

City of Glendale Council Meeting Agenda

February 26, 2013 – 7:00 p.m.

City Council meetings are telecast live at 7:00 p.m. on the second and fourth Tuesday of the month. 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.

Welcome!

We are glad you have chosen to attend this City Council 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. Legislative policy is set by the elected Council and administered by the Council-appointed City Manager.

The City 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).

Council Meeting Schedule

The Mayor and City Council hold Council meetings to take official action two times each month. These meetings are held on the second and fourth Tuesday of the month at 7:00 p.m. Regular meetings are held in the Council Chambers, Glendale Municipal Office Complex, 5850 W. Glendale Avenue.

Agendas may be obtained after 4:00 p.m. on the Friday before a Council meeting, at the City Clerk's Office in the Municipal Complex. The agenda and supporting documents are posted to the city's Internet web site, www.glendaleaz.com

Questions or Comments

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 (623) 930-2249, Monday - Friday, 8:00 a.m. – 5:00 p.m.

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

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 located at the back of the Council Chambers and give it to the City Clerk before the meeting starts. The Mayor will call your name when the Citizen Comments portion of the agenda is reached. Because these matters are not listed on the posted agenda, the City Council may not act on the information during the meeting but may refer the matter to the City Manager for follow-up.

Public Hearings are also held on certain agenda items such as zoning cases, liquor license applications and use permits. If you wish to speak or provide written comments about a public hearing item on tonight's agenda, please fill out a gold Public Hearing Speakers Card located at the back of the Council Chambers and give it to the City Clerk before the meeting starts. The Mayor will call your name when the public hearing on the item has been opened.

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.



**** 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 administador 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

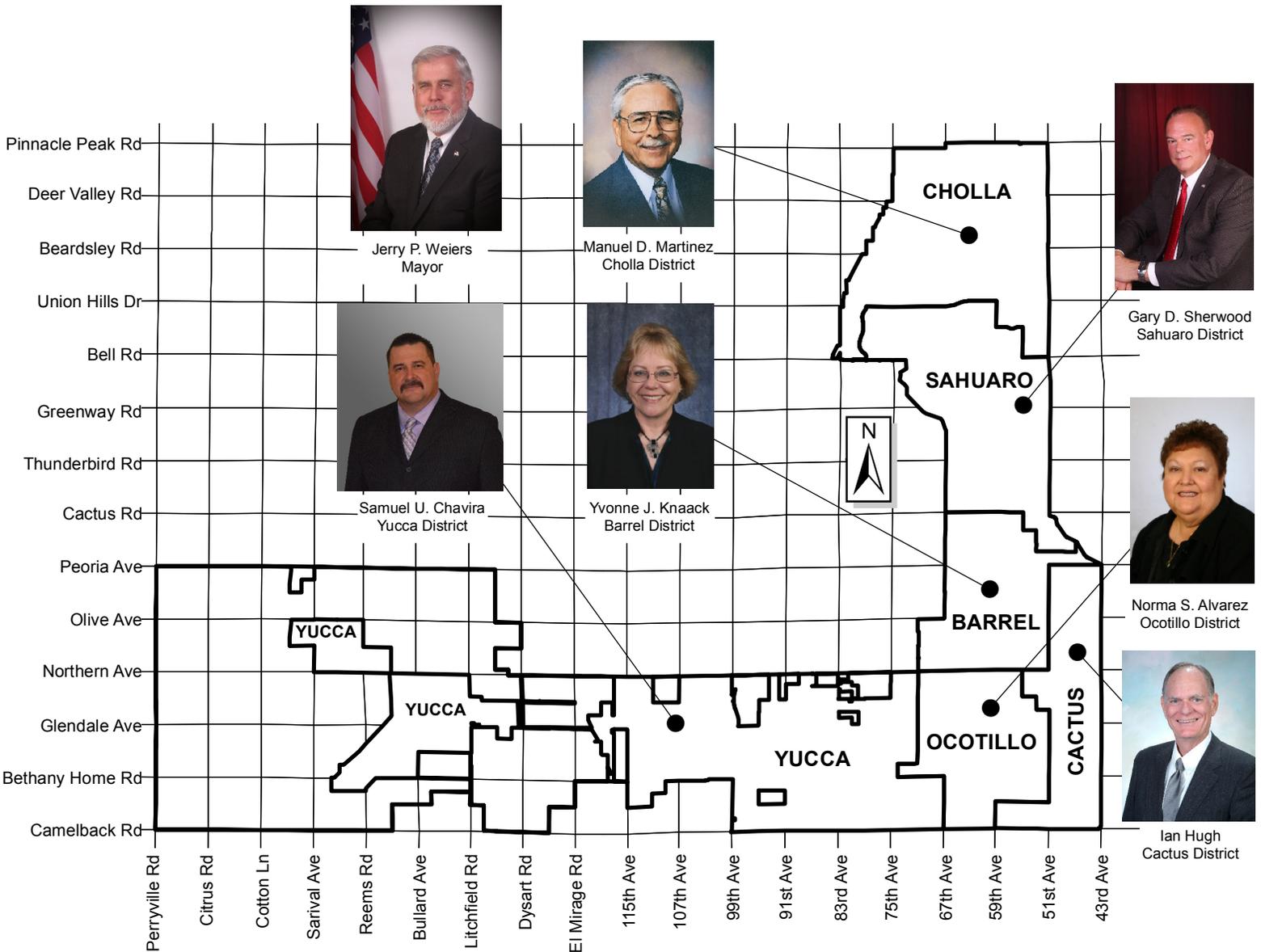
Vice Mayor Yvonne J. Knaack – Barrel District

Appointed City Staff

Horatio Skeete – Acting City Manager
Craig Tindall – City Attorney
Pamela Hanna – City Clerk
Elizabeth Finn – City Judge



Council District Boundaries





**GLENDALE CITY COUNCIL MEETING
Council Chambers
5850 West Glendale Avenue
February 26, 2013
7:00 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 AND MOMENT OF SILENCE

APPROVAL OF THE MINUTES OF February 12, 2013

BOARDS, COMMISSIONS AND OTHER BODIES

BOARDS, COMMISSIONS AND OTHER BODIES

PRESENTED BY: Councilmember Manuel D. Martinez

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. LIQUOR LICENSE NO. 5-8959, JUS' COUNTRY

PRESENTED BY: Susan Matousek, Revenue Administrator

2. REQUEST TO PURCHASE SIDELOAD TRUCK FROM TRUCKS WEST OF PHOENIX, INC.
FOR RESIDENTIAL SANITATION COLLECTION

PRESENTED BY: Stuart Kent, Executive Director, Public Works

3. REQUEST TO PURCHASE HALOGEN VALVES AND PARTS FROM CHEMICAL FEEDING
TECHNOLOGIES, INC. FOR CITY WELLS AND RESERVOIRS

PRESENTED BY: Michael Weber, P.E., Deputy Director, Water Services

4. AUTHORIZATION TO PURCHASE AMMUNITION FROM THE SAN DIEGO POLICE EQUIPMENT COMPANY, INCORPORATED

PRESENTED BY: Debora Black, Interim Police Chief

5. AUTHORIZATION TO PURCHASE EQUIPMENT AND EXTENSION TO MAINTENANCE AND SUPPORT AGREEMENT FROM MORPHOTRAK, INCORPORATED

PRESENTED BY: Debora Black, Interim Police Chief

CONSENT RESOLUTIONS

6. ACCEPTANCE OF NON-DEDICATED 2010 ARIZONA DEPARTMENT OF HOMELAND SECURITY GRANTS AND REMOTEC PURCHASE FOR BOMB ROBOT REFURBISHMENT

PRESENTED BY: Debora Black, Interim Police Chief

RESOLUTION: 4645

7. INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR THE NEW RIVER PATHWAY

PRESENTED BY: Cathy Colbath, Interim Executive Director, Transportation Services

RESOLUTION: 4646

8. INTERGOVERNMENTAL AGREEMENT AND CONTRACT FOR LEGAL SERVICES RELATING TO SETTLEMENT OF THE WHITE MOUNTAIN APACHE TRIBE WATER RIGHTS CLAIMS

PRESENTED BY: Craig Tindall, City Attorney

RESOLUTION: 4647

BIDS AND CONTRACTS

9. AWARD OF BID TO PIERSON CONSTRUCTION CORPORATION FOR CONSTRUCTION OF SARIVAL WATERLINE FOR NORTHERN PARKWAY LANDSCAPING

PRESENTED BY: Cathy Colbath, Interim Executive Director, Transportation Services

10. AWARD OF CONTRACT 13-05 TO ARIZONA BUS SALES FOR PURCHASE OF TRANSIT BUSES

PRESENTED BY: Cathy Colbath, Interim Executive Director, Transportation Services

11. PROFESSIONAL SERVICES AGREEMENT WITH BOB MURRAY AND ASSOCIATES FOR THE CITY MANAGER RECRUITMENT

PRESENTED BY: Jim Brown, Interim Executive Director, Human Resources & Risk Management

ORDINANCES

12. AMENDMENT TO GLENDALE CITY CODE CHAPTER 2 - ADMINISTRATION

PRESENTED BY: Diane Goke, Chief Financial Officer

ORDINANCE: 2838

13. AMENDMENT TO LEASE WITH LEFT SEAT WEST AT GLENDALE, INC. FOR GLENDALE AIRPORT RESTAURANT

PRESENTED BY: Cathy Colbath, Interim Executive Director, Transportation Services

ORDINANCE: 2839

NEW BUSINESS

14. REAPPOINTMENT OF PRESIDING CITY JUDGE ELIZABETH FINN

PRESENTED BY: Jim Brown, Interim Executive Director, Human Resources & Risk Management

15. APPOINTMENT OF CITY JUDGE

PRESENTED BY: Jim Brown, Interim Executive Director, Human Resources & Risk Management

REQUEST FOR FUTURE WORKSHOP AND EXECUTIVE SESSION

CITIZEN COMMENTS

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COUNCIL COMMENTS AND SUGGESTIONS

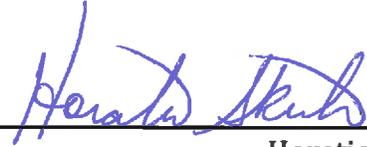
ADJOURNMENT

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,



Horatio Skeete
Acting City Manager



GLENDALE CITY COUNCIL MEETING
Council Chambers
5850 West Glendale Avenue
February 12, 2013
7:00 p.m.

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

Also present were Horatio Skeete, Acting City Manager; Jamsheed Mehta, Interim Assistant City Manager; Nicholas DiPiazza, Deputy City Attorney; and Pamela Hanna, City Clerk.

Mayor Weiers called for the Pledge of Allegiance and a moment of silence was observed.

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

A statement was filed by the City Clerk that the 7 resolutions 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 January 15th and January 22nd, 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 January 15th, 2013 Installation Ceremony and January 22nd, 2013 a 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.

Mayor Weiers asked to hear Agenda item #11 first.

NEW BUSINESS

11. **COUNCIL SELECTION OF VICE MAYOR**
PRESENTED BY: Mayor and Council

In accordance with the Charter and pursuant to City Council Guidelines, Council will designate among its members a Vice Mayor.

The Mayor will accept a motion or motions, call for a second, and conduct a vote of the Council that shall, by virtue of assent of a majority, designate one of its members as Vice Mayor.

It was moved by Councilmember Martinez, and seconded by Councilmember Hugh, to approve Councilmember Yvonne Knaack as Vice Mayor. The motion carried unanimously.

CONSENT AGENDA

Items on the consent agenda are intended to be acted upon in one motion.

Ms. Pamela Hanna, City Clerk, read consent agenda resolution item numbers 1 through 5 by number and title.

CONSENT RESOLUTIONS

1. AMENDMENT NO. 8 TO INTERGOVERNMENTAL AGREEMENT WITH ARIZONA DEPARTMENT OF ECONOMIC SECURITY FOR COMMUNITY ACTION PROGRAM FUNDING AND OPERATIONS
PRESENTED BY: Rebecca H. Daniel, Community Action Program Administrator
RESOLUTION: 4638

This is a request for City Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into Amendment No. 8 to the intergovernmental agreement (IGA) with the Arizona Department of Economic Security (DES) for Community Action Program (CAP) funding and operations.

RESOLUTION NO. 4638 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 AMENDMENT NO. 8 TO THE INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF ECONOMIC SECURITY FOR COMMUNITY ACTION PROGRAM FUNDING.

2. MAIN EXTENSION AGREEMENT WITH VALLEY UTILITIES WATER COMPANY, INC. TO SUPPLY WATER FOR NORTHERN PARKWAY LANDSCAPING
PRESENTED BY: Cathy Colbath, Interim Executive Director, Transportation Services
RESOLUTION: 4639

Staff is requesting City Council waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into a main extension agreement with Valley Utilities Water Company, Inc. (VUWCO) to supply water for Northern Parkway landscaping. This agreement will allow for construction of a waterline extension needed to deliver irrigation water to the landscaping along Northern Parkway, between 143rd Avenue and Dysart Road.

RESOLUTION NO. 4639 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 A MAIN EXTENSION AGREEMENT WITH VALLEY UTILITIES WATER COMPANY, INC. FOR THE CONSTRUCTION AND SUBSEQUENT OWNERSHIP TRANSFER OF A WATERLINE EXTENSION NEEDED TO DELIVER IRRIGATION WATER TO THE LANDSCAPING ALONG NORTHERN PARKWAY.

3. MEMORANDUM OF UNDERSTANDING WITH MARICOPA COUNTY ATTORNEY'S OFFICE FOR THE EQUITABLE SHARING OF RACKETEERING INFLUENCED CORRUPT ORGANIZATIONS ASSETS
PRESENTED BY: Debora Black, Interim Police Chief
RESOLUTION: 4640

This is a request for City Council to authorize the City Manager to enter into a Memorandum of Understanding (MOU) with the Maricopa County Attorney's Office (MCAO) for the equitable sharing of Racketeering Influenced Corrupt Organizations (RICO) assets.

Staff is requesting Council waive reading beyond the title and adopt a resolution authoring the City Manager to enter into a MOU with MCAO for the equitable sharing of RICO assets.

RESOLUTION NO. 4640 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 A MEMORANDUM OF UNDERSTANDING WITH THE MARICOPA COUNTY ATTORNEY'S OFFICE CONCERNING ASSET FORFEITURE SERVICES (RICO) FOR THE GLENDALE POLICE DEPARTMENT.

4. MEMORANDUM OF UNDERSTANDING WITH MARICOPA COUNTY ADULT PROBATION DEPARTMENT FOR EXCHANGE OF PROBATION DATA AND LAW ENFORCEMENT INFORMATION
PRESENTED BY: Debora Black, Interim Police Chief
RESOLUTION: 4641

This is a request for City Council to authorize the City Manager to enter into a memorandum of understanding (MOU) with the Maricopa County Adult Probation Department (MCAPD) for exchange of probation data and law enforcement information.

Staff is requesting Council waive reading beyond the title and adopt a resolution authoring the City Manager to enter into a MOU with MCAPD for exchange of probation data and law enforcement information.

RESOLUTION NO. 4641 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 A MEMORANDUM OF UNDERSTANDING FOR DATA EXCHANGE WITH THE MARICOPA COUNTY ADULT PROBATION DEPARTMENT.

5. AMENDED AND RESTATED TRIBAL WATER RIGHTS SETTLEMENT AND LEASE AGREEMENT

PRESENTED BY: Doug Kukino, Environmental Resources Director
RESOLUTION: 4642

This is a request for Council to waive reading beyond the title and adopt a resolution approving and authorizing execution of the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement, dated November 1, 2012, and all exhibits to the agreement including the revised Lease Agreement for Central Arizona Project (CAP) Water. Council is also requested to authorize the City Manager to execute all required documentation on behalf of the City of Glendale in this transaction.

RESOLUTION NO. 4642 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 THE LEASE AGREEMENT FOR CENTRAL ARIZONA PROJECT WATER AMONG THE CITY OF GLENDALE, THE WHITE MOUNTAIN APACHE TRIBE AND THE UNITED STATES; AND THE AMENDED AND RESTATED WHITE MOUNTAIN APACHE TRIBE WATER RIGHTS QUANTIFICATION AGREEMENT AND ALL ASSOCIATED EXHIBITS THERETO.

It was moved by Vice Mayor Knaack and seconded by Councilmember Martinez, to approve the recommended actions on Consent Agenda Item Nos. 1 through 5, including the approval and adoption of Resolution No. 4638 New Series, Resolution No. 4639 New Series, Resolution No. 4640 New Series, Resolution No. 4641 New Series, and Resolution No. 4642 New Series. The motion carried unanimously.

BIDS AND CONTRACTS

6. AWARD OF PROPOSAL 13-07, LIBRARY BOOKS

PRESENTED BY: Erik Strunk, Executive Director, Parks, Recreation & Library Services

This is a request for City Council to award proposal 13-07 authorizing the City Manager to enter into an agreement for Library Print Materials with Baker & Taylor, Inc. for one year, with the option to extend the agreement for an additional four, one-year increments.

Mr. Strunk said the award of this contract will ensure access to print materials to meet the needs of the community. The final cost will not exceed \$570,886. Funding is available in the book replacement book budgets for this project.

Councilmember Martinez asked if there was going to be monies available to purchase new books and how long it would be before the new books are on the shelves. Mr. Strunk said it will be about eight weeks. Councilmember Martinez said we need to let the public know about the new books. Mr. Strunk said there will be advertising about this.

Mayor Weiers asked if this was an ongoing program that would go on for the next 12 months. Mr. Strunk said yes it was and it was for books only.

It was moved by Vice Mayor Knaack, and seconded by Councilmember Martinez, to approve the Award Proposal 13-07 an agreement for Library print Materials with Baker & Taylor, Inc. The motion carried unanimously.

7. PROFESSIONAL SERVICES AGREEMENT WITH RITTOCH-POWELL & ASSOCIATES CONSULTING ENGINEERS, INC. FOR THE 2012/2013 SLURRY SEAL PROGRAM

PRESENTED BY: Gregory Rodzenko, P.E., Acting City Engineer

This is a request for City Council to authorize the City Manager to enter into a professional services agreement with Ritoch-Powell & Associates Consulting Engineers, Inc. in an amount not to exceed \$95,698.57 for the purpose of providing engineering design services and developing project specifications and bid documents for the 2012/2013 Slurry Seal Program.

Councilmember Sherwood asked Mr. Rodzenko how the engineering design services charges of \$17,664 for a year fit into the 2 million program in the budget book.

Mr. Rodzenko said the \$95,698.57 was for the private vendor consulting design services. The \$17,664 a year was for engineering chargebacks. This is the first year that they have had to go outside for consulting services for this type of project due to recent staff cutbacks. The dollars will come out of the \$2M overall budget for maintenance funds.

It was moved by Councilmember Martinez, and seconded by Councilmember Alvarez, to approve the Professional Services Agreement with Ritoch-Powell & Associates Consulting Engineers, Inc. The motion carried unanimously.

8. MAINTENANCE AGREEMENT WITH TCS AMERICA AND IMPRESSION TECHNOLOGY INCORPORATED FOR TAX MANTRA

PRESENTED BY: Diane Goke, Chief Financial Officer

This is a request for City Council to approve maintenance support expenditures for the Tax Mantra System for one year.

Ms. Goke said the cost for one year was \$147,300.

Councilmember Martinez asked if this company has been doing the maintenance for this software and Ms. Goke said yes. She said she is satisfied with the service they are providing.

It was moved by Councilmember Sherwood, and seconded by Councilmember Chavira, to approve the maintenance support expenditures for the Tax Mantra System. The motion carried unanimously.

RESOLUTIONS

9. EMPLOYEE DEFERRED COMPENSATION CONTRACT WITH GREAT WEST RETIREMENT SERVICES
PRESENTED BY: Jim Brown, Interim Executive Director, Human Resources and Risk Management
RESOLUTION: 4643

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 contract with Great-West Retirement Services (Great-West) for Employee Deferred Compensation Services.

Mr. Brown explained this plan is funded by employee contributions and allows them to make tax deferred contributions from their paychecks into funds set aside for retirement purposes. Great-West offered the strongest proposal, including their fund performance, recordkeeping, fees and administration costs. Mr. Brown explained the documents submitted for approval.

Councilmember Sherwood asked how long the process took. Mr. Brown said it took approximately a year to go through it with the committee.

Councilmember Alvarez asked which departments were represented by the employee committee. Mr. Brown explained it was across the organization, including union representation. He said the majority of departments were represented and he would provide that information to the council.

Vice Mayor Knaack commended the committee and said it was a good thing for the employees.

Councilmember Chavira commented that this was a benefit and tool used by employees when they retire.

RESOLUTION NO. 4643 NEW SERIES WAS READ BY NUMBER AND TITLE ONLY, IT BEING A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, REPEALING RESOLUTION NO. 3527 NEW SERIES; ADOPTING AND AMENDING A RESTATED DEFERRED COMPENSATION PLAN DOCUMENT AS ADMINISTERED BY GREAT WEST LIFE & ANNUITY INSURANCE COMPANY; AUTHORIZING AND APPROVING THE DOCUMENTS NECESSARY TO IMPLEMENT THE DEFERRED COMPENSATION PLAN; AND ESTABLISHING THE DEFERRED COMPENSATION GOVERNING COMMITTEE.

It was moved by Councilmember Martinez, and seconded by Vice Mayor Knaack, to pass, adopt and approve Resolution No. 4643 New Series. The motion carried unanimously.

10. RETIREE HEALTH SAVINGS ACCOUNT CONTRACT WITH EDUCATORS BENEFIT CONSULTANTS, LLC

PRESENTED BY: Jim Brown, Interim Executive Director, Human Resources and Risk Management

RESOLUTION: 4644

Staff is requesting Council waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into a contract with Educators Benefit Consultants, LLC (EBC), a subsidiary of Great-West Retirement Services, to administer the Retiree Health Savings (RHS) accounts contract for the City of Glendale.

Mr. Brown said with the selection of Great West, the current retiree health savings provider, ICMA, will terminate their contract to provide RHS accounts with the city, effective April 1, 2013. He went over the documents necessary to implement the new retiree health savings plan with Educators Benefit Consultants, LLC.

RESOLUTION NO. 4644 NEW SERIES WAS READ BY NUMBER AND TITLE ONLY, IT BEING A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, ADOPTING AN AMENDED AND RESTATED RETIREE HEALTH SAVINGS ACCOUNT (RHSA) PLAN AS ADMINISTERED BY EDUCATORS BENEFIT CONSULTANTS, LLC; AND AUTHORIZING AND APPROVING THE DOCUMENTS NECESSARY TO IMPLEMENT THE RETIREE HEALTH SAVINGS ACCOUNT PLAN.

It was moved by Councilmember Chavira, and seconded by Councilmember Hugh, to pass, adopt and approve Resolution No. 4644 New Series. The motion carried unanimously.

REQUEST FOR FUTURE WORKSHOP AND EXECUTIVE SESSION

It was moved by Vice Mayor Knaack, and seconded by Councilmember Martinez, to hold a City Council Workshop at 1:30 p.m. in the City Council Chambers on Tuesday, February 19th, 2013, to be followed by an Executive Session pursuant to A.R.S. 38-431.03. In addition a special city council workshop/retreat to be held on Thursday, February 21st, 2013 at 8:00 a.m. in room B-3 of the City Council Chambers. The motion carried unanimously.

CITIZEN COMMENTS

There were no citizen comments.

COUNCIL COMMENTS AND SUGGESTIONS

Councilmember Hugh thanked the council for taking him shopping.

Vice Mayor Knaack said she was honored being voted Vice Mayor.

Mayor Weiers expressed concern over other Councilmembers being sick and said he was glad everyone was feeling better.

ADJOURNMENT

There being no further business, the meeting was adjourned at 7:38 p.m.

Pamela Hanna - City Clerk



CITY COUNCIL REPORT

Meeting Date: **2/26/2013**
 Meeting Type: **Voting**
 Title: **BOARDS, COMMISSIONS & OTHER BODIES**
 Staff Contact: **Kristen Krey, Council Services Administrator**

Purpose and Recommended Action

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

Quentin Tolby	Cactus	Appointment	02/26/2013	11/24/2014
Michael Hernandez	Ocotillo	Appointment	02/26/2013	11/24/2014

Citizens Bicycle Advisory Committee

Erik Flodin	Cholla	Appointment	02/26/2013	01/16/2015
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Commission On Persons With Disabilities

Laura Hirsch – Chair	Mayoral	Appointment	02/26/2013	02/26/2014
John Fallucca – Vice Chair	Cholla	Appointment	02/26/2013	02/26/2014

Community Development Advisory Committee

Ronald Jauregui	Barrel	Appointment	02/26/2013	07/01/2014
Gina Schmitz (GESD Rep.)	Ocotillo	Reappointment	03/22/2013	03/22/2015

Judicial Selection Advisory Board

Judge Randall Warner		Reappointment	04/23/2013	04/23/2016
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Library Advisory Board

Karen Aborne	Yucca	Reappointment	04/13/2013	04/13/2015
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Parks and Recreation Advisory Commission

David Moreno	Yucca	Appointment	02/26/2013	04/09/2015
Alexa Salas – Teen	Yucca	Appointment	02/26/2013	05/27/2013
Robert Portillo – Chair	Yucca	Reappointment	04/09/2013	04/09/2014

Personnel Board

Stephen Gilman	Yucca	Appointment	02/26/2013	12/22/2014
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CITY COUNCIL REPORT

Planning Commission

Jamie Aldama	Yucca	Appointment	02/26/2013	03/25/2014
Steve Johnston	Cactus	Appointment	02/26/2013	03/25/2015
Al Lenox	Barrel	Appointment	02/26/2013	03/25/2014
Rod Williams	Ocotillo	Reappointment	03/25/2013	03/25/2015
Robert Petrone – Chair	Cholla	Appointment	02/26/2013	03/25/2014
Bruce Larson – Vice Chair	Mayoral	Appointment	02/26/2013	03/25/2014

Risk Management/Worker’s Compensation Trust Fund Board

Diane Shoemake – Ex-Officio		Appointment	02/26/2013	07/24/2013
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CITY COUNCIL REPORT

Meeting Date: **2/26/2013**
Meeting Type: **Voting**
Title: **LIQUOR LICENSE NO. 5-8959, JUS' COUNTRY**
Staff Contact: **Susan Matousek, Revenue Administrator**

Purpose and Recommended Action

This is a request for City Council to approve a person-to-person transferable series 6 (Bar - All Liquor) license for Jus' Country located at 4346 West Olive Avenue. The Arizona Department of Liquor Licenses and Control application (No. 06070212) was submitted by Douglas Neal Perkins.

