

City of Glendale Council Meeting Agenda

September 24, 2013 – 6:00 p.m.

Welcome!

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

Form of Government

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

Voting Meetings and Workshop Sessions

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

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

Executive Sessions

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

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

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



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

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

Councilmembers

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



MAYOR JERRY P. WEIERS

Vice Mayor Yvonne J. Knaack – Barrel District

Appointed City Staff

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

Meeting Agendas

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

Public Rules of Conduct

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

How to Participate

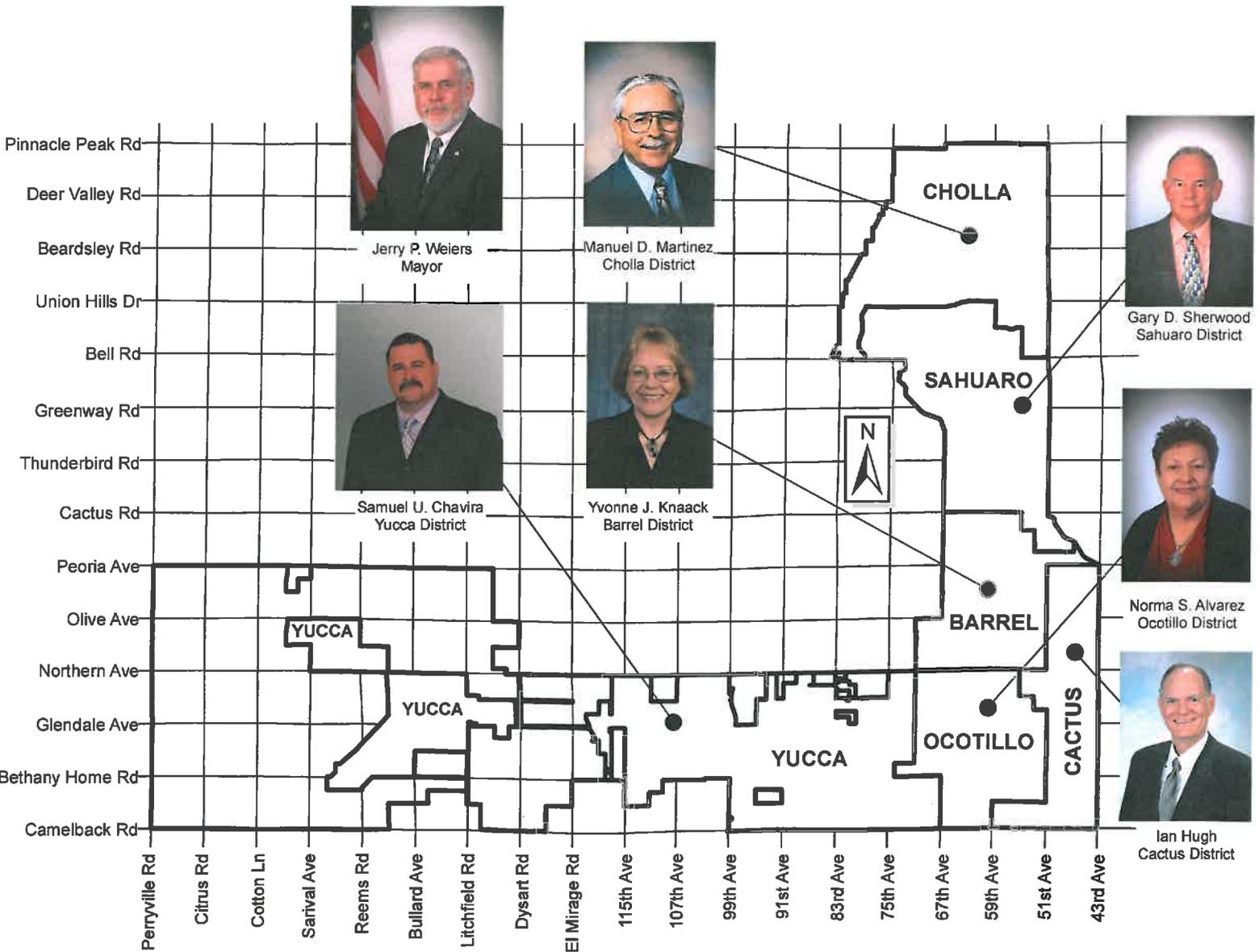
Voting Meeting - The Glendale City Council values citizen comments and input. If you wish to speak on a matter concerning Glendale city government that is not on the printed agenda, please fill out a blue Citizen Comments Card. Public hearings are also held on certain agenda items. If you wish to speak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

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

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



Council District Boundaries





**GLENDALE CITY COUNCIL MEETING
Council Chambers
5850 West Glendale Avenue
September 24, 2013
6:00 p.m.**

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

CALL TO ORDER

PLEDGE OF ALLEGIANCE

PRAYER/INVOCATION

CITIZEN COMMENTS

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

APPROVAL OF THE MINUTES OF September 3, 2013

BOARDS, COMMISSIONS AND OTHER BODIES

**BOARDS, COMMISSIONS AND OTHER BODIES
PRESENTED BY: Councilmember Manuel Martinez**

PROCLAMATIONS AND AWARDS

**PROCLAIM SEPTEMBER 22 – 28, 2013 AS NATIONAL EMPLOYER SUPPORT OF THE
GUARD AND RESERVE WEEK
PRESENTED BY: Office of the Mayor
ACCEPTED BY: Scott Essex, Employer Support of the Guard and Reserve**

PROCLAIM OCTOBER 2013 AS FIRE PREVENTION MONTH

PRESENTED BY: Office of the Mayor

ACCEPTED BY: Terry Jeffries, Assistant Manager, Grand Missouri Mobile Home Park

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. SPECIAL EVENT LIQUOR LICENSE, ACTIVE 20/30 CLUB OF GLENDALE #131

PRESENTED BY: Susan Matousek, Revenue Administrator

2. SPECIAL EVENT LIQUOR LICENSE, ST. HELEN PARISH

PRESENTED BY: Susan Matousek, Revenue Administrator

3. AUTHORIZATION FOR COOPERATIVE PURCHASE OF VEHICLES

PRESENTED BY: Debora Black, Police Chief

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

PRESENTED BY: Debora Black, Police Chief

5. AUTHORIZATION TO ENTER INTO A CONSTRUCTION AGREEMENT WITH MCKENNA CONTRACTING, LLC

PRESENTED BY: Debora Black, Police Chief

6. AGREEMENT FOR FUTURE WASTEWATER AND RECYCLED WATER SERVICES IN THE LOOP 303 CORRIDOR AREA

PRESENTED BY: Craig Johnson, P.E., Executive Director, Water Services

7. AGREEMENT WITH CALGON CARBON CORPORATION TO PURCHASE GRANULAR ACTIVATED CARBON

PRESENTED BY: Craig Johnson, P.E., Executive Director, Water Services

8. EXPENDITURE AUTHORIZATION FOR PURCHASE COSTS FOR RAW WATER FROM SALT RIVER PROJECT AND CENTRAL ARIZONA PROJECT

PRESENTED BY: Craig Johnson, P.E., Executive Director, Water Services

9. EXPENDITURE AUTHORIZATION FOR ARIZONA MUNICIPAL WATER USERS ASSOCIATION FOR ORGANIZATIONAL MEMBERSHIP

PRESENTED BY: Craig Johnson, P.E., Executive Director, Water Services

10. EXPENDITURE AUTHORIZATION FOR COSTS ASSOCIATED WITH PARTIAL OWNERSHIP IN THE SUB-REGIONAL WASTEWATER TREATMENT PLANT

PRESENTED BY: Craig Johnson, P.E., Executive Director, Water Services

11. EXPENDITURE AUTHORIZATION FOR LEAGUE OF ARIZONA CITIES AND TOWNS
2013-14 MEMBERSHIP DUES

PRESENTED BY: Brent Stoddard, Intergovernmental Programs Director

12. EXPENDITURE AUTHORIZATION FOR PAYMENT TO HARALSON, MILLER, PITT,
FELDMAN & MCANALLY, P.L.C. FOR EXTERNAL AUDIT SERVICES

PRESENTED BY: Brent Stoddard, Intergovernmental Programs Director

13. EXPENDITURE AUTHORIZATION FOR PAYMENT TO DICKINSON WRIGHT MARISCAL
WEEKS FOR PROFESSIONAL SERVICES

PRESENTED BY: Michael D. Bailey, City Attorney

14. EXPENDITURE AUTHORIZATION FOR ELECTRICITY AND NATURAL GAS UTILITY
PAYMENTS

PRESENTED BY: Stuart Kent, Executive Director, Public Works

15. CONTRACT AMOUNT INCREASE FOR SECURITY AND FIRE ALARM SERVICE WITH
ACCESS SECURITY SYSTEMS INTERNATIONAL OF ARIZONA

PRESENTED BY: Stuart Kent, Executive Director, Public Works

CONSENT RESOLUTIONS

16. ACCEPTANCE OF GRANTS FROM THE STATE OF ARIZONA OFFICE OF THE ATTORNEY
GENERAL FOR THE VICTIM'S RIGHTS PROGRAM

PRESENTED BY: Debora Black, Police Chief

RESOLUTION: 4724

17. LICENSE AGREEMENT RENEWAL FOR NEW CINGULAR WIRELESS PCS, LLC

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

RESOLUTION: 4725

18. LICENSE AGREEMENTS FOR NEW CINGULAR WIRELESS PCS, LLC

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

RESOLUTION: 4726

LAND DEVELOPMENT ACTIONS

19. FINAL PLAT APPLICATION FP13-01: RE-PLAT OF COPPER COVE PHASE 1 – 9251
WEST MISSOURI AVENUE

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

ORDINANCES

**20. AMENDMENT TO GLENDALE CITY CODE CHAPTER 18 - GARBAGE AND TRASH
(CONTAINERS AND PRECOLLECTION PRACTICES)**

PRESENTED BY: Stuart Kent, Executive Director, Public Works
ORDINANCE: 2861

RESOLUTIONS

**21. INDUSTRIAL DEVELOPMENT AUTHORITY REVENUE BONDS FOR MIDWESTERN
UNIVERSITY**

PRESENTED BY: Jessi Pederson, Economic Development Specialist
RESOLUTION: 4727

REQUEST FOR FUTURE WORKSHOP AND EXECUTIVE SESSION

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,



Brenda S. Fischer, ICMA-CM
City Manager



**MINUTES OF THE
GLENDALE CITY COUNCIL SPECIAL MEETING
Council Chambers
5850 West Glendale Avenue
September 3, 2013
1:00 p.m.**

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

Also present were Brenda Fischer, City Manager; Julie Frisoni, Interim Assistant City Manager; Deborah Robberson, Deputy City Attorney; and Pamela Hanna, City Clerk.

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

CITIZEN COMMENTS

No Comments.

NEW BUSINESS

1. COUNCIL APPOINTMENT OF CITY ATTORNEY

This is a request for the City Council to appoint a city attorney. 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, appoint a city attorney and authorize Human Resources to execute a contract for employment.

Mr. Brown said Council shall appoint a City Attorney who will be the city's chief legal officer

It was moved by Councilmember Sherwood, and seconded by Vice Mayor Knaack, to nominate Michael Bailey as the new City Attorney. The motion carried unanimously.

COUNCIL COMMENTS AND SUGGESTIONS

Councilmember Sherwood welcomed Mr. Bailey to the city.

Councilmember Martinez congratulated and welcomed Mr. Bailey

Councilmember Chavira welcomed Mr. Bailey back to the city.

Councilmember Hugh welcomed Mr. Bailey back to the City.

Vice Mayor Knaack welcomed Mr. Bailey.

Mayor Weiers told Mr. Bailey there was a lot of work to do and they were counting on his expertise. He also reminded everyone of the time of the council workshop to be held today at 1:30 p.m.

ADJOURNMENT

There being no further business, the meeting was adjourned at 1:07 p.m.

Pamela Hanna - City Clerk



CITY COUNCIL REPORT

Meeting Date: **9/24/2013**
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.

Arts Commission

Elizabeth Medina	Barrel	Reappointment	09/27/2013	09/27/2015
Jessica Koory – Vice Chair	Ocotillo	Appointment	09/24/2013	08/23/2014

Citizens Bicycle Advisory Committee

James Grose	CTOC	Appointment	09/24/2013	03/25/2015
Scott Donald	Cholla	Appointment	09/24/2013	07/18/2015

Commission on Persons with Disabilities

Kelly Ausbun	Ocotillo	Appointment	09/24/2013	04/26/2014
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Parks & Recreation Advisory Commission

Barbara Cole	Mayoral	Appointment	09/24/2013	04/09/2014
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Public Safety Personnel Retirement System Fire & Police Board

Brenda Fischer	City Manager	Appointment	09/24/2013	07/01/2016
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CITY COUNCIL REPORT

Meeting Date: **9/24/2013**
Meeting Type: **Voting**
Title: **PROCLAIM SEPTEMBER 22 – 28, 2013 AS NATIONAL EMPLOYER SUPPORT OF THE GUARD AND RESERVE WEEK**
Staff Contact: **Jim Brown, Executive Director, Human Resources & Risk Management**

Purpose and Recommended Action

This is a request for City Council to proclaim September 22 – 28, 2013 as National Employer Support of the Guard and Reserve week in the City of Glendale. This proclamation will be accepted by Scott Essex of the Employer Support of the Guard and Reserve.

Background

The Employer Support of Guard and Reserve (ESGR) was established in 1972 to promote cooperation and understanding between the Reserve Component Service members and their civilian employers, and to assist in the resolution of conflicts arising from the employee's military commitment.

For over 40 years, the ESGR has been facilitating and promoting a cooperative culture of employer support for National Guard and Reserve service by developing and advocating mutually beneficial initiatives; recognizing outstanding employer support; increasing awareness of applicable laws and policies; resolving potential conflicts between employers and their service members; and acting as the employers' principal advocate within the Department of Defense.

This proclamation should be considered a symbol in recognition of National Guard and Reserves members, also known as "Citizen Warriors" who sacrifice and fight for the liberty and freedom of American citizens of the United States. These Citizen Warriors would not be able to defend and protect citizens at home and abroad without the continued promise of meaningful civilian employment for themselves and their families.



CITY COUNCIL REPORT

Meeting Date: **9/24/2013**
Meeting Type: **Voting**
Title: **PROCLAIM OCTOBER 2013 AS FIRE PREVENTION MONTH**
Staff Contact: **Mark Burdick, Fire Chief**

Purpose and Recommended Action

This is a request for City Council to proclaim October 2013 as Fire Prevention Month in Glendale and present the proclamation to Terry Jeffries, Assistant Manager of the Grand Missouri Mobile Home Park.

Mr. Jeffries was chosen to be this year's proclamation recipient because Grand Missouri Mobile Home Park was selected as the destination mobile home park for this year's smoke alarm walk sponsored by the Glendale Fire Department, Arizona Burn Foundation, and the Valley of the Sun United Way.

Background Summary

The National Fire Protection Association (NFPA) has designated October 6-12, 2013, as National Fire Prevention Week with the theme, "Prevent Kitchen Fires." Each year, Fire Prevention Month is proclaimed in Glendale to remind everyone of the importance of fire safety.

Fire safety education for citizens is a priority in the City of Glendale. In 2012, the Glendale Fire Department responded to 47 incidents related to kitchen fires, with only five resulting in actual working fires. These low figures may be a direct result of the Fire Department's continued fire safety education for citizens.

Some of the fire safety programs provided by the Glendale Fire Department to the community include: home escape planning, kitchen safety, smoke alarm tips, general home fire safety, and youth fire-setter intervention and prevention programs. Citizens are encouraged to visit the Fire Department's web page at www.glendaleaz.com/fire for more information, or contact the Fire Department's Community Services Hotline at 623-930-4481 to schedule a fire safety event.

Previous Related Council Action

Council has proclaimed Fire Prevention Month in Glendale since 1997.



CITY COUNCIL REPORT

Meeting Date: **9/24/2013**
Meeting Type: **Voting**
Title: **SPECIAL EVENT LIQUOR LICENSE, ACTIVE 20/30 CLUB OF GLENDALE #131**
Staff Contact: **Susan Matousek, Revenue Administrator**

Purpose and Recommended Action

This is a request for City Council to approve a special event liquor license for the Active 20/30 Club of Glendale #131. The event will be held at Arizona Automotive Institute campus parking lot located at 6829 North 46th Avenue on Saturday, October 12, 2013, from 11 a.m. to 7 p.m. The purpose of this special event liquor license is for a fundraiser.

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 Arizona Automotive Institute campus is located in the Cactus District. If this application is approved, the total number of days expended by this applicant will be one of the allowed 10 days per calendar year. Under the provisions of A.R.S. § 4-203.02, the Arizona Department of Liquor Licenses and Control may issue a special event liquor license only if the Council recommends approval of such license.

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

Attachments

- Finance Department Report
- Liquor License Attachments
- Police Calls for Service Report



FINANCE DEPARTMENT REPORT

Meeting Date: **9/24/2013**
To: **Brenda S. Fischer, City Manager**
From: **Susan Matousek, Revenue Administrator**
Title: **SPECIAL EVENT LIQUOR LICENSE, ACTIVE 20/30 CLUB OF GLENDALE #131**

General Information

Request: Special Event Liquor License

Location: 6829 North 46th Avenue

District: Cactus

Zoned: C-3 (Heavy Commercial)

Applicant: Jeffrey F. Coury

Owner: Active 20/30 Club of Glendale #131

Background

1. The event will be held on Saturday, October 12, 2013, from 11 a.m. to 7 p.m.
2. The total number of days expended by this applicant will be one out of the allowed 10 days per calendar year.
3. The purpose of this event is for a fundraiser.
4. Proceeds from this special event go to Active 20/30 Club of Glendale, Bikers Against Child Abuse, and Max's Sports Restaurant.

Review/Analysis

In accordance with A.R.S. § 4-203.02, the Arizona Department of Liquor Licenses and Control may issue a special event liquor license only if Council recommends approval of such license.

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.

