. Acceptance of rent and other fees by the City for any period after a default by the Licensee is not considered a waiver or estoppel of the City's right to terminate this Agreement for any subsequent failure by the Licensee to comply with its obligations.
- E. Upon the termination of this Agreement for any reason, all rights of the Licensee terminate, including all rights of the Licensee's creditors, trustees and assigns and all others similarly situated as to the License Area.

16. TERMINATION BY EITHER PARTY OR BY LICENSEE.

- A. This Agreement may be terminated for any of the following reasons:
 - i) By either party, upon issuance by a court of competent jurisdiction of an injunction in any way preventing or restraining the Licensee's use of any portion of the License Area and remaining in force for a period of thirty (30) consecutive days.

- ii) By either party, upon the inability of the Licensee to use any substantial portion of the License Area for a period of thirty (30) consecutive days due to the enactment or enforcement of any law or regulation or because of fire, earthquake or similar casualty, or Acts of God or the public enemy.
 - iii) By either party, upon ninety (90) days written notice, if the Licensee is unable to obtain or maintain any license, permit or governmental approval necessary for the construction, installation or operation of the Communication Equipment or the Licensee's business.
 - iv) By Licensee, upon ninety (90) days written notice, if the License Area or the Communication Equipment is unacceptable under the Licensee's design or engineering specifications for the communication system to which the Communication Equipment belongs.
 - v) By Licensee, if the Licensed Area or Communication Equipment are destroyed or damaged to such an extent that in Licensee's party's reasonable judgment, the use of the Communication Equipment is substantially and adversely affected.
- B. In order to exercise the termination provisions above the party exercising termination must not itself be in default under the terms of this Agreement beyond any applicable grace or cure period and, if not otherwise stated above, provide reasonable written notice to the other party.

17. INDEMNIFICATION.

The Licensee shall defend, indemnify and hold harmless the City and its elected or appointed officials, agents, boards, commissions and employees (hereinafter referred to collectively as the "City" in this Section) from all loss, damages or claims of whatever nature, including attorney's fees, expert witness fees and costs of litigation, that arise out of any act or omission of the Licensee or its agents, employees and invitees (hereinafter referred to collectively as "Licensee" in this Section) in connection with the Licensee's operations in the License Area and that result directly or indirectly in the injury to or death of any person or the damage to or loss of any property, or that arise out of the failure of Licensee to comply with any provision of this Agreement. The City shall in all instances, except for loss, damages or claims resulting from the sole negligence or fault of the City, be indemnified by Licensee against all losses, damages or claims. The City shall give the Licensee prompt notice of any claim made or suit instituted that may subject the Licensee to liability under this Section, and Licensee shall have the right to compromise and defend the same to the extent of its own interest. The City shall have the right, but not the duty, to participate in the defense of any claim or litigation with attorneys of the City's selection and at the City's sole cost without relieving the Licensee of any obligations under this Agreement. Licensee's obligations under this Section survive any termination of this Agreement or the Licensee's activities in the License Area.

18. INSURANCE.

A. The Licensee shall procure and at all times maintain the following types and amounts of insurance for its operations in the License Area:

- i) Commercial general liability and property damage insurance in the minimum amount of \$1,000,000 combined single limit, \$2,000,000 aggregate. The coverage amounts set forth may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated.
- ii) Such other insurance as the City's Project Manager deems necessary for the Licensee's operations.

B. Insurance shall:

- i) Be from a company rated at least A- by AM Best;
- ii) Name the City as an additional insured on the insurance policy and maintain coverage through the term of the Agreement;
- iii) Require written notice to the City prior to cancellation;
- iv) Include contractual liability coverage for the obligation of indemnity assumed in this Agreement, subject to standard policy provisions and exclusions; and
- v) Be primary and non-contributory with respect to all other available sources, as relates to Licensee's negligence.

C. Licensee shall provide appropriate certificates of insurance to the City for all insurance policies required by this Section. Absence of City request for proof of initial or renewal coverage does not waive any insurance requirements under this paragraph.

19. DAMAGE OR DESTRUCTION.

The City has no obligation to reimburse the Licensee for the loss of or damage to fixtures, equipment or other personal property of the Licensee, except for loss or damage caused by the negligence or fault of the City or its officers, employees or agents. The Licensee may insure such fixtures, equipment or other personal property for its own protection if it so desires.

20. SURRENDER OF POSSESSION.

Upon the expiration or termination of this Agreement, the Licensee's right to occupy the License Area and exercise the privileges and rights granted under this Agreement shall cease, and it shall surrender and leave the License Area in good condition, normal wear and tear excepted. Unless otherwise provided, all trade fixtures, equipment, and other personal property installed or placed by the Licensee on the License Area shall remain the property of the Licensee, and the Licensee may, at any time during the term of this Agreement, and for an additional period of ninety (90) days after its expiration, remove the same from the License Area so long as Licensee is not in default of any of its obligations, and repairs, at its sole cost,

any damage caused by the removal. Any property not removed by the Licensee within the 90-day period becomes a part of the License Area, and ownership vests in the City, or the City may, at the Licensee's expense, have the property removed. Licensee's indemnity under this Agreement applies to any post termination removal operations.

21. NOTICE.

A. Except as otherwise provided, all notices required or permitted to be given under this Agreement may be personally delivered or mailed by certified mail, return receipt requested, postage prepaid, to the following addresses:

TO THE CITY: City of Glendale
5850 West Glendale Avenue
Glendale, AZ 85301
Attention: Cricket License Project Manager

WITH A COPY TO: City of Glendale
5850 West Glendale Avenue
Glendale, AZ 85301
Attention: City Attorney

TO THE LICENSEE: Cricket Communications, Inc.
Attn: Property Manager
5887 Copley Drive
San Diego, CA 92111

WITH A COPY TO: Cricket Communications, Inc.
Attn: Legal Dept. – Real Estate
5887 Copley Drive
San Diego, CA 92111

B. Any notice given by certified mail is considered to be received on the date delivered or refusal to accept. Either party may designate in writing a different address for notice purposes pursuant to this Section.

C. Pursuant to paragraph 6(E) of this Agreement, all notices of Licensee's intent to enter the License Area shall be provided to the project manager, or designee at telephone numbers to be provided to Licensee by separate correspondence upon execution of this Agreement.

22. SEVERABILITY.

If any provision of this Agreement is declared invalid by a court of competent jurisdiction the remaining terms remain effective so long as the elimination of any invalid provision does not materially prejudice either party with regard to its respective rights and obligations. In the event of material prejudice the adversely affected party may terminate this Agreement.

23. TAXES AND LICENSES.

- A. The Licensee shall pay any leasehold tax, possessory-interest tax, sales tax, personal property tax, transaction privilege tax, use tax or other exaction assessed or assessable as a direct result of its occupancy of the License Area under authority of this Agreement, including any tax assessable on the City. If laws or judicial decisions result in the imposition of a real property tax on the interest of the City as a direct result of Licensee's occupancy of the License Area, the tax shall also be paid by the Licensee on a proportional basis for the period this Agreement is in effect.
- B. The Licensee shall, at its own cost, obtain and maintain in full force and effect during the term of this Agreement all licenses and permits required for all activities authorized by this Agreement.

24. LITIGATION.

This Agreement is governed by the laws of the State of Arizona. If any litigation or arbitration between the City and the Licensee arises under this Agreement, the successful party is entitled to recover its reasonable attorney's fees, expert witness fees and other costs incurred in connection with the litigation or arbitration.

25. RULES AND REGULATIONS.

The Licensee shall at all times comply with all federal, state and local laws, ordinances, rules and regulations which are applicable to its operations and the License Area, including all laws, ordinances, rules and regulations adopted after the Effective Date. The Licensee shall display to the City, upon request, any permits, licenses or other reasonable evidence of compliance with the law.

26. RIGHT OF ENTRY RESERVED.

- A. The City may, at any time, enter upon the License Area for any lawful purpose, so long as the action does not unreasonably interfere with the Licensee's use or occupancy of the License Area. The City shall have access to the Communication Equipment itself only in emergencies or upon reasonable notice to the Licensee.
- B. Without limiting the generality of the foregoing, the City and any furnisher of utilities and other services shall have the right, at their own cost, to maintain existing and future utility, mechanical, electrical and other systems and to enter upon the License Area at any time to make repairs, replacements or alterations that may, in the opinion of the City, be necessary or advisable and from time to time to construct or install over, in or under the License Area systems or parts and in connection with maintenance, use the License Area for access to other parts in and around the License Area. Exercise of rights of access to repair, to make alterations or commence new construction will not unreasonably interfere with the use and occupancy of the License Area by the Licensee.
- C. Exercise of any of the foregoing rights by the City or others pursuant to the City's rights does not constitute an eviction of the Licensee, nor are grounds for any abatement of rent or any claim for damages.

27. CONFLICTS OF INTEREST.

This Agreement may be cancelled for conflicts of interest as described under A.R.S. § 38-511.

28. DISPUTE RESOLUTION.

Any dispute that arises under this Agreement shall be subject to the Dispute Resolution procedure contained in Exhibit B, which is attached hereto, incorporated by reference and an enforceable part of this Agreement.

29. PROHIBITIONS.

Licensee, to its current actual knowledge without duty of inquiry and on behalf of any subcontractor performing work at the License Area on Licensee's behalf, certifies, to the extent applicable under A.R.S. §§ 35-391 *et. seq* and 35-393 *et. seq*, that neither has "scrutinized" business operations, as defined in the preceding sections, in the countries of Sudan or Iran.

30. MISCELLANEOUS.

This Agreement constitutes the entire agreement between the parties concerning the subject matter stated and supersedes all prior negotiations, understandings and agreements between the parties concerning those matters. This Agreement shall be interpreted, applied and enforced according to the fair meaning of its terms and not be construed strictly in favor of or against either party, regardless of which party may have drafted any of its provisions. No provision of this Agreement may be waived or modified except by a writing signed by the party against whom the waiver or modification is sought to be enforced. Electronic signature blocks do not constitute a signature for purposes of this Agreement. This Agreement may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument. The terms of this Agreement are binding upon and inure to the benefit of the parties' successors and assigns.

[The remainder of this page left intentionally blank.]

EXECUTED to be effective as of the effective date above.

CITY OF GLENDALE,
an Arizona municipal corporation

Brenda S. Fischer
City Manager

ATTEST:

Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

Michael D. Bailey
City Attorney

CRICKET COMMUNICATIONS, INC.,
a Delaware corporation

Ron Bittner
Sr. Director of Site Development

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this _____ day of _____, 2013,
by _____, in his or her capacity as the
_____ on behalf of Cricket Communications, Inc., a Delaware
corporation.

In witness whereof I hereunto set my hand and official seal.

Notary Public

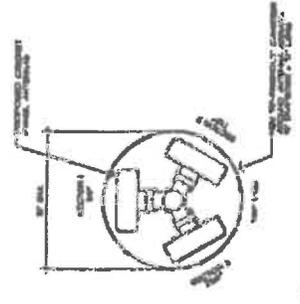
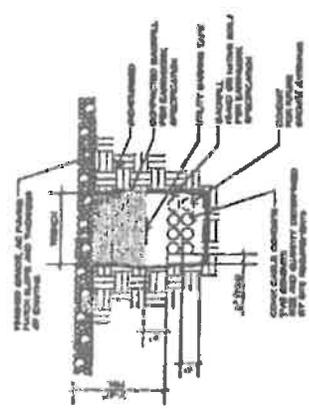
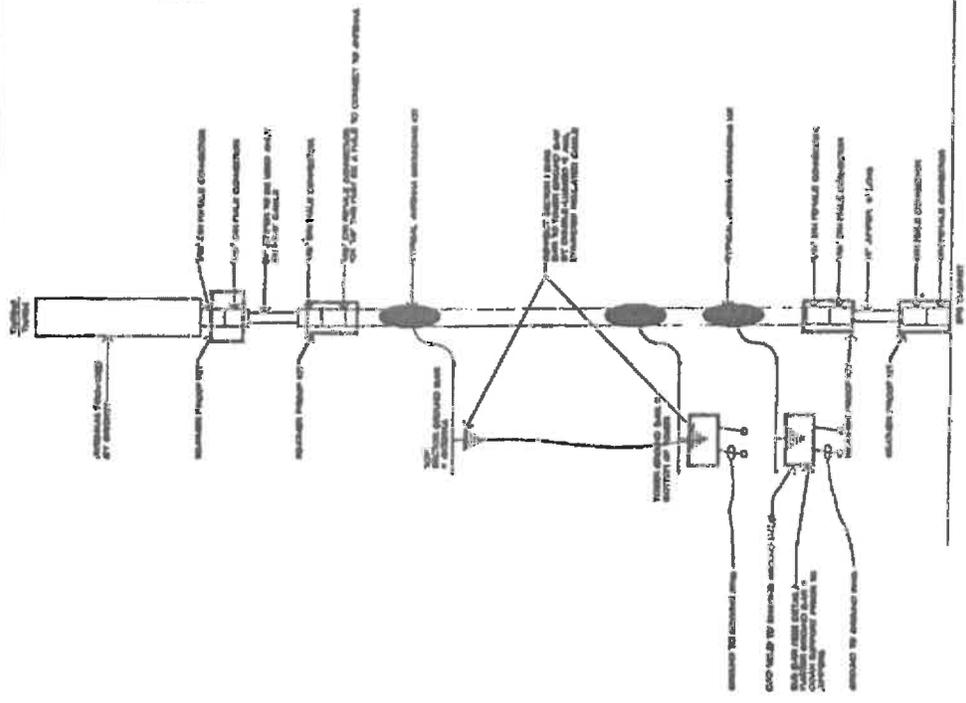
My Commission Expires:

EXHIBIT A

(see attached)

APPROVED PLAN
COMMUNITY DEVELOPMENT
CITY OF GLENDALE

cricket communications
Lucent Technologies
CROWN CASTLE
EM
ARIZONA SYSTEMS ENGINEERING, INC.
PHX-074.D
MANISTEE RANCH
7987 N. 83RD AVENUE
GLENDALE, ARIZONA
SHEET NUMBER
A-4



SECTION	ANTENNA TYPE	ANTENNA HEIGHT	ANTENNA WEIGHT	COAXIAL CABLE TYPE	COAXIAL CABLE LENGTH	COAXIAL CABLE WEIGHT	ANTENNA CONNECTIONS	ANTENNA TYPE	ANTENNA HEIGHT	ANTENNA WEIGHT
ONE	1/2 WAVE	100 FT	100 LB	RG-214	100 FT	100 LB	1/2 WAVE ANTENNA	1/2 WAVE	100 FT	100 LB
TWO	1/2 WAVE	100 FT	100 LB	RG-214	100 FT	100 LB	1/2 WAVE ANTENNA	1/2 WAVE	100 FT	100 LB
THREE	1/2 WAVE	100 FT	100 LB	RG-214	100 FT	100 LB	1/2 WAVE ANTENNA	1/2 WAVE	100 FT	100 LB

1 ANTENNA CONNECTIONS

2 ANTENNA LAYOUT

3 COAXIAL CABLE TRENCH

ONLY INCLUDE CABLE IN SCHEDULE

NOTES:
1. ALL ANTENNAS SHALL BE MOUNTED ON THE TOWER.
2. ALL ANTENNAS SHALL BE MOUNTED ON THE TOWER.
3. ALL ANTENNAS SHALL BE MOUNTED ON THE TOWER.
4. ALL ANTENNAS SHALL BE MOUNTED ON THE TOWER.

EXHIBIT B

DISPUTE RESOLUTION

1. Disputes.

- 1.1 Commitment. The parties commit to resolving all disputes promptly, equitably, and in a good-faith, cost-effective manner.
- 1.2 Application. The provisions of this Exhibit will be used by the parties to resolve all controversies, claims, or disputes ("Dispute") arising out of or related to this Agreement-including Disputes regarding any alleged breaches of this Agreement.
- 1.3 Initiation. A party may initiate a Dispute by delivery of written notice of the Dispute, including the specifics of the Dispute, to the Representative of the other party as required in this Agreement.
- 1.4 Informal Resolution. When a Dispute notice is given, the parties will designate a member of their senior management who will be authorized to expeditiously resolve the Dispute.
 - a. The parties will provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any Dispute in order to assist in resolving the Dispute as expeditiously and cost effectively as possible;
 - b. The parties' senior managers will meet within 10 business days to discuss and attempt to resolve the Dispute promptly, equitably, and in a good faith manner, and
 - c. The Senior Managers will agree to subsequent meetings if both parties agree that further meetings are necessary to reach a resolution of the Dispute.

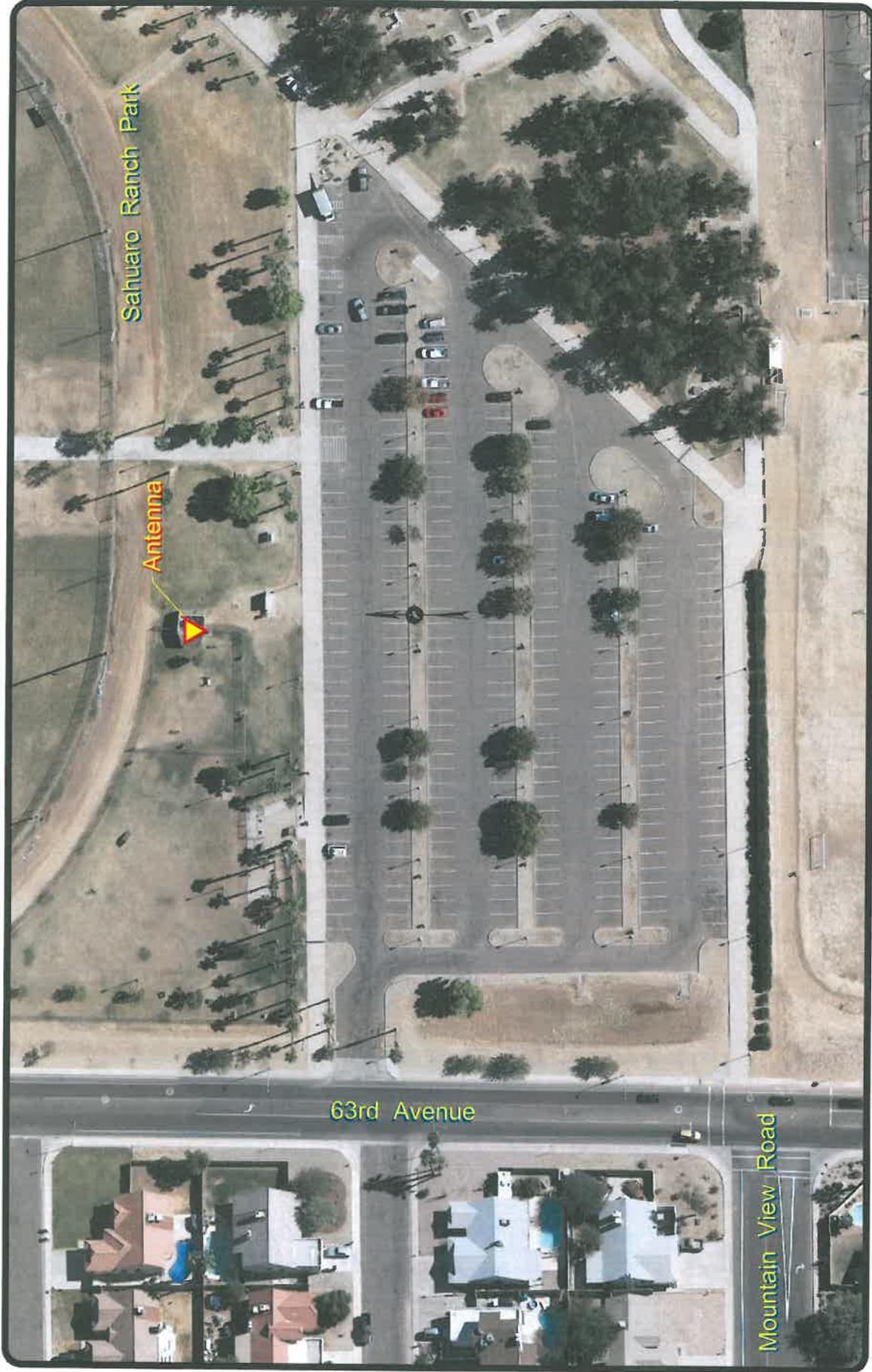
2. Arbitration.

- 2.1 Rules. If the parties are unable to resolve the Dispute by negotiation within 30 days from the Dispute notice, and unless otherwise informal discussions are extended by the mutual agreement, the Dispute will be decided by binding arbitration in accordance with Construction Industry Rules of the AAA, as amended herein. Although the arbitration will be conducted in accordance with AAA Rules, it will not be administered by the AAA, but will be heard independently.
 - a. The parties will exercise best efforts to select an arbitrator within five business days after agreement for arbitration. If the parties have not agreed upon an arbitrator within this period, the parties will submit the selection of the arbitrator to one of the principals of the mediation firm of Scott & Skelly, LLC, who will then select the arbitrator. The parties will equally share the fees and costs incurred in the selection of the arbitrator.
 - b. The arbitrator selected must be an attorney with at least 15 years' experience with commercial construction legal matters in Maricopa County, Arizona, be independent, impartial, and not have engaged in any business for or adverse to either Party for at least 10 years.
- 2.2 Discovery. The extent and the time set for discovery will be as determined by the arbitrator. Each Party must, however, within 10 days of selection of an arbitrator deliver to the other Party copies of all documents in the delivering party's possession that are relevant to the dispute.

- 2.3 Hearing. The arbitration hearing will be held within 90 days of the appointment of the arbitrator. The arbitration hearing, all proceedings, and all discovery will be conducted in Glendale, Arizona unless otherwise agreed by the parties or required as a result of witness location. Telephonic hearings and other reasonable arrangements may be used to minimize costs.
 - 2.4 Award. At the arbitration hearing, each Party will submit its position to the arbitrator, evidence to support that position, and the exact award sought in this matter with specificity. The arbitrator must select the award sought by one of the parties as the final judgment and may not independently alter or modify the awards sought by the parties, fashion any remedy, or make any equitable order. The arbitrator has no authority to consider or award punitive damages.
 - 2.5 Final Decision. The Arbitrator's decision should be rendered within 15 days after the arbitration hearing is concluded. This decision will be final and binding on the Parties.
 - 2.6 Costs. The prevailing party may enter the arbitration in any court having jurisdiction in order to convert it to a judgment. The non-prevailing party will pay all of the prevailing party's arbitration costs and expenses, including reasonable attorney's fees and costs.
3. **Services to Continue Pending Dispute.** Unless otherwise agreed to in writing, Consultant must continue to perform and maintain progress of required Services during any Dispute resolution or arbitration proceedings, and City will continue to make payment to Consultant in accordance with this Agreement.
 4. **Exceptions.**
 - 4.1 Third Party Claims. City and Consultant are not required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defense of a third party who is not obligated by contract to arbitrate disputes with City and Consultant.
 - 4.2 Liens. City or Consultant may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice, but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Arizona Law, including, without limitation, an action under A.R.S. § 33-420, without the necessity of initiating or exhausting the procedures of this Exhibit.
 - 4.3 Governmental Actions. This Exhibit does not apply to, and must not be construed to require arbitration of, any claims, actions or other process filed or issued by City of Glendale Building Safety Department or any other agency of City acting in its governmental permitting or other regulatory capacity.
 - 4.4 Injunctive Relief. Any actions for injunctive relief shall be excluded from this Dispute Resolution and arbitration process.

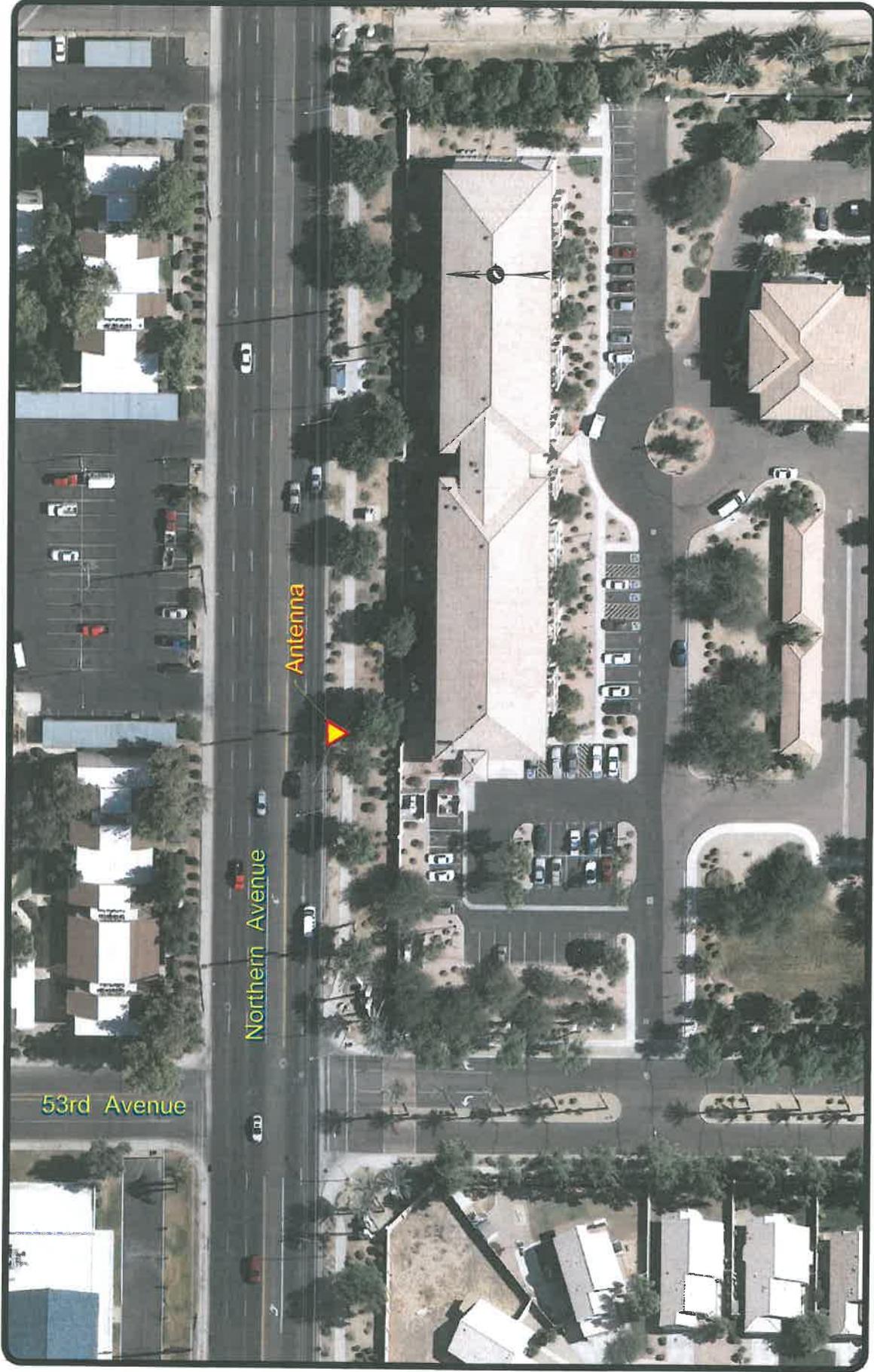


**GRANT LICENSE AGREEMENT
CRICKET COMMUNICATIONS, INC.
59TH & BELL**



**GRANT LICENSE AGREEMENT
CRICKET COMMUNICATIONS, INC.
SAHUARO RANCH PARK**





**GRANT LICENSE AGREEMENT
CRICKET COMMUNICATIONS, INC.
53RD & NORTHERN**



CITY COUNCIL REPORT

Meeting Date: **1/14/2014**
Meeting Type: **Voting**
Title: **AUTHORIZATION TO ENTER INTO A TEMPORARY CONSTRUCTION LICENSE AGREEMENT WITH COFFMAN SPECIALTIES, INC. RELATED TO CONSTRUCTION OF HOV LANES AT MARYLAND AVENUE AND LOOP 101**
Staff Contact: **Jamsheed Mehta, AICP, Executive Director, Transportation Services**

Purpose and Recommended Action

This is a request for Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into a temporary construction license agreement with Coffman Specialties, Inc. related to construction of high-occupancy vehicle (HOV) lanes at Maryland Avenue and Loop 101.