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 19,760. This series 6 license is being transferred from the previous owner at this location to the new owner. However, since the license has been on inactive status, the approval of this license will increase the number of liquor licenses in the area by one. The current number of liquor licenses within a one-mile radius is as listed below.

Series	Type	Quantity
06	Bar - All Liquor	9
07	Bar - Beer and Wine	2
09	Liquor Store - All Liquor	5
10	Liquor Store - Beer and Wine	6
12	Restaurant	6
	Total	28

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

Staff Report

Map

Police Calls for Service Report



STAFF REPORT

Meeting Date: 2/26/2013
To: Horatio Skeete, Acting City Manager
From: Susan Matousek, Revenue Administrator
Title: LIQUOR LICENSE NO. 5-8959, JUS' COUNTRY

General Information

Request: Person-to-Person Transferable

License: Series 6 (Bar - All Liquor)

Location: 4346 West Olive Avenue

District: Cactus

Zoned: C-2 (General Commercial)

Applicant: Douglas Neal Perkins

Owner: DNP, LLC

Background

1. The 60-day deadline for processing this license was February 26, 2013. A letter requesting an extension was sent to the Arizona Department of Liquor Licenses and Control on January 7, 2013.
2. The population density is 19,760 persons within a one-mile radius.
3. The business is over 300 feet from any church or school.
4. This series 6 license is being transferred from the previous owner at this location to the new owner. However, since the license has been on inactive status, the approval of this license will increase the number of liquor licenses in the area by one.

Citizen Participation to Date

No protests were received during the 20-day posting period, January 7 through January 27, 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 person-to-person 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.

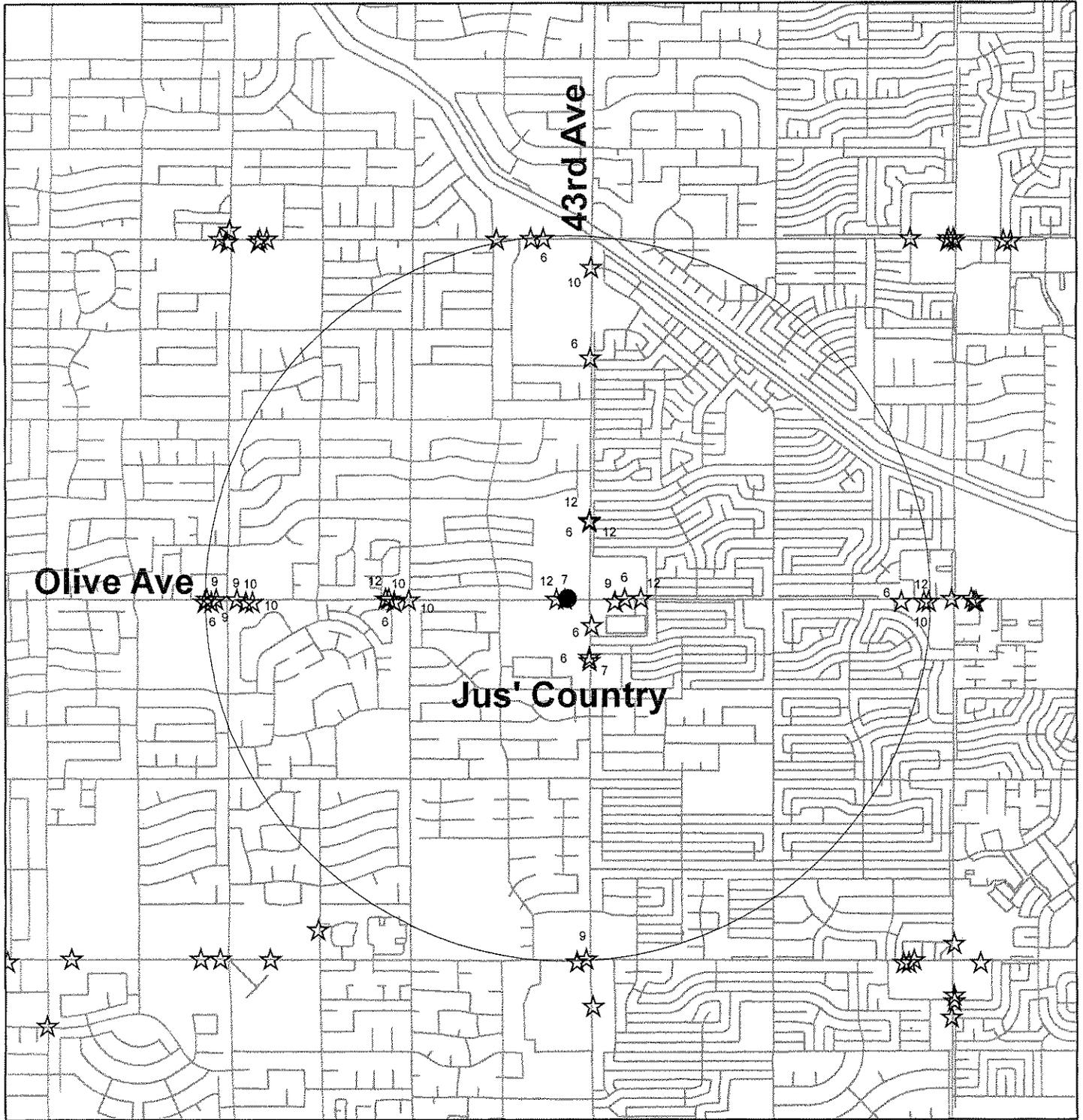
COMMUNITY AND ECONOMIC DEVELOPMENT: Approved the application with no comments.

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: Jus' Country

LOCATION: 4346 W. Olive Avenue

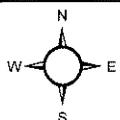
APPLICANT: Douglas Neal Perkins

ZONING: C-2

APPLICATION NO: 5-8959



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



13-1

GLENDALE POLICE DEPARTMENT

Liquor Application Worksheet

Date: 01-08-13

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-to-Person Transfer**

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

Business Name: **Jus' Country**

Business Address: **4346 W. Olive Ave**

Applicant/s Information

Name: **Perkins, Douglas Neal**

Name:

Name:

Name:

Background investigation of applicant/s completed.

Calls for Service History:	Call history for location beginning: 1/8/2008	Other Suites	New ownership call history beginning:
Liquor Related	4		
Vice Related			
Drug Related			
Fights / Assaults	6		
Robberies			
Burglary / Theft	11		
911 calls			
Trespassing			
Accidents	3		
Fraud / Forgery			
Threats	1		
Criminal damage	3		
Other non-criminal*	27		
Other criminal	1		
Total calls for service	56	N/A	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.

Current License Holder:

Carl Hilton Jones (Agent)
Two Cherries LLC (Owner)

There are no known concerns with the current license holder.

Location History:

No significant Calls for Service history at this location.

*The State Liquor Board does not consider Calls for Service information involving the previous license holder during their decision making process on "Person-to-Person" license transfers.

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>1-8-13</u>
CID Lieutenant or Commander	_____	_____
Deputy City Attorney	_____	_____
Chief of Police or designee	<u>[Signature]</u>	<u>1-10-2013</u>



CITY COUNCIL REPORT

Meeting Date: **2/26/2013**
Meeting Type: **Voting**
Title: **REQUEST TO PURCHASE SIDELOAD TRUCK FROM TRUCKS WEST OF PHOENIX, INC. FOR RESIDENTIAL SANITATION COLLECTION**
Staff Contact: **Stuart Kent, Executive Director, Public Works**

Purpose and Recommended Action

This is a request for City Council to approve the purchase of a sideload truck for residential sanitation from Trucks West of Phoenix, Inc. in an amount not to exceed \$275,646.69.

Background Summary

The residential sanitation division services over 52,000 residential homes weekly with automated sideload collection trucks. These trucks are placed on a vehicle replacement schedule to replace older pieces of equipment with new pieces of equipment to maintain service to residents and minimize vehicle maintenance costs. The serviceable life of an automated sideloader is typically six to eight years, at which time will become a backup truck for several years until replaced.

In an effort to reduce overall vehicle maintenance costs, the sanitation division will be replacing two older trucks with one new truck, thereby, reducing the residential sanitation fleet size from 28 to 27 trucks. One of the trucks has been in service for over 10 years and the other for over 11 years, both exceeding the projected serviceable life. The new replacement truck is essential towards maintaining a high level of customer service to Glendale residents.

The vendor, Trucks West of Phoenix, Inc. was awarded this bid through a competitive bid process by the City of Tempe RFP #13-006. The City of Tempe has allowed for a cooperative use of their contract.

Community Benefit/Public Involvement

By leveraging the economies of scale of this cooperative contract, competitive prices and time savings are realized.



CITY COUNCIL REPORT

Budget and Financial Impacts

Cost	Fund-Department-Account
\$275,646.69	2480-17830-78003, Sanitation

Capital Expense? Yes No

Budgeted? Yes No

Requesting Budget or Appropriation Transfer? Yes No

If yes, where will the transfer be taken from?

Attachments

Staff Report

Agreement



STAFF REPORT

To: **Horatio Skeete, Acting City Manager**
From: **Stuart Kent, Executive Director, Public Works**
Item Title: **REQUEST TO PURCHASE SIDELOAD TRUCK FROM TRUCKS WEST OF PHOENIX, INC. FOR RESIDENTIAL SANITATION COLLECTION**
Requested Council Meeting Date: **2/26/2013**
Meeting Type: **Voting**

PURPOSE

The information provided in this report relates to a proposed purchase of a sideload truck for residential sanitation collection in an amount not to exceed \$275,646.69. The purpose of this report is to request the City Manager to forward this proposed contract with Trucks West of Phoenix, Inc. to the City Council for consideration and approval.

BACKGROUND

The residential sanitation division services over 52,000 residential homes weekly with automated sideload collection trucks. These trucks are placed on a vehicle replacement schedule to replace older pieces of equipment with new pieces of equipment to maintain service to residents and minimize vehicle maintenance costs. The serviceable life of an automated sideloader is typically six to eight years, at which time will become a backup truck for several years until replaced. In an effort to reduce overall vehicle maintenance costs, the sanitation division will be replacing two older trucks with one new truck, thereby, reducing the residential sanitation fleet size from 28 to 27 trucks. One of the trucks has been in service for over 10 years and the other for over 11 years, both exceeding the projected serviceable life. The new replacement truck is essential towards maintaining a high level of customer service to Glendale residents.

The vendor, Trucks West of Phoenix, Inc. was awarded this bid through a competitive bid process by the City of Tempe RFP #13-006 on October 18, 2012, with a four-year contract extension. The terms and conditions of the City of Tempe contract extend the use of the contract for use by the Strategic Alliance for Volume Expenditures (SAVE) cooperative members with the approval of the contractor. The City of Glendale has received approval from Trucks West of Phoenix, Inc. to utilize the contract through the cooperative purchase agreement.

Staff is recommending an award to Trucks West of Phoenix, Inc. in the amount of \$275,646.69 for the purchase of an automated sideload truck for residential sanitation collection.



STAFF REPORT

ANALYSIS

Staff considered an alternative option to refurbish a sideload truck in lieu of replacing one. A certified vendor assessed both trucks and advised against refurbishment due to heavy wear and tear shown on the chassis. The cost to refurbish these trucks would outweigh the cost benefits associated with a refurbishment program and a greater return on investment would be realized through the purchase of a new truck.

FISCAL IMPACTS

Funds for this purchase are available in the FY 2012-13 capital improvement plan of the Sanitation Enterprise Fund.

**AGREEMENT FOR
Purchase of (1) Sideload Truck**

This Agreement for the purchase of one (1) Sideload Sanitation Truck ("Agreement") is effective and entered into between CITY OF GLENDALE, an Arizona municipal corporation ("City"), and Trucks West of Phoenix, Inc., an Arizona corporation, authorized to do business in Arizona, (the "Contractor"), as of the _____ day of _____, 2013.

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**, in through the S.A.V.E. Cooperative Purchasing Agreement under the City of Tempe RFP #13-006 for refuse trucks (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.

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 \$275,646.69, 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.
 - 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.

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 \$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.

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 of 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 overnight courier 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 service 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:

Trucks West of Phoenix, Inc.
c/o Mark Riley
2239 N. Black Canyon Hwy
Phoenix, AZ 85009

- 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 Bill Sterling
6210 West Myrtle Avenue, Suite #111
Glendale, Arizona 85301
623-930-2619

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 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

(Signatures appear on the following page.)

The parties enter into this Agreement as of the effective date shown above.

City of Glendale,
an Arizona municipal corporation

By: Horatio Skeete
Its: Acting City Manager

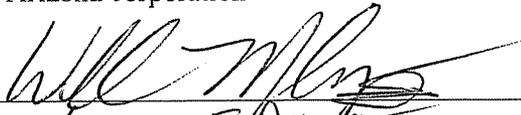
ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

Trucks West of Phoenix, Inc.,
an Arizona corporation



By: William F. Riley
Its: CEO

EXHIBIT A

Purchase of (1) Sideload Truck

PROJECT

[See attached]



Dave,

11/20/2012

Per our discussion, the City of Glendale has requested a quote for quantity 1 Autocar / Scorpion sideload refuse trucks. Per the Tempe RFP, standard spec highlights include but are not limited to:

Autocar ACX64

- Cummins ISL engine
- Allison 4500 series transmission.
- 20k front
- 40k rear
- All standard equipment per bid spec
- 315 front tires
- 315 rear tires
- Centralized air drain manifold
- Dash AC with roof mount condenser
- 16" steering wheel

Scorpion sideload body

- All standard equipment per bid spec

Per our discussion you would like to spec the following additional option(s):

+ Dual AC \$4,500

Pre-tax / pre-FET base pricing is as follows, as per 10/22/2012, Contract number T13-006-01: \$247,692.76 per unit

Based on all the above mentioned combined option pricing, we are coming in at a pre-tax pricing point of \$252,192.76 per unit. Your pricing including the 9.3% effective tax rate comes in at \$275,646.69 per unit. Pricing assumes you are still FET exempt.

Upon issuance of purchase order, we will estimate delivery dates based on current market conditions. Dave, as always, we look forward to taking care of your new fleet purchase needs and continuing to supporting your fleet after the purchase.

If you have further questions or concerns, please let me know how I can assist further.

Thanks again!

Mark W. Riley
Trucks West of Phoenix
New Truck, Parts and Service sales
602-615-2813

EXHIBIT B

Purchase of (1) Sideload Truck

COMPENSATION

METHOD AND AMOUNT OF COMPENSATION

By bid, including all services, materials, taxes and costs under the S.A.V.E. (Strategic Alliance for Volume Expenditures) Cooperative Purchasing Agreement and the City of Tempe's previous RFP # 13-006 regarding refuse trucks.

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 \$275,646.69.

DETAILED PROJECT COMPENSATION

Per bid schedule, amount awarded as follows:

Bid Total Price	\$275,646.69
-----------------	--------------



**CITY OF TEMPE
REQUEST FOR COUNCIL ACTION**

**Council Meeting Date: 10/18/2012
Agenda Item: 5B9**

ACTION: Approve the issuance of a one-year contract with four one-year renewal options to Trucks West of Phoenix for the purchase of refuse vehicles to be used by the Public Works Department.

FISCAL IMPACT: Total cost of this contract will not exceed \$1,600,000 – the requested amount includes a \$250,000 option to upgrade the vehicles to be CNG (compressed natural gas) powered if a practical return on investment can be achieved. Sufficient funds have been appropriated in the Solid Waste Fund – cost centers 3713 and 3714 – for the anticipated expenditure in the current fiscal year.

RECOMMENDATION: Approve the award of the contract.

BACKGROUND INFORMATION: The City of Tempe issued a Request for Proposal (RFP) to establish a contract for the purchase of refuse vehicles to be utilized by the Solid Waste Division of Public Works for the collection of residential and commercial refuse.

The City of Tempe's trash and recycling operational programs include residential collection of trash and recyclables, commercial/industrial collection of trash and recyclables and residential uncontained bulk/brush collection. The current fleet of collection vehicles is comprised of 55 units:

Type	Used For	Quantity
Side Loader	Residential – Trash/Recyclables	22
Front Loaders	Commercial/Industrial – Trash/Recyclable	20
Rear Loaders	Residential – Uncontained Bulk/Brush	13

This request, for FY 2012/2013, is for the purchase of five vehicles – three front load and two side load units – which will replace current vehicles which have reached the end of their useful life with the City.

This request includes an option to upgrade the vehicles to be CNG powered which adds approximately \$50,000 to the cost of each vehicle. Incorporating CHG fueled vehicles into the fleet is an element of the fuel diversification strategy adopted by the City. Within the framework of achieving social, economic and environmental sustainability, staff is currently evaluating specific ROI variables of the change to CHG including cost of the upgrade, cost of fueling options, miles driven, fuel consumption, operational sustainability over time, greenhouse gas emission reduction and fleet maintenance and training issues.

Evaluation Process

Three firms submitted a total of 22 offers for three classes of refuse vehicles – rear load, side load and front load. The proposals were evaluated by a committee comprised of Solid Waste, Fleet, Public Works Management and Procurement staff. The responses were scored by type of vehicle on the following criteria – sub categories carry equal weight unless otherwise noted:

Criteria	Weight
Cost	8 (29%)
Base Vehicle (70%)	
Options (10%)	
Diagnostic software & cables (10%)	
Training (10%)	
Ability to meet requested parameters	6 (21%)

Specifications	
Delivery Time	
Agreement to warranty provisions	
Functionality of unit	5 (18%)
Ergonomics	
Curb to curb turning diameter	
Wall to wall turning diameter	
Local parts, warranty & service	4 (14%)
Training for service technicians	4 (14%)
Manuals	
Training	
Diagnostic tools and software	
Diagnostic support	
Overall response to RFP	1 (4%)
Quality, composition & completeness	
Acceptance of terms and conditions	

Results of Scoring

Rear Loader

Firm	Overall Score	Cost
Trucks West of Phoenix – Autocar/Wayne	284.86	\$ 215,019.19
Trucks West of Phoenix – Autocar/Newway	284.20	\$ 212,418.29
Freightliner Sterling Western Star of Arizona – Condor /Wayne	280.74	\$ 214,523.00
Freightliner Sterling Western Star of Arizona – Condor/McNeilus	268.90	\$ 208,772.00
Vanguard Trucks – Mack/Wayne	261.76	\$ 225,000.00
Vanguard Trucks – Mack/McNeilus	257.64	\$ 215,400.00

Information after vendor name indicates manufacturer of cab and chassis/refuse body
Cost is for base vehicle only

Side Loader

Firm	Overall Score	Cost
Trucks West of Phoenix – Autocar/Scorpion	288.14	\$ 247,692.76
Trucks West of Phoenix – Autocar/Wayne	287.87	\$ 249,427.76
Freightliner Sterling Western Star of Arizona – Condor /Wayne	283.69	\$ 248,195.00
Freightliner Sterling Western Star of Arizona – Condor /Scorpion	282.63	\$ 247,247.00
Vanguard Trucks – Mack/Scorpion	275.30	\$ 254,225.00
Vanguard Trucks – Mack/Wayne	267.34	\$ 254,999.00
Freightliner Sterling Western Star of Arizona – Condor /McNeilus	263.28	\$ 249,700.00
Vanguard Trucks – Mack/McNeilus	262.33	\$ 256,400.00

Information after vendor name indicates manufacturer of cab and chassis/refuse body
Cost is for base vehicle only

Front Loader

Firm	Overall Score	Cost
Trucks West of Phoenix – Autocar/Wayne	286.27	\$ 231,777.71
Trucks West of Phoenix – Autocar/Newway	282.25	\$ 228,772.11
Freightliner Sterling Western Star of Arizona – Condor /Wayne	281.98	\$ 230,878.00
Freightliner Sterling Western Star of Arizona – Condor /Newway	270.23	\$ 226,552.00
Vanguard Trucks – Mack/Wayne	266.94	\$ 237,756.00
Freightliner Sterling Western Star of Arizona – Condor /McNeilus	266.66	\$ 231,950.00
Vanguard Trucks – Mack/Newway	259.21	\$ 233,500.00
Vanguard Trucks – Mack/McNeilus	255.88	\$ 238,750.00

Information after vendor name indicates manufacturer of cab and chassis/refuse body
 Cost is for base vehicle only

Summary

Price carried a significant portion of the overall score, however, other critical elements such as wall to wall turning diameters (important since many Tempe routes involve pickup of refuse in alleys and from commercial dumpster storage areas where space may be limited) warranty (including a firm's willingness to reimburse the City should warranty issues take longer than "normal" to complete), training (includes service technician training for repair of engine, transmission, refuse body components, etc. as well as diagnostics of problems) and delivery time must also be consider to determine the best value for the City.

It is the recommendation of the committee to award as follows:

Rear Loader	Trucks West of Phoenix	Autocar/Wayne
Side Loader	Trucks West of Phoenix	Autocar/Scorpion
Front Loader	Trucks West of Phoenix	Autocar/Wayne

ATTACHMENTS: 13-006 Trucks West Submittal

STAFF CONTACT(S): Aaron Alvarado, Fleet Manager, (480) 350-8344

Department Director: Ken Jones, Finance & Technology Department Director
 Legal review by: David Park, Assistant City Attorney
 Prepared by: Tony Allen, CPPB, Procurement Officer

EXHIBIT C

Purchase of (1) Sideload Truck

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: **2/26/2013**

Meeting Type: **Voting**

Title: **REQUEST TO PURCHASE HALOGEN VALVES AND PARTS FROM CHEMICAL FEEDING TECHNOLOGIES, INC. FOR CITY WELLS AND RESERVOIRS**

Staff Contact: **Michael Weber, P.E., Deputy Director, Water Services**

Purpose and Recommended Action

This is a request for City Council to authorize the purchase of 10 halogen valves and parts for city wells and reservoirs from Chemical Feeding Technologies, Inc. in an amount not to exceed \$96,089.80.

Background Summary

The purchase of the halogen valves will provide an automatic emergency shutoff system for chlorine gas used as a disinfectant to treat raw water. Installing these valves will further enhance the city's operating procedures which are in place for public and employee safety at the city's well sites, reservoirs, and adjacent areas.

Chemical Feeding Technologies, Inc. is the sole authorized provider to sell and service the halogen valves and parts in Arizona. Materials Management has approved the purchase of halogen valves from Chemical Feeding Technologies, Inc. as a sole-source procurement.

Community Benefit/Public Involvement

The Halogen Gas Shutoff System will automatically shut off the chlorine feed valve during a chlorine event.

Budget and Financial Impacts

Cost	Fund-Department-Account
\$96,089.80	2400-61048-550800, City Wide Well Rehab

Capital Expense? Yes No

Budgeted? Yes No



CITY COUNCIL REPORT

Requesting Budget or Appropriation Transfer? Yes No

If yes, where will the transfer be taken from?

Attachments

Staff Report

Other



STAFF REPORT

To: **Horatio Skeete, Acting City Manager**
From: **Michael Weber, P.E., Deputy Director, Water Services**
Item Title: **REQUEST TO PURCHASE HALOGEN VALVES AND PARTS FROM
CHEMICAL FEEDING TECHNOLOGIES, INC. FOR CITY WELLS AND
RESERVOIRS**
Requested Council Meeting Date: **2/26/2013**
Meeting Type: **Voting**

PURPOSE

This report provides information regarding the proposed purchase of 10 halogen valves and parts to enhance public and employee safety at, or near, city wells and reservoirs. The 10 valves and associated parts are to be purchased from Chemical Feeding Technologies, Inc. in an amount not to exceed \$96,089.80. The City Manager is requested to forward this item to the City Council for consideration and approval.

BACKGROUND

In the process to produce high-quality drinking water, chlorine gas is used as a disinfectant to treat raw water. Comprehensive operating procedures are currently in place to ensure public and staff safety. The purchase of the halogen valves will further enhance safety by providing an automatic emergency shutoff system for chlorine cylinders.

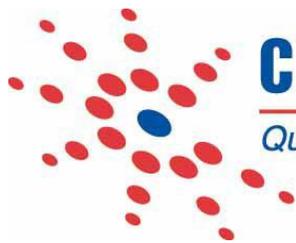
Chemical Feeding Technologies, Inc. is the sole source authorized provider to sell and service the halogen valves and parts in Arizona. Materials Management has approved the sole-source procurement of halogen valves from Chemical Feeding Technologies, Inc.

ANALYSIS

Upgrading to the newest technology will further enhance public and employee safety at the city's well sites and reservoirs and adjacent areas. The Halogen Gas Shutoff System will automatically shut off the chlorine feed valve during a chlorine event.

FISCAL IMPACTS

Total cost for all 10 valves and associated parts is \$96,089.80. Funds are available in the FY 2012-13 operating budget of the Water Services Department.



Chemical Feeding Technologies, Inc.

Quality Products for Environmental Quality®

February 5, 2013

TO: Glendale Water

E-mail: klogan@glendaleaz.com

2 pages transmitted

ATTN: Kerry Logan

FROM: Richard Reed

SUBJECT: Chlorine Emergency Shut-off System

REF: Chemical Feeding Technologies, Inc. Quote # R020413A Rev. 1

We are pleased to provide the following prices for emergency chlorination shut-off systems:

Item	Qty	Part Number	Description	Each Cost	Ext. Cost
1.	10	8002.00	WALL MOUNTED MICROPROCESSOR BASED NEMA 4X CONTROL PANEL TO CONTROL TWO (2) 150# CL2 CYLINDER SHUT-OFF ACTUATORS WITH STANDARD BATTERY BACK-UP, 120VAC POWER	\$7,375.50	\$73,755.00
2.	10	4500.05	THREE (3) DPDT OUTPUT SELF LATCHING RELAYS	\$779.40	\$7,794.00
3.	10	4500.06	RESET BUTTON FOR UNLATCHING RELAYS	\$109.90	\$1,099.00
			TOTAL		\$82,648.00
4.	2	8500.00	SPARE TERMINATOR ACTUATORS WITH CABLE	\$2,221.20	\$4,442.40
5.	1		9.3% SALES TAX ON \$82,648.00		\$7,686.26
6.	1		9.3% SALES TAX ON \$4,442.40		\$413.14
7.	1		FREIGHT FROM FACTORY TO JOB SITE.		\$900.00

Notes:

1. The above prices include a 10% quantity discount from our July 20, 2012 pricing.
2. The above pricing includes
 - 2.1 Supervision of installation
 - 2.2 Equipment start-up, check-out, and operator training

Page 2

Glendale Water – Halogen Gemini Shut-off System

February 05, 2013

3. Estimate delivery time for up to ten (10) Halogen systems is 2 – 3 weeks after receipt of an order.

The above prices are FOB shipping point, subject to review after 30 days, and do not include any applicable sales or use taxes. Our terms of sale, upon credit approval, are NET 30 days from date of invoice.