10. Has the applicant been convicted of a felony in the past five years, or had a liquor license revoked?
 YES NO (attach explanation if yes)
11. This organization has been issued a special event license for one days this year, including this event
(not to exceed 10 days per year).
12. Is the organization using the services of a promoter or other person to manage the event? YES NO
If yes, attach a copy of the agreement.

13. List all people and organizations who will receive the proceeds. Account for 100% of the proceeds.
THE ORGANIZATION APPLYING MUST RECEIVE 25% OF THE GROSS REVENUES OF THE SPECIAL EVENT LIQUOR SALES.

Name	<u>Active 20/30 Club of Glendale #131</u>	<u>25%</u>
		Percentage
Address	<u>PO Box 1035 Glendale AZ, 85311</u>	
Name	<u>Bikers Against Child Abuse (B.A.C.A.)</u>	<u>25%</u>
		Percentage
Address	<u>PO Box 2684 Mesa AZ, 85214</u>	
	<u>(Attach additional sheet if necessary)</u>	

14. Knowledge of Arizona State Liquor Laws Title 4 is important to prevent liquor law violations. If you have any questions regarding the law or this application, please contact the Arizona State Department of Liquor Licenses and Control for assistance.

NOTE: ALL ALCOHOLIC BEVERAGE SALES MUST BE FOR CONSUMPTION AT THE EVENT SITE ONLY.
"NO ALCOHOLIC BEVERAGES SHALL LEAVE SPECIAL EVENT PREMISES."

15. What security and control measures will you take to prevent violations of state liquor laws at this event?
(List type and number of security/police personnel and type of fencing or control barriers if applicable)

4 # Police Fencing
8 # Security personnel Barriers

Security will consist of 4 Sworn Arizona Peace officers working in 2 shifts of 2 each. 4 additional volunteer security personnel will be provided by B.A.C.A.
An additional 4 security personnel will be provided by Max's Sports Restaurant. Temporary and Permanent fencing will enclose the event area. Identification will be checked in a central location at the entrance of the event and wrist bands issued for those persons of legal age.

16. Is there an existing liquor license at the location where the special event is being held? YES NO
If yes, does the existing business agree to suspend their liquor license during the time period, and in the area in which the special event license will be in use? YES NO
(ATTACH COPY OF AGREEMENT)

_____ () _____
Name of Business Phone Number

17. Your licensed premises is that area in which you are authorized to sell, dispense, or serve spirituous liquors under the provisions of your license. The following page is to be used to prepare a diagram of your special event licensed premises. Please show dimensions, serving areas, fencing, barricades or other control measures and security positions.

Additional organizations receiving proceeds from October 19th Charitable Event Class 15 Special Event
Liquor License

Name: Max's Sports Restaurant

Percentage: 50% (Max's will also pay for product used from this portion)

Address: 6727 N. 47th Ave., Glendale Arizona, 85301

Max's Sports Restaurant located at 6727 N. 47th Ave will be acting as a manager and promoter for a 20/30 fundraiser to be held on October 12th 2013. The fundraising event will be held at the Arizona Automotive Institute (AAI) campus parking lot beginning at 11 AM and continuing until 7 PM on October 12th 2013.

Max's will provide 2 trained bartenders with a current Arizona Department of Liquor Licenses and Control Certificate of Title 4 Training.

Alcoholic beverages will be limited to draft beer. No spirituous liquor or wine will be offered.

All alcohol consumption at the above mentioned event will be confined to a fenced in area encompassing the parking lot of the AAI Campus located at 6829 N. 46th Ave. Glendale AZ 85301.

Access to the event area will be restricted and monitored. Security personnel and sworn Arizona Police officers will be on location to ensure compliance with Arizona Liquor Laws.

Wrist bands will be issued at the entrance of the event for persons over the age of 21. No alcohol consumption will be permitted nor provided to any person who has not first had their age verified and obtained a wristband.

Proceeds from the fundraising event will be dispersed as follows

Active 20/30 Club of Glendale = 25% of Alcohol Sale Proceeds

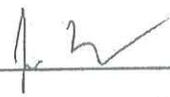
Bikers Against Child Abuse = 25% of Alcohol Sale Proceeds

Max's Sports Restaurant = 50% of Alcohol Sale Proceeds

Compensation to alcohol vendor will be made from Max's share of the proceeds.

Signed  Date 7-26-13
Print JAMES A. Young

Max's Sports Restaurant
6727 N. Glendale Ave.
Glendale AZ, 85301
(623) 937-1671

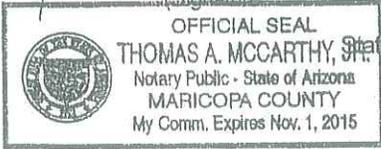
Signed  Date 07-26-2013
Print Jeffrey F. Coury

Active 20/30 Club of Glendale #131
PO Box 1025
Glendale AZ, 85311
(602) 568 - 9963

THIS SECTION TO BE COMPLETED ONLY BY AN OFFICER, DIRECTOR OR CHAIRPERSON OF THE ORGANIZATION NAMED IN QUESTION #1

18. I, Jeffery F. Coory declare that I am an Officer/Director/Chairperson appointing the applicant listed in Question 6, to apply on behalf of the foregoing organization for a Special Event Liquor License.

X [Signature] President 07-26-2013 (602) 525-1426
 (Signature) (Title/Position) (Date) (Phone #)



State of Arizona County of Maricopa
 The foregoing instrument was acknowledged before me this

July 26, 2013
 Day Month Year

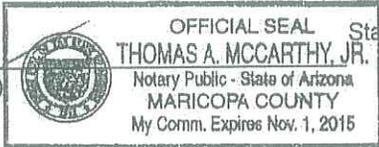
My Commission expires on: Nov. 1, 2013
 (Date)

[Signature]
 (Signature of NOTARY PUBLIC)

THIS SECTION TO BE COMPLETED ONLY BY THE APPLICANT NAMED IN QUESTION #6

19. I, Jeffery F. Coory declare that I am the APPLICANT filing this application as listed in Question 6. I have read the application and the contents and all statements are true, correct and complete.

X [Signature] State of Arizona County of Maricopa
 (Signature) The foregoing instrument was acknowledged before me this



July 26, 2013
 Day Month Year

My commission expires on: Nov 1, 2013
 (Date)

[Signature]
 (Signature of NOTARY PUBLIC)

You must obtain local government approval. City or County MUST recommend event and complete item #20. The local governing body may require additional applications to be completed and submitted 60 days in advance of the event. Additional licensing fees may also be required before approval may be granted.

LOCAL GOVERNING BODY APPROVAL SECTION

20. I, _____ hereby recommend this special event application
 (Government Official) (Title)
 on behalf of _____
 (City, Town or County) (Signature of OFFICIAL) (Date)

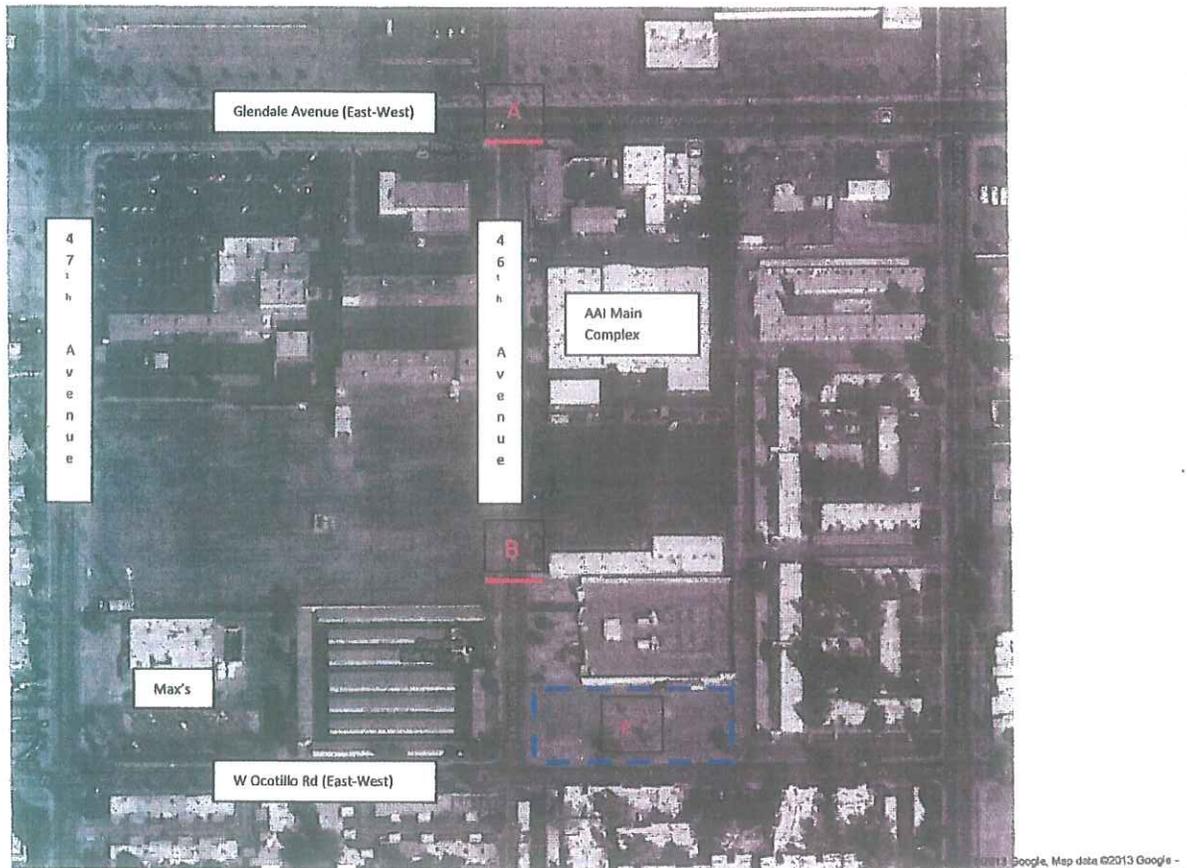
FOR DLLC DEPARTMENT USE ONLY

Department Comment Section:

 (Employee) (Date)

APPROVED DISAPPROVED BY: _____
 (Title) (Date)

Street Closures and Parking

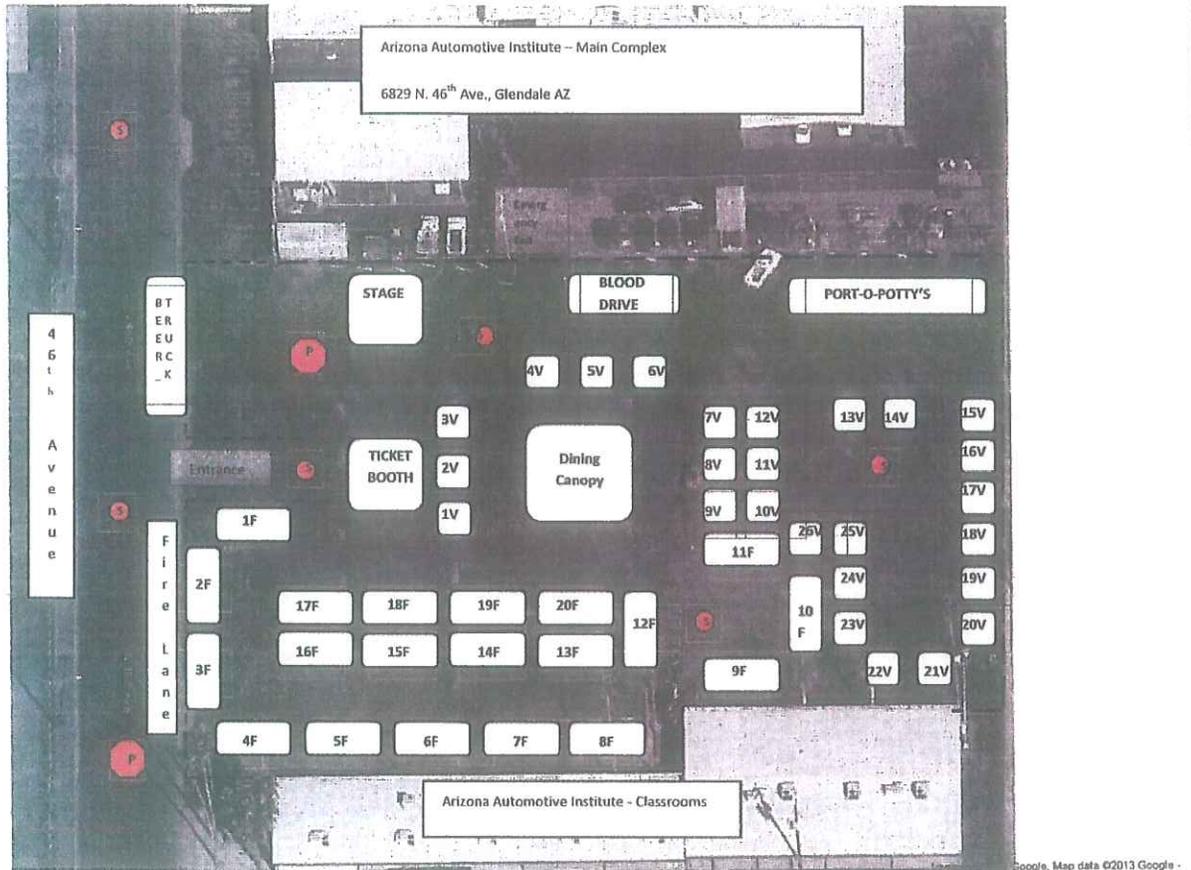


A: 46th Ave. closure northern boundary. Barricades set up to prohibit traffic flow south onto 46th Ave from Glendale Avenue. Intersection has no traffic signals. Access to adjacent businesses on the North-West and North-East corners of Glendale Ave. and 46th Ave. is from Glendale Ave. Said businesses do not have 46th Ave. entrance or exits.

B: 46th Ave. closure southern boundary. Barricades to be set up from southern property line of AAI (6829 N. 46th Ave) across 46th Ave. Barricades set up at this location will allow access to Guardian Self Storage facility and SRP facility on the South-West and South-East corner of W. Ocotillo Rd.

C: Vacant lot located on the South-East corner of 46th Ave and W. Ocotillo Rd. will be used for automobile parking to the event. This property is owned by AAI and leased to Max's Sports Restaurant (a co-sponsor of the event) for overflow parking.

Event Facilities



Bold dotted line indicates existing fencing at location. Smaller dotted lines indicate temporary barriers placed to enclose the food, beverage and retail portion of the event.

A beer truck provided by Hensley Companies will park along 46th Ave. with its taps facing inward towards the lot.

A 20'x20' ground level stage (stage will not consist of any risers) will be placed on the north side of the lot near the beer truck. Electricity for the stage will be provided and run from the AAI facility.

Approximately midway through the northern side of the lot a Blood Drive Bus will be parked.

A Bank of 8 portable toilets will be located at the far north – east corner of the event.

A ticket booth will be located immediately at the entrance of the event. All food and beverage purchases will require the use of tickets. Tickets will cost \$2 each. Samples of BBQ will cost 1 ticket. Beer will cost 2 tickets. ½ of all proceeds go to the sponsored charity (B.A.C.A.)

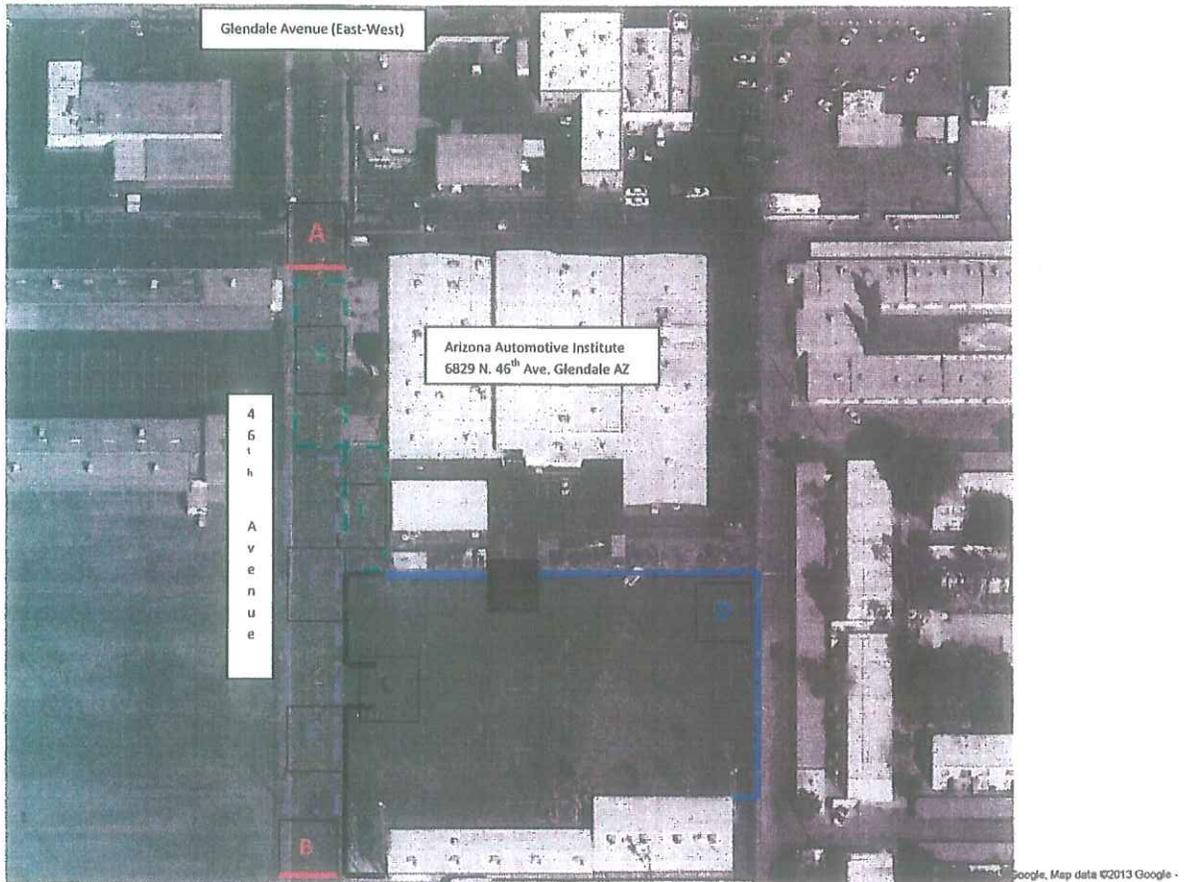
An approximately 25' x 25' foot Canopy for food consumption and shade will be erected just West of Center of the lot.