Background

ADOT is constructing HOV lane on-and-off ramps on Loop 101 from Bethany Home Road to Glendale Avenue that, upon completion, will connect with the Maryland Avenue overpass. Construction began in October 2013, and is scheduled for completion in spring 2014.

The contractor on this project, Coffman Specialties, Inc., has requested the use of vacant city-owned property located at the southwest corner of 91st and Northern Avenues. Coffman Specialties, Inc. will use the land to store construction equipment so its employees can have adequate space to work and complete construction without unnecessarily closing lanes or impeding traffic flow on Maryland Avenue and on the Loop 101 freeway.

Analysis

The term of this agreement will terminate upon the completion of the project or on April 15, 2014, whichever occurs first. This agreement also requires Coffman Specialties, Inc. to obtain and maintain minimum insurance requirements.

Community Benefit/Public Involvement

This agreement will enable the contractor to efficiently continue construction activities at a sufficient pace to meet the anticipated spring 2014 completion schedule. Upon completion of the project, visitors to Glendale's Sports and Entertainment District will benefit by an additional point of access to and from the freeway.



CITY COUNCIL REPORT

Budget and Financial Impacts

Coffman Specialties, Inc. will pay the City of Glendale \$1.00 for this temporary construction license agreement, as is customary with this type of agreement when a regionally-funded project directly benefits the city. The project involves approximately \$14,000,000 of state and regional funds, and although Glendale benefits from the project, there is no cost to the city.

Attachments

Resolution

Agreement

RESOLUTION NO. 4763 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE CITY MANAGER TO EXECUTE A TEMPORARY CONSTRUCTION LICENSE AGREEMENT FOR USE OF CITY REAL PROPERTY LOCATED AT THE SOUTHWEST CORNER OF 91ST AND NORTHERN AVENUES WITH COFFMAN SPECIALTIES, INC.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

SECTION 1. That the City Manager or her designee is hereby authorized to execute and deliver a Temporary Construction License Agreement for use of City real property located at the southwest corner of 91st and Northern Avenues with Coffman Specialties, Inc. Said license agreement is now on file with the City Clerk.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this ____ day of _____, 2014.

MAYOR

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

REVIEWED BY:

City Manager

l_coffman_101

TEMPORARY CONSTRUCTION LICENSE AGREEMENT

Grantor: City of Glendale, Arizona

Grantee: Coffman Specialties, Inc.

License Area: Depicted in Exhibit A

For the consideration of One Dollar (\$1.00) and other valuable consideration paid to Grantor by the Grantee, the receipt and sufficiency of which is acknowledged in this Temporary Construction License Agreement (the "Agreement"), and subject to the terms and conditions contained in the Agreement, Grantor has granted, bargained, sold, and conveyed to Grantee, its successors and assigns a temporary license over, across and under the License Area for continuous and uninterrupted use in order to allow Grantee to store equipment and make use of the License Area as a laydown yard as Grantee undertakes improvements to the high-occupancy vehicle lane at State Route 101 and Maryland Avenue (the "Improvements").

Terms and Conditions

1. **Survey; Fence.** No later than fifteen (15) days following the execution of this Agreement, Grantee will at its sole cost and expense hire a professional surveyor to survey the boundary of the License Area generally depicted in Exhibit A. Grantee will fence and screen the portion of the License Area that Grantee plans to use at Grantee's sole cost and expense and subject to Grantor's review and concurrence.
2. **Use of License Area.** In its use and enjoyment of the License Area, Grantee will exercise its best efforts so as to avoid any disruption on all properties adjacent to the License Area. Prior to termination of this Agreement, Grantee shall restore the License Area to the condition in which it existed prior to the execution of this Agreement.
3. **Entrance.** Prior to commencing any use of the License Area, Grantee will obtain a license or similar instrument from the City of Peoria ("Peoria") allowing Grantee to cross Peoria's property in order to enter the License Area. The preceding sentence will not prevent or restrain Grantee from complying with its obligation in **Paragraph 1** to survey the License Area.
4. **Dust Control.** Grantee will fully comply with any and all laws and regulations related to dust control, including but not limited to all dust control regulations promulgated by Maricopa County.
5. **Indemnity.** To the fullest extent permitted by law, Grantee will indemnify, defend and hold harmless Grantor and each of Grantor's members, officers, employees or agents (the

“Indemnified Parties”), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys’ fees, court costs and the costs of appellate proceedings) to which any such of the Indemnified Parties may become subject, under any theory of liability whatsoever (“Claims”), unless caused by the negligence of any of the Indemnified Parties, insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or in connection with the work of the Grantee, its officers, employees, agents, or any tier of Grantee’s subcontractor.

6. **Term.** This Agreement will terminate upon (i) Grantor’s completion of the Improvements, or (ii) April 15, 2014, whichever occurs first.

7. **Insurance.**

7.1 Requirements. Contractor must obtain and maintain the following insurance ("Required Insurance"):

a. Contractor and Sub-contractors. Contractor, and each Sub-contractor performing work or providing materials related to this Agreement must procure and maintain the insurance coverages described below (collectively referred to herein as the "Contractor's Policies"), until each Party's obligations under this Agreement are completed.

b. General Liability.

(1) Contractor must at all times relevant hereto carry a commercial general liability policy with a combined single limit of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate for each property damage and contractual property damage.

(2) Sub-contractors must at all times relevant hereto carry a general commercial liability policy with a combined single limit of at least \$1,000,000 per occurrence.

(3) This commercial general liability insurance must include independent contractors' liability, contractual liability, broad form property coverage, XCU hazards if requested by the City, and a separation of insurance provision.

(4) These limits may be met through a combination of primary and excess liability coverage.

c. Auto. A business auto policy providing a liability limit of at least \$1,000,000 per accident for Contractor and \$1,000,000 per accident for Sub-contractors and covering owned, non-owned and hired automobiles.

d. Workers' Compensation and Employer's Liability. A workers' compensation and employer's liability policy providing at least the minimum benefits required by Arizona law.

e. Notice of Changes. Contractor's Policies must provide for not less than 30 days' advance written notice to City Representative of:

- (1) Cancellation or termination of Contractor or Sub-contractor's Policies;
 - (2) Reduction of the coverage limits of any of Contractor or and Sub-contractor's Policies; and
 - (3) Any other material modification of Contractor or Sub-contractor's Policies related to this Agreement.
- f. Certificates of Insurance.
- (1) Within 10 business days after the execution of the Agreement, Contractor must deliver to City Representative certificates of insurance for each of Contractor and Sub-contractor's Policies, which will confirm the existence or issuance of Contractor and Sub-contractor's Policies in accordance with the provisions of this section, and copies of the endorsements of Contractor and Sub-contractor's Policies in accordance with the provisions of this section.
 - (2) City is and will be under no obligation either to ascertain or confirm the existence or issuance of Contractor and Sub-contractor's Policies, or to examine Contractor and Sub-contractor's Policies, or to inform Contractor or Sub-contractor in the event that any coverage does not comply with the requirements of this section.
 - (3) Contractor's failure to secure and maintain Contractor Policies and to assure Sub-contractor policies as required will constitute a material default under the Agreement.
- g. Other Contractors or Vendors.
- (1) Other contractors or vendors that may be contracted with in connection with the Project must procure and maintain insurance coverage as is appropriate to their particular contract.
 - (2) This insurance coverage must comply with the requirements set forth above for Contractor's Policies (e.g., the requirements pertaining to endorsements to name the parties as additional insured parties and certificates of insurance).
- h. Policies. Except with respect to workers' compensation and employer's liability coverages, City must be named and properly endorsed as additional insureds on all liability policies required by this section.
- (1) The coverage extended to additional insureds must be primary and must not contribute with any insurance or self insurance policies or programs maintained by the additional insureds.
 - (2) All insurance policies obtained pursuant to this section must be with companies legally authorized to do business in the State of Arizona and reasonably acceptable to all parties.

7.2 Sub-contractors.

- a. Contractor must also cause its Sub-contractors to obtain and maintain the Required Insurance.
- b. City may consider waiving these insurance requirements for a specific Sub-contractor if City is satisfied the amounts required are not commercially available to the Sub-contractor and the insurance the Sub-contractor does have is appropriate for the Sub-contractor's work under this Agreement.
- c. Contractor and Sub-contractors must provide to the City proof of the Required Insurance whenever requested.

7.3 Indemnification.

- a. To the fullest extent permitted by law, Contractor must defend, indemnify, and hold harmless City and its elected officials, officers, employees and agents (each, an "Indemnified Party," collectively, the "Indemnified Parties"), for, from, and against any and all claims, demands, actions, damages, judgments, settlements, personal injury (including sickness, disease, death, and bodily harm), property damage (including loss of use), infringement, governmental action and all other losses and expenses, including attorneys' fees and litigation expenses (each, a "Demand or Expense"; collectively, "Demands or Expenses") asserted by a third-party (i.e. a person or entity other than City or Contractor) and that arises out of or results from the breach of this Agreement by the Contractor or the Contractor's negligent actions, errors or omissions (including any Sub-contractor or other person or firm employed by Contractor), whether sustained before or after completion of the Project.
- b. This indemnity and hold harmless provision applies even if a Demand or Expense is in part due to the Indemnified Party's negligence or breach of a responsibility under this Agreement, but in that event, Contractor shall be liable only to the extent the Demand or Expense results from the negligence or breach of a responsibility of Contractor or of any person or entity for whom Contractor is responsible.
- c. Contractor is not required to indemnify any Indemnified Parties for, from, or against any Demand or Expense resulting from the Indemnified Party's sole negligence or other fault solely attributable to the Indemnified Party.

8. **Impediment.** Grantor will not unreasonably allow anything to impede Grantee's use of the License Area.

(SIGNATURES ON FOLLOWING PAGE)

Executed this ____ day of _____.

GRANTOR:

City Of Glendale,
an Arizona municipal corporation

By: Brenda S. Fischer, City Manager

ATTEST:

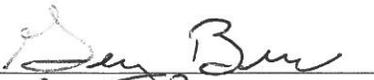
By: Pam Hanna, City Clerk (Seal)

APPROVED AS TO FORM:

By: Michael Bailey, City Attorney

Executed this day 17 day of December 2013

GRANTEE:

By: 
Gregory Brown

Its: Coffman Specialties, Inc.
Project Manager

EXHIBIT "A"

FIRST AMERICAN TITLE

When Recorded Mail To:

Richard H. Flaaen, City Attorney
THE CITY OF GLENDALE
5850 West Glendale Avenue
Glendale, Arizona 85301-2599

201-1338864 2 of 3

CONVEYANCE DEED

For the consideration of Ten and No/100 Dollars (\$10.00), and other valuable consideration, HICKMAN LAND COMPANY, L.L.C., an Arizona limited liability company ("Grantor"), does hereby convey to THE CITY OF GLENDALE, an Arizona municipal corporation ("Grantee"), the following real property situated in Maricopa County, Arizona (the "Property"):

See Exhibit "A" attached hereto and made a part hereof.

Grantor hereby reserves for itself the right to use, occupy, enjoy and remain in exclusive possession of the property, as set forth, and for the period prescribed, in Paragraph 13 of that certain Agreement in Lieu of Condemnation dated September 18, 2001, between Grantor and others affiliated with Grantor, as transferors, and Grantee, as transferee, subject to all terms and conditions governing the use, occupancy, enjoyment and possession of the Property applicable to Grantor as may be set forth in such Agreement.

SUBJECT TO: Those matters set forth on Exhibit "B" attached hereto and made a part hereof.

DATED this 29th day of July, 2002.

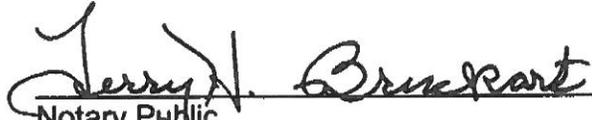
HICKMAN LAND COMPANY, L.L.C.,
an Arizona limited liability company

By:


Glenn M. Hickman, Manager

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 29th day of July, 2002, by Glenn M. Hickman, the Manager of HICKMAN LAND COMPANY, L.L.C., an Arizona limited liability company, for and on behalf thereof.



Notary Public

My Commission Expires:

 Notary Public State of Arizona
Maricopa County
Terry H Bruckart
Expires July 10, 2005

Unofficial Document

EXHIBIT "A"**NO. 201-800-1338864**

That portion of the Northeast quarter of Section 4, Township 2 North, Range 1 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Northeast corner of said Section 4;

thence West along the North line of said Section a distance of 715.49 feet;

thence South 01 degrees 45 minutes 56 seconds West 40.02 feet to a point on the South right-of-way line of Northern Avenue and the POINT OF BEGINNING;

thence continuing South 01 degrees 45 minutes 56 seconds West 362.00 feet;

thence East 50.00 feet to a point on the East line of the West half of the Northeast quarter of the Northeast quarter of said Section 4;

thence South 01 degrees 45 minutes 56 seconds West along said East line 864.48 feet to the Southeast corner of said West half of the Northeast quarter of the Northeast quarter;

thence South 89 degrees 50 minutes 32 seconds West 10.00 feet;

thence South 01 degrees 45 minutes 56 seconds West 92.05 feet;

Unofficial Document

thence South 89 degrees 50 minutes 32 seconds West 376.11 feet;

thence North 01 degrees 44 minutes 12 seconds East 1319.58 feet to a point 40.02 feet South of the North Section line and on the South right-of-way line of said Northern Avenue;

thence East along said right-of-way line 336.74 feet to the POINT OF BEGINNING;

EXCEPT that portion described as follows:

COMMENCING at the Northeast corner of said Section 4;

thence South 88 degrees 40 minutes 25 seconds West along the North line of said Northeast quarter 1052.24 feet;

thence South 00 degrees 24 minutes 37 seconds West 40.02 feet to the Northwest corner of said parcel on the South line of the North 40.00 feet of said Northeast quarter and the POINT OF BEGINNING;

Continued

EXHIBIT "A"NO.201-800-1338864

thence North 88 degrees 40 minutes 25 seconds East along said South line 337.05 feet to a point on the East line of said parcel;

thence South 00 degrees 01 minutes 25 seconds West along the East line of said parcel 18.15 feet;

thence North 68 degrees 30 minutes 19 seconds West 16.78 feet to a point on the South line of the North 51.64 feet of said Northeast quarter;

thence South 88 degrees 40 minutes 25 seconds West along said South line 321.51 feet to a point on the West line of said parcel;

thence North 00 degrees 24 minutes 37 seconds East along the West line of said parcel 11.65 feet to the POINT OF BEGINNING.

EXHIBIT "B"
SCHEDULE OF PERMITTED EXCEPTIONS

1. Reservations contained in the Patent from the United States of America, reading as follows:

Subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local customs, laws and decisions of courts, and also subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted, as provided by law, and there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by authority of the United States of America.
2. The liabilities and obligations imposed upon said land by reason of: (a) inclusion thereof within the Unofficial Document series of the Salt River Project Agricultural Improvement and Power District; (b) membership of the owner thereof in the Salt River Valley Water Users' Association, an Arizona corporation; and (c) the terms of any Water Right Application made under the reclamation laws of the United States for the purpose of obtaining water rights for said land. (All assessments due and payable are paid.)
3. Water rights, claims or title to water, whether or not shown by the public records.
4. A plat recorded in Book 11, Page 78, of Road Maps, purporting to show a county roadway.
5. An easement for irrigation ditch or pipeline and incidental purposes, recorded as Instrument No. 84-094506 of Official Records of the Office of the Maricopa County Recorder ("M.C.R.")
6. The rights of the Grantor hereunder (or one or more affiliates of Grantor) to remain in possession of the Property described in Exhibit "A" attached to this Conveyance Deed as set forth that certain Agreement in Lieu of Condemnation between Grantor, and certain affiliates of Grantor, and Grantee dated September 18, 2001 and as reserved by Grantor in this Conveyance Deed.

7. Any and all conditions, easements, encroachments, rights-of-way, or restrictions which a physical inspection, or accurate ALTA survey, of the Property would reveal; and the applicable zoning and use regulations of any municipality, county, state, or the United States affecting the Property.

Unofficial Document



CITY COUNCIL REPORT

Meeting Date: **1/14/2014**
Meeting Type: **Voting**
Title: **AUTHORIZATION OF AMENDMENT NO. 3 TO THE CONTRACT WITH SOUTHWEST FABRICATION, LLC TO INCREASE THE ANNUAL SPENDING AUTHORITY FOR BUS SHELTER INSTALLATION AND REPAIR**
Staff Contact: **Jamsheed Mehta, AICP, Executive Director, Transportation Services**

Purpose and Recommended Action

This is a request for City Council to approve additional spending authority as part of Amendment Number Three to contract C-7675 with Southwest Fabrication, LLC for Bus Shelter Installation and Repair from \$27,000 annually to an amount not to exceed \$255,000 per year for this amendment and any subsequent extensions.

Background

Currently, there are 170 bus stops throughout the city containing shelters and furniture, along with another 50 locations with benches and trash cans only. The standard for refurbishing shelters and furniture is a five-year cycle. The average cost of refurbishment per shelter is \$3,500 - \$4,500 depending on condition and any extra repairs that need to be completed. Due to budgetary constraints over the past few years, Transportation Services had only focused on shelters in the poorest condition, as well as emergency repairs due to accident damage. This has resulted in a backlog of 100 to 125 shelters that need to be addressed.

Analysis

The city currently has a contract with Southwest Fabrication, LLC for bus shelter installation and repair, which began in 2011. To date, two of the allowable five contract extensions have been exercised. As part of the second extension, staff is requesting an increase in the spending authority in an amount not to exceed \$255,000 annually over the remaining life of the contract. This proposed increase will allow staff to systematically schedule refurbishment of shelters over the next two to three years to address the backlog using available capital funding.

Community Benefit/Public Involvement

The regular scheduling of refurbishment of bus shelters and furniture ensures a clean and safe environment for transit users, as well as presenting a professional image of the city. It also prolongs the life of these shelters and amenities and reduces replacement costs over the long-term.



CITY COUNCIL REPORT

Budget and Financial Impacts

Funds for this shelter refurbishment are included in the Bus Stops and Shelters capital budget and the GO Transportation Program Fixed Route operating budget.

Cost	Fund-Department-Account
\$225,000	2210-65013-550800, Bus Stops and Shelters
\$30,000	1660-16540-518200, Fixed Route

Capital Expense? Yes No

Budgeted? Yes No

Requesting Budget or Appropriation Transfer? Yes No

Attachments

Amendment to Agreement

	Contract Amendment No. Three (3) RFP# 11-46 BUS SHELTER INSTALLATION AND REPAIR	CITY OF GLENDALE Materials Management 5850 West Glendale Avenue, Suite 317 Glendale, Arizona 85301
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In accordance with the Special Terms and Conditions, the above referenced contract is amended as follows:

The option to extend the term of the agreement is exercised this 19th day of November, 2013. The term of the contract is hereby extended from January 1, 2014 through December 31, 2014, unless terminated, canceled or extended as provided within the contract. All other provisions of the contract shall remain in their entirety.

Per the terms and conditions of RFP 11-46 the following is hereby changed to reflect the following:

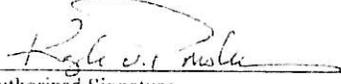
Section 4, paragraph 4.1 (Compensation) of agreement No. 11-46; change from "will not exceed \$27,000..." to \$255,000, as specifically detailed in Exhibit B (the "Compensation").

Exhibit B (Compensation)

Not-To-Exceed Amount; change to read "The total amount of compensation paid to Contractor for full completion of all work required by the Project during the entire term of the Project must not exceed \$255,000 per year.

With the extension of the agreement, a current insurance certificate is required. The certificate and policy shall name the City of Glendale as additional insured and shall be primary coverage for the activity of the Contractor. The certificate shall be sent to the Materials Management Department within 5-business days.

In witness whereof, the parties hereto have executed this amendment to be effective the date first written above.

Contractor hereby acknowledges receipt of and is in agreement with the amendment. A signed copy must be filed with the City of Glendale Materials Management office. Please provide current information if the address has changed.	
<u>Southwest Fabrication, LLC</u> <u>22233 N 23rd Avenue</u> <u>Phoenix, Arizona 85027</u> <u>Phone: 623-587-4648 ext. 109</u> <u>Email: kyle.presler@sw-fab.com</u>	
 Authorized Signature	11/19/2013 Date
<u>KYLE J. PRESLER, CONTROLLER</u> Printed Name and Title	

AGREEMENT FOR
BUS SHELTER INSTALLATION AND REPAIR
City of Glendale Solicitation No. 11-46

This Agreement for bus shelter installation and repair ("Agreement") is effective and entered into between CITY OF GLENDALE, an Arizona municipal corporation ("City"), and SOUTHWEST FABRICATION, LLC, an Arizona limited liability company, (the "Contractor"), as of the 1st day of May, 2011.

RECITALS

- A. City intends to undertake a project for the benefit of the public and with public funds that is more fully set forth in Exhibit A, pursuant to Solicitation No. 11-46 (the "Project");
- B. City desires to retain the services of Contractor to perform those specific duties and produce the specific work as set forth in the Project attached hereto;
- C. City and Contractor desire to memorialize their agreement with this document.

AGREEMENT

In consideration of the Recitals, which are confirmed as true and correct and incorporated by this reference, the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, City and Contractor agree as follows:

- 1. **Key Personnel; Sub-contractors.**
 - 1.1 **Services.** Contractor will provide all services necessary to assure the Project is completed timely and efficiently consistent with Project requirements, including, but not limited to, working in close interaction and interfacing with City and its designated employees, and working closely with others, including other contractors or consultants, retained by City.
 - 1.2 **Project Team.**
 - (A) Project Manager.
 - (1) Contractor will designate an employee as Project Manager with sufficient training, knowledge, and experience to, in the City's option, complete the project and handle all aspects of the Project such that the work produced by Contractor is consistent with applicable standards as detailed in this Agreement;
 - (2) The City must approve the designated Project Manager; and
 - (3) To assure the Project schedule is met, Project Manager may be required to devote no less than a specific amount of time as set out in Exhibit A.
 - (B) Project Team.
 - (1) The Project manager and all other employees assigned to the project by Contractor will comprise the "Project Team."
 - (2) Project Manager will have responsibility for and will supervise all other employees assigned to the project by Contractor.

(C) Discharge, Reassign, Replacement.

- (1) Contractor acknowledges the Project Team is comprised of the same persons and roles for each as may have been identified in the response to the Project's solicitation.
- (2) Contractor will not discharge, reassign or replace or diminish the responsibilities of any of the employees assigned to the Project who have been approved by City without City's prior written consent unless that person leaves the employment of Contractor, in which event the substitute must first be approved in writing by City.
- (3) Contractor will change any of the members of the Project Team at the City's request if an employee's performance does not equal or exceed the level of competence that the City may reasonably expect of a person performing those duties or if the acts or omissions of that person are detrimental to the development of the Project.

(D) Sub-contractors.

- (1) Contractor may engage specific technical contractor (each a "Sub-contractor") to furnish certain service functions.
- (2) Contractor will remain fully responsible for Sub-contractor's services.
- (3) Sub-contractors must be approved by the City, unless the Sub-contractor was previously mentioned in the response to the solicitation.
- (4) Contractor shall certify by letter that contracts with Sub-contractors have been executed incorporating requirements and standards as set forth in this Agreement.

2. **Schedule.** The services will be undertaken in a manner that ensures the Project is completed timely and efficiently in accordance with the Project.

3. **Contractor's Work.**

3.1 **Standard.** Contractor must perform services in accordance with the standards of due diligence, care, and quality prevailing among contractors having substantial experience with the successful furnishing of services for projects that are equivalent in size, scope, quality, and other criteria under the Project and identified in this Agreement.

3.2 **Licensing.** Contractor warrants that:

- (A) Contractor and Sub-contractors will hold all appropriate and required licenses, registrations and other approvals necessary for the lawful furnishing of services ("Approvals"); and
- (B) Neither Contractor nor any Sub-contractor has been debarred or otherwise legally excluded from contracting with any federal, state, or local governmental entity ("Debarment").
 - (1) City is under no obligation to ascertain or confirm the existence or issuance of any Approvals or Debarments or to examine Contractor's contracting ability.
 - (2) Contractor must notify City immediately if any Approvals or Debarment changes during the Agreement's duration and the failure of the Contractor to notify City as required will constitute a material default under the Agreement.

3.3 **Compliance.** Services will be furnished in compliance with applicable federal, state, county and local statutes, rules, regulations, ordinances, building codes, life safety codes, and other standards and criteria designated by City.

3.4 Coordination; Interaction.

- (A) For projects that the City believes requires the coordination of various professional services, Contractor will work in close consultation with City to proactively interact with any other professionals retained by City on the Project ("Coordinating Project Professionals").
- (B) Subject to any limitations expressly stated in the Project Budget, Contractor will meet to review the Project, Schedule, Project Budget, and in-progress work with Coordinating Project Professionals and City as often and for durations as City reasonably considers necessary in order to ensure the timely work delivery and Project completion.
- (C) For projects not involving Coordinating Project Professionals, Contractor will proactively interact with any other contractors when directed by City to obtain or disseminate timely information for the proper execution of the Project.

3.5 Work Product.

- (A) Ownership. Upon receipt of payment for services furnished, Contractor grants to City, and will cause its Sub-contractors to grant to the City, the exclusive ownership of and all copyrights, if any, to evaluations, reports, drawings, specifications, project manuals, surveys, estimates, reviews, minutes, all "architectural work" as defined in the United States Copyright Act, 17 U.S.C § 101, *et seq.*, and other intellectual work product as may be applicable ("Work Product").
 - (1) This grant is effective whether the Work Product is on paper (e.g., a "hard copy"), in electronic format, or in some other form.
 - (2) Contractor warrants, and agrees to indemnify, hold harmless and defend City for, from and against any claim that any Work Product infringes on third-party proprietary interests.
- (B) Delivery. Contractor will deliver to City copies of the preliminary and completed Work Product promptly as they are prepared.
- (C) City Use.
 - (1) City may reuse the Work Product at its sole discretion.
 - (2) In the event the Work Product is used for another project without further consultations with Contractor, the City agrees to indemnify and hold Contractor harmless from any claim arising out of the Work Product.
 - (3) In such case, City shall also remove any seal and title block from the Work Product.

4. Compensation for the Project.

- 4.1 Compensation. Contractor's compensation for the Project, including those furnished by its Sub-contractors will not exceed \$27,000, as specifically detailed in Exhibit B (the "Compensation").
- 4.2 Change in Scope of Project. The Compensation may be equitably adjusted if the originally contemplated scope of services as outlined in the Project is significantly modified.
 - (A) Adjustments to the Compensation require a written amendment to this Agreement and may require City Council approval.
 - (B) Additional services which are outside the scope of the Project contained in this Agreement may not be performed by the Contractor without prior written authorization from the City.

5. **Billings and Payment.**

5.1 **Applications.**

- (A) Contractor will submit monthly invoices (each, a "Payment Application") to City's Project Manager and City will remit payments based upon the Payment Application as stated below.
- (B) The period covered by each Payment Application will be one calendar month ending on the last day of the month or as specified in the solicitation.