Please feel free to call if you have any questions. Thank you for this opportunity to be of service.

Chemical Feeding Technologies, Inc.

Phone: 602/650-1557 Fax: 602/277-2270 E-mail: rick@chemfeedtech.com



CITY COUNCIL REPORT

Meeting Date: **2/26/2013**
 Meeting Type: **Voting**
 Title: **AUTHORIZATION TO PURCHASE AMMUNITION FROM THE SAN DIEGO POLICE EQUIPMENT COMPANY, INCORPORATED**
 Staff Contact: **Debora Black, Interim Police Chief**

Purpose and Recommended Action

This is a request for City council to authorize a purchase from the San Diego Police Equipment Company, Incorporated in an amount not to exceed \$32,000 through the remainder of FY13.

Background Summary

This ammunition covers all of the training and qualifications for Glendale police officers. The San Diego Police Equipment Company, Incorporated is on an Arizona State Contract and use of this contract has been approved by Materials Management. The Police Department has \$32,000 remaining in their operating budget specifically for ammunition. The department would like permission to spend that funding with the San Diego Police Equipment Company, Incorporated for any ammunition needs during the remainder of FY13.

Previous Related Council Action

On October 9, 2012, Council approved an ammunition purchase in the amount of \$72,412 from San Diego Police Equipment Company, Incorporated.

Budget and Financial Impacts

Cost	Fund-Department-Account
\$32,000	1700-12310-521400, Range Supplies

Capital Expense? Yes No

Budgeted? Yes No

Requesting Budget or Appropriation Transfer? Yes No



CITY COUNCIL REPORT

If yes, where will the transfer be taken from?

Attachments

Staff Report



STAFF REPORT

To: **Horatio Skeete, Acting City Manager**
From: **Debora Black, Interim Police Chief**
Item Title: **AUTHORIZATION TO PURCHASE AMMUNITION FROM THE SAN DIEGO POLICE EQUIPMENT COMPANY, INCORPORATED**
Requested Council Meeting Date: **2/26/2013**
Meeting Type: **Voting**

PURPOSE

This report contains information on proposed purchases from the San Diego Police Equipment Company, Incorporated in an amount not to exceed \$32,000 through the remainder of FY13. The purpose of this report is to request the City Manager forward this item to the City Council for their consideration and approval.

BACKGROUND

This is a request to purchase ammunition for the Glendale Police Department. This ammunition covers all of the training and qualifications for Glendale police officers. The San Diego Police Equipment Company, Incorporated is on an Arizona State Contract and use of this contract has been approved by Materials Management. The Glendale Police Department has been using this company for several years. The department will utilize an Arizona Department of Public Safety (DPS) contract, in order to receive a very competitive rate. This contract was last bid in March 2009 in accordance with the State procurement process. On October 9, 2012, Council approved an ammunition purchase in the amount of \$72,412 from San Diego Police Equipment Company, Incorporated.

ANALYSIS

This purchase of ammunition from the San Diego Police Equipment Company, Incorporated is to provide ammunition officers for their training and qualifications, as well as for use on duty. The ammunition is important for training and for each officer to complete annual qualification required by Arizona Peace Officer Standards and Training. It is important for this purchase to go forward at this meeting so that officers will have ammunition for training and qualifications, and to carry in their weapon.

I will be recommending that City Council approve purchases from the San Diego Police Equipment Company, Incorporated in an amount not to exceed \$32,000 through the remainder of FY13.



STAFF REPORT

Utilizing the State DPS contract ensures the best pricing based on the amount of ammunition purchased.

FISCAL IMPACTS

The funding is available in the Police Department's operating budget.



CITY COUNCIL REPORT

Meeting Date: **2/26/2013**
 Meeting Type: **Voting**
 Title: **AUTHORIZATION TO PURCHASE EQUIPMENT AND EXTENSION TO MAINTENANCE AND SUPPORT AGREEMENT FROM MORPHOTRAK, INCORPORATED**
 Staff Contact: **Debora Black, Interim Police Chief**

Purpose and Recommended Action

This is a request for City Council to authorize a purchase from MorphoTrak, Incorporated for replacement of equipment and authorize an extension to a maintenance and support agreement.

Background Summary

The Glendale Police Department needs to replace three pieces of fingerprinting equipment and extend their annual maintenance and service agreement for the existing fingerprinting equipment. The equipment is an integral part of fingerprinting and photo identification of arrestees and it gives police the ability to ensure the arrestees are properly identified. The equipment provides automated fingerprint search capabilities, latent searching capability, electronic image storage, and electronic exchange of fingerprints and responses.

The extension to the current maintenance and support agreement occurs on an annual basis from July 1st through June 30th of each year. All other AFIS components that belong to the Glendale Police Department and the Court are covered under this agreement. These components include additional fingerprinting devices, printers, and other workstation equipment.

Budget and Financial Impacts

Cost	Fund-Department-Account
\$77,071.85	1860-32030-518200, State RICO

Capital Expense? Yes No

Budgeted? Yes No

Requesting Budget or Appropriation Transfer? Yes No



CITY COUNCIL REPORT

If yes, where will the transfer be taken from?

Attachments

Staff Report

Agreement



STAFF REPORT

To: **Horatio Skeete, Acting City Manager**
From: **Debora Black, Interim Police Chief**
Item Title: **AUTHORIZATION TO PURCHASE EQUIPMENT AND EXTENSION TO MAINTENANCE AND SUPPORT AGREEMENT FROM MORPHOTRAK, INCORPORATED**
Requested Council Meeting Date: **2/26/2013**
Meeting Type: **Voting**

PURPOSE

This report contains information on the proposed purchase from MorphoTrak, Incorporated for replacement of equipment and an extension to a maintenance and support agreement. The purpose of this report is to request the City Manager forward this item to the City Council for their consideration and approval.

BACKGROUND

The Glendale Police Department needs to replace three pieces of fingerprinting equipment and extend their annual maintenance and service agreement for the existing fingerprinting equipment. Glendale Police Department was notified by MorphoTrak, Incorporated that three components of their current Automated Fingerprint Information System (AFIS) equipment are reaching their end of useful life and will no longer be supported at an acceptable level of service due to the limited availability of parts. The first piece of equipment being replaced allows officers to take electronic fingerprints of index fingers to quickly verify the identity of the person; the second piece of equipment allows officers to take all 10 fingerprints; and the third piece of equipment is a printer that allows officers to print the fingerprint cards and other documentation that is required to be sent to the court.

The equipment is an integral part of fingerprinting and photo identification of arrestees and it gives police the ability to ensure the arrestees are properly identified. The equipment provides automated fingerprint search capabilities, latent searching capability, electronic image storage, and electronic exchange of fingerprints and responses. All police agencies in the state use this equipment and MorphoTrak, Incorporated is the only authorized vendor in the state. One year of maintenance and support is included in the purchase price.

The extension to the current maintenance and support agreement occurs on an annual basis from July 1st through June 30th of each year. All other AFIS components that belong to the Glendale Police Department and the Court are covered under this agreement. These components include



STAFF REPORT

additional fingerprinting devices, printers, and other workstation equipment. The rest of the AFIS components are in good working condition and do not need replacement at this time.

ANALYSIS

The amount of the equipment is \$38,978, and the amount of the maintenance agreement is \$38,093.85, for a total purchase amount of \$77,071.85. Racketeering Influenced Corrupt Organization (RICO) funds will be used for this purchase. The purchase price is based off of an Arizona state contract, which has been reviewed and approved by the City Attorney's Office.

The systems being replaced are integral to identifying arrestees, and are used to send information to Maricopa County Jail for bookings, therefore; the only viable option is to replace the equipment. Although our current maintenance and support agreement is still valid for a few more months, the outdated equipment is no longer serviceable, so it is important to move forward soon.

FISCAL IMPACTS

RICO will be used to fund both the equipment and the maintenance and support agreement.



3 Washington Square
Albany, NY 12205
Tel: (518) 452-3502
Fax: (518) 452-3581

January 29, 2013

Chief Debora Black
City of Glendale Police Department
6835 N 57th Dr.
Glendale, AZ 85301

**RE: Extension to Maintenance and Support Agreement # 004845-000
AFIS**

Dear Chief Black:

By means of this letter, MorphoTrak, Inc. ("MorphoTrak" or "Seller") hereby extends City of Glendale maintenance and support agreement as referenced above. Enclosed are the updated Exhibit A Description of Covered Products, Exhibit B Support Plan, Exhibit C Support Plan Options and Pricing Worksheet and Exhibit D Billable Rates for the period 07/01/2013 through 06/30/2014. Pursuant to Section 3.2 of the original agreement as referenced above, all terms and conditions shall remain in full force and effect.

Please indicate acceptance of this extension by signing the acceptance block below and **return one copy to my attention at MorphoTrak, Inc. at 3 Washington Square, Albany, NY 12205 or fax it to my attention at 518-452-3581 or Email to: Susan.Noisseau@morpho.com on or before 07/01/2013.** Failure to return this fully executed letter on or before 07/01/2013 will result in a lapse in maintenance, which will be subject to a 10% recertification and reimplementation fee.

If you have any questions or need further clarification, please contact me directly at (518)724-5241 or e-mail Susan.Noisseau@morpho.com.

Sincerely,

Susan Noisseau
Contracts Administration Specialist II
MorphoTrak, Inc.

Accepted by:

MORPHOTRAK, INC.

CITY OF GLENDALE

Signed by: _____

Signed by: _____

Printed Name: Walt Scott

Printed Name: _____

Title: Senior Director

Title: _____

Date: _____

Date: _____

Exhibit A
DESCRIPTION OF COVERED PRODUCTS

MAINTENANCE AND SUPPORT AGREEMENT NO. SA #004845-000

CUSTOMER: City of Glendale

The following table lists the Products under maintenance coverage:

<i>Product</i>	<i>Description</i>	<i>Node Name</i>	<i>Qty</i>
Printer	Lexmark	AZLPTGLN01	1
Printer	Lexmark (OPPIS)	AZLPTGLN02	1
DDG	Demographic Data Gateway	AZMDGGLN01	1
MM Workstation	Full Function Workstation & AUX	AZMGPGLN01	1
MM Workstation	Full Function Workstation	AZMGPGLN02	1
MorphoTouch	MT 200	AZMMTGLN01	1
OPPIS	OPPIS Workstation	AZMPOGLN01	1
Livescan	TP3800 (no fee, unit being replaced)	AZXLSGLN01	1
Livescan	Mobile Livescan	AZXLSGLN02	1

Exhibit B SUPPORT PLAN

This Support Plan is a Statement of Work that provides a description of the support to be performed.

1. Services Provided. The Services provided are based on the Severity Levels as defined herein. Each Severity Level defines the actions that will be taken by Seller for Response Time, Target Resolution Time, and Resolution Procedure for reported errors. Because of the urgency involved, Response Times for Severity Levels 1 and 2 are based upon voice contact by Customer, as opposed to written contact by facsimile or letter. Resolution Procedures are based upon Seller's procedures for Service as described below.

SEVERITY LEVEL	DEFINITION	RESPONSE TIME	TARGET RESOLUTION TIME
1	Total System Failure - occurs when the System is not functioning and there is no workaround; such as a Central Server is down or when the workflow of an entire agency is not functioning.	Telephone response within 1 hour of initial voice notification	Resolve within 24 hours of initial notification
2	Critical Failure - Critical process failure occurs when a crucial element in the System that does not prohibit continuance of basic operations is not functioning and there is usually no suitable workaround. Note that this may not be applicable to intermittent problems.	Telephone response within 3 Standard Business Hours of initial voice notification	Resolve within 7 Standard Business Days of initial notification
3	Non-Critical Failure - Non-Critical part or component failure occurs when a System component is not functioning, but the System is still useable for its intended purpose, or there is a reasonable workaround.	Telephone response within 6 Standard Business Hours of initial notification	Resolve within 180 days in a Seller-determined Patch or Release.
4	Inconvenience - An inconvenience occurs when System causes a minor disruption in the way tasks are performed but does not stop workflow.	Telephone response within 2 Standard Business Days of initial notification	At Seller's discretion, may be in a future Release.
5	Customer request for an enhancement to System functionality is the responsibility of Seller's Product Management.	Determined by Seller's Product Management.	If accepted by Seller's Product Management, a release date will be provided with a fee schedule, when appropriate.

1.1 Reporting a Problem. Customer shall assign an initial Severity Level for each error reported, either verbally or in writing, based upon the definitions listed above. Because of the urgency involved, Severity Level 1 or 2 problems must be reported verbally to the Seller's call intake center. Seller will notify the Customer if Seller makes any changes in Severity Level (up or down) of any Customer-reported problem.

1.2 Seller Response. Seller will use best efforts to provide Customer with a resolution within the appropriate Target Resolution Time and in accordance with the assigned Severity Level when Customer allows timely access to the System and Seller diagnostics indicate that a Residual Error is present in the Software. Target Resolution Times may not apply if an error cannot be reproduced on a regular basis on either Seller's or Customer's Systems. Should Customer report an error that Seller cannot reproduce, Seller may enable a detail error capture/logging process to monitor the System. If Seller is unable to correct the reported Residual Error within the specified Target Resolution Time, Seller will escalate its procedure and assign such personnel or designee to correct such Residual Error promptly. Should Seller, in its sole discretion, determine that such Residual Error is not present in its Release, Seller will verify: (a) the Software operates in conformity to the System Specifications, (b) the

Software is being used in a manner for which it was intended or designed, and (c) the Software is used only with approved hardware or software. The Target Resolution Time shall not commence until such time as the verification procedures are completed.

1.3 Error Correction Status Report. Seller will provide verbal status reports on Severity Level 1 and 2 Residual Errors. Written status reports on outstanding Residual Errors will be provided to System Administrator on a monthly basis.

2. Customer Responsibility.

2.1 Customer is responsible for running any installed anti-virus software.

2.2 Operating System ("OS") Upgrades. Unless otherwise stated herein, Customer is responsible for any OS upgrades to its System. Before installing any OS upgrade, Customer should contact Seller to verify that a given OS upgrade is appropriate.

3. Seller Responsibility.

3.1 Anti-virus software. At Customer's request, Seller will make every reasonable effort to test and verify specific anti-virus, anti-worm, or anti-hacker patches against a replication of Customer's application. Seller will respond to any reported problem as an escalated support call.

3.2 Customer Notifications. Seller shall provide access to (a) Field Changes; (b) Customer Alert Bulletins; and (c) hardware and firmware updates, as released and if applicable.

3.3 Account Reviews. Seller shall provide annual account reviews to include (a) service history of site; (b) downtime analysis; and (c) service trend analysis.

3.4 Remote Installation. At Customer's request, Seller will provide remote installation advice or assistance for Updates.

3.5 Software Release Compatibility. At Customer's request, Seller will provide: (a) current list of compatible hardware operating system releases, if applicable; and (b) a list of Seller's Software Supplemental or Standard Releases.

3.6 On-Site Correction. Unless otherwise stated herein, all suspected Residual Errors will be investigated and corrected from Seller's facilities. Seller shall decide whether on-site correction of any Residual Error is required and will take appropriate action.

4. Compliance to Local, County, State and/or Federal Mandated Changes. *(Applies to Software and interfaces to those Products)* Unless otherwise stated herein, compliance to local, county, state and/or federally mandated changes, including but not limited to IBR, UCR, ECARS, NCIC and state interfaces are not part of the covered Services.

(The below listed terms are applicable only when the Maintenance and Support Agreement includes Equipment which is shown on the Description of Covered Products, Exhibit A to the Maintenance and Support Agreement)

5. On-site Product Technical Support Services. Seller shall furnish labor and parts required due to normal wear to restore the Equipment to good operating condition.

5.1 Seller Response. Seller will provide telephone and on-site response to Central Site, defined as the Customer's primary data processing facility, and Remote Site, defined as any site outside the Central Site, as shown in Support Plan Options and Pricing Worksheet.

5.2 At Customer's request, Seller shall provide continuous effort to repair a reported problem beyond the PPM. Provided Customer gives Seller access to the Equipment before the end of the PPM, Seller shall extend a two (2) hour grace period beyond PPM at no charge. Following this grace period, any additional on-site labor support shall be invoiced on a time and material basis at Seller's then current rates for professional services.

**Exhibit C
SUPPORT PLAN OPTIONS AND PRICING WORKSHEET**

Maintenance and Support Agreement # SA # 004845-000 Date 05/09/2012
 New Term Effective Start 07/01/2012 End 06/30/2013

CUSTOMER: Address (1): Address (2): CITY, STATE, ZIP CODE:	City of Glendale 6835 N. 57 th Glendale, AZ 85301	BILLING AGENCY: Address (1): Address (2): CITY, STATE, ZIP CODE:	
CONTACT NAME: CONTACT TITLE TELEPHONE: FAX: Email:	Debora Black Chief (623)930-3059 dblack@glendaleaz.com	CONTACT NAME: CONTACT TITLE TELEPHONE: FAX: Email:	

For support on products below, please contact Customer Support at (800) 734-6241 or email at cscenter@morpho.com.
 AFIS System LiveScan™ Station Printrak™ BIS System

STANDARD SUPPORT	ANNUAL FEE
<input checked="" type="checkbox"/> Advantage – Software Support ♦ 8 a.m. – 5 p.m. Monday to Friday PPM ♦ Supplemental Releases & Updates ♦ Software Customer Alert Bulletins ♦ Unlimited Telephone Support ♦ Standard Releases & Updates ♦ Telephone Response: 2 Hour ♦ Remote Dial-In Analysis ♦ Automatic Call Escalation	\$ <u>38,978</u>
STANDARD SUPPORT TOTAL	\$ 38,978

SUPPORT OPTIONS	ANNUAL FEE
<input checked="" type="checkbox"/> On-Site Hardware Support ♦ 8 a.m. – 5 p.m. Monday-Friday PPM ♦ Defective Parts Replacement ♦ Hardware Service Reporting ♦ Next day PPM On-site Response ♦ Escalation Support ♦ Product Repair ♦ Hardware Vendor Liaison ♦ Hardware Customer Alert Bulletins ♦ Equipment Inventory Detail Management	\$ <u>Included</u>
<input checked="" type="checkbox"/> Parts Support – Best Effort Basis ♦ Parts Ordered & Shipped Next Business Day ♦ Parts Customer Alert Bulletins ♦ <i>If customer is providing their own on-site hardware support, the following applies:</i> * Customer Orders & Replaces Parts * Telephone Technical Support for Parts Replacement Available	\$ <u>Included</u>
<input checked="" type="checkbox"/> UPLIFTS ♦ Increase PPM to 24 x 7 software support ♦ Increase Response Time to 4 hour on site and 1 hour telephone	\$ <u>Included</u> \$ <u>Included</u>
SUPPORT OPTIONS TOTAL	\$ Included as checked

THIRD PARTY SUPPORT	ANNUAL FEE
<input type="checkbox"/> THIRD PARTY VENDOR NAME: ♦ TERM DATE: ♦ COVERAGE:	\$ <u>N/A</u>
THIRD PARTY SUPPORT TOTAL	\$ N/A

USERS CONFERENCE – NORTH AMERICA	ANNUAL FEE
<input type="checkbox"/> Users Conference Attendance (\$2,950 per Attendee) Year _____ Number Attendees Requested _____ • Registration fee • Hotel accommodations • Roundtrip travel for event • Daily meals • Ground transportation to/from the conference airport to the conference hotel	\$ <u>N/A</u>
USERS CONFERENCE TOTAL	\$ N/A

OTHER AVAILABLE OPTIONS	ANNUAL FEE
<input type="checkbox"/> LiveScan 3000 Prism Protection \$1,500 unit/year – Covers labor and material fee for replacement of one (1) prism per year <input type="checkbox"/> Other: _____	\$ <u>N/A</u> \$ <u>N/A</u>
OTHER AVAILABLE OPTIONS TOTAL	\$ N/A

Prepared by: **Susan Noisseau, (518)724-5241, Susan.Noisseau@morpho.com**

SUPPORT TOTAL * \$ 38,978
USERS CONFERENCE TOTAL \$ N/A
FULL TERM FEE GRAND TOTAL* \$ 38,978
**Exclusive of taxes if applicable*

PLEASE PROVIDE A COPY OF YOUR CURRENT TAX EXEMPTION CERTIFICATE (IF APPLICABLE)

Exhibit D
DESCRIPTION OF COVERED PRODUCTS

MAINTENANCE AND SUPPORT AGREEMENT NO. SA #004845-000

CUSTOMER: Glendale Police Department

The following are Seller's current billable rates, subject to an annual change.

COVERAGE HOURS (PPM)	BILLABLE RATES (OUTSIDE THE SCOPE OF A CURRENT EXECUTED AGREEMENT)
8am-5pm, M-F (local time)	\$160 per hour, 2 hours minimum
After 5p, Saturday, Sunday, Seller Holidays	\$240 per hour, 2 hours minimum

COVERAGE HOURS (PPM)	BILLABLE RATES (WITHOUT AN AGREEMENT)
8am-5pm, M-F (local time)	\$320 per hour, 2 hours minimum
After 5p, Saturday, Sunday, Seller Holidays	\$480 per hour, 2 hours minimum

APPENDIX A AZAFIS MAINTENANCE SERVICES AGREEMENT LIVESCAN & AFIS MAINTENANCE PRICING GLENDALE POLICE DEPARTMENT				
ITEM DESCRIPTION	Annual Fee for Coverage Period 7/1/10-6/30/11	Annual Fee for Coverage Period 7/1/11-6/30/12	Annual Fee for Coverage Period 7/1/12-6/30/13	Annual Fee for Coverage Period 7/1/13-6/30/14
LIVESCAN MAINTENANCE				
Ruggedized Cabinet	\$486	\$510	\$536	\$0
TP3800 XCH	\$8,492	\$8,917	\$9,362	\$0
AZAFIS, TP-COMX-NTMAIL, SMTP Mail Support	\$91	\$96	\$100	\$0
TouchPrint Duplex Printer	\$517	\$543	\$570	\$598
Mobile LiveScan			\$4,274	\$4,487
LIVESCAN TOTAL	\$9,586	\$10,065	\$14,842	\$5,086
AFIS MAINTENANCE				
Demographic Data Gateway	\$9,280	9,744	10,231	10,743
OPPS Workstation (PC, Printer, License)	\$1,205	1,265	1,329	1,395
MetaMorpho Full Function Workstation w/ AUX	\$9,923	10,419	10,940	11,487
Remote Cluster Connectivity	\$607	637	669	703
MorphoTouch 200	\$234	246	258	271
MetaMorpho Full Function Workstation	\$8,028	8,429	8,851	9,293
AFIS TOTAL	\$29,277	30,741	32,278	33,892
GRAND TOTAL	\$38,863	40,806	47,120	38,978

TP3800 to be replaced FY13-14



CITY COUNCIL REPORT

Meeting Date: **2/26/2013**
Meeting Type: **Voting**
Title: **ACCEPTANCE OF NON-DEDICATED 2010 ARIZONA DEPARTMENT OF
HOMELAND SECURITY GRANTS AND REMOTEC PURCHASE FOR BOMB
ROBOT REFURBISHMENT**
Staff Contact: **Debora Black, Interim Police Chief**

Purpose and Recommended Action

This is a request for City Council to accept non-dedicated 2010 grant funding from the Arizona Department of Homeland Security (AZDOHS) in the amount of \$65,000 and authorize a purchase from Remotec for refurbishment of a bomb robot in the amount of \$68,022.29.

Staff is requesting Council waive reading beyond the title and authorize the City Manager to accept non-dedicated 2010 grant funding from the AZDOHS in the amount of \$65,000 and authorize a purchase from Remotec for refurbishment of a bomb robot in the amount of \$68,022.29.

Background Summary

Glendale Police Department was notified that AZDOHS had undedicated grant funding from their 2010 grants. Glendale Police Department applied for \$65,000 in funding for the specific purpose of refurbishing a bomb robot and was awarded the full amount of their request. The robot conducts observation, diagnostic, x-ray, hazmat monitoring and renders safe procedures for dangerous explosive device related calls for service.

The refurbishment will be done by Remotec in the amount of \$68,022.29. The robot is a proprietary item to Remotec, who is the sole manufacturer and distributor of the robot's platform. Materials Management has approved the purchase of the refurbishment as a sole source. The proposed refurbishment includes a complete software upgrade, replacement of the lighting and camera systems, and overhaul maintenance of the chassis, gear and joint motors.

Previous Related Council Action

On November 9, 2010, Glendale Police Department received 2010 grant funding from AZDOHS in the amount of \$164,000.



CITY COUNCIL REPORT

Budget and Financial Impacts

Cost	Fund-Department-Account
\$1,496.00	1700-12310-523400, EOD Robot Maintenance
\$1,526.29	1700-12310-525400, EOD Main Account
\$65,000	1840-33192-551400, 2010 AZDOHS Grant

Capital Expense? Yes No

Budgeted? Yes No

Requesting Budget or Appropriation Transfer? Yes No

If yes, where will the transfer be taken from?

Attachments

Staff Report

Resolution

Agreement



STAFF REPORT

To: **Horatio Skeete, Acting City Manager**
From: **Debora Black, Interim Police Chief**
Item Title: **ACCEPTANCE OF NON-DEDICATED 2010 ARIZONA DEPARTMENT OF
HOMELAND SECURITY GRANTS AND REMOTEC PURCHASE FOR BOMB
ROBOT REFURBISHMENT**
Requested Council Meeting Date: **2/26/2013**
Meeting Type: **Voting**

PURPOSE

This report contains information on the proposed non-dedicated 2010 grant funding from the Arizona Department of Homeland Security (AZDOHS) in the amount of \$65,000 and a purchase from Remotec for refurbishment of a bomb robot in the amount of \$68,022.29. The purpose of this report is to request the City Manager forward this item to the City Council for their consideration and approval.