A maximum of 20 food vendors will be allotted a 10' x 20' space to set up their stands. All food stands are numbered and marked with an 'F'. Food slips numbered 4 – 10 will be allowed access to electrical connections provided from the Southern facilities of AAI.

26 vendor booths measuring 10' x 10' will be placed around the central tent area and along the eastern portion of the lot.

Octagons indicate locations of security personnel. Large Octagons indicate locations of sworn Peace Officers, one located at the entrance to the motorcycle parking area and bike show and a second located near the stage and beer facility.

Event Boundaries



A: Northern Boundary of event.

B: Southern Boundary of event. Barricades set to prohibit through traffic. A uniformed Peace Officer will be present at this point of entry to allow entrance of Motorcyclists participating in the Charity run access to 46th Avenue to park their vehicles. A uniformed Peace Officer will also allow access to 46th Ave. for participants in the auto show portion of the event. Participants of the car show must have their vehicles in location no later than 1030 AM.

C: Lines represent temporary fencing to site of food, retail, and beverage section of the event. Section C will connect existing fencing on location to 46th Ave allowing a single entrance and egress to the event. Security will be present at the entrance of this section to assure that no alcoholic beverages pass beyond this singular access point.

D: Light Blue lines represent existing fencing at location.

E: Area Reserved for Auto Show

F: Area Reserved for Motorcycle parking (participants of the BACA Charity Run).

G: Emergency Exit.



City of Glendale
 5850 W. Glendale Ave.
 Glendale, AZ 85301
 www.glendaleaz.com/taxandlicense

SPECIAL EVENT LIQUOR APPLICATION

FOR CITY USE ONLY

L15 L16

Amount Due: _____

Account #

Event Information

Event Business Location Name: Arizona Automotive Institute
 Event Address: 6829 N. 46th Avenue
 Name of person filling out this form: Jeffery F Coury
 Phone Number: 623 594-6033 Address: 8230 N. 58th Avenue
 What is your relationship to the business? Agent Owner Attorney Consultant Other _____
If different from the person filling out this form, provide event contact person below,
 Event Contact Name: _____
 Phone Number: _____ Address: _____
 What is their relationship to the business? Agent Owner Attorney Consultant Other _____
 If "Other," please describe your relationship to the business: _____

Event Sponsor Information

Organization Name: Active 20/30 Club of Glendale #131
 Organization Address: _____
 Federal ID Number: _____

Dates & Hours of Event

Date	Hours	Date	Hours
Day 1: <u>Saturday 10/12/13</u>	<u>11 am to 7 pm</u>	Day 6: _____	_____
Day 2: _____	_____	Day 7: _____	_____
Day 3: _____	_____	Day 8: _____	_____
Day 4: _____	_____	Day 9: _____	_____
Day 5: _____	_____	Day 10: _____	_____

Event Activities

Patron Dancing Yes x No Cover Charge Yes x No If yes, Amount \$ _____
 Live Entertainment x Yes No If yes, Type Music
 Adult Entertainment Yes x No Outdoor dining x Yes No
 Food Served x Yes No Outdoor Alcohol Consumption x Yes No

FOR CITY USE ONLY



[Empty dotted box for Account#]

Event Fencing

Will there be fencing? Yes No SEE SITE PLANS

If yes: Type of Material _____ Height of Fence _____

 Number of Exit Gates _____ Width of Exit Gate(s) _____

Event Parking

Is Parking Area Exclusively for this Location? Yes No If yes: How many parking spaces? _____

Will any part of the event be in a Parking Lot? Yes No Shared with other businesses? Yes No

Will there be Vendors Outside? Yes No If yes: How many ? _____

Permit Requirements*

Have you contacted the City Planning Department about any potential zoning restrictions or Use Permit requirements that may apply to this property or business? Yes No

If "NO," please contact Development Services Center at 623-930-2800 or visit them on the 2nd Floor of Glendale City Hall, 5850 W Glendale Avenue.

**Please note that approval of a Permit does not guarantee that you will be issued a liquor license.*

Interpreter Language

The applicant or agent may be asked to answer questions regarding this liquor application at the City Council meeting. The City can provide Spanish interpretation at no cost to the applicant.

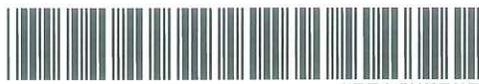
Do you want to request Spanish interpretation assistance for the City Council meeting? Yes No

I swear or affirm I have read all of the above questions and have personally provided all of the information to the best of my knowledge and belief and that all of it is true. I understand that all information regarding ownership of the business is very important and relevant to the processing of my application. I understand that if I provide any false information in this application, it may result in either a recommendation of disapproval of this application by the City of Glendale, criminal charges being filed against me, or both.

 (Signature of person filling out this form)

 (Date)

PLEASE SUBMIT THIS FORM ALONG WITH THE ARIZONA STATE LIQUOR LICENSE & CONTROL SPECIAL EVENT LIQUOR LICENSE APPLICATION



13-84

GLENDALE POLICE DEPARTMENT

Liquor Application Worksheet

Date: 08-21-13

License Type: **Series 15 Special Event (Temporary License)**

Definition: Allows a charitable, civic, fraternal, political or religious organization to sell and serve spirituous liquor for consumption only on the premises where the spirituous liquor is sold, and only for the period authorized on the license. This is a temporary license.

Application Type: **New License**

Definition: New license

Business Name: **Active 20/30 Club of Glendale #131**

Business Address: **PO Box 1035 Glendale, AZ 85311 (Event at 6829 N. 46th Ave Arizona Automotive Institute)**

Applicant/s Information

Name: **Coury, Jeffery F.**

Name:

Name:

Name:

Background investigation of applicant/s completed.

Calls for Service History:	Call history for location beginning: 8/21/2012	Other Suites	New ownership call history beginning:
Liquor Related			
Vice Related			
Drug Related			
Fights / Assaults			
Robberies			
Burglary / Theft	1		
911 calls	8		
Trespassing			
Accidents			
Fraud / Forgery			
Threats			
Criminal damage			
Other non-criminal*	1		
Total calls for service	10	N/A	N/A

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

GLENDALE POLICE DEPARTMENT

Liquor Application Worksheet

Applicant Background Synopsis:

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

Proceeds from this special event go to the Active 20/30 Club of Glendale #131 (charitable group), Bikers Against Child Abuse (B.A.C.A.) and Max's Sports Restaurant.

Event date is scheduled for 10-12-13.

Current License Holder:

N/A

Location History:

No significant Calls for Service history at this location.

Special Concerns:

None found

Background investigation complete:

Police Department recommendation has No Cause for Denial.

		Date
Investigating Officer – M. Ervin	<u>M. ERVIN</u>	<u>8-21-13</u>
CID Lieutenant or Commander	_____	_____
Deputy City Attorney	_____	_____
Chief of Police or designee	<u>[Signature]</u>	<u>8/22/2013</u>



CITY COUNCIL REPORT

Meeting Date: **9/24/2013**
Meeting Type: **Voting**
Title: **SPECIAL EVENT LIQUOR LICENSE, ST. HELEN PARISH**
Staff Contact: **Susan Matousek, Revenue Administrator**

Purpose and Recommended Action

This is a request for City Council to approve a special event liquor license for St. Helen Parish. The event will be held at St. Helen's Social Center located at 5510 West Cholla Street on Sunday, October 20, 2013, from 1:30 p.m. to 4:30 p.m. The purpose of this special event liquor license is for a fundraiser.

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 St. Helen's Social Center is located in the Barrel District. If this application is approved, the total number of days expended by this applicant will be one of the allowed 10 days per calendar year. Under the provisions of A.R.S. § 4-203.02, the Arizona Department of Liquor Licenses and Control may issue a special event liquor license only if the Council recommends approval of such license.

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

Attachments

- Finance Department Report
- Liquor License Attachments
- Police Calls for Service Report



FINANCE DEPARTMENT REPORT

Meeting Date: 9/24/2013
To: Brenda S. Fischer, City Manager
From: Susan Matousek, Revenue Administrator
Title: SPECIAL EVENT LIQUOR LICENSE, ST. HELEN PARISH

General Information

Request: Special Event Liquor License

Location: 5510 West Cholla Street

District: Barrel

Zoned: R1-7 (Single Family Residential)

Applicant: Donald J. Gorny

Owner: St. Helen Parish

Background

1. The event will be held on Sunday, October 20, 2013, from 1:30 p.m. to 4:30 p.m.
2. The total number of days expended by this applicant will be one out of the allowed 10 days per calendar year.
3. The purpose of this event is for a fundraising social.
4. Proceeds from this special event go to St. Helen Parish.

Review/Analysis

In accordance with A.R.S. § 4-203.02, the Arizona Department of Liquor Licenses and Control may issue a special event liquor license only if Council recommends approval of such license.

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.

ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

800 W Washington 5th Floor
Phoenix AZ 85007-2934
(602) 542-5141

400 W Congress #521
Tucson AZ 85701-1352
(520) 628-6595



APPLICATION FOR SPECIAL EVENT LICENSE

Fee = \$25.00 per day, for 1-10 day events only
A service fee of \$25.00 will be charged for all dishonored checks (A.R.S. § 44-6852)

PLEASE NOTE: THIS DOCUMENT MUST BE FULLY COMPLETED OR IT WILL BE RETURNED.

DEPT USE ONLY
LIC#

****APPLICATION MUST BE APPROVED BY LOCAL GOVERNMENT**

1. Name of Organization: ST HELEN PARISH - HOLY NAME SOCIETY

2. Non-Profit/I.R.S. Tax Exempt Number: [REDACTED]

3. The organization is a: (check one box only)

- Charitable Fraternal (must have regular membership and in existence for over 5 years)
 Civic Political Party, Ballot Measure, or Campaign Committee
 Religious

4. What is the purpose of this event? SOCIAL

5. Location of the event: 5510 W. CHOLLA ST; GLENDALE, MARICOPA, 85304
Address of physical location (Not P.O. Box) City County Zip

Applicant must be a member of the qualifying organization and authorized by an Officer, Director or Chairperson of the Organization named in Question #1. (Signature required in section #18)

6. Applicant: Gorey Daines Jr. [REDACTED]
Last First Middle Date of Birth

7. Applicant's Mailing Address: [REDACTED]
Street City State Zip

8. Phone Numbers: (623) 979-4202 (623) 406-9445 [REDACTED]
Site Owner # Applicant's Business # Applicant's Home #

9. Date(s) & Hours of Event: (Remember: you cannot sell alcohol before 10:00 a.m. on Sunday)

	Date	Day of Week	Hours from A.M./P.M.	To A.M./P.M.
Day 1:	<u>10/20/13</u>	<u>SUNDAY</u>	<u>1:30 PM</u>	<u>4:30 PM</u>
Day 2:	_____	_____	_____	_____
Day 3:	_____	_____	_____	_____
Day 4:	_____	_____	_____	_____
Day 5:	_____	_____	_____	_____
Day 6:	_____	_____	_____	_____
Day 7:	_____	_____	_____	_____
Day 8:	_____	_____	_____	_____
Day 9:	_____	_____	_____	_____
Day 10:	_____	_____	_____	_____

10. Has the applicant been convicted of a felony in the past five years, or had a liquor license revoked?
 YES NO (attach explanation if yes)
11. This organization has been issued a special event license for 1 days this year, including this event
(not to exceed 10 days per year).
12. Is the organization using the services of a promoter or other person to manage the event? YES NO
If yes, attach a copy of the agreement.
13. List all people and organizations who will receive the proceeds. Account for 100% of the proceeds.
**THE ORGANIZATION APPLYING MUST RECEIVE 25% of the gross revenues of
Alcoholic Beverage Sales.**

Name	Address	Percentage
ST. HELEN PARISH		100%

(Attach additional sheet if necessary)

14. Knowledge of Arizona State Liquor Laws Title 4 is important to prevent liquor law violations. If you have any questions regarding the law or this application, please contact the Arizona State Department of Liquor Licenses and Control for assistance.

NOTE: ALL ALCOHOLIC BEVERAGE SALES MUST BE FOR CONSUMPTION AT THE EVENT SITE ONLY.
"NO ALCOHOLIC BEVERAGES SHALL LEAVE SPECIAL EVENT PREMISES."

15. What security and control measures will you take to prevent violations of state liquor laws at this event?
(List type and number of security/police personnel and type of fencing or control barriers if applicable)

2 # Police Fencing
2 # Security personnel Barriers

16. Is there an existing liquor license at the location where the special event is being held? YES NO
If yes, does the existing business agree to suspend their liquor license during the time period, and in the area in which the special event license will be in use? YES NO
(ATTACH COPY OF AGREEMENT)

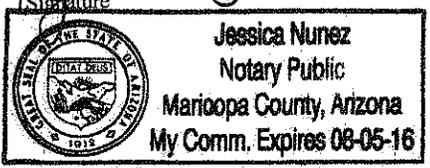
Name of Business () Phone Number

17. Your licensed premises is that area in which you are authorized to sell, dispense, or serve spirituous liquors under the provisions of your license. The following page is to be used to prepare a diagram of your special event licensed premises. Please show dimensions, serving areas, fencing, barricades or other control measures and security positions.

THIS SECTION TO BE COMPLETED ONLY BY AN OFFICER, DIRECTOR OR CHAIRPERSON OF THE ORGANIZATION NAMED IN QUESTION #1

18. I, Donald J. Goraly, declare that I am an Officer/Director/Chairperson appointing the applicant listed in Question 6, to apply on behalf of the foregoing organization for a Special Event Liquor License.

X Donald J. Goraly CHAIRPERSON 8/19/13 (623) 930-0018
 (Signature) (Title/Position) (Date) (Phone #)



State of Arizona County of Maricopa
 The foregoing instrument was acknowledged before me this

19th August 2013
 Day Month Year

My Commission expires on: 08-05-2016
 (Date)

Jessica Nunez
 (Signature of NOTARY PUBLIC)

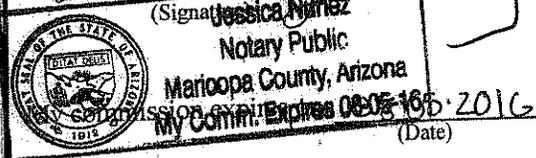
THIS SECTION TO BE COMPLETED ONLY BY THE APPLICANT NAMED IN QUESTION #6

19. I, Donald J. Goraly, declare that I am the APPLICANT filing this application as listed in Question 6. I have read the application and the contents and all statements are true, correct and complete.

X Donald J. Goraly
 (Signature)

State of Arizona County of Maricopa
 The foregoing instrument was acknowledged before me this

19th August 2013
 Day Month Year



Jessica Nunez
 (Signature of NOTARY PUBLIC)

You must obtain local government approval. City or County MUST recommend event & complete item #20. The local city or county jurisdiction may require additional applications to be completed and additional licensing fees before approval may be granted.

LOCAL GOVERNING BODY APPROVAL SECTION

20. I, _____ (Government Official) _____ (Title) hereby recommend this special event application on behalf of _____ (City, Town or County) _____ (Signature of OFFICIAL) _____ (Date)

FOR DLLC DEPARTMENT USE ONLY

Department Comment Section:

 _____ (Employee) _____ (Date)

APPROVED DISAPPROVED BY: _____ (Title) _____ (Date)



City of Glendale
5850 W. Glendale Ave.
Glendale, AZ 85301
www.glendaleaz.com/taxandlicense

SPECIAL EVENT LIQUOR APPLICATION

Account #

FOR CITY USE ONLY

L15 L16

Amount Due: _____

Event Information

Event Business Location Name: ST HELEN PARISH

Event Address: 5510 W. CHOLA ST

Name of person filling out this form: DONALD J. GORNY LITCHFIELD PARK, AZ

Phone Number: 623-930-0018 Address: _____

What is your relationship to the business? Agent Owner Attorney Consultant Other _____

If different from the person filling out this form, provide event contact person below,

Event Contact Name: _____

Phone Number: _____ Address: _____

What is their relationship to the business? Agent Owner Attorney Consultant Other _____

If "Other," please describe your relationship to the business: _____

Event Sponsor Information

Organization Name: ST. HELEN PARISH

Organization Address: 5510 W. CHOLA ST

Federal ID Number: _____

Dates & Hours of Event

Date	Hours	Date	Hours
Day 1: <u>OCT 20, 2013</u>	<u>1:30-4:30 PM</u>	Day 6: _____	_____
Day 2: _____	_____	Day 7: _____	_____
Day 3: _____	_____	Day 8: _____	_____
Day 4: _____	_____	Day 9: _____	_____
Day 5: _____	_____	Day 10: _____	_____

Event Activities

Patron Dancing Yes No Cover Charge Yes No If yes, Amount \$ _____

Live Entertainment Yes No If yes, Type _____

Adult Entertainment Yes No Outdoor dining Yes No

Food Served Yes No Outdoor Alcohol Consumption Yes No

FOR CITY USE ONLY



[Empty box for Account#]

Event Fencing

Will there be fencing? Yes No

If yes: Type of Material _____ Height of Fence _____
Number of Exit Gates _____ Width of Exit Gate(s) _____

Event Parking

Is Parking Area Exclusively for this Location? Yes No If yes: How many parking spaces? **MORE THAN NEEDED**

Will any part of the event be in a Parking Lot? Yes No Shared with other businesses? Yes No

Will there be Vendors Outside? Yes No If yes: How many? _____

Permit Requirements*

Have you contacted the City Planning Department about any potential zoning restrictions or Use Permit requirements that may apply to this property or business? Yes No

If "NO," please contact Development Services Center at 623-930-2800 or visit them on the 2nd Floor of Glendale City Hall, 5850 W Glendale Avenue.