5.2 **Payment.**

- (A) After a full and complete Payment Application is received, City will process and remit payment within 30 days.
- (B) Payment may be subject to or conditioned upon City's receipt of:
 - (1) Completed work generated by Contractor and its Sub-contractors; and
 - (2) Unconditional waivers and releases on final payment from Sub-contractors as City may reasonably request to assure the Project will be free of claims arising from required performances under this Agreement.

5.3 **Review and Withholding.** City's Project Manager will timely review and certify Payment Applications.

- (A) If the Payment Application is rejected, the Project Manager will issue a written listing of the items not approved for payment.
- (B) City may withhold an amount sufficient to pay expenses that City reasonably expects to incur in correcting the deficiency or deficiencies rejected for payment.

6. **Termination.**

6.1 **For Convenience.** City may terminate this Agreement for convenience, without cause, by delivering a written termination notice stating the effective termination date, which may not be less than 30 days following the date of delivery.

- (A) Contractor will be equitably compensated for Service and Repair furnished prior to receipt of the termination notice and for reasonable costs incurred.
- (B) Contractor will also be similarly compensated for any approved effort expended and approved costs incurred that are directly associated with project closeout and delivery of the required items to the City.

6.2 **For Cause.** City may terminate this Agreement for cause if Contractor fails to cure any breach of this Agreement within seven days after receipt of written notice specifying the breach.

- (A) Contractor will not be entitled to further payment until after City has determined its damages. If City's damages resulting from the breach, as determined by City, are less than the equitable amount due but not paid Contractor for Service and Repair furnished, City will pay the amount due to Contractor, less City's damages, in accordance with the provision of § 5.
- (B) If City's direct damages exceed amounts otherwise due to Contractor, Contractor must pay the difference to City immediately upon demand; however, Contractor will not be subject to consequential damages of more than \$1,000,000 or the amount of this Agreement, whichever is greater.

7. **Conflict.** Contractor acknowledges this Agreement is subject to A.R.S. § 38-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on City's behalf is also an employee, agent, or consultant of any other party to this Agreement.

8. **Insurance.**

8.1 **Requirements.** Contractor must obtain and maintain the following insurance ("Required Insurance"):

- (A) Contractor and Sub-contractors. Contractor, and each Sub-contractor performing work or providing materials related to this Agreement must procure and maintain the insurance coverages described below (collectively referred to herein as the "Contractor's Policies"), until each Party's obligations under this Agreement are completed.
- (B) General Liability.
 - (1) Contractor must at all times relevant hereto carry a commercial general liability policy with a combined single limit of at least \$1,000,000 per occurrence and \$1,000,000 annual aggregate for each property damage and contractual property damage.
 - (2) Sub-contractors must at all times relevant hereto carry a general commercial liability policy with a combined single limit of at least \$1,000,000 per occurrence.
 - (3) This commercial general liability insurance must include independent contractors' liability, contractual liability, broad form property coverage, XCU hazards if requested by the City, and a separation of insurance provision.
 - (4) These limits may be met through a combination of primary and excess liability coverage.
- (C) Auto. A business auto policy providing a liability limit of at least \$1,000,000 per accident for Contractor and \$1,000,000 per accident for Sub-contractors and covering owned, non-owned and hired automobiles.
- (D) Workers' Compensation and Employer's Liability. A workers' compensation and employer's liability policy providing at least the minimum benefits required by Arizona law.
- (E) Notice of Changes. Contractor's Policies must provide for not less than 30 days' advance written notice to City Representative of:
 - (1) Cancellation or termination of Contractor or Sub-contractor's Policies;
 - (2) Reduction of the coverage limits of any of Contractor or and Sub-contractor's Policies; and
 - (3) Any other material modification of Contractor or Sub-contractor's Policies related to this Agreement.
- (F) Certificates of Insurance.
 - (1) Within 10 business days after the execution of the Agreement, Contractor must deliver to City Representative certificates of insurance for each of Contractor and Sub-contractor's Policies, which will confirm the existence or issuance of Contractor and Sub-contractor's Policies in accordance with the provisions of this section, and copies of the endorsements of Contractor and Sub-contractor's Policies in accordance with the provisions of this section.

(2) City is and will be under no obligation either to ascertain or confirm the existence or issuance of Contractor and Sub-contractor's Policies, or to examine Contractor and Sub-contractor's Policies, or to inform Contractor or Sub-contractor in the event that any coverage does not comply with the requirements of this section.

(3) Contractor's failure to secure and maintain Contractor Policies and to assure Sub-contractor policies as required will constitute a material default under the Agreement.

(G) Other Contractors or Vendors.

(1) Other contractors or vendors that may be contracted with in connection with the Project must procure and maintain insurance coverage as is appropriate to their particular contract.

(2) This insurance coverage must comply with the requirements set forth above for Contractor's Policies (e.g., the requirements pertaining to endorsements to name the parties as additional insured parties and certificates of insurance).

(H) Policies. Except with respect to workers' compensation and employer's liability coverages, City must be named and properly endorsed as additional insureds on all liability policies required by this section.

(1) The coverage extended to additional insureds must be primary and must not contribute with any insurance or self insurance policies or programs maintained by the additional insureds.

(2) All insurance policies obtained pursuant to this section must be with companies legally authorized to do business in the State of Arizona and reasonably acceptable to all parties.

8.2 Sub-contractors.

(A) Contractor must also cause its Sub-contractors to obtain and maintain the Required Insurance.

(B) City may consider waiving these insurance requirements for a specific Sub-contractor if City is satisfied the amounts required are not commercially available to the Sub-contractor and the insurance the Sub-contractor does have is appropriate for the Sub-contractor's work under this Agreement.

(C) Contractor and Sub-contractors must provide to the City proof of the Required Insurance whenever requested.

8.3 Indemnification.

(A) To the fullest extent permitted by law, Contractor must defend, indemnify, and hold harmless City and its elected officials, officers, employees and agents (each, an "Indemnified Party," collectively, the "Indemnified Parties"), for, from, and against any and all claims, demands, actions, damages, judgments, settlements, personal injury (including sickness, disease, death, and bodily harm), property damage (including loss of use), infringement, governmental action and all other losses and expenses, including attorneys' fees and litigation expenses (each, a "Demand or Expense"; collectively, "Demands or Expenses") asserted by a third-party (i.e. a person or entity other than City or Contractor) and that arises out of or results from the breach of this Agreement by the Contractor or the Contractor's negligent actions, errors or omissions (including any Sub-contractor or other person or firm employed by Contractor), whether sustained before or after completion of the Project.

(B) This indemnity and hold harmless provision applies even if a Demand or Expense is in part due to the Indemnified Party's negligence or breach of a responsibility under this Agreement, but in

that event, Contractor shall be liable only to the extent the Demand or Expense results from the negligence or breach of a responsibility of Contractor or of any person or entity for whom Contractor is responsible.

- (C) Contractor is not required to indemnify any Indemnified Parties for, from, or against any Demand or Expense resulting from the Indemnified Party's sole negligence or other fault solely attributable to the Indemnified Party.

9. Immigration Law Compliance.

- 9.1 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.
- 9.2 Any breach of warranty under subsection 9.1 above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
- 9.3 City retains the legal right to inspect the papers of any Contractor or subcontractor employee who performs work under this Agreement to ensure that the Contractor or any subcontractor is compliant with the warranty under subsection 9.1 above.
- 9.4 City may conduct random inspections, and upon request of City, Contractor shall provide copies of papers and records of Contractor demonstrating continued compliance with the warranty under subsection 9.1 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.
- 9.5 Contractor agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon Contractor 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.
- 9.6 Contractor's warranty and obligations under this section to the City is 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.
- 9.7 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.

10. Foreign 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 statutes, in the countries of Sudan or Iran.

11. Notices.

- 11.1 A notice, request or other communication that is required or permitted under this Agreement (each a "Notice") will be effective only if:
 - (A) The Notice is in writing; and
 - (B) Delivered in person or by private express overnight delivery service (delivery charges prepaid), certified or registered mail (return receipt requested); and
 - (C) Notice will be deemed to have been delivered to the person to whom it is addressed as of the date of receipt, if:

- (1) Received on a business day, or before 5:00 p.m., at the address for Notices identified for the Party in this Agreement by U.S. Mail, hand delivery, or overnight courier on or before 5:00 p.m.; or
- (2) As of the next business day after receipt, if received after 5:00 p.m.
- (D) The burden of proof of the place and time of delivery is upon the Party giving the Notice; and
- (E) Digitalized signatures and copies of signatures will have the same effect as original signatures.

11.2 **Representatives.**

- (A) Contractor. Contractor's representative (the "Contractor's Representative") authorized to act on Contractor's behalf with respect to the Project, and his or her address for Notice delivery is:

Southwest Fabrication, LLC
 c/o Kyle Presler
 22233 N 23rd Avenue
 Phoenix, AZ 85027

- (B) City. City's representative ("City's Representative") authorized to act on City's behalf, and his or her address for Notice delivery is:

City of Glendale
 c/o Cathy Foland
 6829 N 58th Dr, Suite 202
 Glendale, Arizona 85301
 623-930-2867

With required copy to:

City Manager
 City of Glendale
 5850 West Glendale Avenue
 Glendale, Arizona 85301

City Attorney
 City of Glendale
 5850 West Glendale Avenue
 Glendale, Arizona 85301

- (C) Concurrent Notices.

- (1) All notices to City's representative must be given concurrently to City Manager and City Attorney.
- (2) A notice will not be deemed to have been received by City's representative until the time that it has also been received by City Manager and City Attorney.
- (3) City may appoint one or more designees for the purpose of receiving notice by delivery of a written notice to Contractor identifying the designee(s) and their respective addresses for notices.

- (D) Changes. Contractor or City may change its representative or information on Notice, by giving Notice of the change in accordance with this section at least ten days prior to the change.

12. **Financing Assignment.** City may assign this Agreement to any City-affiliated entity, including a non-profit corporation or other entity whose primary purpose is to own or manage the Project.

13. Entire Agreement; Survival; Counterparts; Signatures.

13.1 Integration. This Agreement contains, except as stated below, the entire agreement between City and Contractor and supersedes all prior conversations and negotiations between the parties regarding the Project or this Agreement.

- (A) Neither Party has made any representations, warranties or agreements as to any matters concerning the Agreement's subject matter.
- (B) Representations, statements, conditions, or warranties not contained in this Agreement will not be binding on the parties.
- (C) The solicitation, any addendums and the response submitted by the Contractor are incorporated into this Agreement as if attached hereto. Any Contractor response modifies the original solicitation as stated. Inconsistencies between the solicitation, any addendums and the response or any excerpts attached as Exhibit A and this Agreement will be resolved by the terms and conditions stated in this Agreement.

13.2 Interpretation.

- (A) The parties fairly negotiated the Agreement's provisions to the extent they believed necessary and with the legal representation they deemed appropriate.
- (B) The parties are of equal bargaining position and this Agreement must be construed equally between the parties without consideration of which of the parties may have drafted this Agreement.
- (C) The Agreement will be interpreted in accordance with the laws of the State of Arizona.

13.3 Survival. Except as specifically provided otherwise in this Agreement each warranty, representation, indemnification and hold harmless provision, insurance requirement, and every other right, remedy and responsibility of a Party, will survive completion of the Project, or the earlier termination of this Agreement.

13.4 Amendment. No amendment to this Agreement will be binding unless in writing and executed by the parties. Any amendment may be subject to City Council approval. Electronic signature blocks do not constitute execution.

13.5 Remedies. All rights and remedies provided in this Agreement are cumulative and the exercise of any one or more right or remedy will not affect any other rights or remedies under this Agreement or applicable law.

13.6 Severability. If any provision of this Agreement is voided or found unenforceable, that determination will not affect the validity of the other provisions, and the voided or unenforceable provision will be deemed reformed to conform to applicable law.

13.7 Counterparts. This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.

14. Term. The term of this Agreement commences upon the effective date and continues for a one year initial period. The City may, at its option and with the approval of the Contractor, extend the term of this Agreement an additional ~~five~~ years, renewable on an annual basis. Contractor will be notified in writing by the City of its intent to extend the Agreement period at least 30 calendar days prior to the expiration of the original or any renewal Agreement period. Price adjustments will only be reviewed during the Agreement renewal period. There are no automatic renewals of this Agreement.

*five

15. Dispute Resolution. Each claim, controversy and dispute (each a "Dispute") between Contractor and City will be resolved in accordance with Exhibit C. The final determination will be made by the City.

KD
Initial
KD
Initial
JSS
Initial

13. **Entire Agreement; Survival; Counterparts; Signatures.**

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13.6 **Severability.** If any provision of this Agreement is voided or found unenforceable, that determination will not affect the validity of the other provisions, and the voided or unenforceable provision will be deemed reformed to conform to applicable law.

13.7 **Counterparts.** This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.

14. **Term.** The term of this Agreement commences upon the effective date and continues for a one year initial period. The City may, at its option and with the approval of the Contractor, extend the term of this Agreement an additional four years, renewable on an annual basis. Contractor will be notified in writing by the City of its intent to extend the Agreement period at least 30 calendar days prior to the expiration of the original or any renewal Agreement period. Price adjustments will only be reviewed during the Agreement renewal period. There are no automatic renewals of this Agreement.

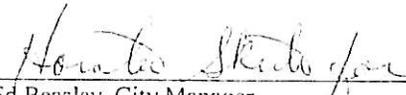
15. **Dispute Resolution.** Each claim, controversy and dispute (each a "Dispute") between Contractor and City will be resolved in accordance with Exhibit C. The final determination will be made by the City.

16. Exhibits. The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference.

Exhibit A	Project
Exhibit B	Compensation
Exhibit C	Dispute Resolution

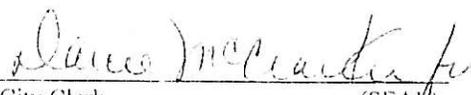
The parties enter into this Agreement as of the effective date shown above.

City of Glendale,
an Arizona municipal corporation



Ed Beasley, City Manager

ATTEST:



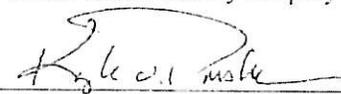
City Clerk (SEAL)

APPROVED AS TO FORM:



City Attorney

Southwest Fabrication, LLC,
an Arizona limited liability company



By: Kyle J. Presler
Its: Controller

EXHIBIT A

BUS SHELTER INSTALLATION AND REPAIR

PROJECT

1.1 SCOPE

- 1.1.1 Several of Glendale's bus stops have shelters, benches, trash receptacles and/or other amenities. Each of these bus stops has varying degrees of maintenance needs. Some sites are high-volume locations.
- 1.1.2 The City of Glendale has made a commitment to the maintenance of clean and comfortable bus stops for its transit users. This Agreement is to address shelter refurbishment, installation, removal and repair of regional and custom shelters and furniture.

1.2 GENERAL SPECIFICATIONS

- 1.2.1 The City agrees to pay for products and materials recommended by the Contractor and pre-approved by the contract administrator that are necessary to maintain satisfactory operation of the bus shelters. Parts and labor required to repair and/or install such furniture shall be paid in accordance with Exhibit B to this Agreement, and the costs involved will be itemized on the invoice separately from the labor repair.
- 1.2.2 Contractor shall perform work activities at times that shall maximize safety and minimize disruption to the community, transit passengers and transit operators. For example, whenever possible, avoid morning rush hour, evening rush hour and excessive noise, and assure that vehicles do not impede passenger boarding areas, etc.
- 1.2.3 Contractor's vehicles shall not impede normal traffic flow and shall adhere to the City of Phoenix Barricade Manual. The Contractor shall notify the contract administrator, 24 hours in advance, if lane closure is required.
- 1.2.4 Upon completion of any installation, repair or refurbishment, the contractor shall clean any soiled spots and remove all excess garbage. All trash, scraps, wrappers, tools, and any other miscellaneous materials introduced to the job site shall be removed by the Contractor and, where appropriate, disposed of in a legal and environmentally safe manner.
- 1.2.5 Contractor shall immediately inform the contract administrator of all incidents that may result in a citizen complaint to the City.

1.3 REPAIRS

- 1.3.1 Routine repairs may include, but are not limited to:
 - 1.3.1.1 Replacing bus stop logos on shelters
 - 1.3.1.2 Securing loose or damaged perforated panels
 - 1.3.1.3 Securing and tightening bolts on furniture/shelter/trash can
 - 1.3.1.4 Repairing metal mesh on benches, trashcans, or shelters
 - 1.3.1.5 Repairing or replacing parts of the shelter, bench, trashcan or solar lighting system
- 1.3.2 Contractor shall be required to perform various repairs on-site, as assigned by the contract administrator. Minor repairs shall be completed within three (3) days of assignment. Complex repairs shall be completed with seven (7) days.
- 1.3.3 Replacement materials shall be of equal or greater quality than existing materials.

1.4 REFURBISHMENT

- 1.4.1 The City's goal is to refurbish a portion of the shelter and transit furniture sites annually. All regional-style shelters and furniture may be required to be painted in a powder-coated finish. Contractor shall be responsible for: all painting whether powder-coated or standard type paint is required by the contract administrator, removal, transport and retrieval of the painted shelter or furniture from the painter's shop. Contractor shall install replacement furniture immediately upon removal of units designated for powder-coat painting. The City will supply replacement furniture. Custom-style furniture shall be refurbished on-site.
- 1.4.2 All regional shelters and furniture are to be refurbished off-site; refurbishment is to reflect the appearance of being new. All regional-style shelters and furniture (except the copper roofs) shall be powder-coat painted with color: RAL 6004 unless otherwise specified by the contract administrator. Work may include metalwork, welding, cutting, grinding, and replacing pieces and parts to make the product to look as though it is new. The roof shall either be copper-coated or if fiberglass will be painted per sections 1.9, 1.10, and 1.11 to match the powder-coat finish.
- 1.4.3 All custom-style shelters and furniture are to be refurbished to reflect the appearance of being new. Custom shelter shall be required to be refurbished on-site. This may include metalwork, welding, cutting, grinding, and replacing pieces and parts, brickwork, woodwork, stuccowork and painting to make the shelter to look as though it is new. All regional-style furniture shall need to be painted to color: RAL 6004 unless otherwise requested by the contract administrator. Refurbishing and repairing shall be made per sections 1.9, 1.10, 1.11 and 1.12.
- 1.4.4 The City shall provide a list of shelters to be refurbished. The Contractor shall prepare a work schedule within 14 days of receipt of the list for contract administrator approval.
- 1.4.5 As shelters are being refurbished, the Contractor shall prepare a report to email to the contract administrator defining the work performed. The report shall be received on a weekly basis by 4:00 p.m. each Monday, and clearly indicate work completed the previous week as compared to the schedule.

1.5 FURNITURE INSTALLATION

- 1.5.1 Contractor shall install, remove and/or relocate transit furniture at locations to be determined by the contract administrator. Regional-style shelters require a crane truck for removal and installation.
- 1.5.2 Tasks may include, but not be limited to:
- 1.5.2.1 Furniture installation and securement to concrete slab
 - 1.5.2.2 Transportation of transit furniture to a designated bus stop site
 - 1.5.2.3 Preparation of transit pad (countersink bolts, furniture leveling, etc.)
 - 1.5.2.4 Removal of existing furniture to restore transit pad
 - 1.5.2.5 Transport furniture to other locations (secure sight—no hazards such as bolts sticking up, etc.)
 - 1.5.2.6 Furniture relocation and re-installation

1.6 SOLAR LIGHTING INSTALLATION

- 1.6.1 Contractor shall install solar power lighting units on City-owned transit shelters as directed by the contract administrator.
- 1.6.2 Tasks may include, but not be limited to:
- 1.6.2.1 Cutting hole in roof for light fixture and drilling mounting holes for fixture and solar panel
 - 1.6.2.2 Mounting solar unit box and components with tamper proof bolts and fastening solar panels
 - 1.6.2.3 Wiring solar unit and caulk entire fixture

1.6.2.4 Making sure system works properly

1.6.2.5 Refinishing roof area as needed

1.6.2.6 Disposing of Shelters and Furniture

1.7 INVENTORY

1.7.1 On occasion, the Contractor may need to store City-owned furniture for a short period of time, such as, but not limited to, in-between installations or refurbishments. Contractor may be required to submit a monthly inventory report showing City inventory on-hand and what items have been moved each month. No inventory is to be used without written approval from the contract administrator. No costs for storage will be charged.

1.8 PAINTING

1.8.1 Custom-style shelters are painted on-site. For these shelters, the following guidelines shall be used:

1.8.1.1 Use industrial maintenance enamel-gloss finish. Paint in strict accordance with the manufacturer's recommendation. The following paint manufacturers have been approved for use: Frazee Deer-O Paints, Sherwin Williams, Dunn Edwards, The Valspar Corporation, and Universal Paints.

1.8.1.2 Provide the best quality grade of the various types of coatings as regularly manufactured by one of the approved paint manufacturers. Materials not displaying the manufacturer's identification as a standard, best-grade product will not be accepted. Materials provided by the Contractor shall CONTAIN NO LEAD or lead products as required under applicable Federal laws and regulations.

1.8.1.3 Provide undercoat paint and thinners produced by the same manufacturer as the finish coat as part of a unified system of paint finish.

1.8.1.4 Color selection, unless otherwise specified by the City, shall be teal, Tiger Drylac RAL #6004, or equivalent, for all surfaces.

1.8.2 If required, the Contractor shall prepare panels for finish and color in advance, with the materials specified.

1.9 SURFACE PREPARATION

1.9.1 General

1.9.1.1 Examine surfaces to determine and locate conditions that will adversely affect the permanence and quality of the completed work. Repair as needed to provide a smooth surface for application of the paint coating.

1.9.1.2 Clean all surfaces scheduled to receive new paint coatings from all dirt, dust, oxidized paint film, loose and unsound paint coatings, and other foreign matter.

1.9.1.3 Schedule cleaning and painting so that dust and other contaminants from the cleaning process will not fall onto wet, newly painted surfaces.

1.9.2 Metal Surfaces

1.9.2.1 Thoroughly clean surfaces to be free from dirt, oil and grease, loose and unsound paint coatings and other surface contaminants, which may impair the adhesion of the new paint coating.

1.9.2.2 Allow furniture to dry thoroughly before application of paint.

1.10 APPLICATION

1.10.1 Use equipment and materials as is recommended for application by the product manufacturer and ensure that integrity of the finish will not be jeopardized by use of the proposed equipment.

- 1.10.2 Provide finish coats that are compatible with prime paints used. Provide barrier coats over incompatible primers, or remove the primer and reapply as required.
- 1.10.3 Upon request, furnish information on the characteristics of the specific finish materials to ensure that compatible prime coats are used.
- 1.10.4 Provide paint finishes of even, uniform color, free from cloudy or mottled appearance. Promptly correct all non-complying work.
- 1.10.5 Touch up prime coats that have been damaged and touch up bare areas prior to start of finish coats application.
- 1.10.6 Allow sufficient drying time between coats, modifying periods as recommended by the material manufacturer to suit adverse weather conditions.

1.11 TECHNICAL SPECIFICATIONS

1.11.1 The following methods and procedures shall be used to refurbish shelters.

1.11.2 Stucco

- 1.11.2.1 Examine and locate all areas requiring stucco repair.
- 1.11.2.2 Repair stucco per City of Glendale Standard Details G-408 Design Guidelines to match existing stucco, prior to painting.

Portland Cement:	ASTM C150-86, Type 1
Hydrated Lime:	ASTM C206-84, (1988) Type S
Aggregate:	ASTM C897-88, clean, natural
Finish Coat Aggregate:	Fine silica sand
Reinforcement:	Provide 1/2" long Owens-Corning fiberglass strands, alkali resistant.
Finish Coat:	Portland Cement by Western Stucco as accepted by the City of Glendale.
Portland Cement Plaster: (each coat)	One part cement to three parts sand. Hydrated lime may be added for plasticity in amount of 10% by weight or 25% volume.
First two (2) coats:	Include 1-1/2 pounds of fiberglass reinforcement per sack of cement.
Finish coat:	Use fine, screened sand as aggregate.
Color and Finish:	As approved by the City.
Application:	Apply in three coats to total thickness of 1", comply with ASTM C926.

1.11.3 Wood Surfaces

- 1.11.3.1 Shelters that are to be painted on-site shall be painted in accordance with the following guidelines. The contractor shall:
- 1.11.3.2 Clean wood surfaces until free from dirt, oil, unsound paint coatings, and other surface contaminants that may impair the adhesion of new paint coatings.

- 1.11.3.3 Smooth finished wood surfaces exposed to view, using the proper sandpaper. Where required, use varying degrees of coarseness to provide a uniformly smooth and unmarred wood surface. Sand sharp edges of paint film to a smooth feathered edge.
- 1.11.3.4 Fill, sand, and otherwise repair as needed, to provide a smooth surface for application of the new coating.

1.12 RESPONSE TIMES

- 1.12.1 Regular Response. Contractor shall respond to all calls for service in accordance with the established schedule negotiated between the Contractor and the contract administrator.
- 1.12.2 Emergency Response.
 - 1.12.2.1 On rare occasions when in an emergency situation that present a danger to transit passengers, pedestrians or traffic flow, the Contractor shall respond to the location within four (4) hours whenever needed. The Contractor shall be expected to secure, make the job site safe and evaluate what repairs are necessary. The Contractor shall have 24 to 48 hours (depending on the situation as defined by the City contract administrator) to make the necessary repairs. In addition to the contract administrator, other police or fire staff may call in an emergency situation.
 - 1.12.2.2 The four-hour period begins when the phone call is placed. The Contractor shall be responsible to respond within the correct time even in the event that an answering service or answering machine receives the call. If the Contractor does not respond in the time allocated, the City shall have the right to call another service vendor and the cost shall be passed along to the Contractor for payment. All invoices received from the Contractor may be held until the service vendor has been paid.
 - 1.12.2.3 Pricing for emergency callouts shall be paid in accordance with the information set forth in Exhibit B, and the costs involved will be itemized on the invoice separately from any regular labor repairs. The 24 to 48 hour repairs shall be priced within the Regular Response rates.
- 1.12.3 Unusual Response. On even more rare occasions, a situation may occur where the job site may require unusual means and/or equipment as specified by the contract administrator. When these occasions occur, the contract administrator shall contact the Contractor. The Contractor shall visit the site and determine what action and/or special equipment may be necessary. The Contractor shall email a quotation to the contract administrator with any unusual equipment required to complete the job. The Contractor may proceed only after approval from the contract administrator.

1.13 PERSONNEL REQUIREMENTS

- 1.13.1 Contractor shall furnish all necessary trained personnel, supervision, scheduling, equipment, tools, maintenance, cleaning supplies, paint and other consumables and accessories required to perform the services designated in this RFP. All work shall be performed in strict accordance with the conditions, provisions, standards and specifications described herein.
- 1.13.2 Contractor shall provide an employee uniform, shirt or vest bearing the contractor's name and/or logo. This attire must include fluorescent yellow or red with reflective stripes for visibility to traffic and for personnel safety.
- 1.13.3 Contractor shall not employ staff that does not have legal status to work in the United States to perform services under this contract.
- 1.13.4 The contractor shall provide a 24-hour phone number to fulfill the requirements stipulated in Section 1.13. Emergency Response.

1.14 ADDITIONAL SERVICES

1.14.1 Additional tasks and services may be required for events and situations associated with providing comprehensive bus stop and passenger facilities maintenance. Additional services may include temporary placement of transit furniture.

1.15 INSPECTIONS

1.15.1 Contract administrator and Contractor shall conduct joint inspections of areas after the repair. The City shall decide all questions that may arise as to the quality and acceptability of any work performed under the Agreement.