BACKGROUND

Since 1999, AZDOHS has been distributing grant funding to enhance efforts to prepare, prevent, and respond to terrorist attacks and other disasters. The Glendale Police Department has been receiving the grant funds to purchase safety equipment to protect first responders, specialized equipment for technical operations, and equipment to enhance communication efforts, as well as to develop preparedness training and to enhance prevention and intervention programs.

On November 9, 2010, Glendale Police Department received 2010 grant funding from AZDOHS in the amount of \$164,000. Glendale Police Department was then notified that AZDOHS had undedicated grant funding from their 2010 grants. Glendale Police Department applied for \$65,000 in funding for the specific purpose of refurbishing a bomb robot and was awarded the full amount of their request. The robot was originally purchased in 2003 using grant funding. The robot conducts observation, diagnostic, x-ray, hazmat monitoring and renders safe procedures for dangerous explosive device related calls for service.

The refurbishment will be done by Remotec in the amount of \$68,022.29. The robot is a proprietary item to Remotec, who is the sole manufacturer and distributor of the robot's platform. Materials Management has approved the purchase of the refurbishment as a sole source. The proposed refurbishment includes a complete software upgrade, replacement of the lighting and camera systems, and overhaul maintenance of the chassis, gear and joint motors.



STAFF REPORT

ANALYSIS

Having a robotic system is a requirement in order to have an FBI accredited bomb squad. The robot has experienced robust wear and tear during the course of its normal bomb squad operations over the past 10 years. It is routinely used on the majority of bomb calls, as well as Special Weapons and Tactics (SWAT) barricade operations. The refurbishment ensures that the robot will be functional for another 10 years. Future repairs or needed equipment is budgeted for each year. Repairs that may be needed in the future are the replacement of tires, tracks, and gearing maintenance.

The grant funding must be used by May 31, 2013, so it is important that this item go forward at this meeting. I will be recommending that Council approve the acceptance of non-dedicated 2010 grant funding from the Arizona Department of Homeland Security and authorize the purchase from Remotec to refurbishment the bomb robot in the amount of \$68,022.29.

FISCAL IMPACTS

There is no match required for this grant funding. The 2010 AZDOHS grant funding will be used to fund a majority of the refurbishment. The remaining \$3,022.29 is available in the Police Department's operating budget.

RESOLUTION NO. 4645 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE ACCEPTANCE OF GRANT AGREEMENT NUMBER 777810-04, STATE OF ARIZONA 2010 HOMELAND SECURITY GRANT PROGRAM, URBAN AREA SECURITY INITIATIVE, FOR THE BOMB SQUAD ROBOT REFURBISHMENT PROJECT IN THE APPROXIMATE AMOUNT OF \$65,000 FOR THE GLENDALE POLICE DEPARTMENT.

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 that the documents accepting Grant Agreement Number 777810-04, State of Arizona 2010 Homeland Security Grant Program, Urban Area Security Initiative, for the Bomb Squad Robot Refurbishment project, be entered into in the approximate amount of \$65,000 on behalf of the Glendale Police Department.

SECTION 2. That the City Manager, or his designee, is authorized to execute and deliver any and all necessary documents on behalf of the Glendale Police Department.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this ____ day of _____, 2013.

M A Y O R

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

REVIEWED BY:

Acting City Manager

SUBGRANTEE AGREEMENT-REALLOCATION

10-AZDOHS-HSGP- 777810-04

Between

The Arizona Department of Homeland Security
And

Glendale Police Department

WHEREAS, A.R.S. § 41-4254 charges the Arizona Department of Homeland Security (AZDOHS) with the responsibility of administering funds.

THEREFORE, it is agreed that the AZDOHS shall provide funding to the

Glendale Police Department

(subrecipient) for services under the terms of this Grant Agreement.

I. **PURPOSE OF AGREEMENT**

The purpose of this Agreement is to specify the responsibilities and procedures for the subrecipient's role in administering homeland security grant funds.

II. **TERM OF AGREEMENT, TERMINATION AND AMENDMENTS**

This Agreement shall become effective on **February 1, 2013** and shall terminate on **May 31, 2013**. The obligations of the subrecipient as described herein will survive termination of this agreement.

III. **DESCRIPTION OF SERVICES**

The subrecipient shall provide the services for the State of Arizona, Arizona Department of Homeland Security as approved in the grant application titled
"Bomb Squad Robot Refurbishment "

and funded at \$ **65,000** (as may have been modified by the award letter).

IV. **MANNER OF FINANCING**

The AZDOHS shall:

- a) Provide up to \$ **65,000** to the subrecipient for services provided under Paragraph III.
- b) Payment made by the AZDOHS to the subrecipient shall be on a reimbursement basis only and is conditioned upon receipt of proof of payment and applicable, accurate and complete reimbursement documents, as deemed necessary by the AZDOHS, to be submitted by the subrecipient. A listing of acceptable documentation can be found at www.azdohs.gov. Payments will be contingent upon receipt of all reporting requirements of the subrecipient under this Agreement.

V. FISCAL RESPONSIBILITY

It is understood and agreed that the total amount of the funds used under this Agreement shall be used only for the project as described in the application. Any modification to quantity or scope of work must be preapproved in writing by the AZDOHS. Therefore, should the project not be completed, the subrecipient shall reimburse said funds directly to the AZDOHS immediately. If the project is completed at a lower cost than the original budget called for, the amount reimbursed to the subrecipient shall be for only the amount of dollars actually spent by the subrecipient in accordance with the approved application. For any funds received under this Agreement for which expenditure is disallowed by an audit exemption or otherwise by the AZDOHS, the State, or Federal government, the subrecipient shall reimburse said funds directly to the AZDOHS immediately.

VI. FINANCIAL AUDIT/PROGRAMATIC MONITORING

The subrecipient agrees to terms specified in A.R.S. § 35-214 and § 35-215.

- a) In addition, in compliance with the Federal Single Audit Act (31 U.S.C. par. 7501-7507), as amended by the Single Audit Act Amendments of 1996 (P.L. 104 to 156), the subrecipient must have an annual audit conducted in accordance with OMB Circular #A-133 ("Audits of States, Local Governments, and Non-profit Organizations") if the subrecipient expends more than \$500,000 from Federal awards. If the subrecipient has expended more than \$500,000 in Federal dollars, a copy of the subrecipient's audit report for the previous fiscal year and subsequent years within the period of performance is due annually to AZDOHS by March 31st.
- b) Subrecipients will be monitored periodically by the AZDOHS staff, both programmatically and financially, to ensure that the project goals, objectives, performance requirements, timelines, milestone completion, budgets, and other related program criteria are being met. Monitoring will be accomplished through a combination of office-based reviews and onsite monitoring visits. Monitoring can involve aspects of the work involved under this contract including but not limited to the review and analysis of the financial, programmatic, performance and administrative issues relative to each program and will identify areas where technical assistance and other support may be needed.

VII. APPLICABLE FEDERAL REGULATIONS

The subrecipient must comply with the grant guidance Office of Management and Budget (OMB) Circulars Code of Federal Regulations (CFR) and other Federal guidance including but not limited to:

- a) 44 CFR Chapter 1, Federal Emergency Management Agency, Department of Homeland Security at http://www.access.gpo.gov/nara/cfr/waisidx_07/44cfrv1_07.html.
- b) 2 CFR 225 Cost Principles for State, Local & Indian Tribal Governments (A-87 OMB Circular), at http://www.access.gpo.gov/nara/cfr/waisidx_07/2cfr225_07.html. Cost Principles: 2 CFR Part 225, State and Local Governments; 2 CFR Part 220, Educational Institutions; 2 CFR Part 230, Non-Profit Organizations; Federal Acquisition Regulation Sub-part 31.2, Contracts with Commercial Organizations. OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations, at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>.

- c) 44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (formerly OMB Circular A-102), at http://149.168.212.15/mitigation/Library/44_CFR-Part_13.pdf. U.S. Department of Homeland Security Authorized Equipment List (AEL), at <https://www.rkb.mipt.org/ael.cfm> 2 CFR Part 215, Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.
- d) 28 CFR applicable to grants and cooperative agreements, including Part II, Applicability of Office of Management and Budget Circulars; Part 18, Administrative Review Procedure; Part 20, Criminal Justice Information Systems; Part 22, Confidentiality of Identifiable Research and Statistical Information; Part 23, Criminal Intelligence System Operating Policies; Part 42, Non-discrimination Equal Employment Opportunities Policies and Procedures; Part 61, Procedures for Implementing the National Environmental Policy Act; Part 63, Floodplain Management and Wetland Protection Procedures; and Part 66, Uniform Administrative Requirements for Grants and Co-operative Agreements to State and Local Government.

Included within the above mentioned guidance documents are provisions for the following:

NIMSCAST

The subrecipient agrees to complete the National Incident Management System Compliance Assistance Support Tool (NIMSCAST) and remain in compliance.

Environmental Planning and Historic Preservation

The subrecipient shall comply with all applicable Federal, State, and Local environmental and historic preservation (EHP) requirements and shall provide any information requested by FEMA to ensure compliance with applicable laws including: National Environmental Policy Act, National Historic Preservation Act, Endangered Species Act, and Executive Orders on Floodplains (11988), Wetlands (11990) and Environmental Justice (12898). Subrecipient shall not undertake any project having the potential to impact EHP resources without the prior approval of AZDOHS/FEMA, including but not limited to communications towers, physical security enhancements, new construction, and modifications to buildings that are 50 years old or greater. Subrecipient must comply with all conditions placed on the project as the result of the EHP review. Any change to the approved project scope of work will require re-evaluation for compliance with these EHP requirements. If ground disturbing activities occur during project implementation, the subrecipient must ensure monitoring of ground disturbance and if any potential archeological resources are discovered, the subrecipient will immediately cease construction in that area and notify FEMA and the appropriate State Historic Preservation Office. Procurement and construction activities shall not be initiated prior to the full environmental and historic preservation review.

Consultants/Trainers/Training Providers

Billings for consultants/trainers/training providers must include at a minimum: a description of services; dates of services; number of hours for services performed; rate charged for services; and, the total cost of services performed. Consultant/trainer/training provider costs must be within the prevailing rates; must be obtained under consistent treatment with the procurement policies of the subrecipient and 44 CFR Chapter 1, Part 13; and shall not exceed the maximum of \$450 per day per consultant/trainer/training provider unless prior written approval is granted by the AZDOHS. In addition to the per day \$450 maximum amount, the consultant/trainer/training provider may be reimbursed

reasonable travel, lodging, and per diem not to exceed the state rate. Itemized receipts are required for lodging and travel reimbursements. The subrecipient will not be reimbursed costs other than travel, lodging, and per diem on travel days for consultants/trainers/training providers.

Contractors/Subcontractors

The subrecipient may enter into written subcontract(s) for performance of certain of its functions under the contract in accordance with terms established in the OMB Circulars, Code of Federal Regulations, DHS Guidance and DHS Program Guide. The subrecipient agrees and understands that no subcontract that the subrecipient enters into with respect to performance under this Agreement shall in any way relieve the subrecipient of any responsibilities for performance of its duties. The subrecipient shall give the AZDOHS immediate notice in writing by certified mail of any action or suit filed and prompt notice of any claim made against the subrecipient by any subcontractor or vendor which in the opinion of the subrecipient may result in litigation related in any way to the Agreement with the AZDOHS.

Personnel and Travel Costs

All grant funds expended for personnel, travel, lodging, and per diem must be consistent with the subrecipient's policies and procedures and must be applied uniformly to both federally financed and other activities of the agency. At no time will the subrecipient's reimbursement(s) exceed the State rate established by the Arizona Department of Administration, General Accounting Office Travel Policies: <http://www.gao.state.gov>.

Procurement

The subrecipient shall comply with all internal agency procurement rules/policies and must also comply with Federal procurement rules/policies as outlined in section VII and all procurement must comply with Arizona State procurement code and rules. The Federal intent is that all Homeland Security Funds are awarded competitively. The subrecipient shall not enter into a Sole or Single Source procurement agreement, unless prior written approval is granted by the AZDOHS.

Training and Exercise

The subrecipient agrees that any grant funds used for training and exercise must be in compliance with grant guidance. All training must be approved through the ADEM/AZDOHS training request process prior to execution of training contract(s). All exercises must utilize the FEMA Homeland Security Exercise and Evaluation Program (HSEEP) Toolkit for exercise design, development and scheduling. Subrecipient agrees to:

- a) Submit the HSEEP Toolkit Exercise Summary to AZDOHS with all Exercise Reimbursement Requests.
- b) Post all exercises, documentation and After Action Reports/Improvement Plans via the HSEEP Toolkit.
- c) Within 60 days of completion of an exercise, the exercise host subrecipient is required to upload the AAR/IP into the HSEEP Toolkit and email the AAR/IP to the local County Emergency Manager, the FEMA Region IX Exercise POC, HSEEP@dhs.gov, the AZDOHS Strategic Planner, and the Arizona Department of Emergency Management (ADEM) Exercise Officer.

Nonsupplanting Agreement

The subrecipient shall not use funds to supplant State or Local funds or other resources that would otherwise have been made available for this program/project. Further, if a position created by a grant is filled from within, the vacancy created by this action must be filled within thirty (30) days. If the vacancy is not filled within thirty (30) days, the subrecipient must stop charging the grant for the new position. Upon filling the vacancy, the subrecipient may resume charging for the grant position.

E-Verify

Compliance requirements for A.R.S. § 41-4401—immigration laws and E-Verify requirement.

- a) The subrecipient warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A. (That subsection reads: "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program).
- b) A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the contract and the subrecipient may be subject to penalties up to and including termination of the Agreement.
- c) The AZDOHS retains the legal right to inspect the papers of any employee who works on the Agreement to ensure that the subrecipient is complying with the warranty under paragraph (a) above.

Property Control

Effective control and accountability must be maintained for all property. The subrecipient must adequately safeguard all such property and must assure that it is used solely for authorized purposes as described in the guidance and application. The subrecipient shall exercise caution in the use, maintenance, protection and preservation of such property.

- a) Equipment shall be used by the subrecipient in the program or project for which it was acquired as long as needed, whether or not the program or project continues to be supported by federal grant funds. Theft, destruction, or loss of property shall be reported to the AZDOHS immediately.
- b) Nonexpendable Property is property which has a continuing use, is not consumed in use, is of a durable nature with an expected service life of one or more years, has an acquisition cost of \$300 (Three Hundred Dollars) or more, and does not become a fixture or lose its identity as a component of other equipment or plant.
- c) A Capital Asset is any personal or real property, or fixture that has an acquisition cost of \$5,000 (Five Thousand Dollars) or more per unit and/or a useful life of more than one year. When use of the Capital Asset for project activities is discontinued, the subrecipient shall request/receive authorization from AZDOHS prior to disposition.
- d) A Property Control Form shall be maintained for the entire scope of the program or project for which property was acquired through the end of its useful life and/or disposition. Nonexpendable Property and Capital Assets must be included on the Property Control Form. When disposition of Nonexpendable Property and Capital Assets occurs the subrecipient shall submit an updated Property Control Form to AZDOHS.

- e) Upon submission of the final quarterly programmatic report the subrecipient must file with the AZDOHS a copy of the Property Control Form. The subrecipient agrees to be subject to equipment monitoring and auditing by state or federal authorized representatives to verify information.
- f) A physical inventory of the Nonexpendable Property and Capital Assets must be taken and the results reconciled with the Property Control Form at least once every two years.

(1) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

(2) Adequate maintenance procedures must be developed to keep the property in good condition.

Allowable Costs

The allowability of costs incurred under this agreement shall be determined in accordance with the general principles of allowability and standards for selected cost items as set forth in the applicable OMB Circulars, Code of Federal Regulations, authorized equipment lists and guidance documents referenced above.

- a) The subrecipient agrees that grant funds are not to be expended for any indirect costs that may be incurred by the subrecipient for administering these funds.
- b) The subrecipient agrees that grant funds are not to be expended for any Management and Administrative (M&A) costs that may be incurred by the subrecipient for administering these funds unless explicitly applied for and approved in writing by the AZDOHS and shall be in compliance with Grant Guidance.

VIII. DEBARMENT CERTIFICATION

The subrecipient agrees to comply with the Federal Debarment and Suspension regulations as outlined in the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions."

IX. FUNDS MANAGEMENT

The subrecipient must maintain funds received under this Agreement in separate ledger accounts and cannot mix these funds with other sources. The subrecipient must manage funds according to applicable Federal regulations for administrative requirements, costs principles, and audits.

The subrecipient must maintain adequate business systems to comply with Federal requirements. The business systems that must be maintained are:

- Financial Management
- Procurement
- Personnel
- Property
- Travel

A system is adequate if it is 1) written; 2) consistently followed – it applies in all similar circumstances; and 3) consistently applied – it applies to all sources of funds.

X. REPORTING REQUIREMENTS

Regular reports by the subrecipient shall include:

a) Programmatic Reports

The subrecipient shall provide quarterly programmatic reports to the AZDOHS within fifteen (15) working days of the last day of the quarter in which services are provided. The subrecipient shall use the form provided by the AZDOHS to submit quarterly programmatic reports. The report shall contain such information as deemed necessary by the AZDOHS. The subrecipient shall use the Quarterly Programmatic Report Format template, which is posted at www.azdohs.gov. If the scope of the project has been fully completed and implemented, and there will be no further updates, then the quarterly programmatic report for the quarter in which the project was completed will be sufficient as the final report. The report should be marked as final and should be inclusive of all necessary and pertinent information regarding the project as deemed necessary by the AZDOHS. Quarterly programmatic reports shall be submitted to the AZDOHS until the entire scope of the project is completed

b) Quarterly Programmatic Reports are due:

January 15 (period October 1– December 31)

April 15 (period January 1 – March 31)

July 15 (period April 1 – June 30)

October 15 (period July 1 – September 30)

c) Financial Reimbursements

The subrecipient shall provide as frequently as monthly but not less than quarterly requests for reimbursement. Reimbursements shall be submitted with the Reimbursement Form provided by the AZDOHS staff. The subrecipient shall submit a final reimbursement for expenses received and invoiced prior to the end of the termination of this Agreement no more than **forty-five (45) calendar days** after the end of the Agreement. Requests for reimbursement received later than the forty-five (45) days after the Agreement termination will not be paid. The final reimbursement request as submitted shall be marked FINAL.

The AZDOHS requires that all requests for reimbursement are submitted via U.S. mail (United States Postal Service), FedEx, UPS, etc...or in person. Reimbursements submitted via fax or by any electronic means will not be accepted.

The AZDOHS reserves the right to request and/or require any supporting documentation it feels necessary in order to process reimbursements.

All reports shall be submitted to the contact person as described in Paragraph XXXIX, NOTICES, of this Agreement.

XI. ASSIGNMENT AND DELEGATION

The subrecipient may not assign any rights hereunder without the express, prior written consent of both parties.

XII. AMENDMENTS

Any change in this Agreement including but not limited to the Description of Services and budget described herein, whether by modification or supplementation, must be accomplished by a formal Agreement amendment signed and approved by and between the duly authorized representative of the subrecipient and the AZDOHS.

Any such amendment shall specify: 1) an effective date; 2) any increases or decreases in the amount of the subrecipient's compensation if applicable; 3) be titled as an "Amendment," and 4) be signed by the parties identified in the preceding sentence. The subrecipient expressly and explicitly understands and agrees that no other method of communication, including any other document, correspondence, act, or oral communication by or from any person, shall be used or construed as an amendment or modification or supplementation to this Agreement.

XIII. OFFSHORE PERFORMANCE OF WORK PROHIBITED

Due to security and identity protection concerns, all services under this Agreement shall be performed within the borders of the United States. All storage and processing of information shall be performed within the borders of the United States. This provision applies to work performed by subcontractors at all tiers.

XIV. AGREEMENT RENEWAL

This Agreement shall not bind nor purport to bind the AZDOHS for any contractual commitment in excess of the original Agreement period.

XV. RIGHT TO ASSURANCE

If the AZDOHS in good faith has reason to believe that the subrecipient does not intend to, or is unable to perform or continue performing under this Agreement, the AZDOHS may demand in writing that the subrecipient give a written assurance of intent to perform. If the subrecipient fails to provide written assurance within the number of days specified in the demand, the AZDOHS at its option may terminate this Agreement.

XVI. CANCELLATION FOR CONFLICT OF INTEREST

The AZDOHS may, by written notice to the subrecipient, immediately cancel this Agreement without penalty or further obligation pursuant to A.R.S. § 38-511 if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the State or its subdivisions (unit of Local Government) is an employee or agent of any other party in any capacity or a consultant to any other party to the Agreement with respect to the subject matter of the Agreement. Such cancellation shall be effective when the parties to the Agreement receive written notice from the AZDOHS, unless the notice specifies a later time.

XVII. THIRD PARTY ANTITRUST VIOLATIONS

The subrecipient assigns the State of Arizona any claim for overcharges resulting from antitrust violations to the extent that such violations concern materials or services supplied by third parties to subrecipient toward fulfillment of this Agreement.

XVIII. AVAILABILITY OF FUNDS

Every payment obligation of the AZDOHS under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If the funds are not allocated and available for the continuance of this Agreement, the AZDOHS may terminate this Agreement at the end of the period for which funds are available. No liability shall accrue to the AZDOHS in the event this provision is exercised, and the AZDOHS shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph, including purchases and/or contracts entered into by the subrecipient in the execution of this Agreement.

XIX. FORCE MAJEURE

If either party hereto is delayed or prevented from the performance of any act required in this Agreement by reason of acts of God, strikes, lockouts, labor disputes, civil disorder, or other causes without fault and beyond the control of the party obligated, performance of such act will be excused for the period of the delay.

XX. PARTIAL INVALIDITY

Any term or provision of this Agreement that is hereafter declared contrary to any current or future law, order, regulation, or rule, or which is otherwise invalid, shall be deemed stricken from this Agreement without impairing the validity of the remainder of this Agreement.

XXI. ARBITRATION

In the event of any dispute arising under this Agreement, written notice of the dispute must be provided to the other party within thirty (30) days of the events giving the rise to the dispute. The subrecipient agrees to terms specified in A.R.S. § 12-1518.

XXII. GOVERNING LAW AND CONTRACT INTERPRETATION

- a) This Agreement shall be governed and interpreted in accordance with the laws of the State of Arizona.
- b) This Agreement is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms in this document.
- c) Either party's failure to insist on strict performance of any term or condition of the Agreement shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object.

XXIII. ENTIRE AGREEMENT

This Agreement and its Exhibits constitute the entire Agreement between the parties hereto pertaining to the subject matter hereof and may not be changed or added to except by a writing signed by all parties hereto in conformity with Paragraph X, REPORTING REQUIREMENTS; provided; however, that the AZDOHS shall have the right to immediately amend this Agreement so that it complies with any new legislation, laws, ordinances, or rules affecting this Agreement. The subrecipient agrees to comply with any such amendment within ten (10) business days of receipt of a fully executed amendment. All prior and contemporaneous agreements, representations, and understandings of the parties, oral, written, pertaining to the subject matter hereof, are hereby superseded or merged herein.

XXIV. RESTRICTIONS ON LOBBYING

The subrecipient shall not use funds made available to it under this Agreement to pay for, influence, or seek to influence any officer or employee of a State or Federal government.

XXV. LICENSING

The subrecipient, unless otherwise exempted by law, shall obtain and maintain all licenses, permits, and authority necessary to perform those acts it is obligated to perform under this Agreement.

XXVI. NON-DISCRIMINATION

The subrecipient shall comply with all State and Federal equal opportunity and non-discrimination requirements and conditions of employment, including the Americans with Disabilities Act, in accordance with A.R.S. title 41, Chapter 9, Article 4 and Executive Order 2009-09.

XXVII. SECTARIAN REQUESTS

Funds disbursed pursuant to this Agreement may not be expended for any sectarian purpose or activity, including sectarian worship or instruction in violation of the United States or Arizona Constitutions.

XXVIII. SEVERABILITY

The provisions of this Agreement are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Agreement.

XXIX. ADVERTISING AND PROMOTION OF AGREEMENT

The subrecipient shall not advertise or publish information for commercial benefit concerning this Agreement without the written approval of the AZDOHS.

XXX. OWNERSHIP OF INFORMATION, PRINTED AND PUBLISHED MATERIAL

The AZDOHS reserves the right to review and approve any publications funded or partially funded through this Agreement. All publications funded or partially funded through this Agreement shall recognize the AZDOHS and the U.S. Department of Homeland Security. The U.S. Department of Homeland Security and the AZDOHS shall have full and complete rights to reproduce, duplicate, disclose, perform, and otherwise use all materials prepared under this Agreement.

The subrecipient agrees that any report, printed matter, or publication (written, visual, or sound, but excluding press releases, newsletters, and issue analyses) issued by the subrecipient describing programs or projects funded in whole or in part with Federal funds shall contain the following statement:

"This document was prepared under a grant from U.S. Department of Homeland Security. Points of view or opinions expressed in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Homeland Security."

The subrecipient also agrees that one copy of any such publication, report, printed matter, or publication shall be submitted to the AZDOHS to be placed on file and distributed as appropriate to other potential sub-recipients or interested parties. The AZDOHS may waive the requirement for submission of any specific publication upon submission of a request providing justification from the subrecipient.

The AZDOHS and the subrecipient recognize that research resulting from this Agreement has the potential to become public information. However, prior to the termination of this Agreement, the subrecipient agrees that no research-based data resulting from this Agreement shall be published or otherwise distributed in any form without express written permission from the AZDOHS and possibly the U.S. Department of Homeland Security. It is also agreed that any report or printed matter completed as a part of this agreement is a work for hire and shall not be copyrighted by the subrecipient.

XXXI. CLOSED-CAPTIONING OF PUBLIC SERVICE ANNOUNCEMENTS

Any television public service announcement that is produced or funded in whole or in part by the subrecipient shall include closed captioning of the verbal content of such announcement.

XXXII. INDEMNIFICATION

To the extent permitted by law, each party (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.