**Please note that approval of a Permit does not guarantee that you will be issued a liquor license.*

Interpreter Language

The applicant or agent may be asked to answer questions regarding this liquor application at the City Council meeting. The City can provide Spanish interpretation at no cost to the applicant.

Do you want to request Spanish interpretation assistance for the City Council meeting? Yes No

I swear or affirm I have read all of the above questions and have personally provided all of the information to the best of my knowledge and belief and that all of it is true. I understand that all information regarding ownership of the business is very important and relevant to the processing of my application. I understand that if I provide any false information in this application, it may result in either a recommendation of disapproval of this application by the City of Glendale, criminal charges being filed against me, or both.

Donald J. Gorney
(Signature of person filling out this form)

8/19/2013
(Date)

PLEASE SUBMIT THIS FORM ALONG WITH THE ARIZONA STATE LIQUOR LICENSE & CONTROL SPECIAL EVENT LIQUOR LICENSE APPLICATION



13-87

GLENDALE POLICE DEPARTMENT

Liquor Application Worksheet

Date: 08-21-13

License Type: **Series 15 Special Event (Temporary License)**

Definition: Allows a charitable, civic, fraternal, political or religious organization to sell and serve spirituous liquor for consumption only on the premises where the spirituous liquor is sold, and only for the period authorized on the license. This is a temporary license.

Application Type: **New License**

Definition: New License

Business Name: **St. Helen Parish**

Business Address: **5510 W. Cholla St.**

Applicant/s Information

Name: **Gorny, Donald J.**

Name:

Name:

Name:

Background investigation of applicant/s completed.

Calls for Service History:	Call history for location beginning: 8/21/2012	Other Suites	New ownership call history beginning:
Liquor Related			
Vice Related			
Drug Related			
Fights / Assaults			
Robberies			
Burglary / Theft	2		
911 calls			
Trespassing			
Accidents			
Fraud / Forgery			
Threats			
Criminal damage			
Other non-criminal*	1		
Other criminal	1		
Total calls for service	4	N/A	N/A

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

GLENDALE POLICE DEPARTMENT

Liquor Application Worksheet

Applicant Background Synopsis:

All proceeds from this event go to the St. Helen Parish.

Event is scheduled for 10-20-13 (Sun) (Parish Social).

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:

N/A

Location History:

No significant Calls for Service history at this location.

Special Concerns:

None found

Background investigation complete:

Police Department recommendation has No Cause for Denial.

		Date
Investigating Officer – M. Ervin	<u>M. ERVIN</u>	<u>8-21-13</u>
CID Lieutenant or Commander	_____	_____
Deputy City Attorney	_____	_____
Chief of Police or designee	<u>[Signature]</u>	<u>8/22/13</u>



CITY COUNCIL REPORT

Meeting Date: **9/24/2013**
Meeting Type: **Voting**
Title: **AUTHORIZATION FOR COOPERATIVE PURCHASE OF VEHICLES**
Staff Contact: **Debora Black, Police Chief**

Purpose and Recommended Action

This is a request for City Council to authorize the cooperative purchase of nine vehicles from State of Arizona cooperative purchasing agreements with four different vendors, Chapman Ford, LLC, Larry H. Miller Dodge Avondale, Larry Miller Toyota, and Midway Chevrolet in an amount not to exceed \$241,833.04. The nine vehicles will be used for the Special Investigations Unit (SIU) detectives.

Background

There are three squads in the SIU. Two of the three squads already use undercover vehicles that are on a three-year rotation. The third squad in SIU currently uses fleet vehicles. The fleet vehicles do not blend as well during undercover and surveillance operations. The vehicles being purchased will replace the fleet vehicles for the third squad, and will be added to the three-year rotation. All undercover vehicles are purchased using Racketeering Influenced Corrupt Organization (RICO) funds. The purchase of undercover vehicles is an authorized use of RICO funds. Once the vehicles reach the end of their rotation, they are auctioned off and the proceeds return to the RICO account. Two of the fleet vehicles currently being used will be returned to the Police Department's fleet, and the remaining seven vehicles will be sent to equipment management for auction or redistribution, depending on their condition.

All four vendors were awarded their contracts through a competitive bid process by the State of Arizona. The Special Terms and Conditions of the State of Arizona bid extend the use of the contract to political subdivisions that have entered into a Cooperative Purchasing Agreement with the State of Arizona Procurement Office. Council authorization was granted on May 28, 2013 per Resolution No. 4681 New Series to allow continued use of Arizona State cooperative purchasing agreements. These contracts provide the best pricing available for purchase of these vehicles. Materials Management and the City Attorney's Office has reviewed and approved the cooperative purchase agreements used for these vehicles.

Analysis

This purchase will bring the SIU in line with best practices, which are not to use fleet vehicles during surveillance or undercover work because they do not blend as well as undercover vehicles. The vehicles being purchased will be added to the SIU Vehicle Replacement Fund (VRF). RICO will



CITY COUNCIL REPORT

be used to fund the VRF. Rental vehicles were looked at as an option for undercover and surveillance operations, but the State Contract had such competitive rates for purchasing vehicles, it was found to be the more cost-efficient option.

Budget and Financial Impacts

Cost	Fund-Department-Account
\$241,833.04	1860-32030-518200, State RICO

Capital Expense? Yes No

Budgeted? Yes No

Requesting Budget or Appropriation Transfer? Yes No

If yes, where will the transfer be taken from?

Attachments

None



CITY COUNCIL REPORT

Meeting Date: **9/24/2013**
Meeting Type: **Voting**
Title: **AUTHORIZATION TO PURCHASE AMMUNITION FROM THE SAN DIEGO POLICE EQUIPMENT COMPANY, INCORPORATED**
Staff Contact: **Debora Black, Police Chief**

Purpose and Recommended Action

This is a request for City Council to approve an ammunition purchase from the San Diego Police Equipment Company, Incorporated in an amount not to exceed \$200,000. The purchase will cover all of the practice and qualification ammunition needed for each police officer for Fiscal Year (FY) 2013-14.

Background

This ammunition will be used by the Glendale Police Department and covers all of the training and qualifications for each police officer, as well as for use on duty. The San Diego Police Equipment Company, Incorporated is on an Arizona State Contract; 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 the Arizona State Contract, in order to receive a very competitive rate. This contract was last bid in March 2009 in accordance with the State procurement process. Ammunition has increased in cost since this contract was last bid, so being able to purchase at a four-year-old rate is very beneficial to the city.

Analysis

The ammunition is important for training and for each officer to complete annual qualification required by Arizona Peace Officer Standards and Training. The ammunition officers carry in their weapon is also replaced every year, as a best practice for officer safety. The timing of this item coincides with the business needs of the Police Department.

Utilizing the State contract ensures the best pricing based on the amount of ammunition purchased. Staff is recommending that City Council approve the purchase from the San Diego Police Equipment Company, Incorporated in an amount not to exceed \$200,000.

Previous Related Council Action

On February 26, 2013, Council authorized the Police Department to purchase ammunition from the San Diego Police Equipment Company, Incorporated an amount not to exceed \$32,000 for ammunition needs during the remainder of FY 2012-13.



CITY COUNCIL REPORT

On October 9, 2012, Council authorized the Police Department to purchase ammunition from the San Diego Police Equipment Company, Incorporated in an amount not to exceed \$72,412.

Budget and Financial Impacts

Public Safety Sales Tax Funding will be used for this purchase.

Cost	Fund-Department-Account
\$200,000	1700-12310-521400, Public Safety Sales Tax

Capital Expense? Yes No

Budgeted? Yes No

Requesting Budget or Appropriation Transfer? Yes No

If yes, where will the transfer be taken from?

Attachments

None



CITY COUNCIL REPORT

Meeting Date: **9/24/2013**
Meeting Type: **Voting**
Title: **AUTHORIZATION TO ENTER INTO A CONSTRUCTION AGREEMENT
WITH MCKENNA CONTRACTING, LLC**
Staff Contact: **Debora Black, Police Chief**

Purpose and Recommended Action

This is a request for City Council to authorize the City Manager to enter into a construction agreement with McKenna Contracting, LLC in an amount not to exceed \$66,205 for the construction of a walk-in freezer and refrigerator to store evidence for biological crimes.

Background

State laws require biological evidence from certain crimes to be stored for specific time frames, depending on the crime. The Glendale Police Department has one walk-in freezer and refrigerator, which has almost reached full-capacity. Over the years, state laws have increased the time limits in which biological evidence must be stored. It is for this reason that the Police Department needs to purchase an additional walk-in freezer and refrigerator.

McKenna Contracting, LLC will convert a conference room into a storage area containing a walk-in freezer and refrigerator. The walk-in freezer and refrigerator will be approximately 308 square feet. The conference room is currently storing files, which will be relocated to another area within the Public Safety Building. The time frame for completion of this project is approximately 90 days after Council approval.

Analysis

The Police Department worked with Engineering on a Request for Proposal for this project. McKenna Contracting, LLC had the lowest cost out of four proposals received. The cost of the construction of the walk-in freezer and refrigerator will not exceed \$66,205.

One alternative considered, instead of constructing an additional walk-in freezer and refrigerator, was the use of a refrigerated warehouse facility. The Police Department would not be able to maintain accessibility and control access to the evidence at a refrigerated warehouse facility to ensure proper chain of custody. Therefore, the only viable option is to construct an additional walk-in freezer and refrigerator at the Police Department.

Staff is requesting that Council authorize the City Manager to enter into a construction agreement with McKenna Contracting, LLC.



CITY COUNCIL REPORT

Budget and Financial Impacts

Public Safety Sales Tax will be used to fund this purchase.

Cost	Fund-Department-Account
\$66,205	1700-12310-521400, Public Safety Sales Tax

Capital Expense? Yes No

Budgeted? Yes No

Requesting Budget or Appropriation Transfer? Yes No

If yes, where will the transfer be taken from?

Attachments

Agreement

CONSTRUCTION AGREEMENT

This Construction Agreement ("Agreement") is entered into and effective between the CITY OF GLENDALE, an Arizona municipal corporation ("City"), and McKenna Contracting, LLC, an Arizona limited liability company ("Contractor") as of the _____ day of _____, 20__.

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.

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(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 ninety (90) 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.

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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 \$66,205, 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).

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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.

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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:

McKenna Contracting, LLC
Attn: David McKenna
5154 West Windrose Drive
Glendale, Arizona 85304

(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: Dave Kohnert
5850 West Glendale Avenue
Glendale, Arizona 85301

With required copies to:

City of Glendale
City Manager
5850 West Glendale Avenue
Glendale, Arizona 85301

City of Glendale
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.

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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

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

City of Glendale,
an Arizona municipal corporation

By: Brenda S. Fischer
Its: City Manager

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

Acting City Attorney

McKenna Contracting, LLC
an Arizona limited liability company

By: David McKenna
Its: Member

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

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**EXHIBIT A
CONSTRUCTION AGREEMENT**

PROJECT

Project includes minor demolition of a conference room being converted to a storage area containing a walk-in freezer and refrigerator. Project to be turn-key. Work includes demolition, fire sprinklers, shelving, electrical, concrete coring and supply/installation of approximately 308 s.f. of walk-in freezer and refrigerator space.

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**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 \$66,205.

DETAILED PROJECT COMPENSATION

As shown on page 8 of the Bid Schedule

**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

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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: **9/24/2013**
Meeting Type: **Voting**
Title: **AGREEMENT FOR FUTURE WASTEWATER AND RECYCLED WATER SERVICES IN THE LOOP 303 CORRIDOR AREA**
Staff Contact: **Craig Johnson, P.E., Executive Director, Water Services**

Purpose and Recommended Action

This is a request for Council to approve an assignment of rights, title and interest for future wastewater and recycled water services within the Loop 303 Corridor development area between Global Water Resources, Inc. and Global Water – 303 Utilities Company, Inc. (Global) to EPCOR Water Arizona, Inc. (EWAZ).

Background

The Loop 303 Corridor represents the final major area of development in Glendale’s Municipal Planning Area. One of the challenges faced by the city was the provision of sewer service in the area. On October 23, 2012, the city entered into a wastewater agreement with Global. This agreement allowed for the provision of wastewater and recycled water services on behalf of the city to the area west and north of Luke Air Force Base in Glendale’s Loop 303 Corridor.

Water services for the Loop 303 Corridor are provided by two existing private water companies: EWAZ and Adaman Mutual Water Company. Global is now requesting to assign their rights, titles, and interests to EWAZ for wastewater and recycled water services.

Pursuant to the terms of the agreement with Global signed on October 23, 2012, the City of Glendale must consent to the assignment of the rights and obligations from Global to EWAZ.

Analysis

Having a viable long term wastewater service provider for the Loop 303 Corridor will be beneficial to the economic potential for the city and the region as a whole. In addition, there are no costs to the city’s existing water and sewer customers associated with this agreement.

Previous Related Council Action

On October 23, 2012, Council adopted a resolution authorizing the City of Glendale to enter into a Pre-Annexation Development Agreement (PADA) and an agreement for Future Wastewater and Recycled Water Services. The PADA was between the city and participating landowners within the Loop 303 Corridor Development Group to facilitate the annexation of the owners’ properties



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and the development of those properties within the City of Glendale. The agreement between the city and Global furthered efforts for the provision of wastewater services by a private provider within the Loop 303 Corridor.

On October 2, 2012, staff made a formal presentation at a City Council Workshop concerning the Loop 303 Corridor. Council provided direction to bring forward for consideration at a future voting meeting the PADA and the proposed agreement to allow Global to provide sewer and reclaimed water on behalf of the city.

Previously, this item was discussed at the August 21, 2012 Council Workshop to advise Council of recent work completed by staff to effectively prepare this area for future potential annexation and to reaffirm prior Council direction. Council also approved a Memorandum of Understanding (MOU) on March 9, 2010 that would permit Global to provide sewer services to the Loop 303 Corridor area.

At the June 3, 2008 Workshop, Council provided direction that the provision of water and sewer services in the geographic area located west of 115th Avenue would be paid for by property owners in this area with no impact to existing Glendale water and sewer customers east of 115th Avenue.

Community Benefit/Public Involvement

This agreement allows for the development of sewer capacity needed in the area west and north of Luke Air Force Base in Glendale's Loop 303 Corridor area with no costs to existing water and sewer customers.

Budget and Financial Impacts

There are no costs to the city associated with this agreement.

Capital Expense? Yes No

Budgeted? Yes No

Requesting Budget or Appropriation Transfer? Yes No

Attachments

Agreement

ASSIGNMENT AND ASSUMPTION OF AGREEMENT FOR FUTURE WASTEWATER
AND RECYCLED WATER SERVICES

THIS ASSIGNMENT AND ASSUMPTION OF AGREEMENT FOR FUTURE WASTEWATER AND RECYCLED WATER SERVICES (this "Assignment") is made and entered into as of the ___ day of _____, 2013 by and between GLOBAL WATER RESOURCES, INC., an Arizona corporation ("Global"), GLOBAL WATER - 303 UTILITIES COMPANY, INC., an Arizona corporation ("Utility"), the City of Glendale, an Arizona municipal corporation ("City") and EPCOR WATER ARIZONA INC., an Arizona corporation ("EWAZ").

Recitals

A. Global and Utility are parties to that certain Agreement for Future Wastewater and Recycled Water Services, Contract C-8209, with the City, dated as of October 23, 2012 and recorded in the Office of the Maricopa County Recorder at document 20130104447 (the "Glendale Agreement"). The terms and conditions of the Glendale Agreement are fully incorporated herein by this reference and a copy of the Glendale Agreement is attached as Exhibit A.

B. Global and Utility each desire to assign all of their respective rights, title and interest in and to, and delegate all of their respective obligations under, the Glendale Agreement to EWAZ, and EWAZ desires to assume such rights and obligations thereunder.

C. Pursuant to the terms of Section 4.8 of the Glendale Agreement, neither Global nor Utility may assign the Glendale Agreement, in whole or in part, or any right or obligation thereunder, without the prior written consent of City.

D. The City desires to consent to the assignment and assumption of the rights and obligations of the Agreement.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Global, Utility, City and EWAZ, intending to be legally bound hereby, agree as follows:

1. Recitals. The Recitals are incorporated herein as if fully set forth.
2. Assignment. Each of Global and Utility hereby transfers, conveys, assigns and sets over to EWAZ all of such their respective obligations, rights, title and interest in, to and under the Glendale Agreement.
3. Acceptance and Assumption. EWAZ hereby accepts the foregoing assignments by Global and Utility and assumes and agrees to be bound by the Glendale Agreement and to

timely keep, perform and fulfill each and all of the obligations required to be kept, performed and fulfilled by either Global or Utility under the Glendale Agreement.

4. City Consent. City consents and agrees to the assignment of the Glendale Agreement by Global and Utility to EWAZ, as stated herein.

5. No Modification. This Assignment shall not be construed in any way as modifying, waiving or affecting any of the terms, covenants, conditions or agreements contained in the Glendale Agreement except as expressly provided herein.

6. Amendment of Notice Provision. Section 4.6 of the Glendale Agreement is amended for purposes of providing notice to EWAZ:

EPCOR Water Arizona, Inc.
2355 West Pinnacle Peak road, Suite 300
Phoenix, AZ 85024
Attn: President

7. Further Assurances. Promptly upon request from time to time of the other party, each party shall do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged or delivered, to or at the direction of such party, all further acts, transfers, assignments, powers and other documents and instruments as may be so reasonably requested to give effect to the transactions contemplated by this Assignment.

8. Successors and Assigns. This Assignment shall bind the parties and their respective successors and assigns. Notwithstanding this Section 8, EWAZ may not assign, in whole or in part, this Assignment nor the Glendale Agreement, or any right or obligation thereunder without the prior consent of City.

9. Governing Law. This Assignment shall be governed by, and construed and interpreted in accordance with, the laws of the State of Arizona, without giving effect to its choice of laws provisions.

10. Effectiveness. This Assignment shall not be effective, or of any force or effect, unless and until the City has consented to the assignment of the Glendale Agreement and evidenced that consent by executing this Assignment in the space provided below.

11. Immigration Law Compliance.

A. EWAZ, and on behalf any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.

B. Any breach of warranty under subsection (A) above is considered a material breach of this Assignment and is subject to penalties up to and including termination of this Assignment.