1.16 PROPERTY DAMAGE

1.16.1 Contractor shall be responsible for repair of any damage to City property and restoration of any facility damage, beyond normal wear and tear, caused by Contractor's activities. Repair and restoration shall be to the satisfaction of the transit supervisor. Any repair/restoration of these damages shall be performed at no cost to the City.

1.17 SAMPLES/DEMONSTRATIONS

1.17.1 Contractor may be required to furnish a sample of the goods and/or demonstration of the services provided. Any sample submitted and/or demonstration performed shall create an express warranty that the whole of the goods and/or services shall conform to the sample demonstration. All samples become the property of the City unless designated otherwise by the Contractor.

1.18 SECURITY

1.18.1 The Contractor shall provide adequate facilities to conduct business and storage of furniture, inventory and supplies, as well as space for repair work. Such facilities shall be adequate in size and shall be sure to protect furniture and inventory items.

1.18.2 The City does not assume any responsibility, at any time, for the protection of or loss of Contractor's materials, from the time the Agreement commences until the end of the Agreement.

1.19 STORM WATER REQUIREMENTS

1.19.1 The Contractor shall comply with all Federal, state and local environmental requirements. The Contractor must adhere to the City of Glendale's Storm Water Best Management Practices for painting, etc. If the Contractor has questions or concerns regarding the City's Storm Water Best Management Practices, or to obtain a copy of the practices, call the Office of Environmental Resources at (623) 930-2580.

1.20 SUBCONTRACTORS AND SUPPLIERS

1.20.1 Contractor shall identify and provide a list of all subcontractors and suppliers who will perform various specialized tasks, with the proposal.

1.21 BILLING

1.21.1 The Contractor shall submit invoices by project or projects per location completed.

EXHIBIT B

BUS SHELTER INSTALLATION AND REPAIR

COMPENSATION

METHOD AND AMOUNT OF COMPENSATION

Progress payments for services received.

NOT-TO-EXCEED AMOUNT

The total amount of compensation paid to Contractor for full completion of all work required by the Project during the entire term of the Project must not exceed \$27,000.00.

DETAILED PROJECT COMPENSATION

CUSTOM-STYLE SHELTERS

ITEM	COST	ITEM	COST
Refurbish:*		Removal:	
Custom Unit**		Metal Bench	\$75
Metal Bench	\$600	Trash Can	\$62
Trash Can	\$350	Cement Bench	\$95
Bike Rack	\$250	Old Style Shelter	\$430
		Bike Rack	\$80
Installation:		Relocation:	
Metal Bench	\$91	Metal Bench	\$166
Trash Can	\$74	Trash Can	\$136
Solar Unit	\$395	Cement Bench	\$290
Wood Bench	\$215	Old Style Shelter	\$880
Bike Rack	\$95	Bike Rack	\$175

REGIONAL-STYLE SHELTERS

ITEM	COST	ITEM	COST
Refurbish:*		Removal:	
Regional Unit	\$3,500	Regional Unit	\$267
Metal Bench	\$600	Metal Bench	\$75
Trash Can	\$350	Trash Can	\$62
Bike Rack	\$250	Cement Bench	\$95
		Bike Rack	\$80
Installation:		Relocation:	
Regional Unit	\$360	Regional Unit	\$627
Metal Bench	\$91	Metal Bench	\$166
Trash Can	\$74	Trash Can	\$136
Solar Unit	\$395	Cement Bench	\$290
Bike Rack	\$95	Old Style Unit	\$880
		Bike Rack	\$175

ADDITIONAL PRICING INFORMATION

Cost and Installation of a New Solar Unit
(Per unit cost.) \$395

Labor rate for Emergency Callout \$75 per hour.

Labor rate for additional services \$55 per hour.

* Refurbish prices are listed as "not to exceed" prices. Southwest Fabrication will quote each refurbish unit based on the extent of materials and labor required to refurbish.

** Southwest Fabrication will refurbish the custom units on a cost plus basis for minor repairs. For major repairs to custom shelters, Southwest Fabrication will email quotes prior to performing work.

EXHIBIT C

BUS SHELTER INSTALLATION AND REPAIR

DISPUTE RESOLUTION

1. Disputes.

- 1.1 Commitment. The parties commit to resolving all disputes promptly, equitably, and in a good-faith, cost-effective manner.
- 1.2 Application. The provisions of this Exhibit will be used by the parties to resolve all controversies, claims, or disputes ("Dispute") arising out of or related to this Agreement-including Disputes regarding any alleged breaches of this Agreement.
- 1.3 Initiation. A party may initiate a Dispute by delivery of written notice of the Dispute, including the specifics of the Dispute, to the Representative of the other party as required in this Agreement.
- 1.4 Informal Resolution. When a Dispute notice is given, the parties will designate a member of their senior management who will be authorized to expeditiously resolve the Dispute.
 - (A) The parties will provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any Dispute in order to assist in resolving the Dispute as expeditiously and cost effectively as possible;
 - (B) The parties' senior managers will meet within 10 business days to discuss and attempt to resolve the Dispute promptly, equitably, and in a good faith manner, and
 - (C) The Senior Managers will agree to subsequent meetings if both parties agree that further meetings are necessary to reach a resolution of the Dispute.

2. Arbitration.

- 2.1 Rules. If the parties are unable to resolve the Dispute by negotiation within 30 days from the Dispute notice, and unless otherwise informal discussions are extended by the mutual agreement, the parties may agree, in writing, that the Dispute will be decided by binding arbitration in accordance with Commercial Rules of the AAA, as amended herein. Although the arbitration will be conducted in accordance with AAA Rules, it will not be administered by the AAA, but will be heard independently.
 - (A) The parties will exercise best efforts to select an arbitrator within 5 business days after agreement for arbitration. If the parties have not agreed upon an arbitrator within this period, the parties will submit the selection of the arbitrator to one of the principals of the mediation firm of Scott & Skelly, LLC, who will then select the arbitrator. The parties will equally share the fees and costs incurred in the selection of the arbitrator.
 - (B) The arbitrator selected must be an attorney with at least 10 years experience, be independent, impartial, and not have engaged in any business for or adverse to either Party for at least 10 years.
- 2.2 Discovery. The extent and the time set for discovery will be as determined by the arbitrator. Each Party must, however, within ten (10) days of selection of an arbitrator deliver to the other Party copies of all documents in the delivering party's possession that are relevant to the dispute.
- 2.3 Hearing. The arbitration hearing will be held within 90 days of the appointment of the arbitrator. The arbitration hearing, all proceedings, and all discovery will be conducted in Glendale, Arizona unless otherwise agreed by the parties or required as a result of witness location. Telephonic hearings and other reasonable arrangements may be used to minimize costs.

- 2.4 Award. At the arbitration hearing, each Party will submit its position to the arbitrator, evidence to support that position, and the exact award sought in this matter with specificity. The arbitrator must select the award sought by one of the parties as the final judgment and may not independently alter or modify the awards sought by the parties, fashion any remedy, or make any equitable order. The arbitrator has no authority to consider or award punitive damages.
- 2.5 Final Decision. The Arbitrator's decision should be rendered within 15 days after the arbitration hearing is concluded. This decision will be final and binding on the Parties.
- 2.6 Costs. The prevailing party may enter the arbitration in any court having jurisdiction in order to convert it to a judgment. The non-prevailing party shall pay all of the prevailing party's arbitration costs and expenses, including reasonable attorney's fees and costs.
3. **Services to Continue Pending Dispute**. Unless otherwise agreed to in writing, Contractor must continue to perform and maintain progress of required services during any Dispute resolution or arbitration proceedings, and City will continue to make payment to Contractor in accordance with this Agreement.
4. **Exceptions**.
 - 4.1 Third Party Claims. City and Contractor are not required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defense of a third-party who is not obligated by contract to arbitrate disputes with City and Contractor.
 - 4.2 Liens. City or Contractor may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice, but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Arizona Law, including, without limitation, an action under A.R.S. § 33-420, without the necessity of initiating or exhausting the procedures of this Exhibit.
 - 4.3 Governmental Actions. This Exhibit does not apply to, and must not be construed to require arbitration of, any claims, actions or other process filed or issued by City of Glendale Building Safety Department or any other agency of City acting in its governmental permitting or other regulatory capacity.



CITY COUNCIL REPORT

Meeting Date: **1/14/2014**
Meeting Type: **Voting**
Title: **AUTHORIZATION TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH LITTLEJOHN ENGINEERING ASSOCIATES, INC. FOR DESIGN AND CONSTRUCTION SERVICES FOR THE FISCAL YEAR 2013-14 PAVEMENT MANAGEMENT PROGRAM**
Staff Contact: **Stuart Kent, Executive Director, Public Works**

Purpose and Recommended Action

This is a request for City Council to authorize the City Manager to enter into a professional services agreement with Littlejohn Engineering Associates, Inc. in an amount not to exceed \$306,950 for design and construction administration services for the fiscal year (FY) 2013-14 City of Glendale Pavement Management Program.

Background

The city's annual pavement management program includes providing street rehabilitation activities throughout the city. The city has over 103 miles of arterial and 615 miles of residential and collector roadways. With the exception of minor street and concrete repairs (potholes, curb and sidewalk), the city contracts for all other roadway preventative maintenance and rehabilitation work.

Council was provided with the proposed FY 2013-14 Pavement Management Program rehabilitation plan at the December 17, 2013 Workshop meeting. For FY 2013-14, \$5.25 million is budgeted for roadway maintenance in Glendale, which includes \$2 million in Pavement Management CIP funding (GO Program), a Council approved one-time supplemental of \$3 million in Highway User Revenue Funds (HURF), and \$250,000 in Community Development Block Grant (CDBG) funds. The \$5.25 million will fund all costs associated with completing roughly 13 miles of surface and overlay treatments and a little over one mile of reconstruction work on residential/collector streets in the city, and allow for a reassessment and new field surveys of the roadway network in Glendale. The agreement for the reassessment will be presented at a future meeting for Council approval.

This professional services agreement with Littlejohn Engineering Associates, Inc. is for design and construction administrative services for the FY 2013-14 Pavement Management Program. Littlejohn Engineering Associates, Inc. was selected to perform this work from the pre-qualified Engineering Consultants On-Call List, updated and effective March 1, 2013. Once the design phase is completed, the roadway maintenance and rehabilitation work will be bid and a construction agreement will be presented at a future meeting for Council approval.



CITY COUNCIL REPORT

Analysis

- Staff recommends entering into the agreement with Littlejohn Engineering Associates, Inc.
- The agreement was reviewed and approved by the City Attorney’s Office.
- There will be no impact to any city departments, staff, or service levels.
- This is a one-time expense with no on-going operating and maintenance costs.

Previous Related Council Action

At the December 17, 2013 Workshop, Council was provided with an update on the city’s Pavement Management Program, included in the update was the proposed pavement rehabilitation plan for FY 2013-14.

Community Benefit/Public Involvement

Well maintained infrastructure is an important element of strong neighborhoods and business corridors, and is critical for the attraction of quality economic development.

Budget and Financial Impacts

Funds are available in the FY 2013-14 Capital Improvement Plan (CIP) Budget of the Public Works Department.

Cost	Fund-Department-Account
\$306,950	2210-65089-550800, Pavement Management

Capital Expense? Yes No

Budgeted? Yes No

Requesting Budget or Appropriation Transfer? Yes No

If yes, where will the transfer be taken from?

Attachments

Agreement

PROFESSIONAL SERVICES AGREEMENT

Slurry Seal and Overlay Program, 2014

City Project No. 131403

This Professional Services Agreement ("Agreement") is entered into and effective between CITY OF GLENDALE, an Arizona municipal corporation ("City") and Littlejohn Engineering Associates, Inc., a Tennessee corporation, authorized to do business in the State of Arizona, ("Consultant") as of the ____ day of _____, 2014 ("Effective Date").

RECITALS

- A. City intends to undertake a project for the benefit of the public and with public funds that is more fully set forth in **Exhibit A**, Project (the "Project");
- B. City desires to retain the professional services of Consultant to perform certain specific duties and produce the specific work as set forth in the attached **Exhibit B**, Project Scope of Work ("Scope");
- C. Consultant desires to provide City with professional services ("Services") consistent with best consulting or architectural practices and the standards set forth in this Agreement, in order to complete the Project; and
- D. City and Consultant desire to memorialize their agreement with this document.

AGREEMENT

The parties hereby agree as follows:

1. Key Personnel; Other Consultants and Subcontractors.

- 1.1 Professional Services. Consultant will provide all Services necessary to assure the Project is completed timely and efficiently consistent within Project requirements, including, but not limited to, working in close interaction and interfacing with City and its designated employees, and working closely with others, including other consultants or contractors, retained by City.
- 1.2 Project Team.
 - a. Project Manager.
 - (1) Consultant will designate an employee as Project Manager with sufficient training, knowledge, and experience to, in the City's opinion, complete the project and handle all aspects of the Project such that the work produced by Consultant is consistent with applicable standards as detailed in this Agreement; and
 - (2) The City must approve the designated Project Manager.
 - b. Project Team.
 - (1) The Project Manager and all other employees assigned to the Project by Consultant will comprise the "Project Team."
 - (2) Project Manager will have responsibility for and will supervise all other employees assigned to the Project by Consultant.
 - c. Discharge, Reassign, Replacement.
 - (1) Consultant acknowledges the Project Team is comprised of the same persons and roles for each as may have been identified in **Exhibit A**.
 - (2) Consultant will not discharge, reassign, replace or diminish the responsibilities of any of the employees assigned to the Project who have been approved by City without City's prior written consent unless that person leaves the employment of Consultant, in which event the substitute must first be approved in writing by City.

- (3) Consultant will change any of the members of the Project Team at the City's request if an employee's performance does not equal or exceed the level of competence that the City may reasonably expect of a person performing those duties, or if the acts or omissions of that person are detrimental to the development of the Project.

d. Subcontractors.

- (1) Consultant may engage specific technical contractors (each a "Subcontractor") to furnish certain service functions.
- (2) Consultant will remain fully responsible for Subcontractor's services.
- (3) Subcontractors must be approved by the City.
- (4) Consultant will certify by letter that all contracts with Subcontractors have been executed incorporating requirements and standards as set forth in this Agreement.

2. **Schedule.** The Services will be undertaken in a manner that ensures the Project is completed timely and efficiently in accordance with the Project.

3. **Consultant's Work.**

3.1 Standard. Consultant must perform Services in accordance with the standards of due diligence, care, and quality prevailing among consultants having substantial experience with the successful furnishing of Services for projects that are equivalent in size, scope, quality, and other criteria under the Project and identified in this Agreement.

3.2 Licensing. Consultant warrants that:

- a. Consultant and its Subconsultants or Subcontractors will hold all appropriate and required licenses, registrations and other approvals necessary for the lawful furnishing of Services ("Approvals"); and
- b. Neither Consultant nor any Subconsultant or Subcontractor has been debarred or otherwise legally excluded from contracting with any federal, state, or local governmental entity ("Debarment").
 - (1) City is under no obligation to ascertain or confirm the existence or issuance of any Approvals or Debarments, or to examine Consultant's contracting ability.
 - (2) Consultant must notify City immediately if any Approvals or Debarment changes during the Agreement's duration. The failure of the Consultant to notify City as required will constitute a material default under the Agreement.

3.3 Compliance. Services will be furnished in compliance with applicable federal, state, county and local statutes, rules, regulations, ordinances, building codes, life safety codes, and other standards and criteria designated by City.

3.4 Coordination; Interaction.

- a. For projects that the City believes requires the coordination of various professional services, Consultant will work in close consultation with City to proactively interact with any other professionals retained by City on the Project ("Coordinating Project Professionals").
- b. Consultant will meet to review the Project, Schedule and in-progress work with Coordinating Project Professionals and City as often and for durations as City reasonably considers necessary in order to ensure the timely work delivery and Project completion.
- c. For projects not involving Coordinating Project Professionals, Consultant will proactively interact with any other contractors when directed by City to obtain or disseminate timely information for the proper execution of the Project.

3.5 Work Product.

- a. Ownership. Upon receipt of payment for Services furnished, Consultant grants to City, and will cause its Subconsultants or Subcontractors to grant to the City, the exclusive ownership of and all copyrights, if any, to evaluations, reports, drawings, specifications, project manuals, surveys, estimates, reviews, minutes, all "architectural work" as defined in the United States Copyright Act, 17 U.S.C § 101, *et seq.*, and other intellectual work product as may be applicable ("Work Product").
 - (1) This grant is effective whether the Work Product is on paper (e.g., a "hard copy"), in electronic format, or in some other form.
 - (2) Consultant warrants, and agrees to indemnify, hold harmless and defend City for, from and against any claim that any Work Product infringes on third-party proprietary interests.
- b. Delivery. Consultant will deliver to City copies of the preliminary and completed Work Product promptly as they are prepared.
- c. City Use.
 - (1) City may reuse the Work Product at its sole discretion.
 - (2) In the event the Work Product is used for another project without further consultations with Consultant, the City agrees to indemnify and hold Consultant harmless from any claim arising out of the Work Product.
 - (3) In such case, City will also remove any seal and title block from the Work Product.

4. Compensation for the Project.

- 4.1 Compensation. Consultant's compensation for the Project, including those furnished by its Subconsultants or Subcontractors will not exceed \$306,950.00 as specifically detailed in **Exhibit D** ("Compensation").
- 4.2 Change in Scope of Project. The Compensation may be equitably adjusted if the originally contemplated Scope as outlined in the Project is significantly modified.
 - a. Adjustments to Compensation require a written amendment to this Agreement and may require City Council approval.
 - b. Additional services which are outside the Scope of the Project contained in this Agreement may not be performed by the Consultant without prior written authorization from the City.
 - c. Notwithstanding the incorporation of the Exhibits to this Agreement by reference, should any conflict arise between the provisions of this Agreement and the provisions found in the Exhibits and accompanying attachments, the provisions of this Agreement shall take priority and govern the conduct of the parties.
- 4.3 Allowances. An "Allowance" may be identified in **Exhibit D** only for work that is required by the Scope and the value of which cannot reasonably be quantified at the time of this Agreement.
 - a. As stated in Sec. 4.1 above, the Compensation must incorporate all Allowance amounts identified in **Exhibit D** and any unused allowance at the completion of the Project will remain with City.
 - b. Consultant may not add any mark-up for work identified as an Allowance and which is to be performed by a Subconsultant.
 - c. Consultant will not use any portion of an Allowance without prior written authorization from the City.

- d. Examples of Allowance items include, but are not limited to, subsurface pothole investigations, survey, geotechnical investigations, public participation, radio path studies and material testing.

4.4 Expenses. City will reimburse Consultant for certain out-of-pocket expenses necessarily incurred by Consultant in connection with this Agreement, without mark-up (the "Reimbursable Expenses"), including, but not limited to, document reproduction, materials for book preparation, postage, courier and overnight delivery costs incurred with Federal Express or similar carriers, travel and car mileage, subject to the following:

- a. Mileage, airfare, lodging and other travel expenses will be reimbursable only to the extent these would, if incurred, be reimbursed to City of Glendale personnel under its policies and procedures for business travel expense reimbursement made available to Consultant for review prior to the Agreement's execution, and which policies and procedures will be furnished to Consultant;
- b. The Reimbursable Expenses in this section are approved in advance by City in writing; and
- c. The total of all Reimbursable Expenses paid to Consultant in connection with this Agreement will not exceed the "not to exceed" amount identified for Reimbursable Services in the Compensation.

5. **Billings and Payment.**

5.1 Applications.

- a. Consultant will submit monthly invoices (each, a "Payment Application") to City's Project Manager and City will remit payments based upon the Payment Application as stated below.
- b. The period covered by each Payment Application will be one calendar month ending on the last day of the month.

5.2 Payment.

- a. After a full and complete Payment Application is received, City will process and remit payment within 30 days.
- b. Payment may be subject to or conditioned upon City's receipt of:
 - (1) Completed work generated by Consultant and its Subconsultants and Subcontractors; and
 - (2) Unconditional waivers and releases on final payment from all Subconsultants and Subcontractors as City may reasonably request to assure the Project will be free of claims arising from required performances under this Agreement.

5.3 Review and Withholding. City's Project Manager will timely review and certify Payment Applications.

- a. If the Payment Application is rejected, the Project Manager will issue a written listing of the items not approved for payment.
- b. City may withhold an amount sufficient to pay expenses that City reasonably expects to incur in correcting the deficiency or deficiencies rejected for payment.

6. **Termination.**

6.1 For Convenience. City may terminate this Agreement for convenience, without cause, by delivering a written termination notice stating the effective termination date, which may not be less than 15 days following the date of delivery.

- a. Consultant will be equitably compensated for Services furnished prior to receipt of the termination notice and for reasonable costs incurred.

- b. Consultant will also be similarly compensated for any approved effort expended, and approved costs incurred, that are directly associated with Project closeout and delivery of the required items to the City.

6.2 For Cause. City may terminate this Agreement for cause if Consultant fails to cure any breach of this Agreement within seven days after receipt of written notice specifying the breach.

- a. Consultant will not be entitled to further payment until after City has determined its damages. If City's damages resulting from the breach, as determined by City, are less than the equitable amount due but not paid Consultant for Services furnished, City will pay the amount due to Consultant, less City's damages, in accordance with the provision of Sec. 5.
- b. If City's direct damages exceed amounts otherwise due to Consultant, Consultant must pay the difference to City immediately upon demand; however, Consultant will not be subject to consequential damages more than \$1,000,000 or the amount of this Agreement, whichever is greater.

7. **Conflict.** Consultant acknowledges this Agreement is subject to A.R.S. § 38-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on City's behalf is also an employee, agent, or consultant of any other party to this Agreement.

8. **Insurance.**

8.1 Requirements. Consultant must obtain and maintain the following insurance ("Required Insurance"):

- a. Consultant and Subconsultants and Subcontractors. Consultant, and each Subconsultant or Subcontractor performing work or providing materials related to this Agreement must procure and maintain the insurance coverages described below (collectively referred to herein as the "Consultant's Policies"), until each Party's obligations under this Agreement are completed.
- b. General Liability.
 - (1) Consultant must at all times relevant hereto carry a commercial general liability policy with a combined single limit of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate limit.
 - (2) Subconsultants and Subcontractors must at all times relevant hereto carry a general commercial liability policy with a combined single limit of at least \$1,000,000 per occurrence.
 - (3) This commercial general liability insurance must include independent contractors' liability, contractual liability, broad form property coverage, XCU hazards if requested by the City, and a separation of insurance provision.
 - (4) These limits may be met through a combination of primary and excess liability coverage.
- c. Professional Liability. Consultant must maintain a professional errors and omissions liability policy providing a minimum limit of \$1,000,000 for each claim and a \$2,000,000 annual aggregate limit.
- d. Auto. A business auto policy providing a liability limit of at least \$1,000,000 per accident for Consultant and \$1,000,000 per accident for Subconsultants and Subcontractors and covering owned, non-owned and hired automobiles.
- e. Workers' Compensation and Employer's Liability. Consultant must also maintain a workers' compensation and employer's liability policy providing at least the minimum benefits required by Arizona law.

- f. Notice of Changes. Consultant's Policies must provide for not less than 30 days' advance written notice to City Representative of:
 - (1) Cancellation or termination of Consultant's Policies;
 - (2) Reduction of the coverage limits of any of Consultant's Policies; and
 - (3) Any other material modification of Consultant's Policies related to this Agreement.
- g. Certificates of Insurance.
 - (1) Within 10 business days after the execution of the Agreement, Consultant must deliver to City Representative certificates of insurance for each of Consultant's Policies, which will confirm the existence or issuance of Consultant's Policies in accordance with the provisions of this section, and copies of the endorsements of Consultant's Policies in accordance with the provisions of this section.
 - (2) City is and will be under no obligation either to ascertain or confirm the existence or issuance of Consultant's Policies, or to examine Consultant's Policies, or to inform Consultant, Subconsultant, or Subcontractor in the event that any coverage does not comply with the requirements of this section.
 - (3) Consultant's failure to secure and maintain Consultant's Policies and to assure Consultant's Policies as required will constitute a material default under the Agreement.
- h. Other Contractors or Vendors.
 - (1) Other contractors or vendors that may be contracted with in connection with the Project must procure and maintain insurance coverage as is appropriate to their particular contract.
 - (2) This insurance coverage must comply with the requirements set forth above for Consultant's Policies (e.g., the requirements pertaining to endorsements to name the parties as additional insured parties and certificates of insurance).
- i. Policies. Except with respect to workers' compensation and Consultant's professional liability coverages, City must be named and properly endorsed as additional insureds on all liability policies required by this section.
 - (1) The coverage extended to additional insureds must be primary and must not contribute with any insurance or self insurance policies or programs maintained by the additional insureds.
 - (2) All insurance policies obtained pursuant to this section must be with companies legally authorized to do business in the State of Arizona and reasonably acceptable to all parties.

8.2 Subconsultants and Subcontractors.

- a. Consultant must also cause its Subconsultants and Subcontractors to obtain and maintain the Required Insurance.
- b. City may consider waiving these insurance requirements for a specific Subconsultant or Subcontractor if City is satisfied the amounts required are not commercially available to the Subconsultant or Subcontractor and the insurance the Subconsultant or Subcontractor does have is appropriate for the Subconsultant or Subcontractor's work under this Agreement.
- c. Consultant and Subcontractors must provide to the City proof of the Required Insurance whenever requested.

8.3 Indemnification.

- a. To the fullest extent permitted by law, Consultant must defend, indemnify, and hold harmless City and its elected officials, officers, employees and agents (each, an "Indemnified Party," collectively, the "Indemnified Parties") for, from, and against any and all claims, demands, actions, damages, judgments, settlements, personal injury (including sickness, disease, death, and bodily harm), property damage (including loss of use), infringement, governmental action and all other losses and expenses, including attorneys' fees and litigation expenses (each, a "Demand or Expense" collectively "Demands or Expenses") asserted by a third-party (i.e. a person or entity other than City or Consultant) and that arises out of or results from the breach of this Agreement by the Consultant or the Consultant's negligent actions, errors or omissions (including any Subconsultant or Subcontractor or other person or firm employed by Consultant), whether sustained before or after completion of the Project.
- b. This indemnity and hold harmless provision applies even if a Demand or Expense is in part due to the Indemnified Party's negligence or breach of a responsibility under this Agreement, but in that event, Consultant will be liable only to the extent the Demand or Expense results from the negligence or breach of a responsibility of Consultant or of any person or entity for whom Consultant is responsible.
- c. Consultant is not required to indemnify any Indemnified Parties for, from, or against any Demand or Expense resulting from the Indemnified Party's sole negligence or other fault solely attributable to the Indemnified Party.

9. Immigration Law Compliance.

- 9.1 Consultant, and on behalf of any Subconsultant or 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.
- 9.2 Any breach of warranty under this section is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
- 9.3 City retains the legal right to inspect the papers of any Consultant, Subconsultant, or Subcontractor employee who performs work under this Agreement to ensure that the Consultant, Subconsultant or any Subcontractor is compliant with the warranty under this section.
- 9.4 City may conduct random inspections, and upon request of City, Consultant will provide copies of papers and records of Consultant demonstrating continued compliance with the warranty under this section. Consultant 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.
- 9.5 Consultant agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon Consultant and expressly accrue those obligations directly to the benefit of the City. Consultant also agrees to require any Subconsultant or 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.
- 9.6 Consultant's warranty and obligations under this section to the City is 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.
- 9.7 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.