XXXIII. TERMINATION

- a) All parties reserve the right to terminate the Agreement in whole or in part due to the failure of the subrecipient or the grantor to comply with any term or condition of the Agreement, to acquire and maintain all required insurance policies, bonds, licenses and permits or to make satisfactory progress in performing the Agreement. The staff of either party shall provide a written thirty (30) day advance notice of the termination and the reasons for it.
- b) If the subrecipient chooses to terminate the contract before the grant deliverables have been met then the AZDOHS reserves the right to collect all reimbursements distributed to the subrecipient.
- c) The AZDOHS may, upon termination of this Agreement, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Agreement. The subrecipient shall be liable to the AZDOHS for any excess costs incurred by the AZDOHS in procuring materials or services in substitution for those due from the subrecipient.

XXXIV. CONTINUATION OF PERFORMANCE THROUGH TERMINATION

The subrecipient shall continue to perform, in accordance with the requirements of the Agreement, up to the date of termination, as directed in the termination notice.

XXXV. PARAGRAPH HEADINGS

The paragraph headings in this Agreement are for convenience of reference only and do not define, limit, enlarge, or otherwise affect the scope, construction, or interpretation of this Agreement or any of its provisions.

XXXVI. COUNTERPARTS

This Agreement may be executed in any number of counterparts, copies, or duplicate originals. Each such counterpart, copy, or duplicate original shall be deemed an original, and collectively they shall constitute one agreement.

XXXVII. AUTHORITY TO EXECUTE THIS AGREEMENT

Each individual executing this Agreement on behalf of the subrecipient represents and warrants that he or she is duly authorized to execute this Agreement.

XXXVIII. SPECIAL CONDITIONS

- a) The subrecipient must comply with the most recent version of the Administrative Requirements, Cost Principles, and Audit requirements
- b) The subrecipient acknowledges that U.S. Department of Homeland Security and the AZDOHS reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and authorize others to use, for Federal government purposes: (a) the copyright in any work developed under an award or sub-award; and (2) any rights of copyright to which a subrecipient purchases ownership with Federal support. The subrecipient shall consult with the AZDOHS regarding the allocation of any patent rights that arise from, or are purchased with, this funding.
- c) The subrecipient agrees that, when practicable, any equipment purchased with grant funding shall be prominently marked as follows: **"Purchased with funds provided by the U.S. Department of Homeland Security."**
- d) The subrecipient agrees to cooperate with any assessments, state/national evaluation efforts, or information or data collection requests, including, but not limited to, the provision of any information required for the assessment or evaluation of any activities within this agreement.
- e) The subrecipient is prohibited from transferring funds between programs (State Homeland Security Program, Urban Area Security Initiative, Citizen Corps Program, Operation Stonegarden, and Metropolitan Medical Response System).

XXXIX. NOTICES

Any and all notices, requests, demands, or communications by either party to this Agreement, pursuant to or in connection with this Agreement shall be in writing be delivered in person or shall be sent to the respective parties at the following addresses:

Arizona Department of Homeland Security
1700 West Washington, Suite 210
Phoenix, AZ 85007

The subrecipient shall address all programmatic notices relative to this Agreement to the appropriate the AZDOHS staff; contact information at www.azdohs.gov.

The subrecipient shall submit reimbursement requests relative to this Agreement to the appropriate the AZDOHS staff; contact information at www.azdohs.gov

The AZDOHS shall address all notices relative to this Agreement to:

XXXX. IN WITNESS WHEREOF

The parties hereto agree to execute this Agreement.

FOR AND BEHALF OF THE

Authorized Signature above

Print Name & Title above

Enter Date above

FOR AND BEHALF OF THE

Arizona Department of Homeland Security

Gilbert M. Orrantia
Director

Date

(Please be sure to complete and mail two original documents to the Arizona Department of Homeland Security.)



CITY COUNCIL REPORT

Meeting Date: **2/26/2013**
Meeting Type: **Voting**
Title: **INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR THE NEW RIVER PATHWAY**
Staff Contact: **Cathy Colbath, Interim Executive Director, Transportation Services**

Purpose and Recommended Action

Staff is requesting City Council waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into an intergovernmental agreement (IGA) with the Arizona Department of Transportation (ADOT) for construction of a multiuse pathway along the east bank of New River, from the Bethany Home Road alignment to Northern Avenue.

Background Summary

This IGA with ADOT will provide funding for construction of a 10-foot-wide, concrete, multiuse pathway along the east bank of New River, from the Bethany Home Road alignment to Northern Avenue. The pathway improvements include underpasses at Glendale and Northern avenues, benches, bike racks, landscaping and pedestrian lighting below the bridges.

This pathway along New River provides an important connection within the regional multiuse pathway system and, in particular, will provide a continuous connection from the Grand Canal Pathway in Glendale to the segment of the New River Pathway currently under construction by the City of Peoria at Northern Avenue. This segment of the New River Pathway will provide bicycle and pedestrian access to Westgate City Center, Jobing.com Arena and University of Phoenix Stadium. Federal funds have been identified in the Maricopa Association of Governments' Transportation Improvement Plan, and construction is anticipated to be completed by December 2013.

Previous Related Council Action

On September 25, 2012, City Council approved an IGA with ADOT for this project. However, that IGA was never fully executed when it was sent to ADOT for final signatures. At that time, the State Engineer changed the agreement by adding verbiage stating that the city: 1) will provide eligible inspection services; 2) will be reimbursed for these services; and 3) will invoice ADOT monthly for these inspection services. Not only is it beneficial for the city to be reimbursed for inspection services, allowing city staff to inspect the project will ensure that construction meets city standards.



CITY COUNCIL REPORT

On October 13, 2009, City Council approved a professional services agreement with CH2M Hill, Inc. for design of multiuse pathways along Grand Canal and New River, as well as Maryland Avenue bike lane improvements.

Community Benefit/Public Involvement

This pathway will support an alternative mode of travel and provide users with a safer option than traveling along busy arterial streets.

In 2001, voters approved a half-cent transportation sales tax for the multiuse pathways along the New River and Grand Canal. The New River Pathway has received public input over the past five years from citizen attendance at Annual GO Program open houses and from presentations to the Bicycle Task Force and the Citizens' Transportation Oversight Commission. Annual GO Program newsletters have included updates on the objectives and status of this project.

On January 6, 2011, to update the neighborhood on the project and provide an additional opportunity for input or comments, 487 neighborhood newsletters specifically for this project were mailed to businesses, property owners and residents within one-half mile of the project site. In addition, a project webpage was developed on the City of Glendale website for the New River Multiuse Pathway Project. The website can be accessed by visiting: <http://www.glendaleaz.com/improvements/NewRiver.cfm>.

Budget and Financial Impacts

Cost	Fund-Department-Account
\$188,075	2210-65063-551200 - New River Multiuse Pathway

The total project cost is estimated at \$3,134,114. Funding for construction will be provided by ADOT using federal funds in the amount of \$2,946,039 for construction. Local matching funds are available in the FY 2012-13 capital improvement plan in the estimated amount of \$188,075. If actual costs exceed the estimate, the city will be responsible for any additional project costs.

The operating and maintenance costs associated with this project are estimated at \$17,087 annually, and will be absorbed by the current GO Program operating budget (1660-16590-524400).

Capital Expense? Yes No



CITY COUNCIL REPORT

Budgeted? Yes No

Requesting Budget or Appropriation Transfer? Yes No

If yes, where will the transfer be taken from?

Attachments

Staff Report

Resolution

Agreement



STAFF REPORT

To: **Horatio Skeete, Acting City Manager**
From: **Cathy Colbath, Interim Executive Director, Transportation Services**
Item Title: **INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA
DEPARTMENT OF TRANSPORTATION FOR THE NEW RIVER
PATHWAY**
Requested Council Meeting Date: **2/26/2013**
Meeting Type: **Voting**

PURPOSE

This report contains information on the proposed intergovernmental agreement (IGA) with the Arizona Department of Transportation (ADOT) for construction of a 10-foot-wide, multiuse pathway along New River, from the Bethany Home Road alignment to Northern Avenue. The purpose of this report is to request that the City Manager place this item on an agenda for City Council action.

BACKGROUND

The city of Glendale has secured federal funds through the Maricopa Association of Governments (MAG) for construction of the New River Multiuse Pathway along the east bank of New River from the Bethany Home Road alignment to Northern Avenue. An alternative on the west bank was considered but the east bank location was favored because it provides better access for Glendale users.

This project is an important element in a regional system of off-street pathways. It is part of MAG's off-street plans and is included in the "Alternate Modes" section of the *Glendale Transportation Plan*.

The IGA calls for construction of a 10-foot-wide, concrete pathway for a distance of 2.3 miles. The pathway will have underpasses at Glendale and Northern avenues, and amenities will include landscaping, benches, bike racks and pedestrian lighting below the bridges. The city will maintain these pathway amenities and provide electrical power and water for landscaping.

This pathway will connect to a planned New River Pathway segment to be completed in 2013 by the City of Peoria, and will also connect to the Grand Canal Pathway in Glendale. The project will provide access to nearby professional football, baseball and hockey facilities.

On September 25, 2012, City Council approved an IGA with ADOT for this project. However, that IGA was never fully executed when it was sent to ADOT for final signatures. At that time, the State Engineer changed the agreement by adding verbiage stating that the city: 1) will provide eligible



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inspection services; 2) will be reimbursed for these services; and 3) will invoice ADOT monthly for these inspection services. Not only is it beneficial for the city to be reimbursed for inspection services, allowing city staff to inspect the project will ensure that construction meets city standards.

Additionally, on January 30, 2013, as part of the MAG closeout funds process, the MAG Regional Council awarded this project an additional \$1,396,039 in federal Congestion Mitigation and Air Quality Improvement (CMAQ) funds, which necessitated additional changes to the IGA, requiring City Council approval.

ANALYSIS

This pathway is included in the *Regional Transportation Plan* and the *Glendale Transportation Plan*, and is a benefit to the community, as it will provide a direct connection to a regional system of pathways as part of a regional off-streets plan, as well as a connection to the proposed Glendale Grand Canal Pathway as part of the city's multiuse bicycle/pedestrian system.

Federal funding has been secured and committed toward design and construction, with construction estimated to be completed by December 2013. Funds are available in the FY 2012-13 capital improvement plan.

In 2001, voters approved a half-cent transportation sales tax for the multiuse pathways along the New River and Grand Canal. The New River Pathway project has received public input over the past five years from citizen attendance at annual GO Program open houses and from presentations to the Bicycle Task Force and the Citizens' Transportation Oversight Commission. Annual GO Program newsletters have included updates on the objectives and status of this project.

On January 6, 2011, to update the neighborhood on the project and provide an additional opportunity for input or comments, a neighborhood newsletter, specifically for this project, was mailed to all 487 property owners within one-half mile of the project site. This mailing included businesses, property owners and residents in the project area.

In addition, a project webpage was developed and linked to the City of Glendale website so that those looking for upcoming projects would also be able to find information about the New River Multiuse Pathway Project. <http://www.glendaleaz.com/improvements/NewRiver.cfm>

FISCAL IMPACTS

The total project cost is estimated at \$3,134,114. Funding will be provided by ADOT using federal funds in the amount of \$2,946,039 for construction. Local matching funds in the amount of \$188,075 are available in the FY 2012-13 capital improvement plan. The city match for this



STAFF REPORT

project includes a \$10,000 ADOT review fee, which will be due to ADOT shortly after execution of this IGA.

The operating and maintenance costs associated with this project are estimated at \$17,087 annually, and will be absorbed by the current GO Program operating budget (1660-16590-524400).

RESOLUTION NO. 4646 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 ARIZONA DEPARTMENT OF TRANSPORTATION TO CONSTRUCT A BRIDGE OVER THE ADOT OUTFALL CHANNEL AND A 10-FOOT WIDE CONCRETE PATHWAY AND AMENITIES FROM THE BETHANY HOME ROAD ALIGNMENT TO NORTHERN AVENUE.

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

Neice

SECTION 1. That it is deemed in the best interest of the City of Glendale and the citizens thereof that the Intergovernmental Agreement between the City of Glendale and the Arizona Department of Transportation (IGA/JPA 10-055-I) to construct a bridge over the ADOT Outfall Channel and a 10-foot wide concrete pathway and amenities from the Bethany Home Road Alignment to Northern Avenue 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 _____, 2013.

M A Y O R

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

REVIEWED BY:

Acting City Manager

ADOT File No.: IGA/JPA 10-055-I
AG Contract No.: P001 2012-003062
ADOT No.: SS846 01C
Project No.: GLNN13-902 & GLN11-702
Project: New River Multi-Use Pathway
Section: Bethany Home Road
alignment to Northern Avenue.

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF GLENDALE

THIS AGREEMENT is entered into this date _____ pursuant to the Arizona Revised Statutes § 11-951 through § 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF GLENDALE, acting by and through its MAYOR and CITY COUNCIL (the "City"). The State and the City collectively are referred to as "Parties".

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement on behalf of the City.

3. The work proposed under this Agreement, hereinafter referred to as the "Project", is to construct a 10-foot wide concrete pathway from Bethany Home Road alignment north to Northern Avenue. The pathway includes trail under crossings at Glendale Avenue, Northern Avenue and the ADOT drainage channel bridge located a quarter mile south of Northern Avenue. Amenities include landscaping and irrigation with pedestrian lighting, benches and trash receptacles for pathway users. Pedestrian level lighting will be installed below the bridge at Glendale Avenue at the Glendale Avenue underpass and amenities such as benches and trash receptacles along the pathway. New railings will be added where needed and existing rails increased in height to meet AASHTO guidelines. Construct a bridge approximately 70 feet long and 14 feet wide over the ADOT Outfall Channel located approximately ¼ mile south of Northern Avenue. The bridge will accommodate light-weight maintenance vehicles and will have removable bollards with locks. The City shall maintain the pathway and provide electrical power and water required for the irrigation.

4. Such Project lies within the boundary of the City and has been selected by the City; the survey of the project has been completed; and the plans and estimates will be prepared and, as required, submitted to the State and Federal Highway Administration (FHWA) for its approval.

5. The interest of the State in this Project is the acquisition of Federal funds for the use and benefit of the City and to authorize such Federal funds for the project pursuant to Federal law and regulations.

6. The City, in order to obtain Federal funds for the construction of the Project is willing to provide City funds to match Federal funds in the ratio required or as finally fixed and determined by the City and FHWA.

7. The Parties shall perform their responsibilities consistent with this Agreement and any change or modification to the Project will only occur with the mutual written consent of both Parties.

8. The Project cost breakdown is as follows:

<u>ADOT Project No. SS846 01C</u>	
Construction Federal Aid CMAQ @ 94.3% (MAG TIP GLN 13-902)	\$ 1,388,096.00
Construction Federal Aid CMAQ @ 94.3% (MAG TIP GLN 11-702)	\$ 1,557,943.00
City Match @ 5.7%	\$ 178,075.00
Estimated Construction Cost	\$ 3,124,114.00
ADOT design review fee (SS939 01D)*	\$ 10,000.00
Total Estimated City's Funds	\$ 188,075.00
Total Federal Funds	<u>\$ 2,946,039.00</u>
**TOTAL Project Costs	\$ 3,134,114.00

* (Included in the City Estimated Funds)

** (Includes CE and Project contingencies)

The Parties acknowledge that the eventual actual cost may exceed the *construction* estimate, and in such case, the City is responsible for *any and all costs exceeding the estimate*. Actual costs may be less than the estimate and not needed for the Project, at which time any excess Federal funding will be de-obligated from the Project.

Federal funding is subject to de-obligation and removal from the Project twelve (12) months after the date of initial authorization unless the deadlines in this subsection are met or sufficient justification regarding the delay and expected construction start date are provided to the State and FHWA in writing.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State will:
 - a. Prior to performing or authorizing any work, invoice the City for ADOT's review fee.
 - b. Upon receipt of the review fee and on behalf of the City, act as the City's designated agent.
 - c. Upon execution of this Agreement, invoice the City for the City's estimated share of the Project, currently estimated at \$188,075.00.
 - d. Submit a program to the Federal Highway Administration (FHWA) containing the above-mentioned Project with the recommendation that it be approved for construction and funding. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project Plans, Standard Specifications for Road and Bridge Construction of the Arizona Department of Transportation.
 - e. Upon receipt of the City's estimated share of the Project and approval and authorization by FHWA, the State shall proceed to advertise for, receive and open bids subject to the concurrence of the FHWA and the City, to whom the award is made for and enter into a contract(s) with a firm(s) for the construction of the project. Request the maximum Federal funds available, including construction engineering and administration costs. Should costs exceed the maximum Federal funds available, it is

understood and agreed that the City will be responsible for any overage and for any costs not eligible for Federal funding.

f. Be granted, without cost requirements, the right to enter City right-of-way as required to conduct any and all construction and pre-construction related activities for said Project, including without limitation, temporary construction easements or temporary rights-of-entry on to and over said rights-of-way of the City.

g. Not be obligated to maintain said Project, should the City fail to budget or provide for proper and perpetual maintenance as set for in this Agreement.

h. Once the Project costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs.

2. The City will:

a. Upon execution of this Agreement, designate the State as authorized agent for the City.

b. Remit to the State within thirty (30) days of receipt of an invoice from the State, for ADOT's review costs.

c. Provide to the State design documents required for State review comments as appropriate.

d. Upon receipt of an invoice from the State and prior to bid advertisement and within thirty (30) days of receipt of invoice from the State, remit to the State the City's share of the construction costs currently estimated at \$188,075.00. Once the Project costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs. Final adjustments to the City's funds for construction of the project may be required based on the final contract award amount.

e. Certify that all necessary rights-of-way have been or will be acquired prior to advertisement for bid and also certify that all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the Project area, shall be removed from the proposed right-of-way, or will be removed prior to the start of construction in accordance with The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended; 49 CFR 24, 102 Basic Acquisition Policies; 49 CFR 24.4 Assurances, Monitoring and Corrective Action, parts (a) & (b) and ADOT right-of-way manual; sections 8.02, Responsibilities, 8.03 Prime Functions, 9.07, Monitoring Process and 9.08 Certification of Compliance. Coordinate with the appropriate State's Right-of-Way personnel during any right-of-way process performed by the City if applicable.

f. Not permit or allow any encroachments upon or private use of the right-of-way, except those authorized by permit. In the event of any unauthorized encroachment or improper use, the City shall take all necessary steps to remove or prevent any such encroachment or use.

g. Be responsible for any costs exceeding the maximum Federal funds available for the Project or those costs deemed ineligible for federal aid. Agree that the cost of the construction activities covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed and determined by FHWA.

h. Require their Design Consultant to provide services as required and requested throughout the construction phase for the Project.

i. Grant the State, its agents and/or contractors, without cost, the right to enter Rights-of-Way, as required, to conduct any and all construction and preconstruction related activities, including without limitation, temporary construction easements or temporary Rights-of-Entry to accomplish among other things, soil and foundation investigations.

j. Enter into an agreement with the design consultant which states that the design consultant shall provide professional post-design services as required and requested throughout and upon completion of the construction phase of the Project.

k. The (City) will provide eligible inspection services, and be reimbursed for these services. All ADOT policies and procedures will be applicable as coordinated with the Phoenix Construction District (District) and the ADOT Construction Group. The City, District and Construction Group must agree on the City Inspector. The City Engineering Director must provide the ADOT Construction Group (for pre-approval) all required and current certifications and chargeable rates (labor and equipment). The City Inspector will report to the ADOT Resident Engineer and must comply with all ADOT hardware/software computer requirements; this includes keeping the computer and any information in a secure location. The City Inspector must also utilize ADOT's automated system to complete the required weekly timesheet. The City Inspector will remain an employee of the City and will not be considered an employee of the Arizona Department of Transportation during the term of this Agreement. The City will invoice monthly for reimbursement, all charges must be kept current for both payment and federal reporting purposes. The City will be notified of all approvals by the ADOT Construction Group.

l. Additionally provide a set of as-built plans upon completion of the construction phase of the Project. An electronic version of the as-built plans shall be forwarded to Arizona Department of Transportation Local Government Section.

m. Upon completion of construction, the City shall provide for, at its own cost and as an annual item in its budget, perpetual and proper maintenance of all pathway and landscape improvements. Maintenance of all landscaping shall be in accordance with accepted horticultural practices including but not limited to keeping all areas free of weeds, undesirable grasses and litter, applying irrigation water, furnishing and applying insecticide/herbicide sprays and dust to combat diseases and other pests, pruning, and replanting as required to maintain the landscaping as it was designed and established at the completion of the Project and performing sidewalk repairs as required to keep the sidewalk compliant with the Americans with Disabilities Act Accessibility Guidelines.

n. Upon completion of construction, be responsible for the furnishing of electrical power and water necessary and to maintain and operate the landscaping and irrigation system including but not limited to all testing, adjustments, and repairs necessary to keep system in proper working order.

o. Upon completion of the Project, agree to accept, maintain and assume full responsibility of said Project in writing.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of said project and related deposits or reimbursement. Further, this Agreement may be cancelled at any time upon thirty days (30) written notice to the other party. Should the City terminate the Agreement, the City will reimburse the State for any costs incurred by the State as a result of the termination.

2. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction project. The City, in regard to the City's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and any construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that the State's participation is confined to securing federal aid on behalf of the City and the fulfillment of any other responsibilities of the State as specifically set forth herein; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold harmless, defend and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all costs and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition,

misrepresentation, directives, instruction or event arising out of the performance or non performance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, or its independent contractors, the City, any of its agents, officers and employees, or its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

3. The cost of design and construction covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this Agreement. Therefore, the City agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of Federal Aid received.

4. This Agreement shall become effective upon signing and dating of the Determination Letter by the State's Attorney General.

5. The cost of the Project under this Agreement includes applicable indirect costs approved by the Federal Highway Administration (FHWA). "Applicable indirect costs" means costs incurred by ADOT and approved by FHWA under ADOT's indirect cost allocation proposal, pursuant to 2 CFR 225 and (OMB Circular A-87).

6. Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

7. To the extent applicable under law, the provisions set forth in Arizona Revised Statutes § 35-214 and § 35-215 shall apply to this Agreement.

8. In the event of any controversy which may arise out of this Agreement, the Parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation (ADOT)
Joint Project Administration
205 S. 17th Avenue, Mail Drop 637E
Phoenix, Arizona 85007
(602) 712-7124
(602) 712-3132 Fax

City of Glendale
Transportation Department
5850 West Glendale Avenue
Glendale, Arizona 85301-2599
(623) 920-2000
(623) 847-1399

ADOT Financial Management Services
Attn: Project Accounting
206 S. 17th Avenue, Mail Drop 204B
Phoenix, Arizona 85007
(602) 712-8471 Fax

City of Glendale
City Attorney's Office
City Attorney
Craig Tindall
5850 West Glendale Avenue, Suite 450
Glendale, Arizona 85301-2599

Glendale Finance Director
Diane Goke
5850 West Glendale Avenue
Glendale, Arizona 85301-2599
dgoke@glendaleaz.com

10. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 2009-09 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

11. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments as a result of termination under this paragraph.

12. If the federal funding related to this Project is terminated or reduced by the federal government, or if the federal government rescinds, fails to renew, or otherwise reduces apportionments or obligation authority, the State shall in no way be obligated for funding or liable for any past, current or future expenses under this Agreement

13. Compliance requirements for Arizona Revised Statutes § 41-4401—immigration laws and E-Verify requirement:

a. The City warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Arizona Revised Statutes § 23-214, Subsection A.

b. A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the contract, and the City may be subject to penalties up to and including termination of the Agreement.

c. The State retains the legal right to inspect the papers of any employee who works on the Project to ensure that the City or subcontractor is complying with the warranty under paragraph (a).

14. The City warrants compliance with the Federal Funding Accountability and Transparency Act of 2006 and associated 2008 amendments and with Arizona Revised Statutes § 41-725.

15. Pursuant to Arizona Revised Statutes § 35-391.06 and § 35-393.06, each Party certifies that it does not have a scrutinized business operation in Sudan or Iran. For the purpose of this Section the term “scrutinized business operations” shall have the meanings set forth in Arizona Revised Statutes § 35-391 and/or § 35-393, as applicable. If any Party determines that another Party submitted a false certification, that Party may impose remedies as provided by law including terminating this Agreement.

16. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party’s legal counsel and that the Parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

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

CITY OF GLENDALE

STATE OF ARIZONA
Department of Transportation

By _____
HORATIO SKEETE
Acting City Manager for the City of Glendale

By _____
DALLAS HAMMIT, P.E.
Senior Deputy State Engineer, Development

ATTEST:

By _____
PAMELA HANNA
City Clerk

IGA/JPA 10-055-I

ATTORNEY APPROVAL FORM FOR THE CITY OF GLENDALE

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY OF GLENDALE, an Agreement between public agencies which has been reviewed pursuant to Arizona Revised Statutes § 11-951 through § 11-954, and declare this Agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this _____ day of _____ 2013.

City Attorney



CITY COUNCIL REPORT

Meeting Date: **2/26/2013**
Meeting Type: **Voting**
Title: **INTERGOVERNMENTAL AGREEMENT AND CONTRACT FOR LEGAL SERVICES RELATING TO SETTLEMENT OF THE WHITE MOUNTAIN APACHE TRIBE WATER RIGHTS CLAIMS**
Staff Contact: **Craig Tindall, City Attorney**

Purpose and Recommended Action

This is a request for City Council to waive reading beyond the title and adopt a resolution approving an Intergovernmental Agreement and the Contract for Legal Services with the cities of Avondale, Chandler, and Scottsdale relating to the joint representation in settlement efforts relating to water right claims of the White Mountain Apache Tribe.

Background Summary

On February 12, 2013 the City Council approved the Amended and Restated White Mountain Apache Tribe Water Rights Quantification Agreement and Lease Agreement with the White Mountain Apache Tribe's (WMAT) CAP water by Glendale. Final enforceability of the Settlement will not occur until a number of additional actions have been completed, including National Environmental Policy Act and Environmental Protection Act compliance, and approval of appropriate forms of judgments and decrees in the Gila River and Little Colorado River Adjudication trial courts.

Since 2008, the cities of Avondale, Chandler, Glendale and Scottsdale have jointly retained the services of William H. Anger with the firm of Engelman Berger, P.C., as their lead counsel in representing their respective interests in the negotiations to resolve the WMAT's Salt River watershed claims. The four cities' common positions in the settlement activities have benefited from this joint representation by outside counsel. Over the past few years, Mr. Anger has been successful in meeting with other municipalities in order to present a uniform settlement approach, as well as draft settlement documents consistent with the cities' respective interests. It is anticipated that the four cities will again benefit from this continued joint representation by Mr. Anger in taking all actions required for the Settlement to become enforceable and in order to ensure renewable, long-term water supplies for the City of Glendale.