C. City retains the legal right to inspect the papers of EWAZ or any subcontractor employee who performs work under this Assignment to ensure that EWAZ or any subcontractor is compliant with the warranty under subsection (A) above.

D. City may conduct random inspections, and upon request of the City, EWAZ shall provide copies of papers and records demonstrating continued compliance with the warranty under subsection (A) above. EWAZ 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 11.

E. EWAZ agrees to incorporate into any subcontracts under this Assignment the same obligations imposed upon itself and expressly accrue those obligations directly to the benefit of the City. EWAZ also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Assignment the same obligations above and expressly accrue those obligations to the benefit of the City.

F. EWAZ's warranty and obligations under this Section to the City is continuing throughout the term of this Assignment and its associated Glendale Agreement until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.

G. The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

12. Conflict of Interest. This Assignment is subject to cancellation for conflicts of interest under the provisions of A.R.S. § 38-511.

13. Counterparts. This Assignment may be executed in one or more counterparts, each of which will be considered an original, but all of which together will constitute the same Assignment.

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date and year first set forth above.

(Signatures appear on the following pages.)

GLOBAL WATER RESOURCES, INC.

By: _____
Ron Fleming

Title: President and Chief Operating Officer

Date: _____

STATE OF ARIZONA)
)
COUNTY OF MARICOPA)

On this ____ day of _____, 2013, before me personally appeared Ron Fleming, the President and Chief Operating Officer of Global Water Resources, Inc., a Delaware corporation, for and on behalf thereof, whose identity was proven to me on the basis of satisfactory evidence to be the person who her or she claims to be, and acknowledged that he or she signed the above document.

Notary Public

[Affix notary seal here]

GLOBAL WATER - 303 UTILITIES COMPANY, INC.

By: _____
Ron Fleming

Title: President

Date: _____

STATE OF ARIZONA)
)
COUNTY OF MARICOPA)

On this ____ day of _____, 2013, before me personally appeared Ron Fleming, the President of Global Water - 303 Utilities Company, Inc., an Arizona corporation, for and on behalf thereof, whose identity was proven to me on the basis of satisfactory evidence to be the person who her or she claims to be, and acknowledged that he or she signed the above document.

Notary Public

[Affix notary seal here]

ACKNOWLEDGED, AGREED AND CONSENTED TO:
CITY OF GLENDALE, an Arizona municipal corporation

By: _____
Brenda S. Fischer, City Manager

Date: _____

ATTEST:

By: _____
Pamela Hanna, City Clerk (Seal)

APPROVED AS TO FORM:

Michael Bailey, City Attorney



CITY COUNCIL REPORT

Meeting Date: **9/24/2013**
Meeting Type: **Voting**
Title: **AGREEMENT WITH CALGON CARBON CORPORATION TO PURCHASE GRANULAR ACTIVATED CARBON**
Staff Contact: **Craig Johnson, P.E., Executive Director, Water Services**

Purpose and Recommended Action

This is a request for City Council to authorize the City Manager to enter into a purchase agreement with Calgon Carbon Corporation to purchase granular activated carbon for the city's water treatment plants. The proposed amount will not exceed \$1,480,000 annually.

Background

The Water Services Department operates two surface water treatment facilities which employ the use of Granular Activated Carbon (GAC) as an essential part of the water treatment process. These facilities, Cholla and Oasis Water Treatment Plants, use GAC to absorb organic material in the water treatment process to meet Federal drinking water standards and regulations. Once the GAC material has exceeded its ability to optimally treat water, the "spent" GAC must be removed and either disposed or reactivated.

In 2010, the City of Scottsdale and the City of Phoenix issued a Request for Information and Request for Proposal (RFP), respectively, with the same goal of encouraging private industry to build a local facility for the purposes of reactivating spent GAC. Glendale staff and Scottsdale staff joined the City of Phoenix efforts to jointly secure local GAC reactivation capabilities through the Phoenix issued RFP.

In 2011, Glendale along with Phoenix and Scottsdale participated in the evaluation, scoring, and selection of a company for the purposes of developing and operating a GAC reactivation facility in Maricopa County. Based on criteria, including cost and capabilities, Calgon was selected. Once Calgon was selected Glendale, Phoenix, and Scottsdale participated in developing the general terms and conditions to be applied for the reactivation services. Phoenix and Scottsdale have executed agreements with Calgon and are designated as priority customers. The agreement with Glendale will also designate Glendale as a priority customer and afford the Water Services Department the same competitive pricing identified in the terms and conditions established.

In June of this year, Calgon completed the construction of a new GAC regeneration facility in Gila Bend, Arizona, and provides Glendale with an opportunity to purchase GAC at a significantly reduced price. The current unit cost for GAC is \$0.94 per pound. This agreement will reduce the price to \$0.651 per pound, saving the city an estimated \$400,000 in FY 2013-14. The agreement



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allows for provisions to adjust the unit cost based on several indices to include adjustment factors for natural gas, petroleum, organic chemicals, and the consumer price index. In addition, this agreement will provide the supply, placement, removal, and thermal reactivation of GAC for the Cholla and Oasis water treatment plants. If approved, the initial term shall be for 10 years with an option to extend the agreement for an additional five years. The City Manager may extend the agreement, at her discretion, in accordance with the original terms.

Analysis

Staff recommends approval of the purchase agreement. Approval will not only provide a cost savings, but lock-in unallocated capacity at the Gila Bend facility for Glendale’s use. Loss of this opportunity would mean that the city would need to obtain its GAC from another provider or another out-of-state Calgon facility at significantly higher rates.

Previous Related Council Action

On June 11, 2013, Council authorized the expenditure of funds for chemicals and services obtained under cooperative purchasing agreements for purchases over \$50,000. Included in these chemical and services was the purchase of GAC in an amount not to exceed \$1,480,000.

Budget and Financial Impacts

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

Cost	Fund-Department-Account
\$700,000	2400-17260-524605, Cholla Treatment Plant
\$780,000	2400-17310-524605, Oasis Surface WTP

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

Agreement

**AGREEMENT BETWEEN CITY OF GLENDALE AND
CALGON CARBON CORPORATION FOR SUPPLY, PLACEMENT, REMOVAL AND
THERMAL REACTIVATION OF GRANULAR ACTIVATED CARBON**

THIS CONTRACT is entered into this ___ day of _____, 2013, by and between the City of Glendale, an Arizona Municipal Corporation (the "City") and Calgon Carbon Corporation, a Delaware corporation, and authorized to do business in the State of Arizona (the "Company" or the "Contractor").

RECITALS

- A. The City desires to contract for services for the supply, placement, removal, and thermal reactivation of granulated activated carbon;
- B. The Company is duly qualified to perform those specific duties and supply the products and services as set forth in this Agreement and its exhibits; and
- C. The City and the Company desire to memorialize their agreement with this document.

AGREEMENT

In consideration of Recitals, which are confirmed as true and correct and incorporated herein by reference, and the mutual promises and covenants contained in this Agreement, the Parties agree as follows:

1.0 DESCRIPTION, ACCEPTANCE, DOCUMENTATION

The Company will act under the authority and approval of the Contract Administrator for the City, to provide the services required by this Contract.

1.1 SERVICE DESCRIPTION

The entire Scope of Services identified as Exhibit A, Supply, Placement, Removal and Thermal Reactivation of Granular Activated Carbon, and Exhibit B, including Appendices 1-5, attached hereto, are incorporated herein by reference and are an enforceable part of this Agreement. If any provision incorporated by reference from Exhibit A, Scope of Services, and Exhibit B, including its Appendices, conflicts with any provision of this Contract, this Contract will control.

1.2 ACCEPTANCE AND DOCUMENTATION

- 1.2.1 The City will provide all necessary information to the Company for timely completion of the tasks and services specified in Section 1.1 above.
- 1.2.2 The City's Contract Administrator shall review all Contractor services to determine acceptable performance.

2.0 BILLING RECORDS, AUDIT

- 2.0.1 Company must maintain all books, papers, documents, accounting records and other evidence pertaining to costs incurred and agrees to make these materials available for inspection and audit by the City in accordance with Section 4.7 of this Contract.
- 2.0.2 Payments to the Company shall in no way affect the Company's obligations hereunder or the right of the City to obtain a refund of any payment to the Company which is in excess of that to which it was lawfully entitled.

2.1 *FEE SCHEDULE*

Unit Pricing. The City shall pay the Company for the performance of the GAC Services on a unit price per pound of thermally reactivated GAC basis in accordance with the terms and conditions of this Contract and its attachments. The unit price per pound of thermally reactivated GAC shall serve as the sole compensation to the Company for the performance of all obligations under this Service Contract. Without limiting the generality of the foregoing, the unit pricing is inclusive of all costs associated with labor, materials, transportation, incidentals, equipment, risk, administration, overhead and profit, facility operation and maintenance, and any other services or items necessary to effectively perform and complete the GAC Services in accordance with this Contract.

2.1.1 Unit Pricing for Local GAC Services. As of the Contract Date, and as further set forth in subsection 4.1(B) of Exhibit A, the unit price for the performance of the Local GAC Services (the "Local Service Price") is **\$0.651** per pound of reactivated GAC.

2.1.2 Unit Pricing for Non-Local GAC Services. As of the Contract Date, and as further set forth in subsection 4.1(C) of Exhibit A, the unit price for the performance of non-local GAC Services (the "Non-Local Service Price") is **\$1.02** per pound of reactivated GAC

2.1.3 Fuel Surcharge Applicable to Non-Local GAC Services. As further set forth in subsection 4.1(D) of Exhibit A, and to the extent the Non-Local Service Price is applicable pursuant to subsection (C) of this Section, if the cost of diesel fuel is equal to or greater than \$4.00 per gallon, according to the U.S. National Average On-Highway Diesel Price, the Company shall be entitled to a surcharge on non-local GAC Services ("Non-Local Fuel Surcharge") in accordance with Exhibit B, Appendix 5, Price Adjustments.

2.1.4 Virgin GAC Required for City Operational GAC Losses. As of the Contract Date, and as further set forth in subsection 4.1(E) of Exhibit A, the unit price for the Virgin GAC required to make up for City Operational GAC Losses is \$1.233 per pound of Virgin GAC (the "Additional GAC Price"). The Company acknowledges and agrees that, except with respect to City Operational GAC Losses and as otherwise directed by the City pursuant to subsection 3.1(E) of Exhibit A, the Local Service Price and the Non-Local Service Price include all compensation to the Company with respect to the Company's obligation to provide makeup Virgin GAC. The Company shall be entitled to additional compensation associated with Virgin GAC on a unit price basis solely to the extent such Virgin GAC is required in order to make up for City Operational GAC Losses or as otherwise directed by the City, as determined in accordance with subsection 3.1(E) of Exhibit A. The Additional Virgin GAC Price shall be subject to adjustment annually from the Contract Date in accordance with subsection 4.1(F) of Exhibit A.

Amounts indicated in this Section 2.1 and as further outlined in Exhibit B, Appendix 5, Price Adjustments, represent the entire amounts payable under this Contract. Additional expenses will not be authorized.

2.2 *INVOICING AND PAYMENT APPROVAL*

2.2.1 Invoicing. The Company shall submit monthly invoices to the City for the performance of GAC Services performed during the prior month. Company invoices must include the following: description of services performed, including number of GAC Filter Exchanges and applicable pricing in accordance with Section 2.1; invoice number and date; and such other documentation or information as the City may reasonably require to determine the accuracy and appropriateness of the invoice.

- 2.2.2 Payment. The City shall pay the Company the applicable price for the performance of the GAC Services, as determined in accordance with Section 2.1 and subsection 4.1 of Exhibit A, on a monthly basis in arrears. Advance payments are not authorized. Payment will be made only for actual services or commodities that have been received. The Company further agrees that, in order to receive payment, the Company must have a current IRS Form W-9 on file with the City. The City's obligation to make payments pursuant to this Section shall be subject to the City's rights to dispute any invoice pursuant to Section 2.2.3. The City will issue payment thirty (30) days from the City's receipt of a proper form of invoice, with electronic payment via ACH or wire transfer.
- 2.2.3 Invoice and Payment Disputes. If the City disputes any amount invoiced by the Company, the City may either: (1) pay the disputed amount when otherwise due, and provide the Company with a written objection indicating the amount that is being disputed and providing all reasons then known to the City for its objection to or disagreement with such amount; or (2) withhold payment of the disputed amount and provide the Company with a written objection as aforesaid within the time when such amount would otherwise have been payable. When any billing dispute is finally resolved, if payment by the City to the Company of amounts withheld or reimbursement to the City by the Company of amounts paid under protest is required, such payment to the Company or reimbursement to the City shall be made within 45 days after the date of final resolution.
- 2.2.4 Charges. All charges must be approved by the Contract Administrator before payment.

2.3 PRICE ADJUSTMENT

Annual adjustment. As further set forth in subsection 4.1(F) of Exhibit A, the Local Service Price, the Non-Local Service Price and the Additional Virgin GAC Price shall each be subject to annual adjustment in accordance with Exhibit B, Appendix 5. In no event shall any such annual adjustments increase such prices by more than ten percent (10%) or decrease such prices by more than five percent (5%). Any increase or reduction that is not made as a result of the limitations established by the preceding sentence shall carry forward and be applied to the next Contract Year's adjustment, subject to the same percentage limitations. The Interim Service Price shall not be subject to annual adjustment.

3.0 TERM AND EXTENSION

- 3.0.1 Effective Date and Initial Term. This Contract shall become effective on the date first written above ("Contract Date") and shall continue in effect thereafter for ten (10) years (the "Initial Term") or, if renewed as provided below, until the last day of any renewal term (the "Renewal Term"; the Initial Term and any Renewal Term being referred to herein as the "Term"), unless earlier terminated pursuant to the termination provisions of this Contract, in which event the Term shall be deemed to have ended as of the date of such termination. All rights, obligations and liabilities of the Parties hereto shall commence on the Contract Date, subject to the terms and conditions hereof. At the end of the Term, all other obligations of the Parties hereunder shall terminate, except as provided in Section 3.5.4.
- 3.0.2 Renewal and Extension Option. This Contract may be renewed and extended for additional term of five years at the election of the City in its sole discretion. Except as provided in Section 3.1 with respect to the City's convenience termination rights during any Renewal Term, the terms and conditions governing a Renewal Term shall be the same terms and conditions governing the Initial Term. The Company shall give the City notice of the approaching expiration of the Initial Term no later than 180 days prior to such expiration. The City, no later than 120 days prior to the expiration of the Initial Term shall give the Company written notice of its intent as to whether the City will exercise its renewal option.

3.1 TERMINATION

- 3.1.1 Termination for Convenience. Subject to Section 3.1.2 and 3.1.3 below, Both Parties reserve the right to terminate this Contract or any part of this Contract for its sole convenience with sixty (60) days prior written notice. Upon issuance of such termination notice, the Company must immediately stop all work and must immediately cause any of its suppliers and Subcontractors to cease all work. Should the City choose to terminate this Contract for convenience, the City shall remain obligated to pay the Company for any pounds still under commitment for the remainder of the then current Commitment Volume.
- 3.1.2 Termination Fee During Initial Term. Both Parties agree that they shall not give notice of termination for convenience within the first four (4) years after the Effective Date of this Agreement. Beginning on the fourth anniversary of the Effective Date of this Agreement, Both Parties may terminate this Contract during the Initial Term for convenience, at their discretion, for any reason, by giving the Other Party a written notice at least one (1) year in advanced of the date it intends to terminate this Contract for convenience.
- 3.1.3 Termination During Renewal Term. At any time during any Renewal Term, the City may terminate this Contract for any reason, at its discretion, without cost to the City upon sixty (60) days prior written notice to the Company. The Parties acknowledge and agree that the City's termination rights under this Section are for the sole convenience of the City and are in addition to the City's rights to terminate this Contract in the event of a Company Default. Should the City choose to terminate this Contract during a Renewal Term, the City shall remain obligated to pay the Company for any pounds still under commitment for the remainder of the then current Commitment Volume.
- 3.1.4 The requirements of this Section shall not apply in the event of a termination of this Contract for cause pursuant to Section 3.1.5, for a Company Default pursuant to Section 3.2, for non-appropriation of funds pursuant to Section 3.2, or for a Force Majeure pursuant to Section 3.4.
- 3.1.5 Termination for Cause. Unless otherwise provided in in subsection 3.2.8 below, the City may immediately terminate this Contract for cause in the event of any Company Default as set forth below or if the Company is in violation of any Federal, State, County or City law, regulation or ordinance. The City's termination for cause shall be effective immediately upon providing written notice to the Company in accordance with Section 3.2.9 below. In the event of any termination for cause, the City shall also be entitled to the rights and remedies set forth in section 3.5 (Remedies for Breach) below.
- 3.1.6 Improper Termination. If the City improperly terminates this Contract for cause, the purported termination will be converted to a termination for convenience in accordance with the provisions of Section 3.1.1.