10. Notices.

- 10.1 A notice, request or other communication that is required or permitted under this Agreement (each a "Notice") will be effective only if:
- a. The Notice is in writing; and
 - b. Delivered in person or by overnight courier service (delivery charges prepaid), certified or registered mail (return receipt requested).
 - c. Notice will be deemed to have been delivered to the person to whom it is addressed as of the date of receipt, if:
 - (1) Received on a business day before 5:00 p.m. at the address for Notices identified for the Party in this Agreement by U.S. Mail, hand delivery, or overnight courier service; or
 - (2) As of the next business day after receipt, if received after 5:00 p.m.
 - d. The burden of proof of the place and time of delivery is upon the Party giving the Notice.
 - e. Digitalized signatures and copies of signatures will have the same effect as original signatures.

10.2 Representatives.

- a. Consultant. Consultant's representative (the "Consultant's Representative") authorized to act on Consultant's behalf with respect to the Project, and his or her address for Notice delivery is:

Littlejohn Engineering Associates, Inc.
Attn: James Littlejohn
7227 N. 16th Street, Suite 140
Phoenix, AZ 85020

- b. City. City's representative ("City's Representative") authorized to act on City's behalf, and his or her address for Notice delivery is:

City of Glendale
c/o Engineering Department
5850 W. Glendale Avenue, Suite 315
Glendale, Arizona 85301

With required copy to:

City Manager
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

City Attorney
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

- c. Concurrent Notices.
 - (1) All notices to City's representative must be given concurrently to City Manager and City Attorney.
 - (2) A notice will not be deemed to have been received by City's representative until the time that it has also been received by the City Manager and the City Attorney.
 - (3) City may appoint one or more designees for the purpose of receiving notice by delivery of a written notice to Consultant identifying the designee(s) and their respective addresses for notices.

- d. **Changes.** Consultant or City may change its representative or information on Notice, by giving Notice of the change in accordance with this section at least ten days prior to the change.
11. **Financing Assignment.** City may assign this Agreement to any City-affiliated entity, including a non-profit corporation or other entity whose primary purpose is to own or manage the Project.
12. **Entire Agreement; Survival; Counterparts; Signatures.**
- 12.1 **Integration.** This Agreement contains, except as stated below, the entire agreement between City and Consultant and supersedes all prior conversations and negotiations between the parties regarding the Project or this Agreement.
- a. Neither Party has made any representations, warranties or agreements as to any matters concerning the Agreement's subject matter.
- b. Representations, statements, conditions, or warranties not contained in this Agreement will not be binding on the parties.
- c. Inconsistencies between the solicitation, any addenda attached to the solicitation, the response or any excerpts attached as **Exhibit A**, and this Agreement, will be resolved by the terms and conditions stated in this Agreement.
- 12.2 **Interpretation.**
- a. The parties fairly negotiated the Agreement's provisions to the extent they believed necessary and with the legal representation they deemed appropriate.
- b. The parties are of equal bargaining position and this Agreement must be construed equally between the parties without consideration of which of the parties may have drafted this Agreement.
- c. The Agreement will be interpreted in accordance with the laws of the State of Arizona.
- 12.3 **Survival.** Except as specifically provided otherwise in this Agreement, each warranty, representation, indemnification and hold harmless provision, insurance requirement, and every other right, remedy and responsibility of a Party, will survive completion of the Project, or the earlier termination of this Agreement.
- 12.4 **Amendment.** No amendment to this Agreement will be binding unless in writing and executed by the parties. Electronic signature blocks do not constitute execution for purposes of this Agreement. Any amendment may be subject to City Council approval.
- 12.5 **Remedies.** All rights and remedies provided in this Agreement are cumulative and the exercise of any one or more right or remedy will not affect any other rights or remedies under this Agreement or applicable law.
- 12.6 **Severability.** If any provision of this Agreement is voided or found unenforceable, that determination will not affect the validity of the other provisions, and the voided or unenforceable provision will be reformed to conform with applicable law.
- 12.7 **Counterparts.** This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.
13. **Term.** The term of this Agreement commences upon the Effective Date and continues for one (1)-year. There are no automatic renewals of this Agreement.
14. **Dispute Resolution.** Each claim, controversy and dispute (each a "Dispute") between Consultant and City will be resolved in accordance with **Exhibit E**. The final determination will be made by the City.

15. Exhibits. The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference.

Exhibit A	Project
Exhibit B	Scope of Work
Exhibit C	Schedule
Exhibit D	Compensation
Exhibit E	Dispute Resolution

(Signatures appear on the following page.)

The parties enter into this Agreement effective as of the date shown above.

City of Glendale,
an Arizona municipal corporation

By: Brenda S. Fischer
Its: City Manager

ATTEST:

Pamela Hanna (SEAL)
City Clerk

APPROVED AS TO FORM:

Michael D. Bailey
City Attorney

Littlejohn Engineering Associates, Inc.,
a Tennessee corporation



By: James Littlejohn
Its: President

EXHIBIT A
Professional Services Agreement

PROJECT

(Cover Page)

Exhibit A

Project Description

City of Glendale

Engineering Department

FY2014 Pavement Management Program

The City's annual street maintenance program includes providing pavement repairs throughout the City. The City's street maintenance staff identified and prioritized street maintenance activities (crack seal, asphalt patching, slurry seal, microseal, asphalt overlay and full reconstruction) based on available funds. The engineering design portion of this agreement will be completed for roughly 13 miles of surface overlay, and a little over one mile of reconstruction work. These consist of the specific street segments selected as part of the FY 2014 Pavement Management Program identified in the IMS Pavement Management Analysis Report (December 2013) and approved by Glendale City Council on December 17, 2013. In addition, due to ADA accessibility requirements, accessible curb ramps will be added as needed in areas of asphalt overlay and full reconstruction.

EXHIBIT B
Professional Services Agreement

SCOPE OF WORK

(Cover Page)



LITTLEJOHN ENGINEERING ASSOCIATES

Exhibit B
Scope of Work
City of Glendale
Engineering Department
Slurry Seal and Overlay Program, 2014
City of Glendale Project No. 131403

1.0 Meetings and Coordination

Littlejohn Engineering Associates (LEA) will regularly coordinate with city staff and will do so as necessary to ensure successful project completion. Five (5) meetings are anticipated for the project as follows:

1. 30% Document Review Meeting
2. 65% Document Review Meeting
3. 95% Document Review Meeting
4. Final Document/Comment Resolution Meeting
5. Pre Bid Meeting

2.0 Field Work & Data Collection

The city has provided LEA with Street Maintenance Department (SMD) documents showing street repair locations and estimated quantities. In addition, the city shall provide any pertinent data that may be useful on the project such as as-built documents, right-of-way maps, GIS shape files, etc.

Slurry Seal Program

LEA will review designated street maintenance locations to confirm:

1. Pavement Crack Quantities (linear feet);
2. Striping Quantities (linear feet);
3. Slurry area quantities (square yards);
4. Microseal area quantities (square yards);
5. Asphalt patch areas (square yards).

Overlay Program

LEA will review designated overlay locations to confirm:

1. Overlay Quantities (square yards);
2. Striping Quantities (linear feet);
3. Full Depth Pavement Repair (square yards);
4. Curb Ramp Replacement Quantities along full reconstruction roadways (square feet).

Prior to field inspection, the SMD shall have demarcated areas of pavement repair. LEA shall walk with a representative of the SMD such that each entity can come to an understanding on measurement/marketing methodology. In addition, LEA shall independently evaluate all curb ramps along roadways to be fully reconstructed and make recommendations for repair for the City's approval.

7227 NORTH 16TH STREET, SUITE 140
PHOENIX, AZ 85020
T 602.241.0742 F 602.248.9158



Field inspection shall include two (2) personnel for field data collection for the duration of the project and one(1) person for data collection as needed to address issues, direct field personnel and be on site to review areas of concern.

3.0 Construction Bid Documents

The City's standard Bid Documents will be utilized for this project. LEA will produce technical specifications utilizing previously produced specifications (with minor modifications incorporating changes since the last slurry seal program. Exhibits that will adequately describe and graphically depict each proposed maintenance location will be produced by LEA. The Bid Package will be one bound 8.5"x 11" document to consist of:

1. Roadway Treatment Plans(Surface Treatment)
 - a. Plans shall consist of a graphical depiction of each site (based upon existing aerial photography) with enough information such that the contractor can locate both the site and termini points. Each graphical depiction shall be organized by neighborhood and in a logical sequence that can be interpreted with ease by a contractor in the field.
 - b. Typical striping details.
 - c. Special Details not defined by City of Glendale and MAG Standard Details
2. Roadway Plans (Mill & Overlay, Edge Mill & Overlay, Full Reconstruction)
 - a. Plans shall consist of a graphical depiction of each site (based upon existing aerial photography) with enough information such that the contractor can locate both the site and termini points. Each graphical depiction shall be organized by neighborhood and in a logical sequence that can be interpreted with ease by a contractor in the field.
 - b. Typical striping details.
 - c. Special Details not defined by City of Glendale and MAG Standard Details
 - d. Plans for complete reconstruction shall consist of 24" x 36" Plan & Profile Sheets along with associated sheets including, Cover Sheet, Control Sheet and Detail Sheets.
 - e. Reconstructed roadway shall include topographic survey to define the construction limits of the project.
3. Curb Ramp Exhibits for reconstructed roadway
 - a. Curb Ramp exhibits shall be produced referencing curb ramp repair locations and citing standard details to be used for installation.
 - b. In the event a modified detail is needed for curb ramp repair, the detail shall be provided and referenced in the exhibit.
4. Technical Specifications
 - a. General Notes describing the technical reference materials to be used as well as general conditions for the project.
 - b. Technical Specifications describing the work to be performed for each type of improvement. Improvements will include crack seal, slurry seal, microseal, and asphalt repair areas.
 - c. Special Provisions describing the traffic control and access requirements for each site.
5. Bid Tab
 - a. A bid tab for each site describing the item and quantity shall be provided.



6. Deliverables

- a. 30% submittal of initial plan documents for review
- b. 65% submittal of Bid package and construction cost estimate including all associated documents to be provided in electronic format.
- c. 95% complete submittal of Bid Package and construction cost estimate including all associated documents to be provided in electronic format. Submittal shall include six (6) hard copies 8.5" x 11" bound for surface treatment and 11" x 17" for reconstruction plans.
- d. Final, sealed submittal of Bid Package and construction cost estimating including all associated documents will be provided. Submittal shall include six (6) hard copies 8.5" x 11" bound for surface treatment and 11" x 17" for reconstruction plans. A CD containing all electronic files will also be included.

4.0 Construction Administration

LEA will provide construction administration for the duration of the construction period which is estimated to be 90 calendar days. Tasks shall include:

- a. Attend the preconstruction meeting, take notes, prepare meeting minutes and distribute to the City, Contractor and attendees.
- b. Review and respond to requests for information (RFI)
- c. Review, evaluate and respond to Change Orders
- d. Attend weekly progress meetings, take notes, prepare meeting minutes and distribute to the City, Contractor and attendees.
- e.
- e. 65% submittal of Bid package and construction cost estimate including all associated documents to be provided in electronic format.

5.0 Construction Observation and Inspection

LEA will provide two (2) construction inspectors to provide construction observation and inspection services as needed during the contractor's execution of the above described work.

6.0 Exclusions

The following items are excluded from this contract:

- 1. Topographic survey and base mapping except for full reconstruction roadway
- 2. Existing/new right-of-way base mapping
- 3. Drainage/SWPPP design and report
- 4. Traffic control design
- 5. Permits and clearances (utility, environmental, right-of-way, or geotechnical)

EXHIBIT C
Professional Services Agreement

SCHEDULE

(Cover Page)

Exhibit C

Project Schedule

City of Glendale

Engineering Department

Slurry Seal and Overlay Program, 2014

Slurry Seal and Overlay Program Project Schedule	
Task Description	Duration
Prepare Construction Documents	45 Days
Advertise and Bid	21 Days
Award Contract	30 Days
Construction	90 days

It is understood that this schedule may be modified to meet City deadlines and financial requirements.

EXHIBIT D
Professional Services Agreement

COMPENSATION

METHOD AND AMOUNT OF COMPENSATION

Compensation shall be hourly rates plus allowable reimbursable expenses

NOT-TO-EXCEED AMOUNT

The total amount of compensation paid to Consultant for full completion of all work required by the Project during the entire term of the Project must not exceed \$306,950.

DETAILED PROJECT COMPENSATION

See attached.

EXHIBIT D
Professional Services Agreement

City of Glendale
Project 131403
Slurry Seal and Overlay Program, 2014

COMPENSATION

METHOD AND AMOUNT OF COMPENSATION

Compensation shall be hourly rates plus allowable reimbursable expenses

NOT-TO-EXCEED AMOUNT

The total amount of compensation paid to Consultant for completion of work as outlined in the Scope of Services during the term of the Project will not exceed \$306,950.00

DETAILED PROJECT COMPENSATION

FEE COMPENSATION		
Task No.	Task	Task Fee
1.0	Meetings & Project Coordination	\$8,350.00
2.0	Field Work & Data Collection	\$61,080.00
3.0	Construction Bid Documents	\$73,400.00
	Sub-Total:	\$142,830.00
4.0	Construction Administration	\$12,300.00
5.0	Construction Observation	\$100,320.00
	Sub-Total:	\$112,620.00
6.0	Reimbursable Expenses(Allowance)	\$1,500.00
7.0	Owner Contingency(Allowance)	\$50,000.00
	Sub-Total:	\$51,500.00
	TOTAL PROJECT COST:	\$306,950.00

EXHIBIT E
Professional Services Agreement

DISPUTE RESOLUTION

1. Disputes.

- 1.1 Commitment. The parties commit to resolving all disputes promptly, equitably, and in a good-faith, cost-effective manner.
- 1.2 Application. The provisions of this Exhibit will be used by the parties to resolve all controversies, claims, or disputes ("Dispute") arising out of or related to this Agreement-including Disputes regarding any alleged breaches of this Agreement.
- 1.3 Initiation. A party may initiate a Dispute by delivery of written notice of the Dispute, including the specifics of the Dispute, to the Representative of the other party as required in this Agreement.
- 1.4 Informal Resolution. When a Dispute notice is given, the parties will designate a member of their senior management who will be authorized to expeditiously resolve the Dispute.
- a. The parties will provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any Dispute in order to assist in resolving the Dispute as expeditiously and cost effectively as possible;
 - b. The parties' senior managers will meet within 10 business days to discuss and attempt to resolve the Dispute promptly, equitably, and in a good faith manner, and
 - c. The Senior Managers will agree to subsequent meetings if both parties agree that further meetings are necessary to reach a resolution of the Dispute.

2. Arbitration.

- 2.1 Rules. If the parties are unable to resolve the Dispute by negotiation within 30 days from the Dispute notice, and unless otherwise informal discussions are extended by the mutual agreement, the Dispute will be decided by binding arbitration in accordance with Construction Industry Rules of the AAA, as amended herein. Although the arbitration will be conducted in accordance with AAA Rules, it will not be administered by the AAA, but will be heard independently.
- a. The parties will exercise best efforts to select an arbitrator within five business days after agreement for arbitration. If the parties have not agreed upon an arbitrator within this period, the parties will submit the selection of the arbitrator to one of the principals of the mediation firm of Scott & Skelly, LLC, who will then select the arbitrator. The parties will equally share the fees and costs incurred in the selection of the arbitrator.
 - b. The arbitrator selected must be an attorney with at least 15 years' experience with commercial construction legal matters in Maricopa County, Arizona, be independent, impartial, and not have engaged in any business for or adverse to either Party for at least 10 years.
- 2.2 Discovery. The extent and the time set for discovery will be as determined by the arbitrator. Each Party must, however, within 10 days of selection of an arbitrator deliver to the other Party copies of all documents in the delivering party's possession that are relevant to the dispute.

2.3 Hearing. The arbitration hearing will be held within 90 days of the appointment of the arbitrator. The arbitration hearing, all proceedings, and all discovery will be conducted in Glendale, Arizona unless otherwise agreed by the parties or required as a result of witness location. Telephonic hearings and other reasonable arrangements may be used to minimize costs.

2.4 Award. At the arbitration hearing, each Party will submit its position to the arbitrator, evidence to support that position, and the exact award sought in this matter with specificity. The arbitrator must select the award sought by one of the parties as the final judgment and may not independently alter or modify the awards sought by the parties, fashion any remedy, or make any equitable order. The arbitrator has no authority to consider or award punitive damages.

2.5 Final Decision. The Arbitrator's decision should be rendered within 15 days after the arbitration hearing is concluded. This decision will be final and binding on the Parties.

2.6 Costs. The prevailing party may enter the arbitration in any court having jurisdiction in order to convert it to a judgment. The non-prevailing party will pay all of the prevailing party's arbitration costs and expenses, including reasonable attorney's fees and costs.

3. **Services to Continue Pending Dispute.** Unless otherwise agreed to in writing, Consultant must continue to perform and maintain progress of required Services during any Dispute resolution or arbitration proceedings, and City will continue to make payment to Consultant in accordance with this Agreement.

4. **Exceptions.**

4.1 Third Party Claims. City and Consultant are not required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defense of a third party who is not obligated by contract to arbitrate disputes with City and Consultant.

4.2 Liens. City or Consultant may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice, but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Arizona Law, including, without limitation, an action under A.R.S. § 33-420, without the necessity of initiating or exhausting the procedures of this Exhibit.

4.3 Governmental Actions. This Exhibit does not apply to, and must not be construed to require arbitration of, any claims, actions or other process filed or issued by City of Glendale Building Safety Department or any other agency of City acting in its governmental permitting or other regulatory capacity.



CITY COUNCIL REPORT

Meeting Date: **1/14/2014**
Meeting Type: **Voting**
Title: **AUTHORIZATION TO ENTER INTO AN AGREEMENT WITH ARIZONA PUBLIC SERVICE COMPANY TO RELOCATE OVERHEAD ELECTRIC TRANSMISSION POWER LINES AT 11480 WEST GLENDALE AVENUE**
Staff Contact: **Stuart Kent, Executive Director, Public Works**

Purpose and Recommended Action

This is a request for City Council to authorize the City Manager to enter into an agreement with Arizona Public Service Company (APS) in an estimated amount of \$929,021.59 for the relocation of APS owned overhead 69 kilovolts (kV) electric transmission power lines located at 11480 West Glendale Avenue.

Background

The Glendale Landfill (Landfill) is located at 11480 West Glendale Avenue. Located on the Landfill property is approximately 1.25 miles of APS overhead 69kV electric transmission power lines and related facilities running along the alignment of 115th Avenue from Glendale Avenue to Northern Avenue. The overhead power lines and related facilities must be relocated approximately one-fourth of a mile west of its existing location to the alignment of 117th Avenue, from Glendale to Northern Avenues (west side of the Glendale Regional Public Safety Training Center and the city's Materials Recycling Facility). Relocation of the overhead 69kV power lines is necessary to accommodate the future alignment of the Northern Avenue Parkway and the future expansion of the Landfill. Glendale is coordinating this project with the Maricopa County Department of Transportation (MCDOT) so that relocation of the electric power lines and poles occur at the same time and meet the needs of MCDOT for Northern Avenue Parkway and Glendale for the Landfill.

The scope of work includes: Relocation of approximately 5,250 feet of overhead 69kV electric transmission power lines, two steel self-supporting poles, 12 steel tangent poles, and one 69kV switch, as well as remove the existing spans of transmission wire and 12 steel poles. APS is the owner of the overhead 69kV electric transmission power lines and the city must contract with APS for this relocation project.

Analysis

- Staff recommends entering into the agreement with APS.
- The agreement was reviewed and approved by the City Attorney's Office.
- There will be no impact to any city departments, staff, or service levels.
- This is a one-time expense with no on-going operating and maintenance costs.



CITY COUNCIL REPORT

Previous Related Council Action

On September 23, 2008, Council approved an intergovernmental agreement with Maricopa County, the City of El Mirage, and the City of Peoria to construct the Northern Avenue Parkway.

Community Benefit/Public Involvement

Relocation of the APS power lines is necessary for the completion of Northern Avenue Parkway, a much-needed east-west route in the central portion of the West Valley extending from the Loop 303 expressway to the Grand Avenue (U.S. 60) intersection. Northern Avenue Parkway is intended to improve travel time for West Valley commuters and serve a rapidly growing West Valley population. Additionally, the power line relocation project will facilitate the future expansion of the North Cell of the Glendale Landfill.

Budget and Financial Impacts

The City of Glendale will pay Arizona Public Service Company 73% of the final actual relocation cost of the Relocation Project. The total relocation project cost is estimated to be \$1,272,632.32 and the city's portion (73%) is estimated to be \$929,021.59. APS is responsible for the remaining 27% of the Relocation Project. At the end of the construction, there will be a true-up of the actual costs and payments made; all final billings will be based on actual costs at the end of construction.

Funds are available in the fiscal year (FY) 2013-14 Capital Improvement Plan (CIP) Budget of the Public Works Department.

Cost	Fund-Department-Account
\$929,021.59	2440-78507-550800, Landfill Soil Excavation

Capital Expense? Yes No

Budgeted? Yes No

Requesting Budget or Appropriation Transfer? Yes No

If yes, where will the transfer be taken from?

Attachments

Agreement

**AGREEMENT TO RELOCATE
AN OVERHEAD TRANSMISSION POWER LINE**

This AGREEMENT TO RELOCATE AN OVERHEAD TRANSMISSION POWER LINE (this "Agreement") is executed by and between Arizona Public Service Company, an Arizona corporation (hereinafter referred to as "APS"), and the City of Glendale, an Arizona municipal corporation (hereinafter referred to as "Glendale"), sometimes referred to individually as "Party" and collectively as "Parties."

RECITALS

- A. APS has electric transmission and distribution lines within the City of Glendale, Arizona.
- B. For landfill improvement purposes, Glendale has requested that approximately one and one-fourth miles of APS overhead 69kV electric transmission power lines and related facilities be relocated to an agreed location one-fourth of a mile west of its existing location (the "Relocation Project").
- C. 73% of the Relocation Project (the "Prior Rights Section") is currently located within an easement, east of the 115th Avenue alignment between Northern Avenue and Glendale Avenue. The Prior Rights Section is more particularly described on "Exhibit A" attached hereto.
- D. APS' Service Schedule 3, "Conditions Governing Extensions of Electric Distribution Lines and Services" (approved by the Arizona Corporation Commission), in Section 7.9, authorizes APS to require reimbursement of 69KV Transmission relocation costs when APS has prior rights.
- E. Glendale is willing to pay APS the customary charges for removing and relocating the Prior Rights Section of the Relocation Project.
- F. APS is willing to carry out the Relocation Project under the following terms and conditions.

AGREEMENT

NOW, THEREFORE, in consideration of the above-referenced Recitals and the covenants and agreements set forth below, the Parties agree as follows:

- 1. Glendale agrees that Glendale will pay APS 73% of the final actual relocation cost of the Relocation Project. Upon execution of this Agreement, Glendale will pay 73% of the estimated relocation cost of the Relocation Project. The total Relocation Project cost is currently estimated to be as follows:

\$1,272,632.32 Equals the total estimated 69KV transmission line relocation cost, APS work order number WA148273.

\$929,021.59 Equals 73% of the estimated total relocation cost, which is the amount the City of Glendale is responsible to pay APS.

At the end of the construction, there will be a true-up of the actual costs and payments made. All final billings will be based on actual costs at the end of construction.

2. Glendale will review, comment on, and coordinate with APS regarding finalizing the preliminary plans and specs, and will then approve and sign off on the "Final Plans and Specs."
3. Glendale will execute and return to APS an easement in APS' standard form (provided by APS) for the Overhead 69KV transmission line to be located on City property as generally depicted on "Exhibit B" attached hereto. This new easement will retain APS' prior rights for the Prior Rights Section.
4. Glendale will provide APS with at least five days advance notice of when Glendale is ready for the Relocation Project to begin so that APS can arrange for the affected property to be surveyed and marked. Glendale will contact Reece Ubben at (602) 371-7010.
5. APS will then install the new 69KV transmission electric lines and facilities in accordance with the Final Plans and Specifications.
6. APS will then (in coordination with Glendale and the affected APS customers) perform the switchover from the existing overhead 69KV transmission to the new relocated 69KV overhead transmission line.
7. APS will then remove the existing transmission power lines.
8. The Parties hereto acknowledge that this Agreement is subject to cancellation by Glendale pursuant to A.R.S. §38-511.
9. APS, on behalf of itself and any subcontractor retained to perform work under the Agreement, certifies to the extent applicable under A.R.S. §§35-391 and 35-393 *et seq.* that neither has "scrutinized" business operations, as defined in the proceeding statutes in the countries of Sudan or Iran.

IN WITNESS WHEREOF, APS and Glendale have caused this Agreement to be duly executed and delivered as of the _____ day of _____, 2014.

Approved as to form:

ARIZONA PUBLIC SERVICE COMPANY

CITY OF GLENDALE

SIGNATURE: _____

SIGNATURE: _____

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

The individual executing this Agreement on behalf of Glendale represents and warrants: (i) that he or she is authorized to do so on behalf of Glendale; (ii) that he or she has full legal power and authority to bind Glendale in accordance with the terms herein, and, if necessary, has obtained all required consents or delegations of such power and authority.

EXHIBIT A

Relocate approximately 5,250 feet of overhead 69KV Transmission lines, which includes two (2) special order steel self supporting poles, 12 steel tangent poles, 1-69kV KPF Switch, remove 12 steel poles, and spans of transmission wire.

EXHIBIT “A”

APS Prior Rights Documentation

SE-1-2N-1W
M.A. 22-1045
WRC
DKT 8663 PAGE 22 of 24
84696 24-R

RIGHT OF WAY EASEMENT

FRANCIS M. COCKE, ALISON COCKE JONES, and MARY COCKE GABBARD of the County of Maricopa, State of Arizona, herein called the Grantor, for and in consideration of the sum of Ten Dollars and other good and valuable considerations paid by ARIZONA PUBLIC SERVICE COMPANY, an Arizona corporation, herein called the Grantee, the receipt of which is hereby acknowledged, do hereby grant and convey unto the Grantee, its successors and assigns, a right of way easement 20 feet in width, in, upon, over and across the lands hereinafter described, to erect, construct, reconstruct, replace, repair, maintain and use a line or lines of poles or steel towers and wires or cables suspended thereon and supported thereby, and underground conduits, cables, vaults and manholes, for the transmission and distribution of electricity, and for all other purposes connected therewith, and for telephone, signal and communication purposes, including guys, anchorage, crossarms, braces and all other appliances and fixtures for use in connection therewith, and also for pipelines for any and all purposes, together with their necessary fixtures and appurtenances, at such locations and elevations, upon, along, over and under the hereinafter described right of way as Grantee may now or hereafter deem convenient or necessary from time to time, together with the right of ingress thereto and egress therefrom, to and along said right of way. Grantee is hereby authorized to permit the attachment of wires, cables and facilities of others to the poles, towers or structures maintained by it pursuant to this easement.

The lands through and across which this right of way easement is granted are situated in the County of Maricopa, State of Arizona, and are particularly described as:

The East half (E½) of the Southeast quarter (SE¼) of Section One (1), Township Two (2) North, Range One (1) West of the Gila and Salt River Base and Meridian, also referred to as unpatented mining claims Cocke #5(SESE) Cocke #6 (NESE) as recorded in Maricopa County Records.

The center line of said right of way easement in the aforesaid lands is particularly described as follows:

BEGINNING at a point on the North line of the above described property, 31 feet West of the Northeast corner; thence South, along, parallel with and 31 feet West of the East line to a point on the South line, said point being 31 feet West of the Southeast corner thereof.