In addition to Mr. Anger's representation on the WMAT water matters, he also represents the City's interest in the larger water case known as the Gila River General Stream Adjudication, which litigation has been ongoing since 1979. In the recent past, the Little Colorado water rights have been added to the General Stream Adjudications along with claims from the Hopi Tribe.



CITY COUNCIL REPORT

Previous Related Council Action

On February 12, 2013, the Council adopted Resolution No. 4642 New Series, approving and authorizing execution of the Amended and Restated Tribal Water Rights Settlement and Lease Agreement.

At the February 5, 2013 Workshop, a presentation was made to Council for their information and study on updates and the status of minor revisions to the Agreement.

On February 24, 2009, Council adopted Resolution No. 4235 New Series, authorizing the entering into of an Intergovernmental Agreement and Contract for Legal Services relating to the joint representation in the settlement efforts relating to the water right claims of the White Mountain Apache Tribe.

Community Benefit/Public Involvement

As in any litigation with many parties, a large group of similarly situated parties with common representation can have a much greater effect and see reduced costs than those same parties would have individually.

Budget and Financial Impacts

The cost of representation in the WMAT water rights issues is equally shared by the four cities. Glendale is responsible for 25%, an amount not to exceed \$19,125 per year for the services rendered under this contract, and fees not to exceed \$4,000 per year for expert services.

For all other Glendale water matters and the Gila River General Stream Adjudication issues, Mr. Anger's hourly rate is \$305.00.

Cost	Fund-Department-Account
\$23,125	2360-17110-518200, Utilities

Capital Expense? Yes No

Budgeted? Yes No

Requesting Budget or Appropriation Transfer? Yes No

If yes, where will the transfer be taken from?



CITY COUNCIL REPORT

Attachments

Resolution

Agreement

Agreement

RESOLUTION NO. 4647 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF THE INTERGOVERNMENTAL AGREEMENT AMONG THE CITIES OF AVONDALE, CHANDLER, GLENDALE AND SCOTTSDALE RELATING TO JOINT REPRESENTATION IN SETTLEMENT EFFORTS RELATING TO THE WATER RIGHTS CLAIMS OF THE WHITE MOUNTAIN APACHE TRIBE.

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 Intergovernmental Agreement among the Cities of Avondale, Chandler, Glendale and Scottsdale Relating to the Joint Representation in Settlement Efforts Relating to the Water Rights Claims of the White Mountain Apache Tribe 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 any and all necessary documents 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 _____, 2013.

M A Y O R

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

REVIEWED BY:

Acting City Manager

INTERGOVERNMENTAL AGREEMENT

**AMONG THE CITIES OF AVONDALE, CHANDLER, GLENDALE, AND
SCOTTSDALE RELATING TO JOINT
REPRESENTATION IN SETTLEMENT EFFORTS RELATING TO THE WATER
RIGHTS CLAIMS OF THE WHITE MOUNTAIN APACHE TRIBE**

This Intergovernmental Agreement is made to be effective the ___ day of _____, 2012, among the Cities of Avondale, Chandler, Glendale, and Scottsdale, municipal corporations, hereafter collectively referred to as the "Cities."

Whereas, joint projects among the Cities allow the Cities to maximize their effectiveness and minimize their costs; and

Whereas, settlement activities are currently ongoing relating to the White Mountain Apache Tribe's water rights claims, and the Cities agree that they prefer joint legal representation to assist them with these settlement efforts;

NOW, THEREFORE, for and in consideration of the terms and conditions of this Intergovernmental Agreement, the Cities agree as follows:

1. The purpose of this Intergovernmental Agreement ("IGA") is to identify and define the responsibilities of the Cities relating to joint funding for outside legal counsel to represent the Cities in settlement activities relating to the White Mountain Apache Tribe's water rights claims.

2. Subject to the terms of this IGA and the Contract for Legal Services ("Contract") negotiated with outside counsel, the Cities agree to share in the costs of joint legal representation by outside counsel in settlement activities relating to the White Mountain Apache Tribe's water rights claims. The term of this IGA shall expire upon the latest of the dates on which: 1) a settlement agreement as to the quantification of the water rights of the White Mountain Apache Tribe and the Cities of Avondale, Chandler, Glendale and Scottsdale ("Settlement Agreement") becomes enforceable; and/or 2) the effective date of any other agreements that are exhibits to that Settlement Agreement, and to which any or all of the Cities of Avondale, Chandler, Glendale or Scottsdale are parties. Should any appeals(s) be filed challenging the adjudication court's or courts' orders(s), decree or decrees approving the Settlement, this IGA shall be extended until the final determination of any and all such appeals. The Cities agree to share the total cost of joint representation on a one-fourth basis. Costs shall be allocated as follows:

		%
Avondale		25%
Chandler	=	25%
Glendale	=	25%
Scottsdale	=	25%
<u>Scottsdale</u>	=	25%
All Cities	=	100%

3. Pursuant to the Contract among the Cities and the law firm of Engelman Berger,

P.C., each of the Cities shall pay directly outside legal counsel its per capita share of the total costs of joint representation in response to monthly bills from outside counsel.

4. Subject to the Contract and the provisions of the Supreme Court's Rules of Professional Responsibility for Attorneys, each of the Cities agrees to cooperate in good faith with the other Cities in an effort to make the joint representation a success.

5. This IGA may be cancelled pursuant to A.R.S. § 38-511.

6. This IGA shall become effective upon approval and execution by the authorized representatives of all the Cities. The City Attorney for each City is authorized to execute the Contract for Legal Services and any renewals thereof.

7. Any property, tangible, intangible, personal, real or mixed which may be acquired under the terms of this IGA will, upon partial or complete termination of the IGA, be disposed of in equal pro-rata shares among the Cities.

8. The provisions of this IGA are severable. If any portion or portions of this Agreement are declared to be unlawful or void in a final court of competent jurisdiction, the remaining portions of this IGA which survive any such determination shall remain valid and enforceable according to their terms.

9. This IGA may be executed in counterparts, each of which may contain fewer than all signatures but all of which, together, shall constitute a single instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Intergovernmental Agreement to be effective the date first written above.

[Signatures on following pages]

ATTEST:

CITY OF AVONDALE

By: _____

Its: _____

Its: _____

DETERMINATION OF LEGAL COUNSEL

The foregoing Agreement has been reviewed by the undersigned attorney who has determined that it is in proper form and within the power and authority granted under the laws of the State of Arizona to the City of Avondale.

Avondale City Attorney

ATTEST:

CITY OF CHANDLER

By: _____

Its: _____

Its: _____

DETERMINATION OF LEGAL COUNSEL

The foregoing Agreement has been reviewed by the undersigned attorney who has determined that it is in proper form and within the power and authority granted under the laws of the State of Arizona to the City of Chandler.

Chandler City Attorney

ATTEST:

CITY OF GLENDALE

By: _____

Its: _____

Its: _____

DETERMINATION OF LEGAL COUNSEL

The foregoing Agreement has been reviewed by the undersigned attorney who has determined that it is in proper form and within the power and authority granted under the laws of the State of Arizona to the City of Glendale.

Glendale City Attorney

ATTEST:

CITY OF SCOTTSDALE

By: _____

Its: _____

Its: _____

DETERMINATION OF LEGAL COUNSEL

The foregoing Agreement has been reviewed by the undersigned attorney who has determined that it is in proper form and within the power and authority granted under the laws of the State of Arizona to the City of Scottsdale.

Scottsdale City Attorney

CONTRACT FOR LEGAL SERVICES

This CONTRACT FOR LEGAL SERVICES ("Contract") is entered into and is effective as of the 1st day of July, 2012, by and between by CITY OF GLENDALE, an Arizona municipal corporation ("City"), and the law firm of ENGELMAN BERGER, P.C. ("Counsel").

RECITALS

- A. The Cities of Avondale, Chandler, Glendale, Mesa, and Scottsdale, pursuant to an Intergovernmental Agreement Relating To Joint Legal Representation In The Gila River General Stream Adjudication effective August 1, 2006 ("IGA"), have entered into that certain Contract for Legal Services with Counsel, effective August 1, 2006 (the "Contract for Legal Services"); and
- B. The current renewal of the Contract for Legal Services expires on June 30, 2012 and is extended by this Contact effective July 1, 2012. The City and Counsel now wish to extend the term by which such legal services are provided by entering into this Contract.

AGREEMENT

NOW THEREFORE, in consideration of the mutual agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Counsel hereby agree as follows:

1. **Scope of Services.** Counsel agrees to represent City in the action known as The Gila River General Stream Adjudication and related matters and litigation ("Adjudication") in accordance with the terms of this Contract and direction provided by the City Attorney to serve as its chief legal counsel.
 - 1.1 Counsel agrees to perform legal services specified in this Contract and as identified in any litigation plan adopted by the cities who are parties to the IGA. The City Attorney agrees to collectively direct and manage Counsel's activities with other city attorneys employed or retained by the cities who are parties to the IGA (each, an "IGA City", or collectively, the "IGA Cities"). City Attorney will further ensure that Counsel's activities are under and in accordance with the terms of this Contract; provided, that Counsel shall not be required to perform additional legal services under this Contract if the combined amount of legal services and costs has reached the maximum limit as provided in paragraph 3 of this Contract.
 - 1.2 Counsel agrees to represent City in any hearings relating to interlocutory issues identified by the Arizona Supreme Court as the subject of interlocutory appeals in the Adjudication ("interlocutory issues"). This representation shall include preparation of any and all briefs or other pleadings, presentation of an expert witness, cross-examination of other witnesses, and oral argument as specified by City.

- 1.3 Counsel agrees to represent City regarding issues which are appealed to the Arizona Supreme Court or the United States Supreme Court from the Little Colorado River Adjudication and the Gila River Adjudication. This representation shall include activities as directed by the City Attorney.
- 1.4 Counsel agrees to review City's status as to the Statements of Claimant, and as to the Adjudication, in order to determine issues of common concern with other IGA Cities, e.g., prior decrees, abandonment and forfeitures, federally reserved rights to groundwater, appurtenancy, agency, and other parties' water rights, for the purpose of development of issues the City Attorney will direct Counsel to address in the Adjudication.
- 1.5 Counsel agrees to review relevant portions of the Adjudication records, such as prior pleadings, court orders, transcripts and steering committee reports, which are relevant for the purpose of development of issues the City Attorney will direct Counsel to address in the Adjudication.
- 1.6 Counsel may assist City on any matters before the trial court and Special Master in the Little Colorado River Adjudication and Gila River Adjudication.
- 1.7 Counsel may assist City on any matters before any court addressing the issue of the application of the public trust doctrine on Arizona streams including, but not limited to, Center for Biological Diversity v. Smith, (Maricopa County Superior Court No. CV 2002-000171).
- 1.8 Counsel agrees to assist City in developing a position on normal flow accounting issues and on severance, transfer, abandonment, and forfeiture issues. It is understood that these tasks will be undertaken in addition to work on the interlocutory issues pursuant to direction given by City.
- 1.9 During the term of this Contract, Counsel agrees to prepare any and all notices of appearance, statements of position and briefs, and to present oral argument which may be scheduled by the Arizona Supreme Court or the United States Supreme Court as to the interlocutory issues.
- 1.10 Should Counsel, City Attorney and all other city attorneys employed or retained by IGA Cities determine that technical consultants are required to assist Counsel in its performance of this Contract, such technical consultants may be employed only with the express consent of City Attorney, under such terms and conditions as the City Attorney may specify.
- 1.11 Subject to the activities contemplated in paragraph 11 of this Contract, Counsel shall meet with appropriate representatives of City as necessary to discuss and evaluate the water interests of City and to discuss and evaluate the status of City's water claims in this Adjudication.

- 1.12 City shall provide Counsel a summary of its claim filed in the Adjudication, a description of its water supply and demand, the amount of each component of its water supply (i.e., Kent Decree rights, CAP rights, groundwater pumping, effluent use, etc.), projections of future water supply and demand for City, and other information necessary to assist Counsel in its representation of City in the Adjudication.
 - 1.13 When reasonably feasible, at least ten (10) calendar days prior to their due date, Counsel shall furnish City with draft copies of all motions or briefs to be filed on behalf of City that may be dispositive of a particular issue. If Counsel is unable to meet this ten (10) calendar-day deadline, Counsel shall promptly endeavor to make other arrangements satisfactory to City to address the strategy and major positions in the motion or brief to be filed on behalf of City.
 - 1.14 Counsel will perform services describe in subparagraphs 1.6, 1.7, and 1.10 only upon the direction of the unanimous consensus of city attorneys who are employed or retained by the IGA Cities.
2. **Term of Contract.** Unless terminated as provided below, the term of this Contract shall expire on June 30, 2013. This Contract may be renewed for one (1) additional one (1) year upon the approval of the City Attorney.
 3. **Authorized Expenditures for Legal Services and Expenses.** City agrees to pay Counsel for services rendered hereunder according to the hourly rates and expenses set forth in Exhibit A, with City paying 21.25% of the total cost for all attorneys' fees rendered under this Contract and 20% of the total cost for all expert fees. The total annual cost to City for all attorneys' fees rendered under this Contract, including all expenses for any services rendered, shall not exceed \$19,125, and except as set forth below, City shall not be liable under this Contract for any amount in excess of \$19,125 per year, for legal services and rendered under this Contract. The case budget for legal services and expenses will not include the costs of experts authorized pursuant to paragraph 6.
 - 3.1. The hourly rates for Counsel will include word processing services, clerical overtime and all other overhead expenses of Counsel which will not be billed to City; provided, that the expenses identified in Exhibit A will be separately itemized and billed to City.
 - 3.2. Only one attorney for Counsel may bill for performing the same major task, such as attending the same deposition, meeting, or hearing, unless Counsel has received the prior approval of the City Attorney; provided, that, without the prior approval of City Attorney, more than one attorney may bill for and assist in work related to research and preparation of pleadings and other documents prepared by Counsel. City and other IGA Cities will appoint a contract manager, who may be the City Attorney and authorize such person to perform duties specified in this Contract.

4. **Payment for Service Billing Format.** Counsel shall prepare and distribute to City a monthly billing for services rendered under this Contract.
 - 4.1 The monthly billing shall consist of one, aggregate billing of all services furnished to City and other IGA Cities under this Contract, with expert services that are authorized pursuant to paragraph 6 identified separately from the other furnished services.
 - 4.2 Counsel shall indicate clearly on each bill the allocated portion to be paid separately by City.
 - 4.3 Counsel agrees to assess expert fees equally amongst all IGA Cities. The amount of expert fees for City shall not exceed \$4,000.
 - 4.4 Within thirty (30) days of receipt of each monthly bill, City shall remit to Counsel its allocated portion of the aggregate monthly billing.
5. **Lead Attorney.** William H. Anger shall serve as Lead Attorney to City. Counsel shall not substitute another Lead Attorney to City and other IGA Cities without the prior unanimous written consent of City and other IGA Cities.
6. **Subcontracting/Assignment; Experts.** Services covered by this Contract shall not be assigned or subcontracted, in whole or in part, without the prior written notice and consent of the City Attorney. Technical experts shall not be retained by Counsel at the expense of City without the prior written consent of the City Attorney. This Contract specifically contemplates that experts may be hired during the Contract term upon the unanimous written consent of all City Attorneys employed or retained by other IGA Cities for purposes related to whether federal reserved rights exist for state trust lands, the resolution of Tribal or Indian Community claims, and any other issues in the Adjudication as needed. The total cost to City for such expert services shall not exceed \$4,000.
7. **Insurance.** Counsel shall secure and maintain during the life of this Contract a Certificate of Insurance evidencing that Counsel carries Errors and Omissions Professional Liability with limits no less than \$1,000,000. Insurance evidenced by this certificate shall not expire, be canceled, or be materially changed without fifteen (15) days prior written notice to City.
8. **Independent Contractor.** The services provided by Counsel under this Contract are those of an independent contractor, not an employee.
9. **Termination Under A.R.S. § 38-511.** In accordance with A.R.S. § 38-511, City may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of City's departments or creating the Contract on behalf of City's departments or agencies is, at any time while the Contract or any extension of the Contract is in effect, an employee or any other party of the Contract in any capacity or a consultant to any other party of the Contract with respect to the

subject matter of this Contract. The cancellation shall be effective when written notice from City is received by all other parties to the Contract, unless the notice specifies a later time.

10. **Common Interests and Conflicts of Interest.** City acknowledges that Counsel is jointly representing City and other IGA Cities on matters stated in paragraph 1 of this Contract. To achieve economies of scale and to maximize the effectiveness of City in the Adjudication, City authorizes the Counsel to seek strategies and positions in the Adjudication that advance the common interests of all IGA Cities. However, City also recognize that from time to time issues may arise in the Adjudication which City and other IGA cities may have diverse, incompatible or conflicting interests.
- 10.1 Counsel will fully and timely inform and explain to City the factual and legal basis for each conflict of interest among IGA Cities which Counsel perceives as a result of the performance of its duties under this Contract respecting issues raised in Adjudication.
- 10.2 City will disclose to Counsel perceived or known conflicts of interest among the IGA Cities respecting issues raised in the Adjudication.
- 10.3 In the event the IGA Cities, with Counsel's assistance, are unable to resolve a conflict of interest among them, such conflicts shall be dealt with in accordance with the Supreme Court's Rules of Professional Conduct; provided, however, this Contract shall be construed to confer upon City and upon Counsel a direct obligation to negotiate in good faith in an attempt to resolve such concerns in order to allow Counsel to continue to represent the remaining IGA Cities in situations where the rules would require Counsel to cease representing City.
- 10.4 For convenience or cause other than a conflict of interest among the IGA Cities, City may withdraw from future obligations under this Contract upon written notice to Counsel. In such case, City will promptly pay Counsel for its proportional share of all legal services and expenses incurred up to the date of withdrawal. Upon request of City, Counsel shall provide City, within 30 days after receiving the written withdrawal notice from City, a copy of Counsel's files provided that City has paid Counsel for the photocopy charges incurred in copying said file. In the event City's withdrawal raises issues regarding use by Counsel for the other IGA Cities of confidential or privileged information, such conflict will be dealt with in accordance with the Supreme Court's Rules of Professional Conduct; provided, City will negotiate in good faith with Counsel and the other IGA Cities in order to allow Counsel to continue to represent the other IGA Cities in situations where such Rules would require Counsel to cease representing one or more IGA Cities.
- 10.5 Counsel will notify City if one of the IGA Cities has withdrawn from the joint representation contemplated in paragraph 10.

- 10.6 Given the large number of diverse and interested parties in the Adjudication, Counsel shall generally have the right to continue to represent or to undertake to represent existing or new clients in any matter consistent with the Supreme Court's Rules of Professional Conduct.
11. **Separate Representation.** This Contract does not prohibit IGA City or IGA Cities from retaining the Counsel to perform legal services related to the Adjudication that are different in kind to those services performed under this Contract as long as: (i) Counsel is retained by a separate contract; (ii) the IGA City or IGA Cities are billed separately for the services; and (iii) the services are not in furtherance of an issue in which the separately contracting IGA City or Cities have directly conflicting interests with City.
12. **Immigration Law Compliance.**
- 12.1 Counsel, on its own behalf and on behalf of 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.
- 12.2 Any breach of warranty under subparagraph 12.1 above is considered a material breach of this Contract and is subject to penalties up to and including termination of this Contract.
- 12.3 City retains the legal right to inspect the papers of Counsel or a subcontractor employee who performs work under this Contract to ensure that Counsel or any subcontractor is compliant with the warranty under subparagraph 12.1 above.
- 12.4 City may conduct random inspections, and, upon request of City, Counsel will provide copies of papers and records of Counsel demonstrating continued compliance with the warranty under subparagraph 12.1 above. Counsel agrees to keep papers and records available for inspection by 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 paragraph.
- 12.5 Counsel agrees to incorporate into any subcontracts under this Contract the same obligations imposed upon Counsel and expressly accrue those obligations directly to the benefit of City. Counsel also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Contract the same obligations above and expressly accrue those obligations to the benefit of City.
- 12.6 Counsel's warranty and obligations under this section to City are continuing throughout the term of this Contract or until such time as City

determines, in its sole discretion, that Arizona law has been modified and that compliance with this paragraph is no longer a requirement.

- 12.7 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.
13. **Prohibited Activities.** Counsel, and on behalf of any subcontractors, 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 above statutes, in Sudan or Iran.

ENGELMAN BERGER, P.C.

By: _____

Title: _____

CITY OF GLENDALE, an
Arizona municipal corporation

Craig Tindall, City Attorney

EXHIBIT A

During the term of the Contract, Counsel will bill the Cities at the hourly rate of \$305.00 for the time of William H. Anger and other shareholders in the firm; Counsel's hourly rate may increase by \$15.00 per hour each year on the anniversary of the Effective Date. All other attorneys in the firm or attorneys contracted by the firm to perform services under this Contract will be billed at the rate not to exceed \$265.00 per hour which rate may be increased by \$15.00 per hour on the anniversary of the Effective Date. Paralegals will be billed at the rate of \$170.00 per hour, which rate may be increased by \$10.00 per hour on the anniversary of the Effective Date.

Counsel will bill for the reasonable expenses incurred in performing its legal services. These expenses will include long-distance telephone charges, fax charges, electronic research charges, delivery charges, mail expense associated with any filing in the case, printing and copying, and payments to third parties for filing fees, transcripts, travel expenses, including, without limitation, meals and lodging, for settlement negotiations and meetings outside of the Phoenix metropolitan area, and other items for the Cities' benefit under this Contract.



CITY COUNCIL REPORT

Meeting Date: **2/26/2013**
Meeting Type: **Voting**
Title: **AWARD OF BID TO PIERSON CONSTRUCTION CORPORATION FOR CONSTRUCTION OF SARIVAL WATERLINE FOR NORTHERN PARKWAY LANDSCAPING**
Staff Contact: **Cathy Colbath, Interim Executive Director, Transportation Services**

Purpose and Recommended Action

Staff is requesting City Council award the bid and authorize the City Manager to enter into a construction agreement with Pierson Construction Corporation, in an amount not to exceed \$475,681, to construct a waterline extension to deliver irrigation water to the landscaping along Northern Parkway, between Sarival and 143rd Avenues.

Background Summary

This proposed construction agreement is necessary for EPCOR, the water utility company serving this area, to supply and deliver water for Northern Parkway landscaping. This approximately one-mile-long, 12-inch waterline will run from one-half mile south of Peoria Avenue to Northern Parkway. It will extend the existing EPCOR waterline and will deliver the water to the Northern Parkway landscaping between Sarival and 143rd Avenues.

The city has designed and will construct and install the waterline. Construction costs will be fully recovered as per the agreement with EPCOR approved by Council on October 23, 2012. Upon completion, it will be conveyed to EPCOR who will own, operate and maintain it. Construction of the segment of Northern Parkway between 143rd Avenue and Dysart Road will be addressed under a separate agreement, which staff will bring forward at a later date.

Previous Related Council Action

On October 23, 2012, Council approved a main extension agreement with EPCOR Water Arizona, Inc. to supply and deliver water for Northern Parkway landscaping.

On April 26, 2011, Council approved two intergovernmental agreements (IGAs) with Maricopa County. The first is an agreement for drainage improvements along Northern Parkway, and the second is an agreement for operation and maintenance of Northern Parkway, from Sarival Avenue to Dysart Road.

On September 23, 2008, Council approved an IGA with Maricopa County, the City of El Mirage and the City of Peoria to construct Northern Parkway.



CITY COUNCIL REPORT

Community Benefit/Public Involvement

Construction of the waterline is needed to provide irrigation for landscaping along Northern Parkway that will improve the appearance of this roadway, which, in turn, will enhance economic development opportunities in the area.

The public has not been directly involved in this waterline construction agreement; however, public input on Northern Parkway has been received at public hearings and GO Program open houses over the past eight years. Public meetings specifically addressing Northern Parkway were held in February and July 2003, and in June and December 2005. Seven meetings with individual neighborhoods were held in January through March 2006. Input received was used to develop and analyze alternatives considered in the design of the project. A final public hearing on the environmental assessment for this project was held on October 14, 2009, and was attended by 95 citizens. Official federal approval (Finding of No Significant Impact) was received on May 11, 2010.

More information on the Northern Parkway project can be found by visiting:
<http://www.mcdot.maricopa.gov/NorthernParkway/home.htm>.

Budget and Financial Impacts

Cost	Fund-Department-Account
\$475,681	2210-65016-550800, Northern Ave. Super Street

The cost to construct this waterline is estimated at \$475,681. Funding is available in the FY 2012-13 capital improvement plan. The cost of the waterline will be charged to the Northern Parkway Project account, which is GO-funded. A portion of this expenditure will be applied to the city's local match contribution to the Northern Parkway Project.

Capital Expense? Yes No

Budgeted? Yes No

Requesting Budget or Appropriation Transfer? Yes No

If yes, where will the transfer be taken from?



CITY COUNCIL REPORT

Attachments

Staff Report

Agreement



STAFF REPORT

To: **Horatio Skeete, Acting City Manager**
From: **Cathy Colbath, Interim Executive Director, Transportation Services**
Item Title: **AWARD OF BID TO PIERSON CONSTRUCTION CORPORATION FOR CONSTRUCTION OF SARIVAL WATERLINE FOR NORTHERN PARKWAY LANDSCAPING**
Requested Council Meeting Date: **2/26/2013**
Meeting Type: **Voting**

PURPOSE

This report describes the need for the City of Glendale to enter into a construction agreement with Pierson Construction Corporation in an amount not to exceed \$475,681 for construction of a waterline extension to deliver irrigation water to the landscaping along Northern Parkway, between Sarival and 143rd avenues. The purpose of this report is to request that this item be placed on an agenda for City Council action.

BACKGROUND

Northern Parkway is planned to be a 12.5-mile, high-capacity, six-lane expressway connecting Grand Avenue (US 60) to Loop 303. Northern Parkway will provide regional connectivity, enhance east-west mobility, serve expected population and employment growth, reduce travel time and enhance flood protection. Construction of the first phase of Northern Parkway is currently underway and is scheduled for completion in spring 2013. Phase I comprises a four-mile segment from Sarival Avenue to Dysart Road. Construction of a waterline is needed to provide irrigation for landscaping along Northern Parkway that will improve the appearance of this roadway, which, in turn, will enhance economic development opportunities.