3.2 COMPANY DEFAULT

- 3.2.1 Events of Default Not Requiring Previous Notice or Further Cure Opportunity for Termination. Each of the following shall constitute a Company Event of Default upon which the City, by notice to the Company, may terminate this Contract without any requirement of having to give prior notice or requiring the City to give the Company an opportunity to cure:
- 3.2.2 Failure to Meet Certain Performance Standards. The failure of the Company to meet certain Performance Standards, as and to the extent provided in Section 3.2 of Exhibit A (City GAC Testing Rights), unless caused by the occurrence of Force Majeure;

- 3.2.3 Water Treatment Facilities Access Control Requirements. The Company fails to comply with the security and access control requirements for the Water Treatment Facilities set forth in Exhibit B, Appendix 4 and Appendix 5, as and to the extent provided therein;
- 3.2.4 Confidentiality and Data Security. The Company breaches its obligations with respect to Confidentiality and Data Security;
- 3.2.5 Insolvency. The insolvency of the Company as determined under the Bankruptcy Code;
- 3.2.6 Voluntary Bankruptcy. The filing by the Company of a petition of voluntary bankruptcy under the Bankruptcy Code; the consenting of the Company to the filing of any bankruptcy or reorganization petition against the Company under the Bankruptcy Code; or the filing by the Company of a petition to reorganize the Company pursuant to the Bankruptcy Code; or
- 3.2.7 Involuntary Bankruptcy. The issuance of an order of a court of competent jurisdiction appointing a receiver, liquidator, custodian or trustee of the Company or of a major part of the Company's property, or the filing against the Company of a petition to reorganize the Company pursuant to the Bankruptcy Code, which order shall not have been discharged or which filing shall not have been dismissed within 90 days after such issuance or filing.
- 3.2.8 Events of Default Requiring Prior Notice and an Opportunity to Cure. Each of the following shall constitute a Company Event of Default upon which the City, by notice to the Company, may terminate this Contract, but only after giving the Company prior notice and a reasonable time in which to cure the Default:
- 3.2.8.1 Any representation or warranty of the Company hereunder was false or inaccurate in any material respect when made, and the legality of this Contract or the ability of the Company to carry out its obligations hereunder is thereby materially and adversely affected;
- 3.2.8.2 The Company fails to obtain or maintain the insurance policies required by this Contract or to provide evidence of renewal;
- 3.2.8.3 The Company unreasonably fails to comply with the instructions of the City consistent with this Contract;
- 3.2.8.4 The Company fails to perform GAC Filter Exchanges within the time stipulated in this Contract;
- 3.2.8.5 The Company fails to comply with any Applicable Law, including, but not limited to, the legal worker requirements, including all Federal, State and Local immigration requirements set forth in Sections 4.17, 4.18, 4.19, and 4.20 of this Contract;
- 3.2.8.6 The Company assigns or transfers (or attempts to assign or transfer) this Contract or any right or interest herein without the City's prior written consent; or
- 3.2.8.7 The Company otherwise fails to perform any other material obligation under this Contract, unless such default is excused by a Force Majeure as provided herein.
- 3.2.9 The Company acknowledges that the City has an immediate termination right upon the occurrence of any of the defaults listed in Section 3.2 above, and that the Company has no further right of notice or cure in such circumstances of default. Conversely, no default listed in subsection 3.2.8 shall constitute a Company Default giving the City the right to immediately terminate this Contract for cause under this Section unless:
- 3.2.9.1 The City has given prior written notice to the Company stating that a specified default has occurred which gives the City a right to terminate this Contract for cause under this subsection, and describing the default in reasonable detail; and

- 3.2.9.2 The Company has not initiated within a reasonable time (in any event not more than 20 days from the initial default notice) and continued, with due diligence, to carry out to completion all actions reasonably necessary to correct the default and prevent its recurrence. If the Company has initiated and continued with due diligence to carry out to all corrective actions required to cure the non-compliance, the default shall not constitute a Company Default during such period of time (in any event not more than 60 days from the initial default notice) as the Company shall continue, with due diligence, to perform corrective actions to cure all such Company Defaults.
- 3.2.10 Notwithstanding the City's right to terminate the Agreement pursuant to subsection 3.2.8 above, the City in its sole unreviewable discretion, may extend the length of time the Company has to cure if the Company has initiated and continued with due diligence to carry out to completion all actions required to correct any curable default.
- 3.2.11 Other Remedies Upon Company Event of Default. The right of termination provided under this subsection 3.2.5 is not exclusive. If this Contract is terminated by the City for a Company Default, the City shall have the right to pursue a cause of action for actual damages and to exercise all other remedies which are available to it under this Agreement or under Applicable Law. Without limiting the generality of the foregoing, upon a Company Default under this subsection 3.2.5, the City may re-procure or repurchase GAC Services from another source and may recover the excess costs by deducting any unpaid balance otherwise due the Company. The Company shall not be entitled to any compensation for services provided subsequent to receiving any notice of termination for a Company Default under this Section.

3.3 FUNDS APPROPRIATION

- 3.3.1 Continuation Subject to Appropriation. The Company and the City herein recognize that the continuation of this Contract after the close of any Contract Year shall be subject to the approval of the City's budget providing for or covering such contract item as an expenditure therein. The City does not represent that any budget item will be actually adopted, such determination being the determination of the City Council at the time of the adoption of the budget. The City agrees to give written notice of non-appropriation to the Company at least thirty (30) days prior to the end of its current fiscal period and will pay to the Company all approved charges incurred through the end of this period.
- 3.3.2 Suspension If Funds Non-appropriated. In the instance where the City does not appropriate funds to continue this Contract for a given fiscal year, this Contract shall be considered suspended for that year and not terminated, and the City shall have no volume commitment responsibility to the Company for that fiscal year as a result of the suspension of the Contract. The City shall adjust its Commitment Volume, Volume Forecast, and Long-Term Planning Forecast to reflect that it shall not be purchasing GAC Services during the suspension period. Once the City restores funding for this Contract, the City shall again revise its Commitment Volume, Volume Forecast, and Long-Term Planning Forecast, and this Contract shall no longer be considered suspended. Years lost to suspension may be replaced via contract extensions per Section 3.0, at the discretion of the City.
- 3.3.3 Termination If Funds Not Appropriated. Should the City determine that funding will not be restored during the time remaining under the Initial Term of this Contract, the City may then terminate this Contract for convenience pursuant to Section 3.1.1. The City agrees, however, that if this Contract is terminated solely because of the City Council's failure to approve a budget that funds services under this Contract, the City may be subject to claims for damages pursuant to Section 3.5 below.

3.4 **FORCE MAJEURE**

Neither Party will be responsible for delays or failures in performance resulting from acts beyond its control. "Force Majeure" means any act, event or condition that: (1) is solely beyond the reasonable control of the Party relying on it as a justification for not performing an obligation or complying with any condition required of the Party under this Contract; and (2) materially expands the scope, interferes with, delays or increases the cost of performing the Party's obligations under this Contract, to the extent that such act, event or condition is not the result of the willful or negligent act, error or omission, failure to exercise reasonable diligence, or breach of this Contract on the part of the Party claiming the occurrence of an Force Majeure.

3.4.1 Inclusions. Subject to the foregoing, Force Majeure includes, but is not limited to, the following:

3.4.1.1 Naturally occurring events, such as unusually severe and abnormal climactic conditions, earthquakes, fires, tornadoes, hurricanes, floods, lightning, epidemics and other acts of God;

3.4.1.2 Explosion, sabotage, acts of terrorism, war, or civil disturbance; or

3.4.1.3 Labor disputes, strikes, slowdowns, stoppages, or boycotts.

3.4.2 Exclusions. Without limitation, none of the following acts, events or circumstances shall constitute a Force Majeure:

3.4.2.1 Change in Applicable Law;

3.4.2.2 Changes in interest rates, inflation rates, wage rates, insurance costs, commodity prices, currency values, labor availability, exchange rates or other economic conditions;

3.4.2.3 Changes in the financial condition of the Company or its affiliates or subcontractors affecting the ability to perform their respective obligations; or

3.4.2.4 Failure of the Company to secure patents, copyrights or any other intellectual property right which it deems necessary for the performance of its obligations under this Contract.

3.4.3 Extent of Relief Available to the Company. Except as provided in this Section, the only relief the Company shall be entitled to with respect to the occurrence of an Force Majeure is an extension of the time required to perform a GAC Filter Exchange or relief from a specific performance obligation associated with the GAC Services, each subject to the terms and conditions of this Section. The Company shall be entitled to the Non-Local Service Price rather than the Local Service Price for the performance of GAC Services that would otherwise be subject to the Local Service Price pursuant to the terms and conditions of this Contract in the event of the occurrence of an Force Majeure that prevents the Company from performing GAC thermal reactivation services at the Thermal GAC Reactivation Facility, subject to the terms and conditions of this Section.

3.4.4 Relief from Obligations. Except as expressly provided under the terms of this Contract, neither Party to this Contract shall be liable to the other for any loss, damage, delay, default or failure to perform any obligation if it results from a Force Majeure. The occurrence of a Force Majeure shall not excuse or delay the performance of a Party's obligation to pay monies previously accrued and owing under this Contract, or to perform any obligation hereunder not affected by the occurrence of the Force Majeure.

3.4.5 Notice and Mitigation. The Party that asserts the occurrence of an Force Majeure shall notify the other Party by telephone, facsimile or email (with confirmation of receipt), on or promptly after the date the Party experiencing such Force Majeure first knew of the

occurrence thereof, followed within 15 days by a written description of: (1) the Force Majeure and the cause thereof (to the extent known); and (2) the date the Force Majeure began, its estimated duration, and the estimated time during which the performance of such Party's obligations hereunder shall be delayed, or otherwise affected. As soon as practicable after the occurrence of an Force Majeure, the affected Party shall also provide the other Party with a description of: (i) the equitable relief requested, if any; (ii) any areas where costs might be reduced and the approximate amount of such cost reductions; and (iii) its estimated impact on the other obligations of such Party under this Contract. The affected Party shall also provide prompt written notice of the cessation of such Force Majeure. Whenever such act, event or condition shall occur, the Party claiming to be adversely affected thereby shall, as promptly as practicable, use all reasonable efforts to eliminate the cause therefor, reduce costs and resume performance under this Contract. While the Force Majeure continues, the affected Party shall give notice to the other Party, before the first day of each succeeding month, updating the information previously submitted. The Party claiming to be adversely affected by a Force Majeure shall bear the burden of proof, and shall furnish promptly any additional documents or other information relating to the Force Majeure reasonably requested by the other Party.

- 3.4.6 Conditions to Relief. In the event of a Force Majeure, the Company shall, subject to the limitations specifically provided for in this Contract, be entitled to relief in accordance with subsection (A) of this Section, but only to the minimum extent reasonably forced on the Company by the Force Majeure, and the Company shall perform all other services unaffected by the Force Majeure as provided in this Contract. In the event that the Company believes it is entitled to any relief on account of an Force Majeure, it shall furnish the City written notice of the specific relief requested and detailing the event giving rise to the claim within 30 days after the giving of notice delivered pursuant to subsection (C) of this Section, or if the specific relief cannot reasonably be ascertained and such event detailed within such 30-day period, then within such longer period within which it is reasonably possible to detail the event and ascertain such relief. Within 30 days after receipt of such a timely submission from the Company, the City shall issue a written determination as to the extent, if any, it concurs with the Company claim for performance or schedule relief, and the reasons therefor. The agreement of the Parties as to the specific relief to be given the Company hereunder on account of a Force Majeure shall be evidenced by a Contract Administration Memorandum or addendum, as applicable.
- 3.4.7 Acceptance of Relief Constitutes Release. The Company's acceptance of any performance, price or schedule adjustment under this Section shall be construed as a release of the City by the Company from any and all losses or expenses resulting from, or otherwise attributable to, the event giving rise to the adjustment claimed.

3.5 REMEDIES FOR BREACH

- 3.5.1 Generally. The Parties agree that, except as otherwise provided in this Section with respect to termination rights, in the event that either Party breaches this Contract, the other Party may exercise any legal rights it may have under this Contract or under Applicable Law to recover damages or to secure specific performance, and that such rights to recover damages and to secure specific performance shall ordinarily constitute adequate remedies for any such breach.
- 3.5.2 Strict Performance. Failure of either Party to insist upon the strict performance of any item or condition of this Contract or to exercise or delay the exercise of any right or remedy provided in this Contract, or by Applicable Law, or the acceptance of materials or services, obligations imposed by this Contract or by Applicable Law shall not be deemed a waiver of any right of either Party to insist upon the strict performance of this Contract.

- 3.5.3 Right to Assurance. Whenever one Party to this Contract in good faith has reason to question the other Party's intent to perform, the former Party may demand that the other Party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five (5) days, the demanding Party may treat this failure as an anticipatory breach or repudiation of this Contract, subject to the rights and responsibilities of the Parties hereunder.
- 3.5.4 Survival of Certain Provisions Upon Termination. All representations and warranties of the Parties herein contained, the Company's indemnity obligations with respect to events that occurred prior to the termination date of this Contract, and all other provisions of this Contract that so provide shall survive any termination of this Contract. No termination of this Contract shall: (1) limit or otherwise affect the respective rights and obligations of the Parties hereto accrued prior to the date of such termination; or (2) preclude either Party from impleading the other Party in any legal proceeding originated by a third party as to any matter occurring during the Term.
- 3.5.5 No Limitation of Liability Associated with Actual Damages of the City. The City, as a public entity supported by tax monies, in execution of its public trust, cannot agree to waive any lawful or legitimate right to recover monies lawfully due it. Therefore, the Company agrees that it will not insist upon or demand any statement whereby the City agrees to limit in advance or waive any right the City might have to recover actual lawful damages in any court of law under applicable Arizona law. Accordingly, this Contract establishes no such limitation of liability with respect to actual damages that may be incurred by the City as a result of a failure of performance by the Company hereunder.
- 3.5.6 Waiver of Consequential and Punitive Damages. Notwithstanding any provision to the contrary herein, unless prohibited by Applicable Law, in no event shall either Party hereto be liable to the other or obligated in any manner to pay to the other any consequential or punitive damages based upon claims arising out of or in connection with the performance or non-performance of its obligations or otherwise under this Contract, or the material falseness or inaccuracy of any representation made in this Contract, whether such claims are based upon contract, tort, negligence, warranty or other legal theory; provided, however, that the waiver of the foregoing damages under this subsection is intended to apply only to disputes and claims as between the City and the Company. Nothing in this subsection shall limit the obligation of the Company to indemnify, defend and hold harmless the City Indemnitees for any consequential or punitive damages payable to third parties resulting from any act or circumstance for which the Company is obligated to indemnify the City Indemnitees hereunder.

3.6 ATTORNEYS' FEES

- 3.6.1 Fees and Costs. In the event either Party brings any action for any relief, declaratory or otherwise, arising out of this Contract, or on account of any breach or default, the prevailing Party will be entitled to receive from the other Party reasonable attorneys' fees and reasonable costs and expenses ("Fees and Costs"), determined by the court sitting without a jury, which will be considered to have accrued on the commencement of the action and will be enforceable whether or not the action is prosecuted to judgment.
- 3.6.2 Continuation During Disputes. The Company agrees that notwithstanding the existence of any dispute between the Parties, the Company shall continue to perform the obligations required of the Company during the continuation of any such dispute unless enjoined or prohibited by an Arizona Court of competent jurisdiction.
- 3.6.3 Forum for Legal Proceedings. The Parties expressly intend that all legal proceedings related to this Contract or to any rights or any relationship between the Parties arising therefrom

shall be solely and exclusively initiated and maintained in federal or State courts located in the Maricopa County, Arizona. The Company and the City irrevocably consent to the jurisdiction of such courts in any such legal proceeding and waive any objection they may have to so designating the jurisdiction of any such legal proceeding.

4.0 ENTIRE AGREEMENT

This Contract constitutes the entire understanding of the Parties and supersedes all previous representations, written or oral, with respect to the services specified. This Contract may not be modified or amended except by a written document, signed by authorized representatives of each Party. The table of contents and any headings preceding the text of the sections, subsections, sections, and subsections of this Contract shall be solely for convenience of reference and shall not constitute a part of this Contract, nor shall they affect its meaning, construction or effect.

4.1 ARIZONA LAW

This Contract is governed and interpreted according to the laws of the State of Arizona.

4.2 MODIFICATIONS

Any amendment, modification or variation from the terms of this Contract must be in writing and will be effective only after approval of all parties signing the original Contract. The City reserves the right at any time to make changes to any one or more of the following: (a) specifications, including the Performance Standards; and (b) any implementation schedule as set forth in Section 3 of Exhibit A. If the change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or delivery schedule, or both. Any claim for adjustment shall be deemed waived unless asserted in writing within thirty (30) days from the receipt of the change. Price increases or extensions of delivery time shall not be binding on the City unless evidenced in writing and approved by the City's Contract Administrator prior to the institution of the change.

4.3 ASSIGNMENT

Services covered by this Contract may not be assigned or sublet in whole or in part without first obtaining the written consent of the authorized representative of the non-assigning party. Notwithstanding the foregoing, no permission is needed for Company to assign this Contract and/or title to the GAC Thermal Reactivation Facility to any wholly-owned subsidiary or other affiliate of Company so long as such assignment does not release Company of its obligations hereunder. The Company may, upon giving the City one year prior written notice, assign this Contract and may transfer the GAC Thermal Reactivation Facility to a third party for legitimate business purposes, so long as such third party is in excellent financial standing, has an A bond rating, is seasoned and experienced in the nature of this work, and competent and capable of carrying out all terms and conditions of this Contract and the City reasonably agrees to such assignment. If the City consents to the assignment, the third party agrees to be bound by all terms and conditions of this Agreement without further action. The City's consent will not be unreasonably withheld or delayed.

4.4 SUCCESSORS AND ASSIGNS

Except as provided elsewhere in this Contract, this Contract extends to and is binding upon Company, its successors and assigns, including any individual, company, partnership or other entity with or into which Company merges, consolidates or is liquidated, or any person, corporation, partnership or other entity to which Company sells its assets.

4.5 CONTRACT ADMINISTRATION

4.5.1 Contract Administrator. The Contract Administrator for the City is the City's Water Resources Planning and Engineering Director or designee. The Contract Administrator will oversee the execution of this Contract, assist the Company in accessing the organization,

audit billings, approve changes to specifications and schedules, approve payments, establish delivery schedules, approve addenda, and assure Certificates of Insurance are in City's possession and are current and conform to the contract requirements. The Company will channel reports and special requests through the Contract Administrator.