APR 28 71 - 11 35
STATE OF ARIZONA
County of Maricopa }
I, Notary Public, do hereby certify that the within instrument was filed and recorded in my office at Phoenix, Arizona, on the 22nd day of April, 1971, at 10:58 AM, and that the day and hour stated herein are correct.
Notary Public
C. J. [Signature]
22

Grantor shall not erect or construct or permit to be erected or constructed any building or other structure, plant any trees or drill any well, within the limits of said right of way.

Grantee shall have the right to erect, maintain and use gates in all fences which now cross or shall hereafter cross said right of way and to trim, cut and clear away trees or brush whenever in its judgment the same shall be necessary for the convenient and safe exercise of the rights hereby granted.

Grantor reserves the right to cultivate, use and occupy said premises for any purpose consistent with the rights and privileges above granted and which will not interfere with or endanger any of the equipment or other property of the Grantee or the use thereof.

In the event the Grantee permanently abandons said right of way, all Grantee's rights hereunder shall cease, except for the right to remove any and all property placed upon said right of way within a reasonable time subsequent to such abandonment.

The provisions hereof shall be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the Grantor has Executed this instrument the 16th day of April, 1971 Executed in the Presence of:

Francis M. Cocke
FRANCIS M. COCKE
Mary Cocke Gabbard
MARY COCKE GABBARD
Alison Cocke Jones
ALISON COCKE JONES

STATE OF ARIZONA
County of Maricopa }

BOOK 8663 PAGE 221

This instrument was acknowledged before me this 16th day of April, 19 71

by FRANCIS M. COCKE, ALISON COCKE JONES, and MARY COCKE GABBARD



WITNESS my hand and official seal the day and year in this certificate above written.

February 3, 1974

William R. Chism Jr.
Notary Public

Unofficial Document

15687

15687

No. _____

EASEMENT

FROM _____

TO _____

ARIZONA PUBLIC SERVICE COMPANY

Dated _____ A. D. 19____

Filed and recorded at the request of _____

_____ A. D. 19____

at _____, Ariz.

Book _____

Pages _____

County Recorder _____

By _____ Deputy Recorder

Arizona 014015

The United States of America

To all to whom these presents shall come, Greeting:

WHEREAS, In pursuance of the provisions of the Revised Statutes of the United States, Chapter Six, Title Thirty-two, and legislation supplemental thereto, there is now deposited in the Bureau of Land Management of the United States a Certificate of the Land Office at **Phoenix, Arizona,**

accompanied by other evidence, whereby it appears that

Alison Cooke Jones, Mary Cooke Gabbard, Francis M. Cooke, Joan H. Cooke, and the Fisher Contracting Co.,

did on **June 5, 1958,** duly enter and pay for that certain mining claim or premises, known as the **Pit No. 1, Pit No. 4, Pit No. 5, Pit No. 6, and Pit No. 7 placer mining claims, situate in Maricopa County, Arizona, described as follows:**

Gila and Salt River Meridian, Arizona.

T. 2 N., R. 1 W.,

**Pit No. 1 claim, embracing;
Sec. 1, SE $\frac{1}{4}$ SW $\frac{1}{4}$;**

**Pit No. 4 claim, embracing;
Sec. 1, SE $\frac{1}{4}$ SW $\frac{1}{4}$;**

**Pit No. 5 claim, embracing;
Sec. 1, Lot 1;**

**Pit No. 6 claim, embracing;
Sec. 1, Lot 2;**

**Pit No. 7 claim, embracing;
Sec. 1, SW $\frac{1}{4}$ NE $\frac{1}{4}$.**

The premises herein granted contain 199.69 acres.

Patent No. **1193873**

Arizona 014015

NOW KNOW YE, That there is therefore, pursuant to the laws aforesaid, hereby granted by the United States unto the said **Alison Coeke Jones, Mary Coeke Gabbard, Francis M. Coeke, Joan H. Coeke, and the Fisher Contracting Co.,**

, the said placer mining premises, hereinbefore described;

TO HAVE AND TO HOLD said mining premises, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said grantee~~s~~ above named and to **their heirs, its successors** and assigns forever; subject, nevertheless, to the following conditions and stipulations:

FIRST. That the grant hereby made is restricted in its exterior limits to the boundaries of the said mining premises, and to any veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, which may have been discovered within said limits subsequent to and which were not known to exist on **January 22, 1957.**

SECOND. That should any vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, be claimed or known to exist within the above-described premises at said last-named date, the same is expressly excepted and excluded from these presents.

THIRD. That the premises hereby conveyed shall be held subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local laws, customs, and decisions of the courts. And there is reserved from the lands hereby granted a right-of-way thereon for ditches or canals constructed by the authority of the United States.

FOURTH. That in the absence of necessary legislation by Congress, the Legislature of **Arizona** may provide rules for working the mining claim or premises hereby granted, involving easements, drainage, and other necessary means to the complete development thereof.

IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat., 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

[SEAL]

GIVEN under my hand, in the District of Columbia, the **TWENTY-FOURTH** day of **MARCH** in the year of our Lord one thousand nine hundred and **FIFTY-NINE** and of the Independence of the United States the one hundred and **EIGHTY-THIRD.**

For the Director, Bureau of Land Management.

Patent No. **1193873**

By *R. M. Small*
Chief, Patents Section.

UNITED METRO, INC. and **RIGHT OF WAY EASEMENT**
ALLISON COCKE JONES, MARY COCKE GABBARD, FRANCES M. COCKE

of the County of Maricopa, State of Arizona, herein called the Grantor, for and in consideration of the sum of Ten Dollars and other good and valuable considerations paid by ARIZONA PUBLIC SERVICE COMPANY, an Arizona corporation, herein called the Grantee, the receipt of which is hereby acknowledged, do we hereby grant and convey unto the Grantee, its successors and assigns, a right of way easement 20 feet in width, in, upon, over and across the lands hereinafter described, to erect, construct, reconstruct, replace, repair, maintain and use a line or lines of poles or steel towers and wires or cables suspended thereon and supported thereby, and underground conduits, cables, vaults and manholes, for the transmission and distribution of electricity, and for all other purposes connected therewith, and for telephone, signal and communication purposes, including guys, anchorage, crossarms, braces and all other appliances and fixtures for use in connection therewith, and also for pipelines for any and all purposes, together with their necessary fixtures and appurtenances, at such locations and elevations, upon, along, over and under the hereinafter described right of way as Grantee may now or hereafter deem convenient or necessary from time to time, together with the right of ingress thereto and egress therefrom, to and along said right of way. Grantee is hereby authorized to permit the attachment of wires, cables and facilities of others to the poles, towers or structures maintained by it pursuant to this easement.

The lands through and across which this right of way easement is granted are situated in the County of Maricopa, State of Arizona, and are particularly described as:

Lots 1 and 2 and the Southeast quarter ($\frac{SE}{4}$) of the Northeast quarter ($\frac{NE}{4}$) of Section One (1), Township Two (2) North, Range One (1) West of the Gila and Salt River Base and Meridian.

STATE OF ARIZONA }
County of Maricopa }
I hereby certify that the }
within instrument was filed and }
reported to request of }
Mary C. Miller }
in Book: 8663 }
on page: 218-219 }
Witness my hand and official }
seal the day and year aforesaid. }
PAUL H. WADSWORTH }
County Clerk }
Deputy Recorder }
219

APR 28 71 - 11 35

The center line of said right of way easement in the aforesaid lands is particularly described as follows:

BEGINNING at a point on the North line of said Lot 1, 31 feet West of the Northeast corner; thence South along, parallel with, and 31 feet West of the East line of the above described property to a point on the South line, said point being 31 feet West of the Southeast corner.

ALSO, beginning at a point on the North line of said Lot 2, 1421 feet West of the Northeast corner of said Section 1; thence South, parallel to the East section line a distance of 87 feet.

Grantor shall not erect or construct or permit to be erected or constructed any building or other structure, plant any trees or drill any well, within the limits of said right of way.

Grantee shall have the right to erect, maintain and use gates in all fences which now cross or shall hereafter cross said right of way and to trim, cut and clear away trees or brush whenever in its judgment the same shall be necessary for the convenient and safe exercise of the rights hereby granted.

Grantor reserves the right to cultivate, use and occupy said premises for any purpose consistent with the rights and privileges above granted and which will not interfere with or endanger any of the equipment or other property of the Grantee or the use thereof.

In the event the Grantee permanently abandons said right of way, all Grantee's rights hereunder shall cease, except for the right to remove any and all property placed upon said right of way within a reasonable time subsequent to such abandonment.

The provisions hereof shall be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the Grantor has Executed this instrument the 2nd day of Feb., 1971.
Executed in the Presence of:

Allison Cocke Jones Sedina
ALLISON COCKE JONES
Mary C. Gabbard
MARY COCKE GABBARD
Frances M. Cocke
FRANCES M. COCKE

John D. White
Vice Pres

STATE OF ARIZONA

County of Maricopa

} ss.

DKT 8663 PAGE 219

This instrument was acknowledged before me this 2nd day of February, 1971
by John O. White, Vice President of UNITED METRO, Inc. and ALLISON COCKE JONES,

MARY COCKE GABBARD, FRANCES M. COCKE

WITNESS my hand and official seal the day and year in this certificate above written.

My commission expires: February 3, 1974

William S. Chiang
Notary Public

98951

156866

No. _____

EASEMENT

FROM

TO

ARIZONA PUBLIC SERVICE COMPANY

Dated February 2, 1971 A. D. 1971

Filed and recorded at the request of

A. D. 1971

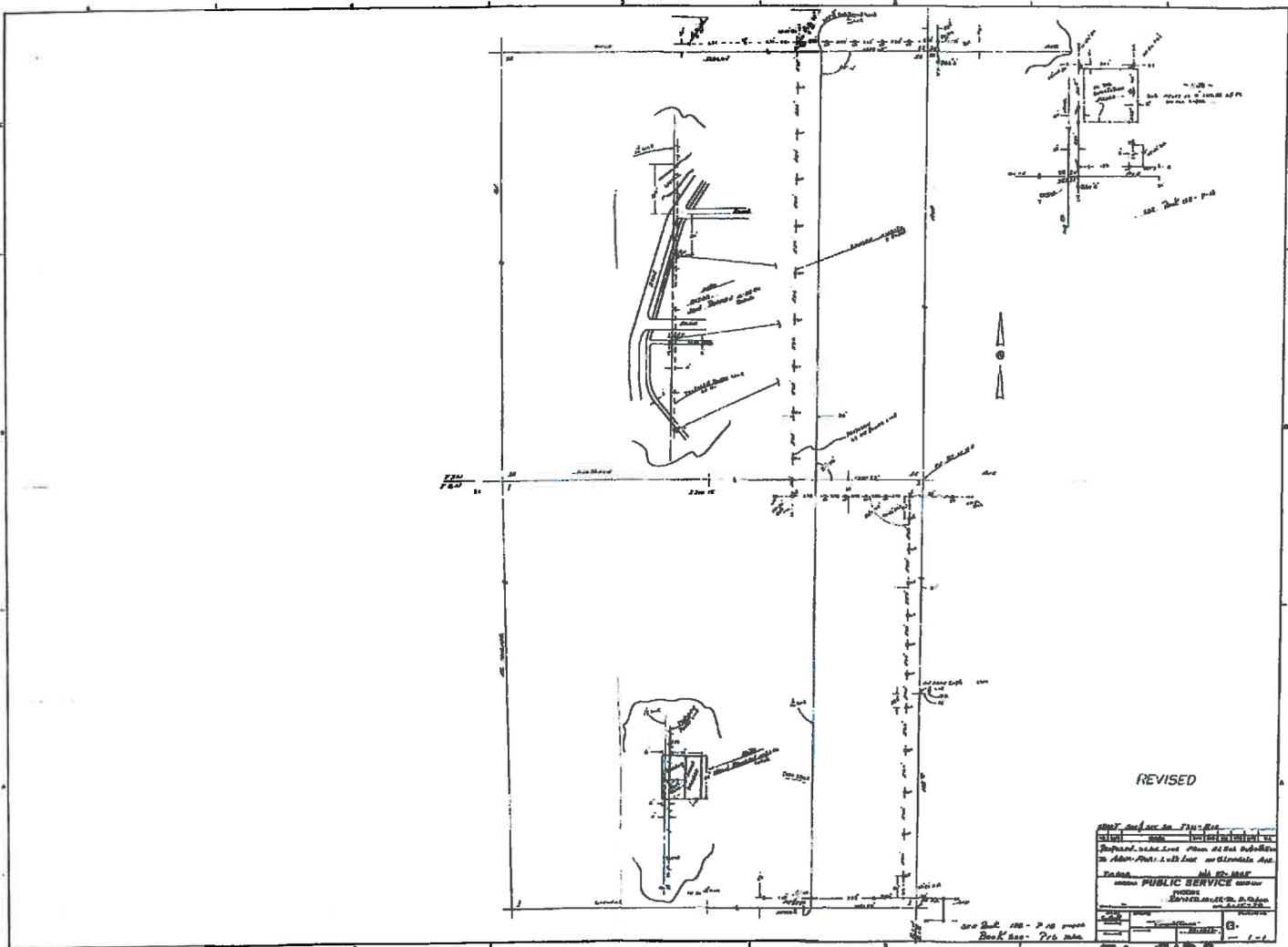
M.

Book _____

Pages _____

County Recorder

By _____
Deputy Recorder



REVISED

PROJECT NO.	70-8138
DATE	10/1/58
BY	J. H. [unclear]
CHECKED BY	[unclear]
APPROVED BY	[unclear]
PUBLIC SERVICE COMPANY	
SUNBELT SYSTEM	
MEMPHIS, TENNESSEE	
SHEET NO. 1 OF 1	

70-8138

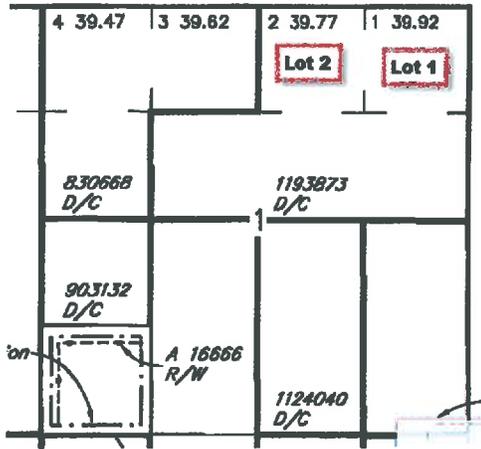


EXHIBIT “B”

New APS Easement Documentation

SE¼ SEC 1 2N 1W
LAT/LONG: 33.547057, -112.310979
APN 501-99-004D
WA148273
MC

UTILITY EASEMENT

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Grantor, for and in consideration of One Dollar (\$1.00) and other valuable consideration, receipt of which is hereby acknowledged, does hereby grant and convey to **ARIZONA PUBLIC SERVICE COMPANY**, an Arizona corporation, (hereinafter called "Grantee"), and to its successors and assigns, a non-exclusive right, privilege, and easement at locations and elevations, in, upon, over, under, through and across, a portion of Grantor's Property described as follows (herein called the "Easement Premises"):

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BEGINNING at the East quarter corner of section 1, Township 2N, Range 1W of the Gila and Salt River Base and Meridian; thence North 89 degrees 20 minutes 32 seconds West a distance of 1284.97 feet; to **The True Point of Beginning**;

thence North 00 degrees 13 minutes 11 seconds West 2568.79 feet;

thence North 89 degrees 06 minutes 00 seconds West 25.00 feet;

thence South 00 degrees 13 minutes 11 seconds East 2568.89 feet;

thence South 89 degrees 20 minutes 32 seconds East 25.00 feet to **The True Point of Beginning**.

The above described Easement Premises contains; 64,221.05 Square Feet or 1.474 Acres.

SEE EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF

Grantee is hereby granted the right within the Easement Premises to: construct, reconstruct, replace, repair, operate and maintain electrical lines, together with appurtenant facilities and fixtures for use in connection therewith, for the transmission and distribution of electricity to, through, across, and beyond Grantor's Property; install, operate and maintain telecommunication wires, cables, conduits, fixtures and facilities incidental to supplying electricity or for Grantee's own use (said electrical and telecommunication lines, facilities and fixtures collectively herein called "Grantee Facilities"); utilize the Easement Premises for all other purposes connected therewith; and permit the installation of the wires, fixtures, conduits, or cables of any other company.

Grantee is hereby granted the right, but not the obligation, to trim, prune, cut, and clear away trees, brush, shrubs, or other vegetation on, or adjacent to, the Easement Premises whenever in Grantee's judgment the same shall be necessary for the convenient and safe exercise of the rights herein granted.

Grantee shall at all times have the right of full and free ingress and egress to and along the Easement Premises for the purposes herein specified.

Grantor shall not locate, erect or construct, or permit to be located, erected or constructed, any building or other structure or drill any well within the limits of the Easement Premises; nor shall Grantor plant or permit to be planted any trees within the limits of the Easement Premises without the prior written consent of Grantee. However, Grantor reserves the right to use the Easement Premises for purposes that are not inconsistent with Grantee's easement rights herein conveyed and which do not interfere with or endanger any of the Grantee Facilities, including, without limitation, granting others the right to use all or portions of the Easement Premises for utility or roadway purposes and constructing improvements within the Easement Premises such as paving, sidewalks, landscaping, and curbing. Notwithstanding the foregoing, Grantor shall not have the right to lower by more than one foot or raise by more than two feet the surface grade of the Easement Premises, and in no event shall a change in the grade compromise Grantee's minimum cover requirements or interfere with Grantee's operation, maintenance or repair.

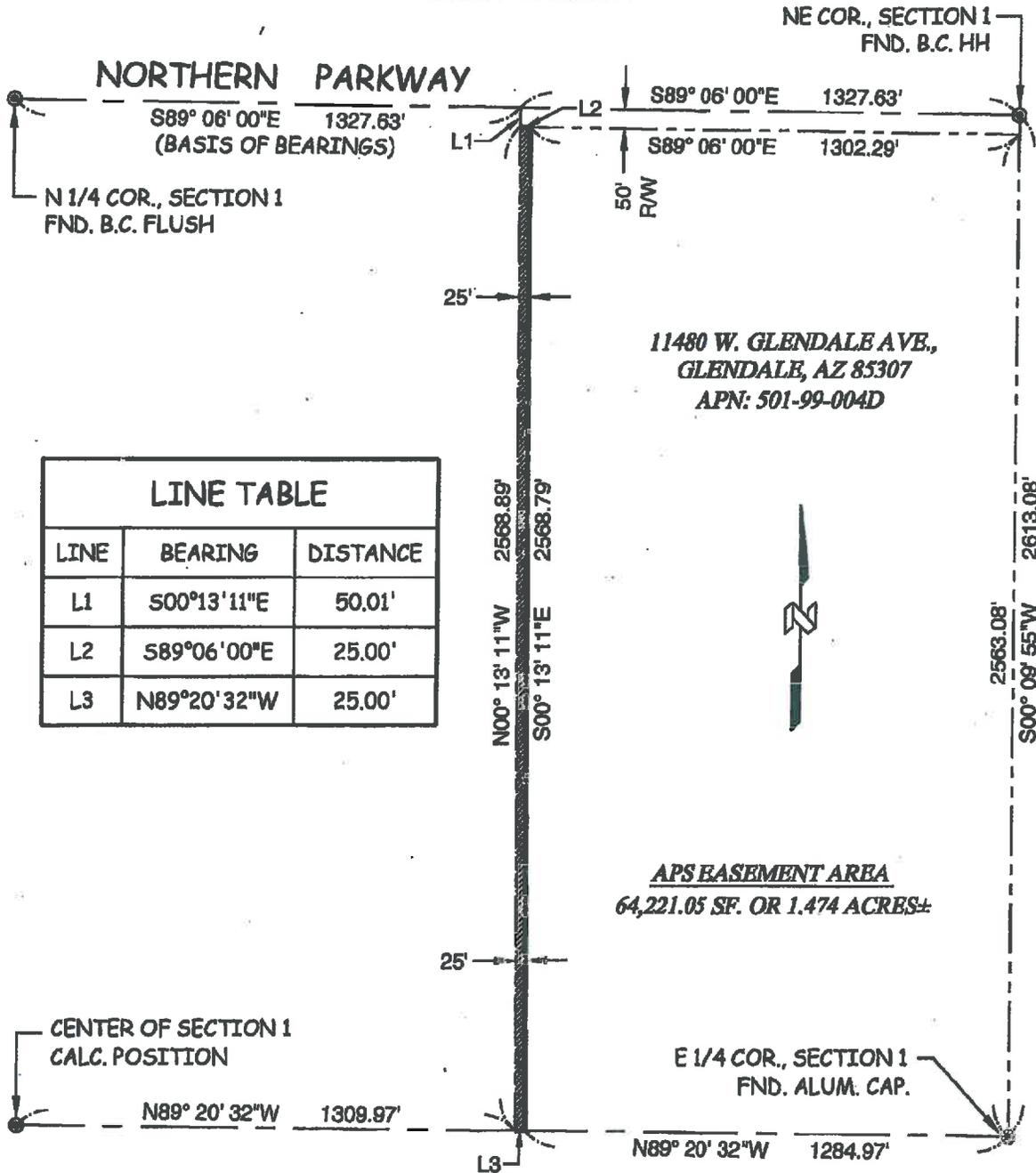
Grantee agrees that following any installation, excavation, maintenance, repair, or other work performed by Grantee within the Easement Premises, the affected area will be restored by Grantee to as close to original condition as is reasonably possible, at the expense of Grantee; and that Grantee shall indemnify Grantor, to the extent required by law, for any loss, cost or damage incurred by Grantor as a result of any negligent installation, excavation, maintenance, repair or other work performed by Grantee within the Easement Premises.

The easement granted herein shall not be deemed abandoned except upon Grantee's execution and recording of a formal instrument abandoning the easement.

The covenants and agreements herein set forth shall extend and inure in favor and to the benefit of, and shall be binding on the heirs, administrators, executors, successors in ownership and estate, assigns and lessees of Grantor and Grantee.

EXHIBIT "B"

SKETCH SHOWING LOCATION AND LIMITS OF
UTILITY EASEMENT



LINE TABLE		
LINE	BEARING	DISTANCE
L1	S00°13'11"E	50.01'
L2	S89°06'00"E	25.00'
L3	N89°20'32"W	25.00'

APS EASEMENT AREA
64,221.05 SF. OR 1.474 ACRES±

LEGEND

- | | |
|---|---|
| <ul style="list-style-type: none"> EASEMENT AREA SECTION LINE PROPERTY LINE | <ul style="list-style-type: none"> • PROPERTY CORNER ⊙ MONUMENT |
|---|---|

JOB # WA148273	DATE: 11/06/2013
NE 1/4 SEC 1	T 2N R 1W
SCALE 1"=400'	
R/W: MICHAEL CAGLIO	
SURVEY: RINDA-JACKSON	
DRAWN BY: J. RINDA	PG. 1 OF 1



CITY COUNCIL REPORT

Meeting Date: **1/14/2014**
Meeting Type: **Voting**
Title: **ADOPT AN ORDINANCE GRANTING A UTILITY EASEMENT TO ARIZONA PUBLIC SERVICE COMPANY ACROSS A PORTION OF CITY-OWNED PROPERTY AT 11480 WEST GLENDALE AVENUE**
Staff Contact: **Stuart Kent, Executive Director, Public Works**

Purpose and Recommended Action

This is a request for the City Council to waive reading beyond the title and adopt an ordinance granting a utility easement to Arizona Public Service Company (APS) across a portion of city-owned property at 11480 West Glendale Avenue.

Background

The Glendale Municipal Landfill (Landfill) is located at 11480 West Glendale Avenue. Located on the Landfill property is approximately 1.25 miles of APS overhead 69 kilovolts (kV) electric transmission power lines and related facilities running along the alignment of 115th Avenue from Glendale Avenue to Northern Avenue. The city requested APS relocate its overhead power lines and related facilities approximately one-fourth of a mile west of its existing location to accommodate the future expansion of the Landfill and the future alignment of the Northern Avenue Parkway. In return, APS requested an easement to protect its facilities in the new location.

Analysis

- Staff recommends approval of the APS utility easement.
- There will be no impact to any city departments, staff or service levels.
- There are no costs incurred as a result of this action.

Community Benefit/Public Involvement

Relocation of the APS power lines is necessary for the completion of Northern Avenue Parkway, a much-needed east-west route in the central portion of the West Valley intended to improve travel time for West Valley commuters and serve a rapidly growing West Valley population.

Attachments

Ordinance

Easement

ORDINANCE NO. 2869 NEW SERIES

AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE CITY MANAGER TO EXECUTE A UTILITY EASEMENT IN FAVOR OF ARIZONA PUBLIC SERVICE COMPANY ON CITY-OWNED PROPERTY TO CONSTRUCT, RECONSTRUCT, REPLACE, REPAIR, OPERATE AND MAINTAIN ELECTRICAL LINES LOCATED AT 11480 WEST GLENDALE AVENUE; AND ORDERING THAT A CERTIFIED COPY OF THIS ORDINANCE BE RECORDED.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

SECTION 1. That the City Council hereby approves the utility easement and all the terms and conditions thereto and directs that the City Manager for the City of Glendale to execute said document granting Arizona Public Service Company a utility easement upon, across, over and under certain property located within existing City property at approximately 11480 West Glendale Avenue, in the form attached hereto as Exhibit A. The legal descriptions are contained in the Easement.

SECTION 2. That the City hereby reserves the right to use the easement premises in any manner that will not prevent or interfere with the exercise by Arizona Public Service Company of the rights granted hereunder; provided, however, that the City shall not obstruct, or permit to be obstructed, the easement premises at any time whatsoever without the express prior written consent of Arizona Public Service Company.

SECTION 3. That the City Clerk be instructed and authorized to forward a certified copy of this ordinance for recording to the Maricopa County Recorder's Office.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this _____ day of _____, 2014.

M A Y O R

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

REVIEWED BY:

City Manager

e_aps_11480 Glendale

Exhibit A-For Reference Only

SE¼ SEC 1 2N 1W
LAT/LONG: 33.547057, -112.310979
APN 501-99-004D
WA148273
MC

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And, Lot 1 of Section 1, Township 2 North, Range 1 West, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

Grantor, for and in consideration of One Dollar (\$1.00) and other valuable consideration, receipt of which is hereby acknowledged, does hereby grant and convey to **ARIZONA PUBLIC SERVICE COMPANY**, an Arizona corporation, (hereinafter called "Grantee"), and to its successors and assigns, a non-exclusive right, privilege, and easement at locations and elevations, in, upon, over, under, through and across, a portion of Grantor's Property described as follows (herein called the "Easement Premises"):

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Grantee is hereby granted the right, but not the obligation, to trim, prune, cut, and clear away trees, brush, shrubs, or other vegetation on, or adjacent to, the Easement Premises whenever in Grantee's judgment the same shall be necessary for the convenient and safe exercise of the rights herein granted.

Grantee shall at all times have the right of full and free ingress and egress to and along the Easement Premises for the purposes herein specified:

Grantor shall not locate, erect or construct, or permit to be located, erected or constructed, any building or other structure or drill any well within the limits of the Easement Premises; nor shall Grantor plant or permit to be planted any trees within the limits of the Easement Premises without the prior written consent of Grantee. However, Grantor reserves the right to use the Easement Premises for purposes that are not inconsistent with Grantee's easement rights herein conveyed and which do not interfere with or endanger any of the Grantee Facilities, including, without limitation, granting others the right to use all or portions of the Easement Premises for utility or roadway purposes and constructing improvements within the Easement Premises such as paving, sidewalks, landscaping, and curbing. Notwithstanding the foregoing, Grantor shall not have the right to lower by more than one foot or raise by more than two feet the surface grade of the Easement Premises, and in no event shall a change in the grade compromise Grantee's minimum cover requirements or interfere with Grantee's operation, maintenance or repair.