On September 23, 2008, Council approved an intergovernmental agreement (IGA) with Maricopa County and the cities of El Mirage, Glendale and Peoria, which stated that each jurisdiction would be responsible for maintenance of their portion of Northern Parkway. On April 26, 2011, Glendale entered into another IGA with Maricopa County, the lead agency on this project, in which the county agreed to install landscaping on this portion of Northern Parkway and the city agreed to supply the water and maintain the landscaping.

On October 23, 2012, Council approved a main extension agreement with EPCOR Water Arizona, Inc. to supply and deliver water for Northern Parkway landscaping. This approximately one-mile-long, 12-inch waterline will run from one-half mile south of Peoria Avenue to Northern Parkway. It will extend the existing EPCOR waterline and will deliver the water to Northern Parkway landscaping between Sarival and 143rd avenues.



STAFF REPORT

This proposed agreement is for construction and installation of the waterline approved by Council on October 23, 2012. This project was designed completely in house by the Engineering Department. Upon completion, the city will convey the waterline to EPCOR who will own, operate and maintain it. Construction of the waterline will take approximately 50 days and be completed in early May 2013. Construction of the waterline for landscaping and irrigation of the segment of Northern Parkway between 143rd Avenue and Dysart Road will be addressed under a separate agreement, which staff will bring forward at a later date.

On January 28, 2013, 10 bids were received for this project, with Pierson Construction Corporation submitting the lowest responsive bid in the amount of \$475,681.

ANALYSIS

Staff is recommending Council enter into an agreement with Pierson Construction Corporation for construction of the Sarival waterline. Alternatives considered by staff included: (1) no landscaping and no waterline; (2) city constructs and operates its own waterline; and (3) city constructs the waterline and turns it over to EPCOR to own and operate.

A landscaping option was selected because Glendale staff believes attractive landscaping on Northern Parkway will help ensure an aesthetically pleasing roadway that will attract quality economic development to the city. Staff considered using a Glendale-owned waterline as an alternative to conveying it to EPCOR; however, owning, operating and maintaining a waterline would not be cost-effective because there are no other city waterlines in this area.

Construction of the first phase of Northern Parkway is scheduled for completion in April 2013. Irrigation installation and landscaping construction will begin in the summer of 2013. Delays in approving this agreement could prevent the timely construction of the waterline and cost the city an extra \$300,000 for interim erosion control.

FISCAL IMPACTS

The cost of this waterline is estimated at \$475,681. Staff has concluded that it will be cost-effective to turn the ownership of this waterline over to EPCOR to operate and maintain. URS Corporation, a private engineering consulting firm, analyzed the payback period for this waterline in their report entitled, "Sarival Waterline for Northern Parkway Landscape Irrigation: Refund and Cost Savings Documentation." This analysis was based on city-approved land use plans and the latest Maricopa Association of Governments socioeconomic projections for the timing of these plans. The agreement allows full recovery of the cost of the waterline based on the following:

- The main extension agreement's commitment to refund the city 10% of water fees for all waterline users for up to 10 years.



STAFF REPORT

- The main extension agreement's commitment to refund the city up to 50% of all hookup fees for new waterline users for up to 20 years (the agreement limits EPCOR refunds to not more than the cost of the line).
- Ongoing costs that the city will not need to pay to operate and maintain this single, isolated waterline over its estimated 70-year life.

This analysis estimates the city will be repaid for the cost of this line in approximately nine years. Should development proceed more slowly than reflected in this analysis, repayment will be slowed, but as indicated above, has a very high probability of ultimately being repaid in full.

Funding is available in the FY 2012-13 capital improvement plan. The cost of the waterline will be charged to the Northern Parkway Project account (2210-65016-550800), which is GO-funded. A portion of this expenditure will be applied to the city's required local match contribution to the Northern Parkway Project.

CONSTRUCTION AGREEMENT

This Construction Agreement ("Agreement") is entered into and effective between the CITY OF GLENDALE, an Arizona municipal corporation ("City"), and Pierson Construction Corporation, an Arizona corporation ("Contractor") as of the ____ day of _____, 2013.

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 the **Notice to Contractors** and the attached **Exhibit A** ("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, the plans and specifications, the **Information for Bidders**, and the **Maricopa Association of Governments ("MAG") General and Supplemental Conditions and Provisions**;
- 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. Project.

- 1.1 Scope.** Contractor will provide all services and material 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, providers or consultants retained by City.
- 1.2 Documents.** The following documents are, by this reference, entirely incorporated into this Agreement and attached Exhibits as though fully set forth herein:
 - (A) Notice to Contractors;
 - (B) Information for Bidders;
 - (C) MAG General Conditions, Supplemental General Conditions, Special and Technical Provisions;
 - (D) Proposal;
 - (E) Bid Bond;
 - (F) Payment Bond;
 - (G) Performance Bond;
 - (H) Certificate of Insurance;
 - (I) Appendix; and
 - (J) Plans and Addenda thereto.

Should a conflict exist between this Agreement (and its attachments), and any of the incorporated documents as listed above, the provisions of this Agreement shall govern.

1.3 Project Team.

- (A) **Project Manager.** Contractor will designate an employee as Project Manager with sufficient training, knowledge, and experience to, in the City's opinion, to 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.

(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) 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 Project will be undertaken in a manner that ensures it is completed in a timely and efficient manner. If not otherwise stated in **Exhibit A**, the Project shall be completed by no later than within 50 (fifty) consecutive calendar days from and including the date of receipt of the Notice to Proceed.

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 and materials 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 of this Agreement.

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

3.4 **Coordination; Interaction.**

- (A) If the City determines that the Project requires the coordination of professional services or other providers, Contractor will work in close consultation with City to proactively interact with any other contractors retained by City on the Project ("Coordinating Entities").
- (B) Subject to any limitations expressly stated in the budget, Contractor will meet to review the Project, schedules, budget, and in-progress work with Coordinating Entities and the City as often and for durations as City reasonably considers necessary in order to ensure the timely work delivery and Project completion.
- (C) If the Project does not involve Coordinating Entities, 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 **Hazardous Substances.** Contractor is responsible for the appropriate handling, disposal of, and if necessary, any remediation and all losses and damages to the City, associated with the use or release of hazardous substances by Contractor in connection with completion of the Project.
- 3.6 **Warranties.** At any time within two years after completion of the Project, Contractor must, at Contractor's sole expense and within 20 days of written notice from the City, uncover, correct and remedy all defects in Contractor's work. City will accept a manufacturer's warranty on approved equipment as satisfaction of the Contractor's warranty under this subsection.
- 3.7. **Bonds.** Upon execution of this Agreement, and if applicable, Contractor must furnish Payment and Performance bonds as required under A.R.S. § 34-608.

4. Compensation for the Project.

- 4.1 **Compensation.** Contractor's compensation for the Project, including those furnished by its Sub-contractors will not exceed \$475,681.00, as specifically detailed in the Contractor's bid and set forth in Exhibit B ("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 by the City.
 - (A) Adjustments to the Scope or 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 and not 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) The 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.

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.

- (C) Contractor will provide, by separate cover, and concurrent with the execution of this Agreement, all required financial information to the City, including City of Glendale Transaction Privilege License and Federal Taxpayer identification numbers.
- (D) City will temporarily withhold Compensation amounts as required by A.R.S. 34-221(C).

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) Contractor will be equitably compensated any services and materials 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.
- (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 more than \$1,000,000 or the amount of this Agreement, whichever is greater.

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, "Contractor's Policies"), until each Parties' 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.
 - (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, products and completed operations, 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) Equipment Insurance. Contractor must secure, pay for, and maintain all-risk insurance as necessary to protect the City against loss of owned, non-owned, rented or leased capital equipment and tools, equipment and scaffolding, staging, towers and forms owned or rented by Contractor or its Sub-contractors.
- (F) 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.
- (G) 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 this Agreement.
- (H) Other Contractors or Vendors.
 - (1) Other contractors or vendors that may be contracted by Contractor with in connection with the Project must procure and maintain insurance coverage as is appropriate to their particular agreement.
 - (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).
- (I) Policies. Except with respect to workers' compensation and employer's liability coverages, the 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 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 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 policy 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.

- 7.4 **Waiver of Subrogation.** Contractor waives, and will require any Subcontractor to waive, all rights of subrogation against the City to the extent of all losses or damages covered by any policy of insurance.

8. Immigration Law Compliance.

- 8.1 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.
- 8.2 Any breach of warranty under subsection 8.1 above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
- 8.3 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 8.1 above.
- 8.4 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 8.1 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 8.
- 8.5 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.
- 8.6 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.

8.7 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.

9. **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.

10. **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. **Non-Discrimination Policies.** Contractor must not discriminate against any employee or applicant for employment on the basis of race, religion, color sex or national origin. Contractor must develop, implement and maintain non-discrimination policies and post the policies in conspicuous places visible to employees and applicants for employment. Contractor will require any Sub-contractor to be bound to the same requirements as stated within this section.

12. **Notices.**

12.1 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).

(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.

(E) Digitalized signatures and copies of signatures will have the same effect as original signatures.

12.2 **Representatives.**

(A) Contractor. Contractor's representative ("Contractor's Representative") authorized to act on Contractor's behalf with respect to the Project, and his or her address for Notice delivery is:

Pierson Construction Corporation
Attn: Richard Pierson
222 S. 52nd Street
Tempe, AZ 85281

(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
Attn: Jim McMains
5850 West Glendale Avenue
Glendale, Arizona 85301

With required copies to:

City of Glendale

City of Glendale

City Manager
5850 West Glendale Avenue
Glendale, Arizona 85301

City Attorney
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 considered 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.

13. **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.

14. **Entire Agreement; Survival; Counterparts; Signatures.**

14.1 **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) Any solicitation, addendums and responses submitted by the Contractor are incorporated fully into this Agreement as Exhibit A. Any inconsistency between Exhibit A and this Agreement will be resolved by the terms and conditions stated in this Agreement.

14.2 **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.

14.3 **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.

14.4 **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.

14.5 **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.

14.6 **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 to applicable law.

14.7 Counterparts. This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.

15. Dispute Resolution. Each claim, controversy and dispute ("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 date shown above.

City of Glendale,
an Arizona municipal corporation

By: Horatio Skeete
Its: Acting City Manager

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

Pierson Construction Corporation
an Arizona corporation

By: Richard Pierson
Its: President

WOMEN-OWNED/MINORITY BUSINESS [] YES [] NO
CITY OF GLENDALE TRANSACTION PRIVILEGE TAX NO. _____
FEDERAL TAXPAYER IDENTIFICATION NO. _____

**EXHIBIT A
CONSTRUCTION AGREEMENT**

PROJECT

This project consists of installing 4,340 feet of 12" C-900 PVC waterline, ten 12" gate valves, asphaltic concrete pavement removal and replacement and 198 lineal feet of 30" steel pipe sleeve in Sarival Avenue approximately 1/2 of a mile south of Peoria Avenue to the Northern Parkway.

EXHIBIT B

CONSTRUCTION AGREEMENT

COMPENSATION

METHOD AND AMOUNT OF COMPENSATION

By bid, including all services, materials and costs.

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 \$475,681.00.

DETAILED PROJECT COMPENSATION

As shown on page 8 of the Bid Summary.

EXHIBIT C

CONSTRUCTION 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 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 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 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: **2/26/2013**
Meeting Type: **Voting**
Title: **AWARD OF CONTRACT 13-05 TO ARIZONA BUS SALES FOR PURCHASE OF TRANSIT BUSES**
Staff Contact: **Cathy Colbath, Interim Executive Director, Transportation Services**

Purpose and Recommended Action

This is a request for City Council to award the bid and authorize the City Manager to enter into an agreement with Arizona Bus Sales in an amount not to exceed \$2,800,000 over the life of the five-year contract for the purchase of transit buses. These buses will be purchased using regional and Federal Transit Administration (FTA) grant funding in compliance with federal purchasing guidelines. No city funds will be used for this purchase.

Background Summary

The city's previous bus purchase contract expired in 2009. Since that time, the city has purchased buses using an existing Regional Public Transit Authority (RPTA) contract. However, the number of buses required by the city was not available within the limitations of the RPTA contract. The inability to continue to use this cooperative agreement has delayed the bus replacement program, resulting in a larger number of vehicles being procured at one time.

Staff issued Request for Proposal (RFP) 13-05 for the purchase of transit buses. Four proposals were received and evaluated, with Arizona Bus Sales' proposal selected as the most responsive and responsible. The resulting contract is for an initial one-year period with the option of four annual renewals, subject to agreement by both parties.

The approval of this contract will allow for the purchase of replacement buses, and allow buses that have exceeded their life expectancy and usefulness to be auctioned through the city's surplus procedure. The newly purchased buses will replace the older vehicles and existing service levels will remain unchanged.

In the first year of this contract, staff plans to purchase 15 buses totaling approximately \$1.6 million. These include ten 12-passenger Dial-a-Ride buses, three 15-passenger GUS buses and two large, 33-passenger GUS buses. After the initial year of the contract, staff anticipates purchasing 12 replacement buses over the next four years, per the replacement plan.

Transit staff is also exploring the feasibility of converting a portion of the bus fleet to an alternative fuel mode, specifically propane. This type of conversion would be a retrofit, as this type of bus is not yet manufactured with that option. It costs approximately \$15,000 per bus to



CITY COUNCIL REPORT

convert to a propane fuel system. Staff will continue to pursue this and other alternative fuel modes as technology and funding become available.

Previous Related Council Action

In July 2002, Council approved a contract with Arizona Bus Sales for the purchase of transit buses.

Community Benefit/Public Involvement

Transportation Services operates the city’s Dial-a-Ride and Glendale Urban Shuttle (GUS) circulator service, providing service to approximately 210,000 passengers per year. To provide these services, transit utilizes a fleet of 30 buses. All of the Dial-a-Ride fleet and the majority of the GUS bus fleet have a five-year life expectancy. In order to continue to provide the level of service the citizens of Glendale have come to expect, it is imperative that the fleet is replaced on schedule to avoid bus shortages due to worn out vehicles or vehicles down for extended service, and to comply with federal guidelines regarding replacement timelines.

Budget and Financial Impacts

Cost	Fund-Department-Account
\$340,048	1650-67529-551400 (FTA Grant AZ -90-X096)
\$257,013	1650-67536-551400 (FTA Grant AZ-90-X103)
\$351,252	1650-67541-551400 (FTA Grant AZ-90-X109)

No city funds are required for this purchase. The purchase cost for 15 buses within the first year of this contract is estimated at \$1.6 million. The available grant funding listed above totals \$948,313. Additional funding will come from two FTA grants that staff will bring forward for Council acceptance in the coming months. Account numbers for the new grants will be established at the time the grants are received. This new grant funding will total approximately \$700,000. There will be no additional impact to the operating budget.

Capital Expense? Yes No

Budgeted? Yes No



CITY COUNCIL REPORT

Requesting Budget or Appropriation Transfer? Yes No

If yes, where will the transfer be taken from?

Attachments

Staff Report

Agreement



STAFF REPORT

To: **Horatio Skeete, Acting City Manager**
From: **Cathy Colbath, Interim Executive Director, Transportation Services**
Item Title: **AWARD OF CONTRACT 13-05 TO ARIZONA BUS SALES FOR PURCHASE OF TRANSIT BUSES**
Requested Council Meeting Date: **2/26/2013**
Meeting Type: **Voting**

PURPOSE

This report explains the proposed contract for the purchase of transit buses to be used for Dial-a-Ride and Glendale Urban Shuttle (GUS) circulator service. The purpose of this report is to request that the City Manager place this item on an agenda for City Council action.

BACKGROUND

Transportation Services operates the city's Dial-a-Ride and GUS circulator service, serving approximately 210,000 passengers per year. In total, transit utilizes a fleet of 30 buses to provide these services. The current model buses used for Dial-a-Ride and GUS have a five-year life expectancy. There is a fleet replacement plan in place through 2035.

The current transit fleet includes 15 buses that are either overdue or eligible for replacement this year. Providing excellent customer service requires the entire fleet be available to meet the needs of residents who depend on Dial-a-Ride and GUS for transportation to medical appointments, work and school.

ANALYSIS

The city's previous contract to purchase buses expired in 2009. Several options were explored for the purchase of replacement bus equipment, including a cooperative purchase using the Regional Public Transit Authority (RPTA) contract. The equipment met city specifications; however, the number of vehicles required by the city was not available within the limitations of the RPTA contract.

Additionally, staff researched purchasing buses using a cooperative agreement through a Minnesota transit agency. Upon detailed investigation, it was deemed that was not a viable option due to differing specifications and types of buses used by that agency. The inability to continue to use a cooperative purchase agreement has delayed the bus replacement program, resulting in a larger number of vehicles being procured at one time.



STAFF REPORT

Staff issued Request for Proposal (RFP) 13-05 for the purchase of transit buses. Four proposals were received and evaluated by a three-person panel including staff from Transportation Services and Field Operations. Arizona Bus Sales was selected as the most responsive, responsible proposer. Staff recommends entering into a purchase agreement with Arizona Bus Sales in an amount not to exceed \$2,800,000 over the five-year life of the contract for the purchase of transit buses. The contract is for one year with the option of four annual renewals, subject to agreement by both parties.

In the first year of this contract, staff plans to purchase 15 buses totaling approximately \$1.6 million. These include ten 12-passenger Dial-a-Ride buses, three 15-passenger GUS buses and two large, 33-passenger GUS buses. After the initial year of the contract, staff anticipates purchasing 12 replacement buses over the next four years, per the replacement plan.

Transit staff is also exploring the feasibility of converting a portion of the bus fleet to an alternative fuel mode, specifically propane. This type of conversion would be a retrofit, as this type of bus is not yet manufactured with that option. It costs approximately \$15,000 per bus to convert to a propane fuel system. Staff will continue to pursue this and other alternative fuel modes as technology and funding become available.

FISCAL IMPACTS

No city funds are required for this purchase. The purchase cost for 15 buses within the first year of this contract is estimated at \$1.6 million. Funding is available through three Federal Transit Administration (FTA) grants previously approved by Council. The local match is available using regional dedicated sales tax funds approved by voters through Proposition 400. The specific funds and associated grants are:

- 1650-67529-551400 (\$340,048) - Grant AZ-90-X096 - approved by Council in February 2010, and extended in October 2012;
- 1650-67529-551400 (\$257,013) - Grant AZ-90-X103 - approved by Council in June 2011; and
- 1650-67529-551400 (\$351,252) - Grant AZ-90-X109 - approved by Council in February 2012.

The available grant funding totals \$948,313. Additional funding will come from two FTA grants that staff will bring forward for Council acceptance in the coming months. Account numbers for the new grants will be established when the grants are received. This new grant funding will total approximately \$700,000. There will be no additional impact to the operating budget.

AGREEMENT FOR
the PURCHASE of BUSES from ARIZONA BUS SALES
City of Glendale Solicitation No. 13-05

This Agreement for **Bus Purchases** ("Agreement") is effective and entered into between CITY OF GLENDALE, an Arizona municipal corporation ("City"), and Creative Bus Sales, Inc., DBA Arizona Bus Sales, a California corporation, authorized to do business in Arizona, (the "Contractor"), as of the ____ day of _____, 2013.

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. 13-05 (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 \$2,800,000 over the life of the contract, 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 \$1,000,000.00 per occurrence and \$2,000,000.00 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 \$1,000,000.00 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 \$2,000,000.00 per accident for Contractor and \$2,000,000.00 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 of 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 overnight courier 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 service 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:

Arizona Bus Sales
c/o Dale Couturier, General Manager
P.O. Box 60038
3615 South 28th Street
Phoenix, Az 85040

- 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 Jeff Henry, Transit Supervisor
6210 West Myrtle Avenue, Bldg S
Glendale, Arizona 85301
623-930-3501

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 sole option, extend the term of this Agreement for four additional one (1) year periods, 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 and may be a factor in the City's decision to terminate the Agreement. 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

(Signatures appear on the following page.)

The parties enter into this Agreement as of the effective date shown above.

City of Glendale,
an Arizona municipal corporation

By: Horatio Skeete
Its: Acting City Manager

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

Creative Bus Sales, Inc., DBA Arizona Bus Sales,
a California corporation,

By:
Its:

EXHIBIT A
RFP 13-05 TRANSIT BUSES
PROJECT

In accordance with the terms and conditions set forth in the solicitation, the Bus chassis and drive-trains will be Ford, GM and International with El Dorado coaches. The coaches will range from the Para-Transit 22' to 24' Mini Buses (Medium size, light duty) and 30' to 35' Medium size (Medium duty), to the Medium size, heavy duty and Large heavy duty buses.

EXHIBIT B
RFP 13-05 TRANSIT BUSES
COMPENSATION

METHOD AND AMOUNT OF COMPENSATION

Compensation for services performed will be paid in accordance with section 4.9, 4.28, 4.33, 4.34, 4.37, 4.38, 4.49, 4.42, 4.43, 4.44, 4.45, section 8 and addendum number 14 of RFP 13-05, the Addendum, and the responses thereto.

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 \$2,800,000 over the life of the Agreement.

DETAILED PROJECT COMPENSATION

Contractor shall submit a complete invoice for each bus.

Payment shall be after receipt of invoice or final acceptance "Post Delivery Test" of each bus, whichever is later.

The City shall have 30 calendar days after the bus has been delivered to perform a "Post-Delivery Test" before completing payment. If the bus fails the City "Post Delivery Test" the contract shall repair the bus and the City shall have 30 additional calendar days to perform a "Post Delivery Test". No payments for the bus will be made until it has been accepted by the City.

Specific details of each bus and coach purchased and delivered shall be in accordance with the City of Glendale RFP 13-05 and the terms of this Agreement.

EXHIBIT C
RFP 13-05 TRANSIT BUSES
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: **2/26/2013**
 Meeting Type: **Voting**
 Title: **PROFESSIONAL SERVICES AGREEMENT WITH BOB MURRAY AND ASSOCIATES FOR THE CITY MANAGER RECRUITMENT**
 Staff Contact: **Jim Brown, Interim Executive Director of Human Resources & Risk Management**

Purpose and Recommended Action

The purpose of this report is to request the City Council enter into a Professional Services Agreement with Bob Murray and Associates for the recruitment of the City Manager position.

Background Summary

At the February 5, 2013 Workshop, Council was presented with three executive search firms recommended by Human Resources to conduct the City Manager recruitment. After reviewing the three proposals, Council gave direction to move forward with Bob Murray and Associates.

Previous Related Council Action

At the November 27, 2012 voting meeting, Council adopted Ordinance No. 2825 New Series to establish an Ad-Hoc City Manager recruitment committee. The committee was composed of seven members including the Mayor-elect, Councilmembers and Councilmembers-elect who began serving after the installation in January 2013.

Budget and Financial Impacts

Cost	Fund-Department-Account
\$28,000	A specific account will be established once the agreement is awarded and formally executed.

Capital Expense? Yes No

Budgeted? Yes No

Requesting Budget or Appropriation Transfer? Yes No



CITY COUNCIL REPORT

If yes, where will the transfer be taken from? To be determined

Attachments

Staff Report

Agreement



STAFF REPORT

To: **Horatio Skeete, Acting City Manager**
From: **Jim Brown, Interim Executive Directors, Human Resources & Risk Management**
Item Title: **PROFESSIONAL SERVICES AGREEMENT WITH BOB MURRAY AND ASSOCIATES FOR THE CITY MANAGER RECRUITMENT**
Requested Council Meeting Date: **2/26/2013**
Meeting Type: **Voting**

PURPOSE

The purpose of this report is to request the City Council enter into a Professional Services Agreement with Bob Murray and Associates for the recruitment of the City Manager position.

BACKGROUND

At the February 5, 2013 Workshop, Council was presented with three executive search firms recommended by Human Resources to conduct the City Manager recruitment. After reviewing the three proposals, Council gave direction to move forward with Bob Murray and Associates.

ANALYSIS

The Professional Services Agreement with Bob Murray and Associates (Consultant) will enable the Consultant to begin the process for the City Manager recruitment which will include:

- Development of the Candidate Profile
- Development of an Advertising Campaign and Recruitment Brochure
- Recruitment of Candidates
- Screening of Candidates
- Conducting Personal Interviews
- Conducting Public Record Search
- Providing Recommendations
- Assisting with the Final Interviews
- Conducting Detailed Reference Checks
- Assisting with Negotiations
- Providing Complete Administrative Assistance

Upon Council approval of the Professional Services Agreement, the Consultant will begin the City Manager Recruitment Process.



STAFF REPORT

FISCAL IMPACTS

The consulting fee and expenses for utilizing Bob Murray and Associates to conduct the City Manager recruitment on behalf of the City of Glendale will not exceed \$28,000.

PROFESSIONAL SERVICES AGREEMENT

This agreement is made by and between the City of Glendale, AZ (the City), and Bob Murray & Associates (the Consultant).

- A. Engagement: The City agrees to engage the Consultant to perform the services described below, the project described as an executive recruitment for a City Manager (the Search).
- B. Services: The Consultant agrees to perform certain services necessary for the completion of the search, which services shall include the following:
 - a. Develop the Candidate Profile
 - b. Develop Advertising Campaign and Recruitment Brochure
 - c. Recruit Candidates
 - d. Screen Candidates
 - e. Conduct Personal Interviews
 - f. Conduct Public Record Search
 - g. Provide Recommendation
 - h. Assist with Final Interviews
 - i. Conduct Detailed Reference Checks
 - j. Assist with Negotiations
 - k. Provide Complete Administrative Assistance

As described in the proposal dated January 31, 2013.

- C. Relationship: The Consultant is an independent contractor and is not to be considered an agent or employee of the City.
- D. Compensation: As full compensation for the Consultant's professional services performed hereunder, the City shall pay the Consultant the fixed amount of \$19,500 (nineteen thousand five hundred dollars).
- E. Expense Reimbursement: The Consultant shall be entitled to reimbursement for expenses from the City for consultant travel, advertising, printing and binding, clerical, long distance charges, postage and delivery, civil, criminal and newspaper checks, and credit checks. Postage, photocopying, and telephone charges are allocated costs. Expenses to be reimbursed shall not exceed \$8,500 (eight thousand five hundred dollars) without prior approval of the City. Copies of receipts will not be provided unless specifically requested and made part of this contract.
- F. Compensation for Additional Services: In the event the City elects to require additional services of the Consultant in addition to those described in paragraph B the Consultant shall be compensated at an agreed upon rate.
- G. Method of Payment: The City shall be billed monthly by the Consultant for the work completed as of that date. Expenses shall be billed and due at the same time.