- 4.5.2 Administrative Communications. The Parties recognize that a variety of contract administrative matters will routinely arise during the Term. These matters will by their nature involve requests, notices, questions, assertions, responses, objections, reports, claims, and other communications made personally, in meetings by phone, by mail and by electronic and computer communications. The purpose of this Section is to set forth a process by which the resolution of the matters at issue in such communications, once resolution is reached, can be formally reflected in the common records of the Parties so as to permit the orderly and effective administration of this Contract.
- 4.5.3 Contract Administration Memoranda. The principal formal tool for the administration of routine matters arising under this Contract between the Parties which do not require an Amendment shall be a "Contract Administration Memorandum". A Contract Administration Memorandum shall be prepared, once all preliminary communications have been concluded, to evidence the resolution reached by the City and the Company as to matters of interpretation and application arising during the course of the performance of their obligations hereunder. Such matters may include, for example: (1) issues as to the meaning, interpretation, application or calculation to be made under any provision hereof; (2) notices, waivers, releases, satisfactions, confirmations, further assurances and approvals given hereunder; and (3) other similar contract administration matters.
- 4.5.4 Procedures. Either Party may request the execution of a Contract Administration Memorandum. When resolution of the matter is reached, a Contract Administration Memorandum shall be prepared by or at the direction of the City reflecting the resolution. The Contract Administration Memorandum shall be numbered, dated, signed by the City Contract Administrator and, at the request of the City, co-signed by a Senior Corporate Representative for the Company. The City and the Company each shall maintain a parallel, identical file of all Contract Administration Memoranda, separate and distinct from all other documents relating to the administration and performance of this Contract.
- 4.5.5 Effect. The executed Contract Administration Memoranda shall serve to guide the ongoing interpretation and performance of this Contract. Any material change, alteration, revision or modification of this Contract, however, shall be effectuated only through a formal Amendment authorized, approved or ratified by resolution of the governing body of the City and properly authorized by the Company.

4.6 RECORDS AND AUDIT RIGHTS

- 4.6.1 Company's records (hard copy, as well as computer readable data), and any other supporting evidence considered necessary by the City to substantiate charges and claims related to this Contract are open to inspection and subject to audit and/or reproduction by City's authorized representative to the extent necessary to adequately permit evaluation and verification of the cost of the work and any invoices, change orders, payments or claims submitted by the Company or any of its payees in accordance with the terms of the Contract. The City's authorized representative must be given access, at reasonable times and places, to all of the Company's records and personnel in accordance with the provisions of this Section throughout the term of this Contract and for a period of three (3) years after last or final payment.
- 4.6.2 Company must require all Subcontractors, insurance agents, and material suppliers (payees) to comply with the provisions of this Section by insertion of these Contract requirements in

a written contract agreement between Company and payee. These requirements will also apply to any and all Subcontractors.

- 4.6.3 Any adjustments and/or payments which must be made as a result of any audit or inspection of the Company's invoices and/or records will be made within a reasonable amount of time (not to exceed 90 days) from presentation of City's findings to Company. In the event an audit by the City shall determine that the City has overpaid the Company, the Company, upon demand, shall refund to the City the amounts overpaid or undocumented. If the overpayment exceeds one percent (1%) of the total amount that should have been properly paid by the City during the period audited, then the Company shall, in addition, reimburse the City for any and all fees and costs incurred in connection with the inspection or audit.

4.7 CONFIDENTIALITY AND DATA SECURITY

- 4.7.1 Generally. All data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted to the Company in connection with this Contract is confidential, proprietary information owned by the City. Except as specifically provided in this Contract, the Company shall not disclose data generated in the performance of services under this Contract to any third person without the prior written consent of the Water Resources Executive Director, or his/her designee.
- 4.7.2 Securing Information. Personal identifying information, financial account information, or restricted City information, whether electronic format or hard copy, must be secured and protected at all times to avoid unauthorized access. At a minimum, the Company must encrypt and/or password-protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices. When personal identifying information, financial account information, or restricted City information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed.
- 4.7.3 Compromise of Confidentiality. In the event that data collected or obtained by the Company in connection with this Contract are believed to have been compromised, the Company shall notify the City Contract Administrator immediately. The Company agrees to reimburse the City for any costs incurred by the City to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach. The Company agrees that the requirements of this subsection shall be incorporated into all Subcontracts. It is further agreed that a violation of this subsection shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Contract without notice.

4.8 CONTRACTOR WARRANTIES

- 4.8.1 Warranties; Responsibility for Correction. The Company expressly warrants that all goods or services furnished under this Contract shall conform to the Performance Standards and the requirements of Applicable Law. The Company shall be fully responsible for making any correction, replacement, or modification necessary for compliance with the Performance Standards or Applicable Law. The Company shall make any required corrections, replacements or modifications to work completed prior to any relevant change in Applicable Law, subject to Force Majeure relief as and to the extent provided in Section 4.12 below.
- 4.8.2 Reliance. The Company acknowledges and agrees that the City is entering into this Contract in reliance on the Company's expertise with respect to the GAC Services, so that the City may continue to meet applicable regulatory requirements at its Water Treatment Facilities and to deliver safe, high quality drinking water to its residents.

4.8.3 Intellectual Property. The Company owns, or has express rights to use, all patents, copyrights and other intellectual property rights necessary for the performance of its obligations under this Contract without any known material conflict with the rights of others.

4.9 INDEPENDENT CONTRACTOR

4.9.1 The services Company provides under the terms of this Contract to the City are that of an Independent Contractor, not an employee, or agent of the City. The City will report the value paid for these services each year to the Internal Revenue Service (I.R.S.) using Form 1099.

4.9.2 City will not withhold income tax as a deduction from contractual payments. As a result of this, Company may be subject to I.R.S. provisions for payment of estimated income tax. Company is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

4.10 CONFLICT OF INTEREST

The 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 the City's departments or agencies is, at any time while the contract or any extension of the contract is in effect, an employee of any other party to the contract in any capacity or a Contractor to any other party to the contract with respect to the subject matter of the contract. The cancellation will be effective when written notice from the City is received by all other parties to the contract, unless the notice specifies a later time (A.R.S. § 38-511).

4.11 NOTICES

All notices or demands required to be given in accordance with the terms of this Contract must be given to the other Party in writing, delivered by hand or registered or certified mail, at the addresses stated below, or to any other address the Parties may substitute by written notice given in the manner prescribed in this paragraph.

In the case of Company:

Calgon Carbon Corporation
500 Calgon Carbon Drive
Pittsburgh, PA 15205
(412) 787-6700
Attn: General Counsel

In the case of City:

City Manager
City of Glendale
5850 West Glendale Avenue
Glendale, AZ 85301

City Attorney
City of Glendale
5850 West Glendale Avenue
Glendale, AZ 85301

Notices will be considered received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail.

4.12 TAXES

Company will be solely responsible for any and all Tax obligations which may result from the Company's performance of this Contract. The City will have no obligation to pay any amounts for

Taxes, of any type, incurred by the Company. The unit pricing established pursuant to this Contract does not include state and local Taxes directly related to the performance of the GAC Services, as the City is exempt from such Taxes. In the event a Change in Law occurs imposing such taxes, the City shall pay such Taxes on a pass-through basis. Notwithstanding the foregoing, the Company shall be solely responsible for all Taxes associated with the Thermal GAC Reactivation Facility and for all Taxes associated with the income of the Company or otherwise imposed on the Company and not directly related to the performance of the GAC Services.

4.13 ADVERTISING

No advertising or publicity concerning the City using the Company's services will be undertaken without first obtaining the written approval for the advertising or publicity from the City Contract Administrator.

4.14 COUNTERPARTS

This Contract may be executed in one or more original counterparts, and each such counterpart shall constitute but one and the same Contract.

4.15 CAPTIONS

The captions used in this Contract are solely for the convenience of the Parties, do not constitute a part of this Contract and are not to be used to construe or interpret this Contract.

4.16 SUBCONTRACTORS

4.16.1 During the performance of the Contract, the Company may engage any additional Subcontractors as may be required for the timely completion of this Contract. The approval of the City must be obtained before the addition of any Subcontractors.

4.16.2 In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Contract remains with the Company.

4.17 COMPLIANCE WITH FEDERAL AND STATE LAWS

The Company understands and acknowledges the applicability to it of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

4.18 IMMIGRATION LAW COMPLIANCE

4.18.1 Under the provisions of A.R.S. §41-4401, the Contractor warrants to the City that the Contractor and all its subcontractors will comply with all Federal Immigration laws and regulations that relate to their employees and that the Contractor and all its subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A).

4.18.2 A breach of this warranty by the Contractor or any of its subcontractors will be considered a material breach of this Contract and may subject the Contractor or its subcontractor to penalties up to and including termination of this Contract or any subcontract. The Contractor will take appropriate steps to assure that all subcontractors comply with the requirements of the E-Verify Program. The Contractor's failure to assure compliance by all its subcontractors with the E-Verify Program may be considered a material breach of this Contract by the City.

4.18.3 The City retains the legal right to inspect the papers of any employee of the Contractor or any subcontractor who works on this Contract to ensure that the Contractor or any subcontractor is complying with the warranty given above.

4.18.4 The City may conduct random verification of the employment records of the Contractor and any of its subcontractors to ensure compliance with this warranty. The Contractor agrees to

indemnify, defend and hold the City harmless for, from and against all losses and liabilities arising from any and all violations of these statutes.

4.19 *LAWFUL PRESENCE IN THE UNITED STATES FOR PERSONS*

Arizona State law A.R.S. §1-502 (H.B. 2008) requires that all PERSONS who will be awarded a contract and apply for public benefit must demonstrate through a signed affidavit and the presentation of a copy of documentation that they are lawfully present in the United States.

4.20 *NO PREFERENTIAL TREATMENT OR DISCRIMINATION*

In accordance with the provisions of ARTICLE 2, Section 36 of the Arizona Constitution, the City will not grant preferential treatment to or discriminate against any individual or group on the basis of race, sex, color, ethnicity or national origin.

4.21 *INDEMNIFICATION*

4.21.1 General Indemnification. To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, must defend, indemnify and hold harmless City of Glendale, its agents, representatives, officers, directors, officials and employees (“City Indemnitees”) from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by Contractor relating to work or services in the performance of this Contract, including but not limited to, any subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Contractor’s and subcontractor’s employees.

4.21.2 Insurance Provisions. Insurance provisions stated in this contract are separate and independent from the indemnity provisions of this paragraph and will not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph will not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

4.21.3 Patent, Copyright and Trademark Indemnity. The Company shall indemnify, defend, save and hold harmless the City Indemnitees against any Claims, including costs and expenses, for infringement of any patent, trademark or copyright or other proprietary rights of any third parties arising out of contract performance or use by the City of materials furnished or work performed under this Contract. The Company agrees upon receipt of notification to promptly assume full responsibility for the defense of any suit or proceeding which is, has been, or may be brought against the City and its agents for alleged infringement, as well as for the alleged unfair competition resulting from similarity in design, trademark or appearance of goods by reason of the use or sale of any goods furnished under this Contract, and the Company further agrees to indemnify the City Indemnitees against any and all expenses, losses, royalties, profits and damages including court costs and attorney’s fees resulting from the bringing of such suit or proceedings including any settlement or decree of judgment entered therein. Any counsel selected by the Company shall be competent in the area of law at issue and shall offer timely and professional representation. The Company expressly agrees that these covenants are irrevocable and perpetual.

4.21.4 Confidentiality and Data Security. The Company shall also indemnify, defend, save and hold harmless the City Indemnitees against any Claims for any loss caused, or alleged to be caused, in whole or in part, by the Company’s or any of its owners’, officers’, directors’, agents’ or employees’ failure to comply with the requirements of this Section regarding confidentiality and data security. This indemnity includes any Claim arising out of the failure

of the Company to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree.

- 4.21.5 Liens. The Company shall hold the City harmless from claimants supplying labor or materials to the Company or its subcontractors in the performance of the work required under this Contract.

4.22 CONTRACTOR ON SITE SAFETY REPORTING REQUIREMENTS

For any non-construction City supplier whose service contract(s) (either singular or in aggregate) results in the contractor working 500 or more hours on site at a City of Glendale location(s) in any one calendar quarter, the following documentation must be provided by the contractor to the Contract Administrator:

- 4.22.1 The contractor's most recent OSHA 300A (if applicable);
- 4.22.2 All accident reports for injuries that occurred in the City under the contract during the most recent review period;
- 4.22.3 The contractor's current worker's compensation experience modifier;
- 4.22.4 The above information is to be provided upon the commencement of the Initial Term and every February thereafter as long as this Contract is in force;
- 4.22.5 The Contract Administrator will provide this information to Risk Management when requested.

5.0 INSURANCE

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work or services hereunder and the results of that work by the Contractor, his agents, representatives, employees or subcontractors.

Additionally, Certificates of Insurance submitted without referencing a Contract number will be subject to rejection and returned or discarded.

5.1 INSURANCE REPRESENTATIONS AND REQUIREMENTS

- 5.1.1 General: Contractor agrees to comply with all applicable City ordinances and state and federal laws and regulations. The insurance policies are to contain, or be endorsed to contain all the following provisions.

Without limiting any obligations or liabilities of Contractor, Contractor must purchase and maintain, at its own expense, the minimum insurance with companies properly licensed by the State of Arizona with an AM Best, Inc. rating of no less than A:VII, and Failure to maintain insurance as specified may result in termination of this Contract at City of Glendale's option. If the contractor maintains higher limits than the minimums shown within, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor.

- 5.1.2 No Representation of Coverage Adequacy: By requiring the insurance stated in this Contract, the City of Glendale does not represent that coverage and limits will be adequate to protect Contractor. City of Glendale reserves the right to review any and all of the insurance policies and/or endorsements required by in this Contract, but has no obligation to do so. Failure to demand any evidence of full compliance with the insurance requirements stated in this Contract or failure to identify any insurance deficiency does not

relieve Contractor from, nor be construed or considered a waiver of, its obligation to maintain the required insurance at all times during the performance of this Contract.

- 5.1.3 Coverage Term:** All insurance required by this Contract must be maintained in full force and effect until all work or services required to be performed under the terms of this Contract are satisfactorily performed, completed and formally accepted by the City of Glendale, unless specified otherwise in this Contract.
- 5.1.4 Claims Made:** In the event any insurance policies required by this Contract are written on a “claims made” basis, coverage must extend, either by keeping coverage in force or purchasing an extended reporting option, for 3 years past completion and acceptance of the work or services as evidenced by submission of annual Certificates of Insurance stating that applicable coverage is in force and contains the required provisions for the 3-year period.
- 5.1.5 Policy Deductibles and or Self Insured Retentions:** The policies stated in these requirements may provide coverage which contain deductibles or self-insured retention amounts. Contractor is solely responsible for any deductible or self-insured retention amount. City of Glendale, at its option, may require Contractor to secure payment of any deductible or self-insured retention by a surety bond or irrevocable and unconditional Letter of Credit.
- 5.1.6 Use of Subcontractors:** If any work under this agreement is subcontracted in any way, Contractor must execute a written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements stated in this Contract protecting City of Glendale and Contractor. Contractor will be responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.
- 5.1.7 Evidence of Insurance:** Before beginning any work or services under this Contract, Contractor must furnish City of Glendale with original Certificate(s) of Insurance and amendatory endorsements or copies of the applicable policy language effecting coverage as required herein. If any of the above cited policies expire during the life of this Contract, it will be Contractor’s responsibility to forward renewal Certificates within 10 days after the renewal date containing all the aforementioned insurance provisions. Certificates will specifically cite the following provisions:
- 5.1.7.1 City of Glendale, its agents, representatives, officers, directors, officials and employees, volunteers are to be covered as additional insureds under the following policies:
- 5.1.7.1.1 Commercial General Liability
- 5.1.7.1.2 Auto Liability
- 5.1.7.1.3 Excess Liability- Follow Form to underlying insurance as required.
- 5.1.7.2 Contractor’s insurance must be primary insurance as respects performance of subject contract. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Contractor’s insurance and shall not contribute with it.
- 5.1.7.3 Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

5.1.7.4 If the Contractor receives notice that any of the required policies of insurance are materially reduced or cancelled, the Contractor is responsible for providing prompt notice of same to the City, unless such coverage is immediately replaced with similar policies.

5.1.7.5 City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

5.2 Required Coverage

5.2.1 Commercial General Liability: Contractor must maintain “occurrence” form Commercial General Liability insurance with a limit of not less than \$2,000,000 for each occurrence, including products and completed operations, personal & advertising injury, \$4,000,000 Annual Aggregate, The policy must cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be “follow form” equal or broader in coverage scope than underlying.

5.2.2 Automobile Liability: Insurance covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property used in the performance of the Contractor’s work or services under this Contract. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be “follow form” equal or broader in coverage scope than underlying. If any hazardous material, as defined by any local, state or federal authority, is the subject, or transported, in the performance of this Contract, an MCS 90 endorsement is required providing \$1,000,000 per occurrence limits of liability for bodily injury and property damage.

5.2.3 Workers Compensation Insurance: As required by the State of Arizona, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

6.0 SEVERABILITY

If any term or provision of this Contract is found to be illegal or unenforceable, then despite this illegality or unenforceability, this Contract will remain in full force and effect and that term or provision will be considered deleted.

6.1 AUTHORITY

Each Party warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each has been properly authorized and empowered to enter this Contract. Each Party further acknowledges that it has read this Contract, understands it, and agrees to be bound by it.

7.0 REQUEST FOR TAXPAYER I.D. NUMBER & CERTIFICATION I.R.S. W-9 FORM

Upon request, the Contractor shall provide the required I.R.S. W-9 Form which is available from the IRS website at www.IRS.gov under their forms section.

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

CITY OF GLENDALE, an Arizona
municipal corporation (“City”)

Brenda S. Fischer
City Manager

ATTEST:

Pamela Hanna (SEAL)
City Clerk

APPROVED AS TO FORM:

Michael D. Bailey
City Attorney

CALGON CARBON CORPORATION,
a Delaware corporation

By: _____
Its: _____
Date: _____

EXHIBIT A

SCOPE OF SERVICES
FOR THE
SUPPLY, PLACEMENT, REMOVAL AND THERMAL REACTIVATION
OF GRANULAR ACTIVATED CARBON
between
THE CITY OF GLENDALE, ARIZONA
and
CALGON CARBON CORPORATION

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SECTION 1

DEFINITIONS

1.1 For the purposes of this Contract, the following words and terms shall have the respective meanings set forth in this Section.

“Additional GAC Price” has the meaning specified in subsection 4.1(F).

“Appendix” means any of the Appendices and, as applicable, any attachments thereto, that are appended to this Contract and identified as such in Exhibit B.