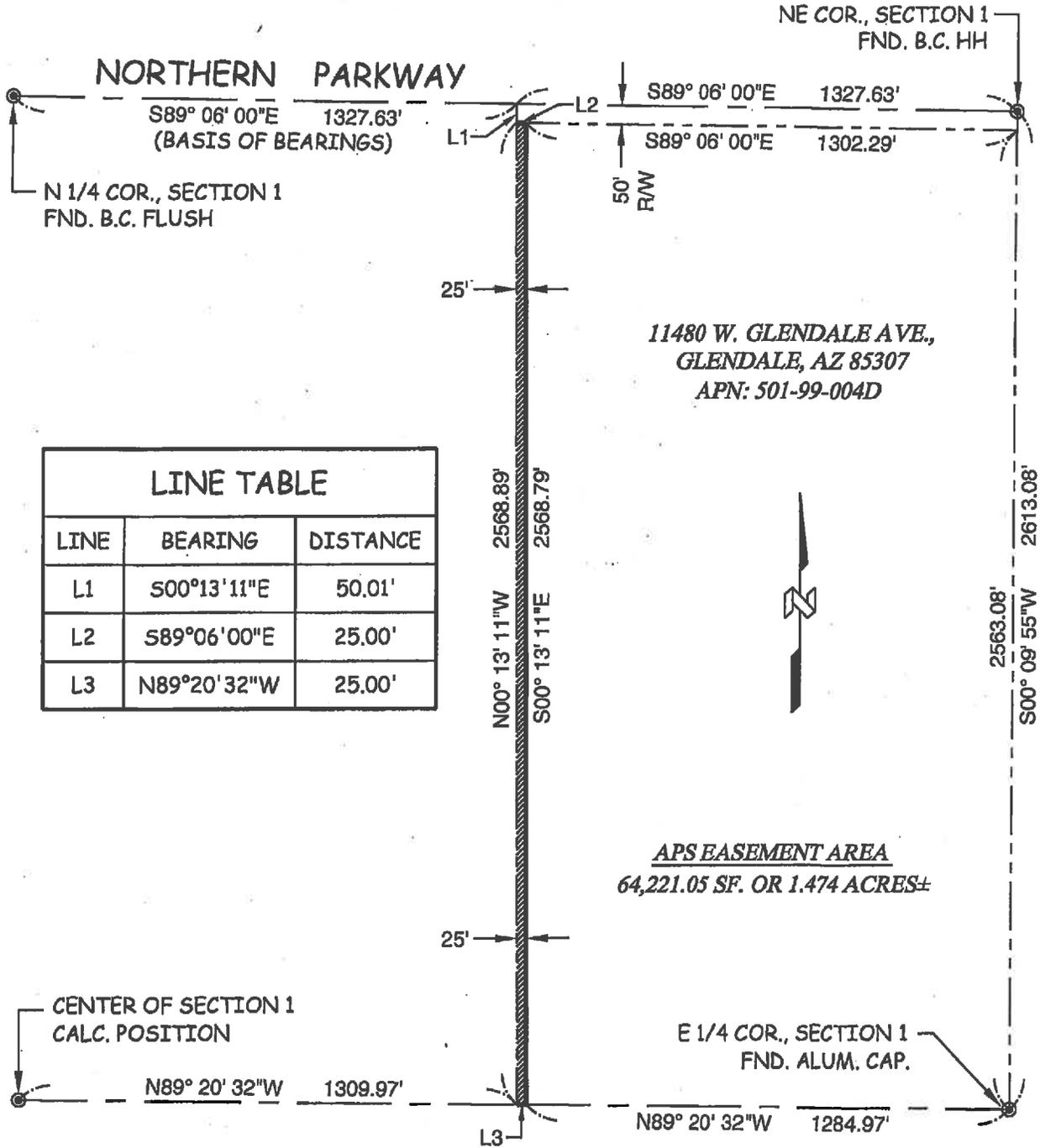
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UTILITY EASEMENT



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APS EASEMENT AREA
64,221.05 SF. OR 1.474 ACRES±

LEGEND

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- SECTION LINE
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JOB # WA148273	DATE: 11/06/2013
NE 1/4 SEC 1	T 2N R 1W
SCALE 1"=400'	
R/W: MICHAEL CAGLIO	
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SE¼ SEC 1 2N 1W
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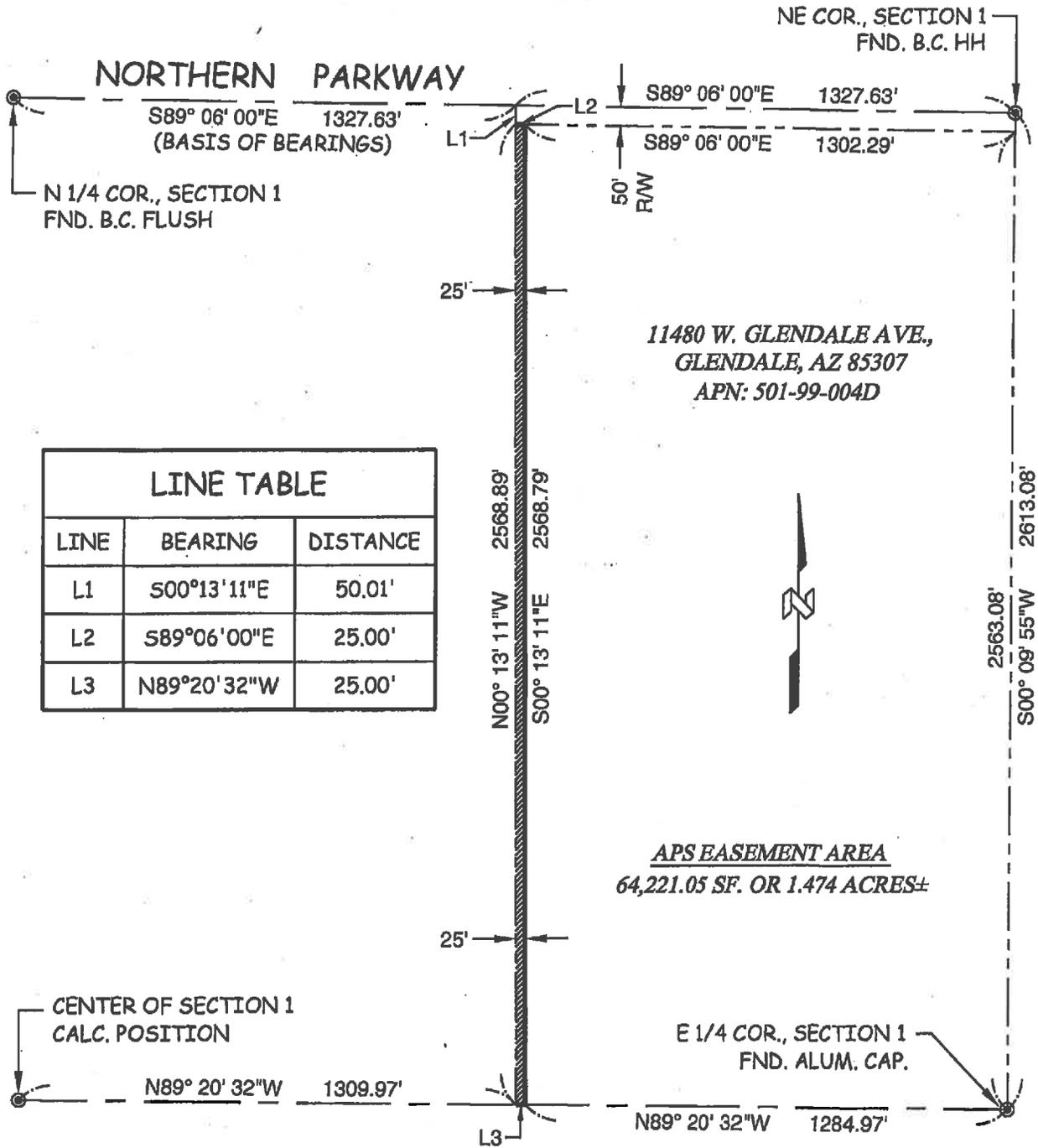
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JOB # WA148273	DATE: 11/06/2013
NE 1/4 SEC 1	T 2N R 1W
SCALE 1"=400'	
R/W: MICHAEL CAGLIO	
SURVEY: RINDA-JACKSON	
DRAWN BY: J. RINDA	PG. 1 OF 1



CITY COUNCIL REPORT

Meeting Date: **1/14/2014**
Meeting Type: **Voting**
Title: **ADOPT AN ORDINANCE AMENDING GLENDALE CITY CODE, CHAPTER 33, ARTICLE II, SECTION 33-84 (VOLUNTARY UTILITY BILLING DONATION PROGRAM)**
Staff Contact: **Tom Duensing, Executive Director, Financial Services**

Purpose and Recommended Action

This is a request for City Council to waive reading beyond the title and adopt an ordinance amending Glendale City Code, Chapter 33, Article II, Section 33-84 (Voluntary utility billing donation program), increasing the voluntary donation amount added to a user's bill to two dollars (\$2.00).

Background

The *From the Heart* program began in 1997 with the mission to promote the positive development of youth, strengthen the capabilities of families and assist residents in addressing crisis needs by supplementing the resources of existing community agencies. *From the Heart* donations are distributed to local non-profit 501(c)(3) agencies, through an application process, that directly serves Glendale residents.

Currently, there are approximately 55,000 utility bills generated each month. The remittance slip included with the City of Glendale utility bills indicates customers can remit a *Voluntary "From the Heart" Donation* in the amount of \$1.00. The intent of the program is to make the donation process effortless. For example, a customer with current charges of \$71.51 would see the following information:

Current Amount Due 11/25/2013	\$71.51
Total Billing Due	71.51
Voluntary "From the Heart" Donation	1.00
Total With Donation	\$72.51

If a donation of more than one (\$1.00) is desired by a customer, the customer can mail or bring a check or money order made out to *From the Heart*, in any dollar amount, to City of Glendale, Customer Service Office.

Approximately 12% of the city's utility customers participate in the program. Contributions over the past three years were as follows:



CITY COUNCIL REPORT

- FY 2010-11 - \$89,433
- FY 2011-12 - \$93,309
- FY 2012-13 - \$78,706

Additionally, in a letter dated October 21, 2013, the City of Glendale was awarded a grant totaling \$225,000 over the next three years (\$75,000 per year) from the Gila River Indian Community to be used toward the *From the Heart* program.

Analysis

Staff presented the following four donation options to City Council at the December 3, 2013 Workshop.

OPTION 1: Continue the current donation program. Leaving it at one dollar (\$1.00) or increasing the voluntary donation amount to two dollars (\$2.00)

OPTION 2: Provide the option of remitting an exact amount toward the program such as \$1, \$5, \$10, or any other exact amounts.

OPTION 3: Provide the option for customers to fill in and overpay any selected amount they would like to donate.

OPTION 4: Provide customers with the option to sign up and be billed for a set amount each month.

Upon conclusion of staff's presentation and Council's discussion, staff was provided guidance to bring forward to a Council Voting meeting option 1, to increase the voluntary utility billing donation program to two dollars (\$2.00).

Previous Related Council Action

At the December 3, 2013 City Council Workshop, staff presented four voluntary *From the Heart* donation options to City Council.

At the October 15, 2013 City Council Workshop, Mayor Weiers requested an update on the *From the Heart* donation on the city water bill.

At the May 28, 2013 City Council Voting Meeting, Council adopted Resolution No. 4682 accepting the Gila River Indian Community Grant for the *From the Heart* program for up to \$75,000 per year for three years which was required as part of the grant process.



CITY COUNCIL REPORT

At the August 31, 2010 City Council Voting Meeting, Council adopted Resolution No. 4682 accepting the Gila River Indian Community Grant for the *From the Heart* program for up to \$75,000 per year for three years which was required as part of the grant process

On June 24, 1997, Council adopted an ordinance establishing the *From the Heart* voluntary utility donation program.

At the June 3, 1997 workshop, staff presented the *From the Heart* program to Council and was given guidance to proceed with the development of the program.

Community Benefit/Public Involvement

From the Heart puts your donation to work every day to make life better for countless Glendale residents. Whether serving meals to the elderly, giving emergency help to homeless families or supporting abused children, *From the Heart* gives agencies that provide services to our neighbors a helping hand. The Gila River Indian Community makes it possible to help even more Glendale families by providing an annual match of \$75,000 to the *From the Heart* program.

Staff will work with the Communications Department to inform citizens of the change to the voluntary *From the Heart* donation program through their utility bills, the Connection newsletter, the city's web site, and press releases.

Budget and Financial Impacts

There is no cost to implement the change to the utility billing donation amount. It is anticipated that by increasing the voluntary donation program to two dollars (\$2.00), it will provide additional revenue for the *From the Heart* program.

Attachments

Ordinance

ORDINANCE NO. 2870 NEW SERIES

AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AMENDING THE CODE OF THE CITY OF GLENDALE, CHAPTER 33, SEC. 33-84 (VOLUNTARY UTILITY BILLING DONATION PROGRAM); AND SETTING FORTH AN EFFECTIVE DATE.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

SECTION 1. That the City Code, Chapter 33, Section 33-84 is hereby amended as follows:

Sec. 33-84. Voluntary utility billing donation program.

(a) There is hereby established a voluntary utility billing donation program for the purpose of facilitating donations by users of city services to human services programs serving the community. All persons receiving bills for services from the city under the provisions of chapters 18 and 33 of this Code shall be included in the voluntary utility billing donation program.

(b) The city manager shall determine the form of the donation program. Donations under any program established pursuant to this section shall be voluntary. The amount of any suggested donation added to a user's bill, if applicable, shall not exceed ~~one dollar (\$1.00)~~ **TWO DOLLARS (\$2.00)** and shall not be included in the amount of any arrearages or collections on an account.

SECTION 2. That the provisions of this ordinance shall become effective thirty (30) days after passage of this ordinance by the Glendale City Council.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this _____ day of _____, 2014.

M A Y O R

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

REVIEWED BY:

City Manager

c_33_84



CITY COUNCIL REPORT

Meeting Date: **1/14/2014**
Meeting Type: **Voting**
Title: **ADOPT AN ORDINANCE AMENDING GLENDALE CITY CODE, CHAPTER 2, ARTICLE I, SECTION 2-3 (COMMUNITY DEVELOPMENT FEE WAIVER/REBATE)**
Staff Contact: **Brian Friedman, Executive Director, Community & Economic Development**

Purpose and Recommended Action

This is a request for City Council to waive reading beyond the title and adopt an ordinance to amend the Glendale City Code Chapter 2, Article 1, Section 2-3 to provide authorization for the City Council to waive or rebate Community Development permit fees upon a finding that the waiver or rebate is in the best interests of the City of Glendale; and, delegates its authority to the City Manager to administratively waive or rebate up to \$50,000 of Community Development permit fees. Staff recommends that City Council adopt the amendment to the existing ordinance to be utilized as an economic development tool.

Background

Since 2010, a total of \$337,000 in community development fee waivers has been authorized. The total fees waived resulted in the creation or retention of 2,563 jobs and created ongoing revenue streams for the city. An independent third party review confirmed a 20:1 return on investment, with estimated annual revenue of \$6.8 million and a 10-year economic impact of \$67.5 million for the city. See the attached review letter from Applied Economics for details.

Analysis

Due to the highly competitive nature of economic development, a community's ability to respond quickly during the recruitment or retention process is often the difference between success and failure of attraction/retention efforts. Community Development fee waiver/rebate options are commonly used as an economic development incentive by municipalities; and, staff research of valley cities indicates that several employ some form of program that allows for the waiver of Community Development fees.

The recommended change to the City Code would allow Glendale to quickly respond during the negotiation process and remain competitive in the market. The number of jobs being created or retained, salaries and benefits paid, and amount of new or retained revenue generation are all evaluated during the due diligence process. In addition, an independent third party review will be utilized prior to making a recommendation to the City Manager to ensure that substantial evidence exists to validate and support a fee waiver/rebate. Incentives in an amount greater than



CITY COUNCIL REPORT

\$50,000 will continue to require City Council approval. The fee waiver/rebate proposal being recommended does not include any development impact fees.

Previous Related Council Action

On December 17, 2013, this item was presented at a City Council Workshop. The City Council provided consensus to bring this item forward to a future voting meeting.

Community Benefit/Public Involvement

Formalizing a change to the City Code will allow the City Council and City Manager to be responsive in a competitive market for the purpose of promoting quality economic development in our community which serves as a means to increase or retain tax revenue and, in turn, supports citizen services and quality of life initiatives.

Budget and Financial Impacts

There is no direct expense to the city as the economic incentive is in the form of a waiver or rebate of fees associated with new or retained business development.

Attachments

Ordinance

Applied Economics Independent Third Party Review Letter

ORDINANCE NO. 2871 NEW SERIES

AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AMENDING GLENDALE CITY CODE CHAPTER 2 (ADMINISTRATION), ARTICLE I (IN GENERAL), SECTION 2-3 RELATING TO COMMUNITY DEVELOPMENT FEES.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

SECTION 1. That Glendale City Code Chapter 2 (Administration), Article I (In General), Section 2-3 is hereby amended to read as follows:

Sec. 2-3. Community development fees; annual review and adjustment; payment; **WAIVER.**

(a) The community development fees of the City of Glendale shall be set forth in Appendix B of the city code.

(b) The community development fees of the City of Glendale shall be reviewed on an annual basis and shall automatically adjust in accordance with the CPIU (Consumer Price Index Urban Users) inflationary index. The adjusted fees shall be published one time in the city's official newspaper not less than thirty (30) days prior to the effective date.

(c) Community development fees shall be paid in lawful money of the United States or by collectible draft or check. Should such draft or check be uncollectible within a reasonable time, the subject permit shall be null and void.

(D) ANY OF THE COMMUNITY DEVELOPMENT FEES MAY BE WAIVED OR REBATED BY THE CITY COUNCIL AS AN ECONOMIC DEVELOPMENT INCENTIVE UPON A FINDING THAT THE WAIVER OR REBATE IS IN THE BEST INTERESTS OF THE CITY OF GLENDALE. THE CITY COUNCIL DELEGATES ITS AUTHORITY TO THE CITY MANAGER TO WAIVE OR REBATE, IN WRITING, COMMUNITY DEVELOPMENT FEES UP TO \$50,000. ANY FEE WAIVER OR REBATE SHALL BE CONDITIONED UPON TIMELY COMPLETION OF THE DEVELOPMENT OR ADDITIONAL IMPROVEMENTS WHICH COMPRISE THE PROJECT.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this ____ day of _____, 2014.

MAYOR

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

REVIEWED BY:

City Manager

c_2_3_cd_fees



December 10, 2013

Mr. Dave McAlindin
Economic Development Official
City of Glendale
5850 W. Glendale Avenue
Glendale, AZ 85301

Dear Dave,

This letter presents the results of our independent third party review of the revenue impacts of the 10 projects that have received fee waivers from the City of Glendale since 2010. The revenue impacts were prepared by city staff using an impact model developed for Glendale by Applied Economics. We understand that it is important for the City to quantify the new revenues created by these companies and justify the return on investment for the fee waivers.

The companies in this analysis will create an estimated 1,417 new jobs and help to retain an additional 1,146 jobs in Glendale that would have otherwise left the city. They will also bring additional capital investment and taxable sales to the city that in turn creates on-going local revenues.

We have reviewed the analyses performed by the city and verified the assumptions that were used to estimate the impacts. Additionally, Applied Economics recreated all fiscal calculations in our version of the impact model. We made minor updates from the original version of the model used by the city to reflect the 2014 property tax rate, the 2.9 percent city sales tax rate implemented in 2012 and the statutory reduction in the commercial property assessment ratio.

We estimate that these companies, and their employees in Glendale, will generate annual revenues to the City of Glendale of \$6.8 million, totaling \$67.5 million over the next ten years based on the information they provided to the City at the time that the fee waivers were granted. Of this total, \$36.7 million represents the property and sales taxes paid by the companies directly, while the remainder represents property and sales taxes, state shared revenues and other revenues generated by company employees living in Glendale. The analysis assumes that 34 percent of employees would work and live in the city based on regional commuting data. Note that these results are slightly different than the original results prepared by city staff based on subsequent changes to the operating pro-formas for Dignity Health and American Furniture Warehouse.

Although a variety of both direct and indirect revenues are presented in the economic and fiscal impact analysis, the city revenues that are most relevant include the direct revenues generated by the company. We believe this represents the most conservative and prudent approach. Based



Mr. Dave McAlindin

Page 2 of 2

on the results of this analysis, the new revenues generated by the companies directly over a 10 year period exceed the combined \$462,000 in permit fee waivers by a margin of \$36.3 million. American Furniture Warehouse, which will generate significant taxable sales, accounts for over half of the total 10 year revenues. However, in reviewing the amount of waivers versus the annual expected revenue impacts for the other projects, the payback periods range from one to two years. The companies and their employees will continue to generate additional revenues to the City on an on-going basis, creating an even greater overall return on investment from the fee waivers.

Based on our review, we believe the economic benefits presented by the Economic Development Department to be reasonable, with the changes above as noted above. Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads 'Sarah E. Murley'.

Sarah E. Murley
Partner



CITY COUNCIL REPORT

Meeting Date: **1/14/2014**
Meeting Type: **Voting**
Title: **ADOPT AN ORDINANCE ESTABLISHING A GENERAL PLAN STEERING COMMITTEE**
Staff Contact: **Jon M. Froke, AICP, Planning Director**

Purpose and Recommended Action

This is a request for City Council to waive reading beyond the title and adopt an ordinance establishing a General Plan Steering Committee. The city's General Plan is required by state law to be periodically updated and the Planning Division is beginning this process. As part of the General Plan update, the Planning Division desires to be assisted by a Steering Committee of interested citizens and stakeholders in the community.

Background

The General Plan is required by state law and serves as the official policy statement of the city to guide the public and private development of the community through new development and redevelopment initiatives. Both content and character of the plan are largely proscribed by state statutes. Elements of the General Plan, both those required by state law as well as elements specific to Glendale make up the plan, along with goals, objectives, and policies for each element.

Preliminary work on the General Plan has begun and will continue through the rest of this year. Staff has developed the framework and a working title for the 10 year update to be known as "Glendale 2035". A Steering Committee will play an important role in the formation and development of this planning endeavor.

To assist with this endeavor, staff is requesting Council establish and appoint a Steering Committee to assist with the preparation of the General Plan. The Steering Committee members shall serve without compensation. The Mayor and each Councilmember shall appoint two members of the Steering committee, with staff recommending an additional seven members for Council approval at large. Each member recommended will be processed through the existing standard protocol for all board and commission members. Current board or commission members will also be allowed to serve on this task force while serving their assigned appointment. The Steering Committee will be provided with an educational program/process covering topic pertinent to the writing of the General Plan.



CITY COUNCIL REPORT

Previous Related Council Action

At the December 17, 2013 City Council Workshop, Council provided guidance to staff to continue with the formation of a Steering Committee for the update of the General Plan.

A presentation was made to the Government Services Committee on November 7, 2013 on the process for moving forward with the formation of the Steering Committee.

During the 2001-2002 update of the General Plan, a Steering Committee of interested citizens, identified then as the General Plan Public Focus Group, was formed to assist staff and the consultant in the writing of the General Plan.

Once the Focus Group completed its work in 2002, the City Council adopted the General Plan, Glendale 2025 The Next Step, on May 28, 2002, and the voters ratified the plan with 86% approval on the November 5, 2002 General Election.

Community Benefit/Public Involvement

State law requires each municipality in Arizona to adopt written procedures to provide effective, early, and continuous public participation in the development of its General Plan, from all geographic, ethnic, and economic areas of the city. The Steering Committee will represent those various stakeholder interests and will meet regularly with plan consultants to provide process oversight.

The Steering Committee, among other public participation efforts, will provide citizens an opportunity to assist with the writing of the General Plan. Increasing citizen involvement will assist the public in understanding, supporting, and implementing the General Plan.

Attachments

Ordinance

ORDINANCE NO. 2872 NEW SERIES

AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, ESTABLISHING A GENERAL PLAN STEERING COMMITTEE TO WORK WITH STAFF TO CREATE A RECOMMENDED DRAFT REVISED GENERAL PLAN, PURSUANT TO THE PROVISIONS OF ARIZONA REVISED STATUTES, TITLE 9, CHAPTER 4, ARTICLE 6, AND SETTING FORTH INSTRUCTIONS AND CHARGES.

WHEREAS, Arizona Revised Statutes §§ 9-461.05 through 9-461.06 set forth the requirements for adoption and amendment of a general plan; and

WHEREAS, at the December 17, 2013 City Council Workshop meeting, staff presented the preliminary framework for the establishment of a General Plan Steering Committee to assist staff to create and deliver a recommended draft revised General Plan; and

WHEREAS, in addition, a presentation was provided to the City Council Government Services Subcommittee to obtain guidance on establishing a General Plan Steering Committee; and

WHEREAS, the City of Glendale has determined that forming a General Plan Steering Committee to work with staff will assist in fulfilling the requirements of said statutes.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

SECTION 1. That pursuant to Article V, Section 1 of the Glendale City Charter, the Council hereby establishes a General Plan Steering Committee (“Steering Committee”) to assist City staff to create and deliver a draft revised General Plan.

SECTION 2. That the Mayor and each member of Council may appoint up to two members to serve on the Steering Committee, with seven members appointed by the Council as a whole. The total membership of the Steering Committee shall not exceed 21 members. All members of the Steering Committee shall serve without compensation.

SECTION 3. That the Steering Committee members will be provided with an educational program/process explaining the purpose and requirements of a General Plan, public participation, and other pertinent topics. The Steering Committee will meet monthly or as needed. The Steering Committee will:

1. Provide recommendations to staff concerning the draft revised General Plan; and
2. Work with the City’s Planning Department to host and/or attend community meetings for public input on the revised General Plan.

SECTION 4. That the Steering Committee is established and appointed as a limited duration advisory committee. The Steering Committee will meet monthly as needed. The Steering Committee's work will be completed and the Steering Committee shall dissolve upon adoption of the General Plan by the Glendale City Council.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this _____ day of _____, 2014.

M A Y O R

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

REVIEWED BY:

City Manager

c_gp_comm



CITY COUNCIL REPORT

Meeting Date: **1/14/2014**
Meeting Type: **Voting**
Title: **AUTHORIZATION TO ENTER INTO A TEMPORARY LICENSE AGREEMENT WITH THE NEW WESTGATE, LLC FOR PARKING ON FEBRUARY 1, 2015**
Staff Contact: **Jamsheed Mehta, AICP, Executive Director, Transportation Services**

Purpose and Recommended Action

This is a request for Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into a temporary license agreement with The New Westgate, LLC (TNW) for the use of 1,679 parking spaces on February 1, 2015.

Background

The city is required to provide parking spaces at Westgate City Center through its agreements with the Arizona Sports and Tourism Authority (AZSTA) and the Arizona Cardinals (Cardinals). These agreements also require parking for the Super Bowl on February 1, 2015.

This agreement will provide 1,679 parking spaces located within the area owned by The New Westgate, LLC for Stadium use on February 1, 2015. The rental fee is twenty dollars (\$20.00) per space for spaces located east of 93rd Avenue or west of 95th Avenue, and a rental fee of thirty dollars (\$30.00) for spaces located between 93rd and 95th Avenues. An applicable tax of 3.4% will also be charged. The final cost of the spaces will be determined by the actual spaces available at the time of determination by TNW. This determination will be made on or before November 1, 2014. The total amount due will range between \$34,721.72 and \$52,082.58.