- H. Term: The term of this agreement shall commence on February 6th, 2013 at which time Consultant shall begin work on the Search and shall continue until the search is completed.
- I. Termination: This agreement may be terminated; (a) by either party at any time for failure of the other party to comply with the terms and conditions of this Agreement; (b) by either party upon 10 days prior written notice to the other party; or (c) upon mutual written agreement of both parties. In the event of termination, the Consultant shall stop work immediately and shall be entitled to compensation for professional fees and expense reimbursement to the date of termination and for any work necessitated by that termination.
- J. Indemnity: Except for loss, damages, liability, claims, suits, costs and expenses whatsoever, including reasonable attorney's fees, caused solely by the negligence of the City, its Council, boards, commissions, officers and employees, Consultant shall indemnify, defend and hold harmless the City, its Council, boards and commissions, officers, and employees from and against any and all loss, damages, liability, claims, suits, costs and expenses whatsoever, including reasonable attorney's fees, regardless of the merits or outcome of any such claim or suit arising from or in any manner connected to Consultant's negligent act or omission regarding performance of services or work conducted or performed pursuant to this Agreement.
- K. Miscellaneous:
- a. The entire agreement between the parties with respect to the subject matter hereunder is contained in this agreement.
 - b. Neither this agreement nor any rights or obligations hereunder shall be assigned or delegated by the Consultant without the prior written consent of the City.
 - c. This agreement shall be modified only by written agreement duly executed by the City and the Consultant.
 - d. Should any of the provisions hereunder be found to be invalid, void or voidable by a court, the remaining provisions shall remain in full force and effect.
 - e. This agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

- f. All notices required or permitted under this agreement shall be deemed to have been given if and when deposited in the United States mail, properly stamped and addressed to the party for whom intended at such party's address listed below, or when delivered personally to such party. A party may change its address for notice hereunder by giving written notice to the other party.

Wherefore, the parties have entered into this agreement as of the later of the dates stated below.

Approved:

Dated: February 6, 2013

Bob Murray & Associates

By: _____

Title: President

1677 Eureka Road, Suite 202
Roseville, CA 95661

Dated: _____, 2013

City of Glendale

By: _____

Title: _____



CITY COUNCIL REPORT

Meeting Date: **2/26/2013**
Meeting Type: **Voting**
Title: **AMENDMENT TO GLENDALE CITY CODE CHAPTER 2 - ADMINISTRATION**
Staff Contact: **Diane Goke, Chief Financial Officer**

Purpose and Recommended Action

Staff is requesting Council to waive reading beyond the title and adopt an ordinance amending Chapter 2 – Administration of the Glendale City Code that establishes a consistent, citywide policy for the collection of delinquent funds with an effective date of April 8, 2013.

Background Summary

The city is owed monies by businesses and citizens for services rendered, taxes, and other fees. Amending Chapter 2 - Administration of the Glendale City Code will enable the city to establish a consistent, citywide policy holding any person who has a delinquent account with the city responsible for all costs incurred by the city in collecting those delinquent funds.

Staff is currently attempting to establish a uniform approach for recovering our cost for collecting bad debt by amending Chapter 2 - Administration of the Glendale City Code. This amendment would hold the person who has a delinquent account responsible for all costs incurred by the city in collecting those delinquent funds.

Previous Related Council Action

On September 25, 2012, Council approved a contract with a Progressive Financial Services, Incorporated to pursue the collection of delinquent utility (water, sewer, and sanitation) accounts, miscellaneous accounts receivables, and transaction privilege and use tax accounts.

Community Benefit/Public Involvement

A notice of this upcoming Council consideration was posted on the city's web site on December 13, 2012.

Budget and Financial Impacts

The city will receive 100% of the debt owed to the city when debt is recovered by the third party collection agency.



CITY COUNCIL REPORT

Capital Expense? Yes No

Budgeted? Yes No

Requesting Budget or Appropriation Transfer? Yes No

If yes, where will the transfer be taken from?

Attachments

Staff Report

Ordinance



STAFF REPORT

To: **Horatio Skeete, Acting City Manager**
From: **Diane Goke, Chief Financial Officer**
Item Title: **AMENDMENT TO GLENDALE CITY CODE CHAPTER 2 - ADMINISTRATION**
Requested Council Meeting Date: **2/26/2013**
Meeting Type: **Voting**

PURPOSE

The purpose of this report is to request the City Manager forward this item to the City Council for their consideration and approval authorizing collection charges related to delinquent accounts maintained by the city.

BACKGROUND

The city is owed monies by businesses and citizens for services rendered, taxes, and other fees. Amending Chapter 2 - Administration of the Glendale City Code will enable the city to establish a consistent, citywide policy holding any person who has a delinquent account with the city responsible for all costs incurred by the city in collecting those delinquent funds.

On September 25, 2012, Council approved a contract with a Progressive Financial Services, Incorporated to pursue the collection of delinquent utility (water, sewer, and sanitation) accounts, miscellaneous accounts receivables, and transaction privilege and use tax accounts. Progressive Financial Services, Incorporated retains 15% of the debt it collects as its fee. Prior to outsourcing collection services to a third party agency, the city handled all debt collections internally and absorbed a majority of all costs associated with the collection process.

There is not a consistent way to recover debt, for example, for delinquent utilities accounts a flat rate is added, per city code, in an attempt to offset some of the costs; however, even with that rate it is not sufficient enough to recover all costs. Further, for delinquent transaction privilege and use tax accounts and the other miscellaneous accounts receivables the city has no provisions to recover costs.

Staff is currently attempting to establish a uniform approach for recovering our cost for collecting bad debt by amending Chapter 2 - Administration of the Glendale City Code. This amendment would hold the person who has a delinquent account responsible for all costs incurred by the city in collecting those delinquent funds.



STAFF REPORT

ANALYSIS

Currently, the city sends delinquent utility (water, sewer, and sanitation) accounts to a third party collection agency. The average uncollected delinquent account totals \$269. The city adds \$16.44 to this total before sending it to Progressive Financial Services, Incorporated. Once the agency collects the debt and retains their 15% service fee, the remaining balance sent to the city equates to \$242.62. Amending the City Code to pass on the total cost associated with collecting the debt will ensure full cost recovery to the city.

FISCAL IMPACTS

This will enable the city to recover 100% of the monies recovered by the city's third party collection agency.

ORDINANCE NO. 2838 NEW SERIES

AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AMENDING GLENDALE CITY CODE, CHAPTER 2, ARTICLE I, SECTION 2.4 BY AUTHORIZING COLLECTION CHARGES RELATING TO DELINQUENT ACCOUNTS MAINTAINED BY THE CITY; AND SETTING FORTH AN EFFECTIVE DATE OF APRIL 8, 2013.

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

SECTION 1. That Glendale City Code Chapter 2, Article I (In General), Sec. 2.4 is hereby amended as follows:

Sec. 2.4. ~~Reserved.~~ Collection Charges.

Any person who has a delinquent account maintained by the city will be responsible for all costs incurred by the city in collecting those delinquent funds. This includes any direct costs incurred, including the cost of a third-party collection agency.

SECTION 2. That the provisions of this ordinance shall become effective on and after April 8, 2013.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this ____ day of _____, 2013.

MAYOR

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

REVIEWED BY:

Acting City Manager



CITY COUNCIL REPORT

Meeting Date: **2/26/2013**
Meeting Type: **Voting**
Title: **AMENDMENT TO LEASE WITH LEFT SEAT WEST AT GLENDALE, INC. FOR GLENDALE AIRPORT RESTAURANT**
Staff Contact: **Cathy Colbath, Interim Executive Director, Transportation Services**

Purpose and Recommended Action

Staff is requesting Council waive reading beyond the title and adopt an ordinance authorizing the City Manager to amend the Glendale Airport Restaurant Lease with Left Seat West at Glendale, Inc. (Left Seat West).

Background Summary

The Glendale Municipal Airport's terminal building was designed and constructed to include a full-service restaurant. Since 1988, several operators have leased the restaurant space; however, retaining a stable, long-term tenant has proved challenging. Glendale's airport restaurant attracts recreational pilots, provides a meeting place during airport events, offers convenient mealtime access for airport tenants and nearby businesses, and appeals to the general public interested in enjoying a good meal in a general aviation airport setting.

In 2011, the city conducted a Request for Proposals (RFP) to operate a restaurant at Glendale Municipal Airport. Left Seat West was the only entity that expressed an interest in leasing and operating the restaurant. Having operated a successful restaurant at Sky Harbor Airport for several years, the owners were confident they could prosper at this location. On November 22, 2011, the City of Glendale and Left Seat West entered into a lease agreement, known as the Glendale Airport Restaurant Lease. The restaurant opened for business on January 1, 2012.

The lease agreement terms with the owners of Left Seat West were negotiated in good faith with the anticipation of a gradual increase in business at the restaurant. Since the opening of Left Seat West, the owners have conducted advertising efforts through their website, distributed flyers and made personal contact with businesses and schools in the area. The restaurant's menu, pricing, service and quality of food have often been praised by customers commenting to airport staff. Unfortunately, restaurant revenue has not met expected volumes of sales. Due to the escalating base rent, the restaurant owners requested a change in the rent terms of the lease.

With the approval of this lease amendment, the city will collect less revenue than originally anticipated when the lease was signed; however, without the amendment, Left Seat West will likely close, and no revenue will be collected. Transportation Services staff recommends that the lease with Left Seat West be amended to reduce the restaurant's monthly base rent to \$300 or



CITY COUNCIL REPORT

three percent of gross sales, whichever is higher, and modify the monthly utility charges for the remainder of the term of the lease, until December 31, 2016. The city will fully recover costs for Utilities and the change assures the city of some revenue above the cost of base utilities. In addition, the lease will be amended to prohibit the assignment of the lease to any other company. Staff recommends these changes be retroactive to December 1, 2012.

Previous Related Council Action

Council approved the Glendale Airport Restaurant Lease with Left Seat West on November 22, 2011.

Community Benefit/Public Involvement

The airport restaurant provides quality food services for the Glendale Municipal Airport's aviation community, airport visitors, surrounding businesses and Glendale citizens.

Budget and Financial Impacts

Revenue generated from the restaurant lease is deposited into the Airport's Lease Revenue Fund.

Capital Expense? Yes No

Budgeted? Yes No

Requesting Budget or Appropriation Transfer? Yes No

If yes, where will the transfer be taken from?

Attachments

Staff Report

Ordinance

Amendment to Agreement



STAFF REPORT

To: **Horatio Skeete, Acting City Manager**
From: **Cathy Colbath, Interim Executive Director, Transportation Services**
Item Title: **AMENDMENT TO LEASE WITH LEFT SEAT WEST AT GLENDALE, INC.
FOR GLENDALE AIRPORT RESTAURANT**
Requested Council Meeting Date: **2/26/2013**
Meeting Type: **Voting**

PURPOSE

This report contains information on a proposed amendment to the lease with Left Seat West at Glendale, Inc. (Left Seat West), the restaurant operating at Glendale Municipal Airport. The purpose of this report is to request that the City Manager place this item on an agenda for City Council action.

BACKGROUND

The Glendale Municipal Airport's terminal building was designed and constructed to include a full-service restaurant. Since 1988, several operators have leased the restaurant space; however, retaining a stable, long-term tenant has proved challenging. Glendale's airport restaurant attracts recreational pilots, provides a meeting place during airport events, offers convenient mealtime access for airport tenants and nearby businesses, and appeals to the general public interested in enjoying a good meal in a general aviation airport setting.

In 2011, the city conducted a Request for Proposals (RFP) to operate a restaurant at Glendale Municipal Airport. Left Seat West was the only entity that expressed an interest in leasing and operating the restaurant. Having operated a successful restaurant at Sky Harbor Airport for several years, the owners were confident they could prosper at this location. On November 22, 2011, the City of Glendale and Left Seat West entered into a lease agreement, known as the Glendale Airport Restaurant Lease. The restaurant opened for business on January 1, 2012.

The term of the existing restaurant lease is for five years, renewable for an additional nine years, in three-year increments. The lease required Left Seat West to pay one percent of the gross receipts the first month, increasing by one percent each month until the sixth month. Effective with the seventh month, Left Seat West was required to pay a base rent of \$800 per month, or six percent of the gross receipts, whichever was greater, until the completion of the first year of the lease. For the second year, the present time period, the base rent is \$1,000 per month, or six percent of the gross receipts, whichever is greater. For the third through fifth year of the lease, the base rent is set at \$1,200 per month, or six percent of the gross receipts, whichever is greater.



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This proposed amendment to the lease will adjust the minimum base rent to \$300 per month, or three percent of gross receipts, whichever is greater. Additionally, the proposed lease amendment will adjust utility fees and prohibit assignment of the new lease terms.

ANALYSIS

The lease agreement terms with the owners of Left Seat West were negotiated in good faith with the anticipation of a gradual increase in business at the restaurant. Since the opening of Left Seat West, the owners have conducted advertising efforts through their website, distributed flyers and made personal contact with businesses and schools in the area. The restaurant's menu, pricing, service and quality of food have often been praised by customers commenting to airport staff. However, in July 2012, the owners requested the restaurant be closed on Mondays through September, in order to reduce staffing and utility costs. They also requested a change in the rent terms of the lease, due to the restaurant's low volume of sales and the escalating base rent.

The original base rent requirement of \$800, increasing to a maximum of \$1,200 per month, assumed an expectation of escalating revenues. In reality, the current economic climate does not support the original concept on which the lease was structured. The proposed rent of \$300 per month or three percent of gross receipts, whichever is greater, is structured to retain a restaurant at the airport. Previous restaurant operators were unable to sustain their businesses for various reasons; however, city staff believes this lease amendment will benefit both the restaurant and the city, and will help keep Left Seat West operating at the airport for years to come.

In addition to the revised rent, this lease amendment also proposes to restructure utility costs. The current lease requires the owners to pay for electricity and natural gas. However, the airport incurs some costs for utilities even if the restaurant space is not occupied. An analysis was conducted to determine the utility cost to the airport and the difference in cost created by a tenant in the restaurant space. Using this analysis, a base utility rate of \$615 a month will be charged for calendar year 2013. Utility rates for subsequent years will be reassessed at the end of each calendar year.

A study of other airport restaurants in the Valley indicates that while other locations have higher lease rates, they also have higher gross sales and higher volumes of customers than currently exist at the Glendale Municipal Airport. The study also revealed some local airport restaurants do not pay utilities.

Transportation Services staff recommends that the lease with Left Seat West be amended to reduce the restaurant's monthly base rent to \$300 or three percent of gross sales, whichever is higher, and modify the monthly utility charges for the remainder of the term of the lease, until December 31, 2016. The city will fully recover costs for Utilities and the change assures the city of some revenue above the cost of base utilities. In addition, the lease will be amended to prohibit



STAFF REPORT

the assignment of the lease to any other company. Staff recommends these changes be retroactive to December 1, 2012.

FISCAL IMPACTS

While at a reduced level than originally anticipated, the lease agreement with Left Seat West will continue to generate revenue to the Airport's Lease Revenue Fund.

ORDINANCE NO. 2839 NEW SERIES

AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE CITY MANAGER AND CITY CLERK TO EXECUTE AMENDMENT NO. 1 TO THE GLENDALE AIRPORT RESTAURANT LEASE WITH LEFT SEAT WEST AT GLENDALE, INC. FOR OPERATING A RESTAURANT IN THE TERMINAL BUILDING AT THE GLENDALE MUNICIPAL AIRPORT.

WHEREAS, the City is the owner of the Glendale Municipal Airport and the Terminal Building located thereon;

WHEREAS, the City and Left Seat West at Glendale, Inc. previously entered into a Glendale Airport Restaurant Lease (C-7846) effective November 22, 2011; and

WHEREAS, the City and Left Seat West at Glendale, Inc. wish to modify and amend the lease.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

SECTION 1. That the City Manager and City Clerk are hereby authorized and directed to execute Amendment No. 1 to Glendale Airport Restaurant Lease with Left Seat West at Glendale, Inc., a copy of which is on file with the Clerk 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 _____, 2013.

M A Y O R

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

REVIEWED BY:

Acting City Manager

AMENDMENT NO. 1
TO
GLENDALE AIRPORT RESTAURANT LEASE

This Amendment No. 1 to the Glendale Airport Restaurant Lease (Contract No. C-7846) is made this ___ day of _____, 2013 ("Effective Date"), by and between the City of Glendale, an Arizona municipal corporation ("City") and Left Seat West at Glendale, Inc., an Arizona corporation ("Lessee").

RECITALS

- A. City and Lessee previously entered into the Glendale Airport Restaurant Lease (Contract No. C-7846), effective November 22, 2011 ("Original Lease"); and
- B. City and Lessee wish to modify and amend the Lease 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 Lessee hereby agree as follows:

- 1. **Recitals.** The recitals set forth above are not merely recitals, but form an integral part of this Amendment.
- 2. **Rent.** Section 3.1 of the Original Lease is deleted and replaced with the following as of the Effective Date of this Amendment:
 - 3.1 Lessee's rent for the lease of the Premises is as follows:
 - a. During the first year of Lessee's lease of the Premises:
 - 1. The rent due for month one will be equal to 1% of Gross Revenue, as defined in this section below (the "Percentage Rent" for this period).
 - 2. The rent due for month two will be equal to 2% of Gross Revenue.
 - 3. The rent due for month three will be equal to 3% of Gross Revenue.
 - 4. The rent due for month four will be equal to 4% of Gross Revenue.
 - 5. The rent due for month five will be equal to 5% of Gross Revenue.
 - 6. The Rent due for month six will be equal to 6% of Gross Revenue.

7. The rent due for months seven through 11 will be equal to \$800 (the "Base Rent" for this period) or 6% of Gross Revenue, whichever is greater.
 8. For months 12 through 60 of Lessee's lease of the Premises, the Base Rent will be equal to \$300 and the Percentage Rent will be 3% of Gross Revenue. Lessee will remit, as set forth below, for each month the greater of the Base Rent or the Percentage Rent.
3. **Utilities.** Section 6 of the Original Lease is deleted and replaced with the following as of the Effective Date of this Amendment:

6. Utilities

6.1 Lessee is responsible for the following utility services to the Premises:

- a. **Natural Gas.** For months 1 through 11 of Lessee's lease of the Premises, natural gas, which the City will bill to Lessee and Lessee will pay to the City, is at a flat rate of \$220 per month, with the initial partial month prorated based on a daily rate. For month 12, natural gas will be billed to Lessee at a flat monthly rate of \$415. Beginning in month 13, which the parties agree is January 1, 2013, gas will be billed to Lessee at a flat monthly rate that represents 1/12 of the total cost of the natural gas consumed by Lessee during the prior calendar year. The natural gas consumed by Lessee during the prior calendar year will be determined by the following formula:

Total Glendale Municipal Airport natural gas consumption for prior year MINUS the Base Natural Gas Usage. The Base Natural Gas Usage is the total Therms used in calendar year 2011 as shown on the Glendale Municipal Airport invoices or 3,637 Therms.

The flat rate will be adjusted annually based on the previous 12 month's actual consumption.

- b. **Electrical Service.** For month's 1 through 11, City will bill electrical service, which is sub-metered for the Premises, and the Lessee will pay to the City in full on a monthly basis. For month 12, electric service will be billed to Lessee at a flat monthly rate of \$200. Beginning in month 13, which the parties agree is January 1, 2013, electric service will be billed to Lessee at a flat monthly rate that represents 1/12 of the total cost of the electricity consumed by Lessee during the prior calendar year. The electricity consumed by Lessee during the prior calendar year will be determined by the following formula:

Total electrical usage for the Glendale Municipal Airport terminal building, meter No. CG5447, MINUS the Base Electricity Usage. The Base Electricity Usage is the total kilowatt hours used in calendar year 2011 or 583,120 KWh.

The flat rate will be adjusted annually based on the previous 12 month's actual consumption.

- c. Other. Any communications fees, including telephone, internet, television, etc., which Lessee will arrange and pay directly to the service provider.
- 6.2 The City is responsible for the payment of water and wastewater service and trash collection.
- 6.3 Lessee must pay all utility charges to the provider before the charge becomes delinquent, and Lessee must pay all billings from the City within 15 days of receipt of the billing.
- 6.4 If Lessee fails to pay all utility charges to the City by five days after the due date Lessee is responsible for interest on the unpaid balance at the rate of 18% per annum from the due date until payment is made in full.
- 4. **Assignment and Sub-Letting.** Section 12 of the Original Lease is deleted and replaced with the following as of the Effective Date of this Amendment:
 - 12. **Assignment and Sub-Letting**
 - 12.1 Lessee may not assign or sub-lease any of its interest under this Agreement, nor permit any other person to occupy the Premises.
 - 12.2 Lessee may not mortgage, encumber, or assign any portion of its right, title, and interest in this Agreement to lenders for any purpose.
- 5. **Ratification of Agreement.** City and Lessee hereby agree that except as expressly provided herein, the provisions of the Original Lease shall be and remain in full force and effect and that if any provision of this Amendment conflicts with the Original Lease, then the provisions of this Amendment shall prevail.

(Signatures appear on the following page.)

CITY OF GLENDALE, an Arizona
municipal corporation

Horatio Skeete, Acting City Manager

ATTEST:

Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

Craig Tindall, City Attorney

Lessee,
Left Seat West at Glendale, Inc., an Arizona
corporation

By: _____
Its: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by _____, in his/her capacity as _____ of Left Seat West at Glendale, Inc., Lessee.

Notary Public

My Commission Expires:



CITY COUNCIL REPORT

Meeting Date: **2/26/2013**
Meeting Type: **Voting**
Title: **REAPPOINTMENT OF PRESIDING CITY JUDGE ELIZABETH FINN**
Staff Contact: **Jim Brown, Interim Executive Director, Human Resources & Risk Management**

Purpose and Recommended Action

This is a request for the City Council to reappoint Presiding City Judge Elizabeth Finn to a two-year term. Her current term expires March 25, 2013.

Background Summary

Judge Elizabeth Finn has served as Presiding City Judge in Glendale since 2003 and is eligible for reappointment to a two-year term. The Judicial Selection Advisory Board unanimously recommends Judge Finn's reappointment based on the results of her reappointment interview, letters of recommendation received on her behalf, confidential survey results conducted by a private research firm, and other reappointment materials.

Community Benefit/Public Involvement

The confidential survey and questionnaire on reappointment was mailed to 201 recipients. Public input on reappointment was sought through advertisement in *The Arizona Republic*, *The Glendale Star* and *Maricopa Lawyer* (published by the Maricopa County Bar Association). The survey results and all letters of input have been provided to the Mayor and Council, along with letters of recommendation.



CITY COUNCIL REPORT

Meeting Date: **2/26/2013**
Meeting Type: **Voting**
Title: **APPOINTMENT OF CITY JUDGE**
Staff Contact: **Jim Brown, Interim Executive Director, Human Resources & Risk Management**

Purpose and Recommended Action

This is a request for the City Council to appoint a City Judge to a two-year term due to the retirement of a current City Judge (Jean Baxter) effective February 8, 2013.

Background Summary

In December 2012 Presiding City Judge Elizabeth Finn received direction from Council to proceed with a recruitment for City Judge due to Judge Baxter's impending retirement. The Judicial Selection Advisory Board (JSAB) in conjunction with city staff conducted a recruitment process to solicit interested candidates for the upcoming City Judge vacancy.

Following an extensive review process, the JSAB recommends that Council consider the following four candidates and select one finalist to be appointed to the position of City Judge for a two-year term.

Maria Brewer
Manuel Delgado, Jr.
Carolyn Macias
Anne Phillips

Community Benefit/Public Involvement

Public input on the candidates being interviewed by the JSAB for potential appointment to the City Judge position was sought through advertisement in *The Glendale Star* and *West Valley News*. All letters of recommendation have been provided to the Mayor and Council.



STAFF REPORT

To: **Horatio Skeete, Acting City Manager**
From: **Jim Brown, Interim Executive Director, Human Resources & Risk Management**
Item Title: **APPOINTMENT OF CITY JUDGE**
Requested Council Meeting Date: **2/26/2013**
Meeting Type: **Voting**

PURPOSE

This is a request for the City Council to appoint a City Judge to a two-year term due to the retirement of a current City Judge (Jean Baxter) effective February 8, 2013.

BACKGROUND

One of the purposes of the Judicial Selection Advisory Board (JSAB) is to recommend to the Mayor and City Council the best qualified applicants for the office of City Judge. In accordance with JSAB by-laws, the Board must recommend at least three finalists for consideration by the Council.

In determining the best qualified applicants, the Board shall select applicants who have outstanding professional competence and reputation and who reflect, to the extent possible, the ethnic, racial, and gender diversity of the community in order to enhance fairness and public confidence in judicial proceedings.

In December 2012, Presiding City Judge Elizabeth Finn received direction from Council to proceed with recruitment for a City Judge due to Judge Baxter's impending retirement. The JSAB in conjunction with city staff conducted a recruitment process to solicit interested candidates for the upcoming City Judge vacancy. All applicants were required to submit an extensive judicial application outlining their experience and qualifications for this position. The JSAB received a total of 48 applications, and after review and discussion, determined that interviews would be scheduled with the top eight candidates.

An extensive due diligence review was also conducted by the JSAB on the eight candidates prior to the interviews. This included contacting individuals and institutions to obtain as much relevant background information as possible. The JSAB interviewed the eight candidates on January 28 and January 29, 2013.

Following the interviews, the JSAB identified four finalists to present to the Council for consideration. Informational packets including pertinent information on each finalist such as



STAFF REPORT

applications, resumes, reference letters, State Bar of Arizona member status and disciplinary history, and video-taped interviews was provided to Council for review.

ANALYSIS

The JSAB recommends that Council, after reviewing all relevant materials provided, consider the following four candidates and select one finalist to be appointed to the position of City Judge for a two-year term:

Maria Brewer
Manuel Delgado, Jr.
Carolyn Macias
Anne Phillips

FISCAL IMPACTS

This is a budgeted position. Traditionally the city judges are reappointed prior to the expiration of their current terms to ensure consistency in ongoing court operations and activities. A delay in filling the vacant position would create a hardship on the court and result in the need to use scarce resources to continue to fund pro-tem judges to manage the workload until a new City Judge is appointed.