Analysis

Per agreements with the AZSTA and Cardinals, Glendale is required to provide 6,000 parking spaces generally within the Westgate area. Securing the 1,679 spaces ensures that Glendale will provide the full 6,000 spaces to the National Football League for Super Bowl per the existing agreements.

Previous Related Council Action

On September 28, 2004, Council adopted a resolution authorizing the entering into of a Memorandum of Agreement with the Arizona Cardinals and the AZSTA for a multiuse stadium and related improvements.



CITY COUNCIL REPORT

On May 27, 2003, Council authorized the approval of the Parking License and Agreement with Covenants, Conditions and Restrictions with the AZSTA and the Arizona Cardinals.

Budget and Financial Impacts

Funds will be budgeted in the Super Bowl account. There are no ongoing costs associated with this license agreement.

Cost	Fund-Department-Account
\$34,721.72- \$52,082.58	1010-16360-518200, Super Bowl Account

Capital Expense? Yes No

Budgeted? Yes No

Requesting Budget or Appropriation Transfer? Yes No

If yes, where will the transfer be taken from?

Attachments

Resolution

Agreement

RESOLUTION NO. 4764 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF AN AGREEMENT ENTITLED "TEMPORARY LICENSE AGREEMENT" WITH THE NEW WESTGATE LLC FOR CERTAIN TEMPORARY PARKING RIGHTS AT WESTGATE.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

SECTION 1. That it is deemed in the best interest of the City of Glendale and the citizens thereof that the Temporary License Agreement for the parking rights with The New Westgate, LLC be entered into, which agreement is now on file in the office of the City Clerk of the City of Glendale.

SECTION 2. That the Mayor or City Manager and the City Clerk be authorized and directed to execute and deliver said agreement on behalf of the City of Glendale.

SECTION 3. Neither the members of the City Council of the City of Glendale nor any officer, employee or agent of the City shall be subject to any personal liability or accountability by reason of the execution of the documents.

SECTION 4. Notice of A.R.S. § 38-511 is hereby given.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this ____ day of _____, 2014.

MAYOR

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

REVIEWED BY:

City Manager

TEMPORARY LICENSE AGREEMENT

This Temporary License Agreement (this "**Agreement**") is made as of this ___ day of _____, 2014, by and between **THE NEW WESTGATE LLC**, a Delaware limited liability company ("**Licensor**"), and **CITY OF GLENDALE**, an Arizona municipal corporation ("**Licensee**"), related to parking lots within the Westgate Entertainment District area located south of Glendale Avenue, west of 91st Avenue, north of Maryland Avenue and east of the Loop 101, in Glendale, Arizona, as more specifically defined herein (the "**Property**").

RECITALS

Licensor and Licensee desire to enter into a license agreement whereby Licensee will license from Licensor space within the Property on a temporary basis, under the following terms and conditions.

NOW THEREFORE, in consideration of the mutual terms and conditions herein contained, the parties hereby agree as follows:

1. **License Areas.** Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee an exclusive license during the License Term to use a parking lot or parking lots owned by Licensor within the Property, comprising a total of 1,679 parking spaces, in an area within the border depicted on the attached Exhibit A and incorporated by reference (the "**License Area Border**"). On or before November 1, 2014, Licensor shall notify Licensee in writing of the parking lot or lots within the License Area Border that are owned by Licensor and which shall constitute the **License Area**. Such License Area includes the parking spaces within such parking lots, and excludes drive-aisles or on-street parking surrounding such lots. The designated parking lots within the License Area will contain at least 1,679 parking spaces. Licensor represents that if 1,679 contiguous parking spaces are then available (on or before the November 1, 2014 designation date) east of 93rd Avenue within the Property, as is the case as of the date of this Agreement, Licensor shall so designate that location as the License Area. In addition to and together with the License Area, and regardless of the ultimate location of the License Area, Licensor grants to Licensee a non-exclusive right of access to and from the License Area. This License is non-transferable and is revocable by Licensor under the Agreement terms. Licensee accepts the License Area "AS IS, WHERE IS" with no express or implied representation or warranty by Licensor as to the condition of the License Areas or the improvements therein, or its suitability for the Permitted Use (as defined below) or any other matter.

2. **License Term and Minimum Hours.** The term of this Agreement shall be for one day only, **February 1, 2015, from 12:00 a.m. until 11:59 p.m.** (the "**License Term**"). Licensee shall not have any right to access or use the License Area, and shall not place any property, equipment or other items in the License Area at any time other than during the License Term.

3. **Intentionally omitted.**

4. **Use.** Licensee shall use the License Area for the sole purpose of **assigning control of the License Area to the National Football League ("NFL") for the NFL's use to park NFL Super Bowl ticket holders via designated permit parking pass which shall be distributed to ticket holders prior to game-day (and explicitly not via day-of-game admission charge)** (the "**Permitted Use**") but for no other use without Licensor's prior written consent. Licensee and/or NFL must provide all requisite personnel in the License Area during the License Term to control such parking operation; Licensor will provide no services within the License Area regarding parking. Licensee's use of the License Area for any purpose other than for the use identified above shall be deemed a material default under this Agreement. Licensee shall at all times use the License Area for the purpose of performing the Permitted Use in a proper manner acceptable to Licensor and in a lawful, honest, conscientious and business-like manner.

5. **Signs/Advertising.** Licensor shall obtain Licensee's written approval before publishing any advertising or promotional material referring to Licensee's Permitted Use of the License Areas.

Licensee shall not have rights to any media towers or additional signage and graphics around, above and adjacent to the License Areas.

6. **License Fee.** In consideration of Licensee's use of the License Area pursuant to this Agreement, on or before **December 31, 2014**, Licensee shall pay to Licensor a rental fee (the "Fee") equal to **the product of (x) and (y), where "x" represents the number of parking spaces and "y" represents the cost per space of \$20.00 per space for any parking spaces east of 93rd Avenue or west of 95th Avenue and \$30.00 per space for any parking spaces located between 93rd and 95th Avenues, as such areas are further illustrated on Exhibit A, plus the then applicable municipal rental tax.** By way of example, if all 1,679 spaces provided are located east of 93rd Avenue, the fee shall be \$33,580, plus applicable tax (the product of 1,679 spaces and \$20.00 per space). By way of further example, if 1,000 spaces are located east of 93rd Avenue and 679 spaces are located between 95th and 93rd Avenues, the fee shall be \$40,670, plus applicable tax (the sum of (i) the product of 1,000 spaces and \$20.00 per space and (ii) the product of 679 spaces and \$30.00 per space). All payments due under this Agreement are to be made payable in lawful money of the United States of America. In addition to and together with the Fee and any other payments to be made by Licensee to Licensor pursuant to the terms of this Agreement, Licensee shall pay to Licensor an amount equal to any state, county or municipal sales, rent, occupancy, excise or use taxes assessed or levied upon Licensor with respect to the amounts paid by Licensee to Licensor pursuant to this Agreement. Such taxes shall not, however, include any franchise, gift, estate, inheritance, conveyance, transfer, or net income tax assessed against Licensor. All amounts payable by Licensee to Licensor shall be paid to Licensor at the address designated by Licensor. No termination or expiration of this Agreement shall terminate or affect Licensee's obligation to pay all Fees and all other amounts due under this Agreement accruing, or relating to the period, prior to the termination or expiration of this Agreement. The provisions of this Section 6 shall survive any termination or expiration of this Agreement.

7. **Late Payments.** If Licensee shall fail to make any payment to Licensor when due, Licensee shall pay Licensor a late charge of ten percent (10%) of the overdue amount for each five (5) days or portion thereof that any said amounts remain outstanding, which late fee shall become immediately due and payable, or Licensor may terminate this agreement with notice to Licensee for such failure to make payment when due. The payment of such late fee shall not, however, excuse or cure any default by Licensee under this Agreement. The Late Fee is not a penalty, but rather is liquidated damages to defray costs and compensate Licensor for damages resulting from such late payment by Licensee. Licensor and Licensee acknowledge the difficulty of determining the damages resulting from late payment by Licensee and therefore have agreed to the Late Fee as an economical alternative to the costly and lengthy litigation that would otherwise result over the damages resulting from Licensee's failure to timely pay any amounts due under this Agreement. The provisions of this Section 7 shall survive any termination or expiration of this Agreement.

8. **Maintenance of the License Area.** Notwithstanding anything in this Agreement to the contrary, Licensee shall be solely responsible (a) for securing all permits and licenses necessary to use the License Area for the Permitted Use, including without limitation any business licenses required by the City of Glendale and/or County of Maricopa, Arizona, (b) for maintaining the License Area in a neat and clean condition, (c) for complying with all applicable laws, rules, fire and safety codes and regulations, including such minimum safety standards as may be established by Licensor, with respect to the use of the License Area, (d) for repair of all damage to the License Area caused by Licensee, its agents, employees, representatives, contractors or invitees, (e) for complying with the Property's rules and regulations established from time to time by Licensor and delivered to Licensee, (f) for all costs and expenses related to cleaning, security, repair and maintenance of the License Area, and (g) for restoring the License Area to its original condition, customary wear and tear excepted, at the end of the License Term.

9. **Insurance.** During the License Term, Licensee shall maintain, at its sole cost and expense, insurance as reasonably required by Licensor, including, without limitation, insurance meeting the requirements set forth on the attached Exhibit B. Before the License Term begins, Licensee shall provide Licensor a Certificate of Insurance which meets Licensor's requirements, including, without limitation, the requirements set forth on attached Exhibit B.

10. **Indemnity**. Licensee shall indemnify, defend and hold harmless Licensor and Licensor's parent, subsidiaries and affiliated companies, and their respective officers, directors, shareholders, agents, employees and affiliates (collectively, with Licensor, the "**Licensor Parties**"), against all loss, damage, expense and liability resulting from injury to or death of persons, including but not limited to employees of Licensee or Licensor, or injury to property, including but not limited to property of Licensee or Licensor, arising out of or in any way connected with Licensee's access to or use of the Property, however caused, except for such injury or death as may be caused by the gross negligence or willful misconduct of Licensor. Licensee shall, upon request by Licensor, defend any suit exerting a claim covered by this obligation to indemnify. Licensee shall pay costs that may be incurred by Licensor in enforcing this obligation to indemnify, including reasonable attorneys' fees. The provisions of this Section 10 shall survive any termination or expiration of this Agreement.

11. **Mutual Waiver of Subrogation**. Licensor and Licensee each hereby waive any rights one may have against the other on account of any loss or damage occasioned to Licensor or Licensee, as the case may be, or their respective property, the License Area, its contents or to other portions of the Property, arising from any risk generally covered by a policy or causes of loss special form insurance and from any risk covered by insurance then in effect. In addition, Licensor and Licensee, for themselves and on behalf of their respective insurance companies, waive any right of subrogation that any such insurance company may have against Licensor or Licensee, as the case may be. The foregoing waivers of subrogation shall be operative only so long as available in the State of Arizona and provided further that no policy of insurance is invalidated thereby.

12. **Risk of Loss or Damage**. Without limiting any other provision of this Agreement, Licensor shall not be liable for, except to the extent, subject to this Agreement, directly caused by the sole gross negligence or willful misconduct of Licensor, and Licensee hereby waives, all claims for loss or damage to Licensee's business or damage to person or property sustained by Licensee or any person claiming by, through or under Licensee resulting from any accident or occurrence in, on or about the License Areas, including, without limitation, claims for loss, theft or damage resulting from: (i) any equipment or appurtenances becoming out of repair; (ii) injury done or occasioned by wind or weather; (iii) any defect in Licensor's failure to operate, for whatever reason, any sprinkler, heating or air-conditioning equipment, electric wiring or the installation thereof, gas, water or steam pipe, drain or other pipe; (vii) the escape of steam or water; (viii) water, snow or ice being upon or coming through the roof, skylight, trap door, stairs, doorways, windows, walks or any other place upon or near the Property; (ix) the failure of any fixture, plaster, tile, stucco or other material or (x) any act, omission or negligence of other licensees or any other persons or occupants of the Property or of adjoining or contiguous buildings, or owners of adjacent or contiguous property or the public, or by operations in the construction of any private, public or quasi-public project. Licensee agrees to use and occupy the License Areas, and to use such other portions of the Property as Licensee is herein given the right to use, at Licensee's own risk, and Licensee hereby assumes the full risk and responsibility for loss, destruction or damage occurring to the personal property of Licensee in the License Areas. The provisions of this Section 12 shall survive any termination or expiration of this Agreement.

13. **Property Security**. Licensor may provide security for the common area of the Property as Licensor shall determine from time to time in its sole discretion. Licensee acknowledges that any security service provided by Licensor shall be at such intervals and with such manpower as Licensor may determine in its sole discretion. Licensee shall at all times comply, and shall cause its employees, representatives and invitees to comply, with the directions of such Property security with respect to the use of the License Areas. Licensee further acknowledges that any such security services are intended to be deterrent in nature and Licensor does not undertake to insure that damage to persons or property will thereby be prevented upon the License Areas or the Property. Licensee acknowledges that this Agreement and Licensee's and Licensor's rights and obligations hereunder do not impose upon Licensor a duty to guard against criminal acts of a third party. Licensor shall have no obligation to provide security service to Licensee with respect to the License Areas.

14. **Taxes and Fees**. Any and all taxes, fees, and assessments, including but not limited to, license fees, fees for permits, profits, sales or use taxes, transaction privilege license taxes, personal property taxes, or any other taxes which may be levied or assessed on the assets, business or capital of

Licensee or on Licensee's income or sales therefrom by any duly constituted government authority shall be borne and paid for entirely by Licensee. Licensee shall indemnify, defend and hold harmless the Licensor Parties for any and all claims, losses, liabilities, damages, amounts, penalties, costs and expenses arising or resulting from Licensee's failure to timely pay any amounts required to be paid by Licensee under this Section 14. The provisions of this Section 14 shall survive any termination or expiration of this Agreement.

15. **Assignment**. It is expressly agreed that Licensee shall not assign or sublease its rights or delegate its duties under this Agreement. Any assignment of rights, sublease or delegation of duties by Licensee without the prior written consent of Licensor shall be void and shall, at Licensor's option, result in the immediate termination of this Agreement.

16. **Removal of Property**. Upon the expiration of the License Term Licensee shall quietly and peaceably surrender the License Areas and shall remove all other equipment and other things placed by Licensee on the License Areas hereunder, and if Licensee shall fail to do so, Licensor shall have the right to make such removal at Licensee's expense, and Licensor may dispose of said property in any manner and retain any and all proceeds arising out of such disposition.

17. **Default**. Each of the following shall constitute a default by Licensee hereunder: the failure by Licensee to observe or perform any covenant, obligation or condition required to be performed or observed by Licensee hereunder and the continuation of such failure for a period of two (2) days after notice thereof from Licensor. In the event of any such default by Licensee, Licensor shall have the right to terminate this Agreement, to recover immediate possession of the License Areas, and to remove all personal property of Licensee from the License Areas at Licensee's cost and expense. In addition, in the event of any default by Licensee hereunder, Licensor shall be entitled to recover all damages permitted by law (including, without limitation, attorneys' fees, costs and expenses) and to enforce all remedies available to Licensor at law or in equity. All rights, powers and remedies of Licensor shall be cumulative and the exercise of one or more of its rights or remedies shall not impair Licensor's right to exercise any other right or remedy, either concurrently or at any later time.

18. **Utilities**. Licensor shall have no obligation to make available to Licensee electricity or other utilities in connection with Licensee's use of the License Area.

19. **Waiver or Consent Limitation**. No term, covenant or condition of this Agreement shall be deemed to have been waived by Licensor or Licensee unless such waiver is in writing and signed by the party to be charged with the waiver. A waiver of any given breach or default shall not be a waiver of any other breach or default. All consents and approvals under this Agreement must be in writing and signed by the party granting such consent or approval. Consent to or approval of any act by one party requiring the other party's consent or approval shall not be deemed to waive or render unnecessary such other party's consent to or approval of any subsequent similar act.

20. **Attorneys' Fees**. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, or if any claim, action or cause of action otherwise arises out of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which the prevailing party may be entitled.

21. **Notices**. All notices, demands, or other writings to be given, made or sent by either party hereto to the other pursuant to this Agreement shall be in writing and shall be deemed to have been fully given, made or sent (i) when actually delivered, if delivered by overnight or other courier or delivery service which confirms delivery in writing, or (ii) within two (2) business days after deposit in the U.S. Mail, if sent by certified mail, postage prepaid, return receipt requested. Such notices shall be addressed to the parties at the addresses set forth on the signature page hereof. Each party may, from time to time by notice to the other, designate another place for receipt of future notices.

22. **Relationship of the Parties**. Nothing contained in this Agreement shall be deemed or construed as creating a partnership, joint venture, principal-agent, or employer-employee relationship

between Licensor and any other person or entity (including, without limitation, Licensee) or as causing Licensor to be responsible in any way for the debts or obligations of such other person or entity.

23. **Authority.** The persons executing this Agreement on behalf of Licensee hereby covenant and warrant to Licensor that Licensee is a validly existing entity in good standing under the laws of the State of Arizona or is a natural person, and the transaction set forth in this Agreement, the performance of Licensee's obligations hereunder and the execution and delivery of this Agreement by Licensee, in each case, has been duly authorized.

24. **Licensor Liability.** In the event of any transfer of the Property by Licensor or assignment by Licensor of this Agreement, the transferor shall be and is hereby entirely freed and relieved of all liability under any and all covenants and obligations contained in or derived from this Agreement arising out of any act, occurrence or omission relating to the Property or this Agreement occurring after the consummation of such transfer. Notwithstanding anything to the contrary set forth in this Agreement, it is expressly understood and agreed that any money judgment against Licensor resulting from any default or other claim arising under this Agreement (whether in contract, tort or for breach of any covenant contained in this Agreement) shall be satisfied only out of the rents, issues, profits and other income actually received from the operation of the Property, and no other real, personal or mixed property of Licensor or any of its owners or affiliated entities, wherever situated, shall be subject to levy on any judgment obtained against Licensor and if such amounts are insufficient for the payment of such judgment, Licensee shall not institute any further action, suit, claim or demand, in law or in equity, against Licensor for or on account of such deficiency. Licensee hereby waives, to the fullest extent permitted by law, any right to satisfy a money judgment against Licensor except from the income received from the operation of the Property.

25. **Miscellaneous.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument. Under this Agreement, if Licensor exercises any right given to it to approve or disapprove, or when any arrangement or term must be satisfactory to Licensor, the decision of Licensor to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall be in the sole and absolute discretion of Licensor. Time is of the essence of this Agreement and of every term, covenant and condition herein. The making, execution and delivery of this Agreement by Licensee has been induced by no representation other than as may be expressly set forth herein. This Agreement embodies the entire understanding of the parties with respect to the subject matter hereof and there are no further or other agreements, written or oral, in effect between the parties relating to the subject matter hereof. This Agreement shall not be construed either for or against Licensor or Licensee, but this Agreement shall be interpreted in accordance with the plain meaning of the language contained in this Agreement. This Agreement may be amended or modified only by a written agreement signed by the respective parties. No oral statement shall in any manner modify or otherwise affect the terms and conditions set forth herein. If two (2) or more persons or entities execute this Agreement as Licensee, then and in such event the word "Licensee" as used in this Agreement shall refer to all such persons or entities, and the liability of such persons or entities for compliance with the performance of all the terms, covenants and conditions of this Agreement shall be joint and several, and notice given to one of them shall be deemed notice to all. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Arizona. The parties hereto hereby consent to the jurisdiction of any state or federal court located within Maricopa County, Arizona in any suit, action or proceeding based hereon or arising out of, under or in connection with this Agreement (and further agree not to assert or claim that such venue is inconvenient or otherwise inappropriate or unsuitable) LICENSOR AND LICENSEE EACH WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY OF ANY CONTRACT OR TORT CLAIM, COUNTERCLAIM, CROSS-COMPLAINT OR CAUSE OF ACTION IN ANY ACTION, PROCEEDING OR HEARING BROUGHT BY EITHER LICENSOR OR LICENSEE AGAINST THE OTHER ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT OR THE USE OR OCCUPANCY OF THE LICENSE AREAS.

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Licenser and Licensee have executed this Agreement on the day and year first above-written.

LICENSEE:

**City Of Glendale,
an Arizona municipal corporation**

By: Brenda S. Fischer, City Manager

ATTEST:

City Clerk (Seal)

APPROVED AS TO FORM:

By: Michael Bailey, City Attorney

Address for notices:

City Manager's Office
5850 W. Glendale Avenue
Glendale, Arizona 85301

With a copy to:

City Attorney's Office
5850 W. Glendale Avenue
Glendale, Arizona 85301

LICENSOR:

THE NEW WESTGATE LLC,
a Delaware limited liability company

By: SFI Westgate City Center - Glendale LLC
a Delaware limited liability company
Its Manager

By: 
Name: David Sotolov
Its: Senior Vice President

[NOTICE PROVISION CONTINUED ON FOLLOWING PAGE]

Address for notices:

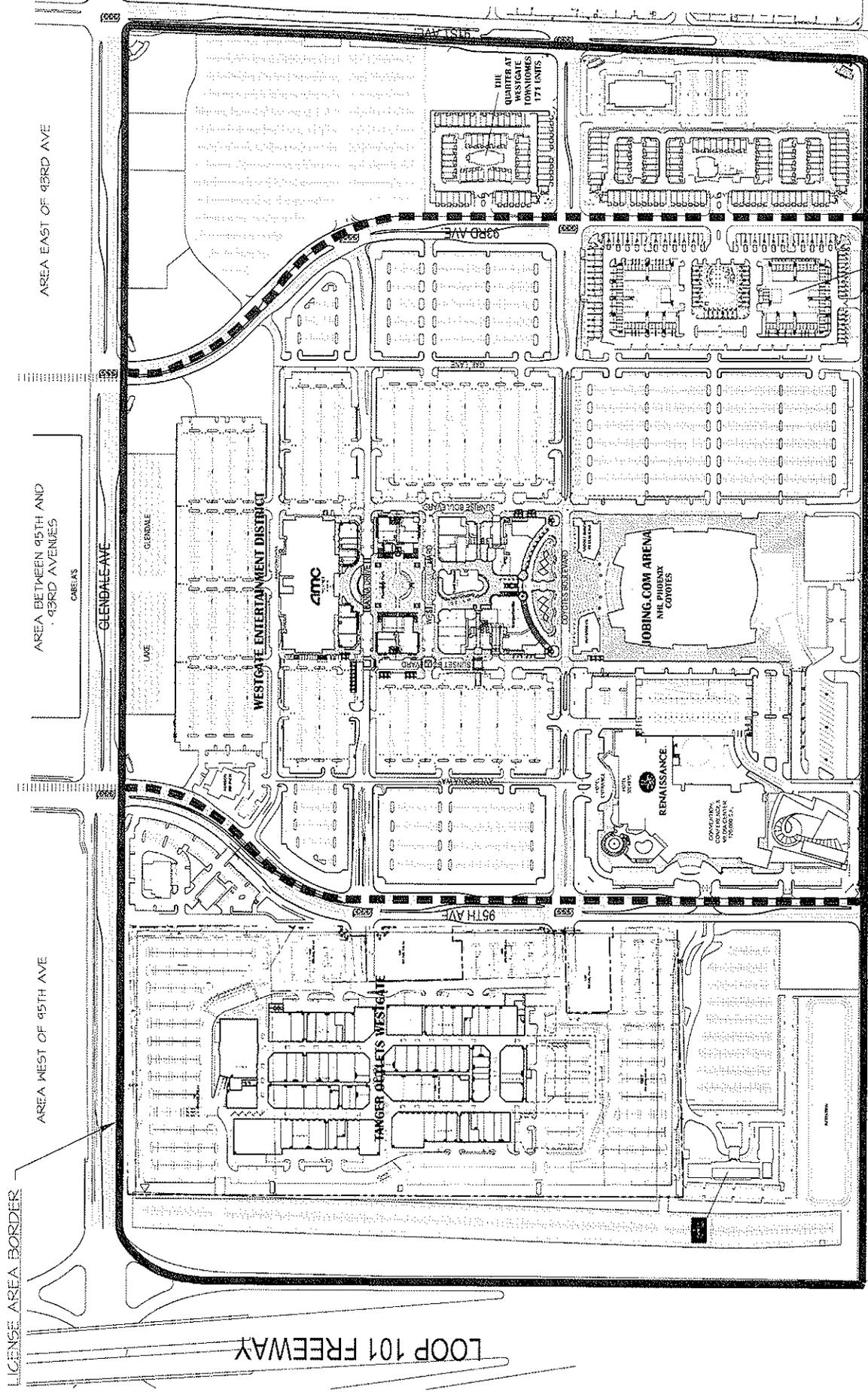
The New Westgate LLC
c/o iStar Financial Inc.
1114 Avenue of the Americas
New York, NY 10036
Attn: Nina Matis

With a copy to:

The New Westgate LLC
c/o iStar Financial Inc.
10960 Wilshire Blvd., Ste. 1260
Los Angeles, CA 90024
Attn: David Sotolov

Teetsel Properties, LLC
2415 E. Camelback Rd., Ste. 700
Phoenix, AZ 85016
Attn: Jeff Teetsel

EXHIBIT A- LICENSE AREA BORDER



* Existing Development Plans - subject to change

EXHIBIT B
Insurance Requirements

Licensee shall maintain, at its sole expense, the following types of insurance coverage or programs of self-insurance coverage as required by statute:

1. Workers' Compensation Insurance as required by law.
2. Commercial General liability Insurance or statutory self-insurance as authorized for Arizona municipalities against any and all damages and liability, including attorneys' fees on account of or arising out of injuries to or the death of any person or damages to the property, however occasioned in, on or about the License Area (with the Licensor's insurance to cover the Property) with at least a single combined liability and property damage limit of One Million and No/100 Dollars (\$1,000,000.00), which policy maintained by Licensee shall name Licensor as an additional insured.

Each policy shall (a) be issued by insurance companies licensed to do business in the State of Arizona, and acceptable to Licensor, (b) name the parties listed below and their respective affiliates, officers, directors, employees, agents and assigns as additional insured's, (c) be primary and noncontributing with respect to any coverage that Licensor may carry and the Certificate of Insurance must contain the following statement (by attachment, if necessary): "This insurance shall be primary and non-contributing with respect to any coverage that Licensor may carry for losses arising out of the Named Insured's operations.", (d) provide that it shall not be canceled or materially changed without thirty (30) days prior written notice to the other party, and (e) be endorsed to provide that Licensee's and Licensor's underwriters and insurance companies shall not have any right of subrogation against the other party. An original copy of the insurance certificate shall be given to Licensor prior to the commencement of the License Term. The obligations contained in this Exhibit are separate and distinct from all other obligations set forth in this Agreement, and are in no way intended to merely support Licensee's duty to indemnify set forth in this Agreement.

Additional Insured Parties:

- 1) The New Westgate LLC
c/o iStar Asset Services, Inc.
P.O. Box 3040
Garden Grove, California
92842-3040
- 2) iStar Financial Inc., and its subsidiaries, successors & assigns
c/o iStar Asset Services, Inc.
P.O. Box 3040
Garden Grove, California
92842-3040
- 3) Teetsel Properties, LLC
2415 East Camelback Road
Suite 700
Phoenix, Arizona
85016
- 4) Vestar Properties, Inc.
2425 East Camelback Road
Suite 750
Phoenix, Arizona
85016
- 5) SFI Westgate City Center – Glendale LLC
c/o iStar Asset Services, Inc.
P.O. Box 3040
Garden Grove, California
92842-3040
- 6) CCD Equity Parnters, LLC
c/o Solus Alternative Asset Management LP (Attn: Francis Blair)
410 Park Avenue
New York, NY 10022