“Applicable Law” means any federal, state, or local law, regulation, rule, policy, or order, as and all amendment thereto, of any Governmental Body having jurisdiction, or any Governmental Approval relating to any services provided by the Company under this Contract.

“Bankruptcy Code” means the United States Bankruptcy Code, Title 11 U.S.C., as amended from time to time and any successor statute thereto. “Bankruptcy Code” shall also include any similar state law relating to bankruptcy, insolvency, the rights and remedies of creditors, the appointment of receivers or the liquidation of companies and estates that are unable to pay their debts when due.

“City” means the City of Glendale, Arizona.

“City Indemnitees” has the meaning set forth in Services Contract Section 4.24.

“City Operational GAC Loss” means (a) GAC loss occurring between the completion of any GAC Filter Exchange and the commencement of any subsequent GAC Filter Exchange; (b) degradation of the GAC during operation of the filter, such as caused by build-up of calcium carbonate or other minerals on the carbon which impact the ability of the GAC to be reactivated such that yield losses are higher than the 5% to 10% “normal” and require the supply of additional Virgin GAC; or (c) higher than the 5% to 10% “normal” Virgin GAC make-up rates incurred due to the lower than normal yield rates resulting from the use by the City of Virgin GAC supplied by another vendor.

“City Representative” has the meaning specified in subsection 3.5(C).

“Commitment Volume” has the meaning specified in subsection 3.4(A).

“Company” or “Contractor” means Calgon Carbon Corporation, a corporation organized and operating under the laws of the State of Delaware, having its principal offices at 500 Calgon Carbon Drive, Pittsburgh, Pennsylvania 15205, and authorized to do business in the State of Arizona.

“Contract Date” means the date this Contract is fully executed by the Parties hereto.

“Contract Year” means the City’s fiscal year commencing on July 1 in any year and ending on June 30 of the following calendar year; provided, however, that the first Contract Year shall commence on the Contract Date and shall end on the following June 30, and the last Contract Year shall commence on July 1 prior to the date this Service Contract expires or is terminated, whichever is appropriate, and shall end on the date of termination. Any computation made on the basis of a Contract Year shall be adjusted on a pro rata basis to take into account any Contract Year of less than 365 or 366 days, whichever is applicable.

“Demand Forecast” has the meaning specified in subsection 3.3(D).

“Fees and Costs” means reasonable fees and expenses of employees, attorneys, architects, engineers, expert witnesses, contractors, consultants and other persons, and costs of transcripts, printing of briefs and records on appeal, copying and other reimbursed expenses, and expenses reasonably incurred in connection with investigating, preparing for, defending or otherwise appropriately responding to any legal proceeding.

“GAC” means granular activated carbon.

“GAC Filter Exchange” means the performance of all GAC Services necessary to provide for the thermal reactivation of the GAC of a single GAC filter at the Water Treatment Facilities.

“GAC Services” means everything required to be furnished and done for and relating to the supply, transportation, placement, removal and thermal reactivation of GAC by the Company for the City pursuant to this Contract, including the Interim GAC Services and the Local GAC Services.

“Governmental Approvals” means all orders of approval, permits, licenses, authorizations, consents, certifications, exemptions, rulings, entitlements and approvals issued by a Governmental Body of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Thermal GAC Reactivation Facility or the performance of the GAC Services.

“Governmental Body” means any federal, state, regional or local legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body, or any official thereof having jurisdiction.

“Initial Term” has the meaning set forth in Services Contract Section 3.0.

“Local GAC Services” means the GAC Services to be provided under this Contract by the Company where reactivation is processed at the Company’s Reactivation Plant in Gila Bend, AZ

“Local Service Price” has the meaning specified in subsection 4.1(B).

“Long Term Planning Forecast” has the meaning specified in subsection 3.4(C).

“Non-Local Fuel Surcharge” has the meaning specified in subsection 4.1(D).

“Non-Local Service Price” has the meaning specified in subsection 4.1(C).

“NSF” means the NSF Water Division of NSF International, an independent, not-for-profit organization that provides standards development, product certification, auditing, education and risk management for public health and the environment, including any successor division or organization.

“Performance Standards” means the requirements and standards for the performance of the GAC Services by the Company, which are set forth Exhibit B, Appendix 1.

“Priority Customers” has the meaning specified in subsection 2.4(A).

“Renewal Term” has the meaning set forth in Services Contract Section 3.0.

“Senior Corporate Representative” has the meaning specified in subsection 3.5(B).

“Services Contract” or “Contract” means this Contract for the Supply, Placement, Removal and Reactivation of Thermal Granular Activated Carbon between the City and the Company, including the Exhibits and Appendices, as the same may be amended or modified from time to time in accordance herewith.

“Service Manager” has the meaning specified in subsection 3.5(A).

“Subcontract” means any contract entered into by the Company or a Subcontractor of the Company of any tier, with one or more persons in connection with the carrying out of the Company’s obligations under this Contract, whether for the furnishing of labor, materials, equipment, supplies, services (including professional design services) or otherwise, excluding contracts related to the construction and commissioning of the GAC Thermal Reactivation Facility.

“Subcontractor” means any person, other than the Company, that enters into a Subcontract, excluding any person entering into a Subcontract related to the construction and commissioning of the GAC Thermal Reactivation Facility.

“Tax” means any tax, fee, levy, duty, impost, charge, surcharge, assessment or withholding, or any payment-in-lieu thereof, and any related interest, penalty or addition to tax.

“Term” means the Initial Term and any Renewal Term.

“Thermal GAC Reactivation Facility” or “Facility” means the potable water thermal GAC reactivation facility to be designed, constructed, financed, owned, operated and maintained by the Company in Maricopa County, Arizona in order to perform the Local GAC Services in accordance with this Contract, including any expansions or capital modification made thereto.

“Thermal GAC Reactivation Facility Site” or “Site” means the parcel of real property identified in Appendix 1 on which the Thermal GAC Reactivation Facility is to be constructed, operated and maintained by the Company.

“Virgin GAC” means newly produced GAC meeting the quality, size, manufacturing and other requirements specified in Exhibit B, Appendix 21

“Volume Forecast” has the meaning specified in subsection 3.4(B).

“Water Treatment Facilities” means the City’s water treatment plants and related assets and facilities, as specifically identified in Exhibit B, Appendix 4.

“WTP” means water treatment plant.

SECTION 2

THERMAL GAC REACTIVATION FACILITY

2.1 THERMAL GAC REACTIVATION FACILITY OPERATIONS

- (A) Operations and Maintenance Generally. The Company shall be fully responsible for operating and maintaining the Thermal GAC Reactivation Facility for the full Term of this Contract in order to provide for the thermal reactivation of the City's GAC at the Thermal GAC Reactivation Facility.
- (B) Compliance with Applicable Law. The Company shall operate and maintain the Thermal GAC Reactivation Facility in accordance with all requirements of all Applicable Laws, including compliance with the terms and conditions of all Governmental Approvals required for the continued operations of the Thermal GAC Reactivation Facility. The Company shall report to the City, promptly upon obtaining knowledge thereof, all violations of the terms and conditions of any Governmental Approval or Applicable Law pertaining to the Thermal GAC Reactivation Facility and shall promptly correct any such violation and resume compliance with Applicable Law.
- (C) NSF Certification. The Company shall maintain NSF certification of the Thermal GAC Reactivation Facility for the full Term of this Contract and, in operating and maintaining the Thermal GAC Reactivation Facility, shall adhere to all applicable quality control procedures and audit requirements established by NSF.
- (D) City Access Rights. The City Representative, providing the Company with reasonable advance notice, shall have the right at any time during normal business hours to visit and inspect the Thermal GAC Reactivation Facility and observe the Company's performance of the GAC Services. During any such observation or inspection, the City Representative shall comply with the Company's reasonable operating and safety procedures and rules, and shall not interfere with the Company's operations of the Thermal GAC Reactivation Facility. The Parties agree that the City shall have immediate access to the Thermal GAC Reactivation Facility during normal business hours, and no Company rule or procedure shall impede, impair or delay such access.

2.2 PRIORITY CUSTOMERS OF THERMAL GAC REACTIVATION FACILITY

- (A) Priority Customer. The Company agrees that the City, along with the Cities of Phoenix and Scottsdale, Arizona, as the Initial Term primary sponsors for the development of the Thermal GAC Reactivation Facility, are and shall remain the Priority Customers at the Facility. Accordingly, the Company agrees that it shall make no commitment to any other Facility customer to the extent such commitment would materially impair service to the City or the Cities of Phoenix and Scottsdale, Arizona.
- (B) Most Favored Customer Status. In the event the Company charges any other customer of the Thermal GAC Reactivation Facility an amount less than the Local Service Price in effect at any given time for the performance of GAC thermal reactivation services, the Company shall provide the same pricing to the City. The City shall never pay more than any other Thermal GAC Reactivation Facility customer.
- (C) Uncommitted Capacity/Right of First Refusal: Both Parties shall remain in communication on an on-going basis and shall review projections of all customer demand as part of the two-

year Long Term Planning Forecast in order to aid both Parties in decision making related to the disposition of uncommitted capacity. Should the Company identify an opportunity to sell uncommitted capacity of the Thermal GAC Reactivation Facility to a customer other than the City or another Priority Customer, the Company shall first provide the City with the opportunity to increase the volume and/or duration of its commitment; subject to the Company's obligation to first provide the opportunity to another Priority Customer. Prior to making a firm proposal to the other customer to reactivate its GAC, the Company shall meet with the City and review the Long Term Planning Forecast to determine whether or not the sale of the uncommitted capacity to another customer would potentially displace volume required by the City. If the City determines that the sale of the uncommitted capacity to another customer would not displace volume required by the City, the Company may proceed with the sale. If the City determines that the sale of uncommitted capacity would potentially displace volume required by the City, the City may choose to exercise its right of first refusal. Should the City exercise its right to increase the volume and/or duration of its commitment, the Company shall make alternative plans with the other customer that will ensure that the City's volume commitment is protected (e.g., quote some or all of the other customer's required volume based on use of Company reactivation facilities other than the local Thermal GAC Reactivation Facility, if necessary). Should the City decline to exercise its option to increase its commitment, the Company shall be free to sell the uncommitted capacity to the other customer. The City shall have three (3) business days in which to choose to exercise its right to increase its commitment, after which the Company shall have to the right to proceed with selling the uncommitted capacity to the other customer without restriction.

2.3 THERMAL GAC REACTIVATION FACILITY EXPANSIONS

- (A) Expansions Generally. The Parties recognize that it may be necessary or desirable from time to time to expand the capacity of the Thermal GAC Reactivation Facility. The Company shall bear the cost and expense of all expansions of the Thermal GAC Reactivation Facility and shall be solely responsible for the financing, permitting, design, construction, and operation of any expansion of the Thermal GAC Reactivation Facility.
- (B) Consultations with the City. The Company shall consult with the City prior to undertaking or committing to any expansion of the Thermal GAC Reactivation Facility. Such consultation shall include providing the City with the Company's plan for the expansion, including the reasons for the expansion and the Company's design, construction and operation plans associated with the expansion.
- (C) Expansions Dictated by Increases in Demand. The Company agrees to consult annually with its Priority Customers defined in subsection 2.2(A) with the express purpose of ensuring adequate local reactivation capacity will be available throughout the full contract period for said Priority Customers, including all Renewal Terms.

Based on the best available information, which shall be reviewed jointly by all Priority Customers, the Priority Customers and the Company shall mutually determine whether the projected increased demand is likely and sustainable and that no other practicable, viable option exists to maintain the supply other than expansion of the plant. The Company shall give a Priority Customer's request for expansion serious consideration, in good faith, and shall agree to expansion if the expansion request would generally be deemed reasonable. A milestone schedule shall be jointly prepared for the provision of the expansion. The milestone schedule shall provide for intermediate points at which the expansion can be cancelled if demand projections change. The Company and the City shall in good faith

negotiate and execute an amendment to this Service Contract incorporating such a milestone schedule if any Thermal GAC Reactivation Facility expansion is required to satisfy the City's demand. Once the amendment is signed by both parties, the Company shall complete the expansion based on the milestone schedule submitted by the Company, but no later than 420 days following the formal notification of the intent to expand. The rights and responsibilities of the Parties with respect to any expansion pursuant to this subsection shall be contained within the amendment, with the understanding that in the case of expansions, the definition of Force Majeure shall also include unforeseen issues regarding the securing of permits related to the design and construction of the expansion. The City acknowledges that expansions agreed upon in later years of the Contract may entail a requirement for the City to extend the term of the Contract in order to ensure that the Company realizes an acceptable return on the additional investment. The exact nature of the Contract term extension shall be negotiated and mutually agreed upon during the expansion determination process.

SECTION 3

PERFORMANCE OF THE GAC SERVICES

3.1 COMPANY OBLIGATIONS GENERALLY

- (A) Performance Standards. The Company shall furnish all labor, materials, equipment and incidentals required to provide the GAC Services at City Water Treatment Facilities, including the removal and replacement of GAC. The Company shall perform the GAC Services in accordance with the Performance Standards set forth in Exhibit B, Appendix 1. As regards Subcontractors, this provision applies only to Subcontractors on City-owned sites, and not at the GAC Thermal Reactivation Facility.
- (B) Affidavits and Chain of Custody. At the time of delivery of any GAC pursuant to this Contract, the Company shall provide an affidavit of compliance stating that the thermal activation services provided and the thermally activated GAC produced comply with all applicable Performance Standards described in Appendix 1, including all applicable provisions of ANSI/AWWA B605-07 Standard, NSF, and City requirements. The Company shall provide a "Chain of Custody" certification that documents that the handling procedure used assures that the GAC from each of the City's Water Treatment Facilities has been separated from other spent GAC sources from the time of removal, through the thermal reactivation process, and during storage and transportation until the GAC is received and placed at the Water Treatment Facility.
- (C) Commencement of Work; Turn-Around Time. The Company shall not commence any GAC Filter Exchange until the Company receives a written demand notice from the City Representative pursuant to subsection 3.3(C). The Company shall commence each GAC Filter Exchange within seven (7) days following receipt of such notice, or as otherwise agreed to by the City pursuant to subsection 3.3(C). Commencement of a GAC Filter Exchange shall be deemed to have occurred upon commencement of filter preparation in accordance with the Performance Standards set forth in Appendix 1. The total turn-around time for each GAC Filter Exchange, from commencement until placement of thermally reactivated GAC and including all transit time, shall not exceed thirty (30) days, except to the extent excused due to the occurrence of Force Majeure as set forth in Service Contract Section 3.4.

- (D) GAC Reactivation Demand and Local Capacity. The Company shall satisfy all of the City's GAC reactivation needs associated with the Water Treatment Facilities for any Term in accordance with the terms and conditions of this Contract. The Company shall provide and perform the Local GAC Services to satisfy all of the City's GAC reactivation needs, subject to the terms and conditions of subsection 3.4.
- (E) Virgin GAC. As indicated in Exhibit B, Appendix 1, makeup Virgin GAC shall be provided by the Company, at no additional cost to the City, to compensate for any loss of GAC that might have occurred during transportation, handling (including removal and installation), and thermal reactivation of the spent GAC, or as otherwise necessary to meet the Performance Standards for GAC set forth in Appendix 1. In addition, GAC that has become contaminated by the Company before, during, or after being placed in the basin shall be removed and replaced with Virgin GAC at no additional cost to the City and in a manner satisfactory to the City. The Company shall also provide Virgin GAC to make up for any other operational GAC loss occurring between the completion of any GAC Filter Exchange and the commencement of any subsequent GAC Filter Exchange (a "City Operational GAC Loss") or for any other reason at the direction of the City; provided, however, that the Company shall be compensated for Virgin GAC required to make up for such City Operational GAC Losses or as otherwise directed by the City as provided in subsection 4.1(E). The Company acknowledges and agrees that the City has no exclusivity requirements pursuant to this Contract with respect to the purchase of Virgin GAC and may purchase Virgin GAC from the Company pursuant to this Contract or from any other source. The City acknowledges that Virgin GAC that is materially outside the agreement specifications and purchased from other sources may prove to be less durable under typical thermal reactivation conditions than Virgin GAC manufactured by the Company, and that use of Virgin GAC from other sources may result in higher thermal reactivation losses, requiring the Company to supply more Virgin GAC to make-up for these losses. Such losses, as validated by the Company and agreed upon by the City, shall be considered City Operational GAC Losses, and the City shall compensate the Company for any such additional Virgin GAC required to be supplied.
- (F) Spills. The Company shall be responsible for the cleanup of any spills during placement or removal of media in the basins that are caused by the Company's equipment, off-loading technique or failure to comply with the Performance Standards, including all cost associated therewith. In addition, the Company shall provide technical support for spills of materials supplied by the Company, including a 24-hour emergency phone number. The Company shall be fully responsible for any spill occurring during transport or during the reactivation process.
- (G) Title and Risk of Loss. All service and materials are subject to final inspection and acceptance by the City Representative or assigned designee. The title and risk of loss of material or service shall not pass to the City until the City actually accepts the material or service at the point of delivery; and such loss, injury, or destruction shall not release the Company from any obligation hereunder. The City assumes no responsibility, at any time, for the protection of or for the loss of materials, from the commencement of performance of the GAC Services until final acceptance of the work associated with each GAC Filter Exchange by the City Representative or assigned designee.
- (H) Damage to City Property and Private Property. The Company shall perform the GAC Services so that no damage results to any City property, including the buildings and grounds of the Water Treatment Facilities. The Company shall promptly repair or replace, at no cost to the City, all City property and private property damaged by the Company or any officer,

director, employee, representative, agent or Subcontractor of the Company in connection with the performance of, or the failure to perform, the GAC Services. The repair and replacements shall restore the damaged property, to the maximum extent reasonably practicable, to its character and condition existing immediately prior to the damage.

3.2 CITY GAC TESTING RIGHTS

The City reserves the right to perform periodic, random, unannounced, testing of any reactivated GAC delivered under this Contract. The reactivated GAC shall be tested for conformance with the Performance Standards associated with iodine number, apparent density, abrasion, and ash by an independent laboratory. Should the reactivated GAC fail any of tests conducted by the independent laboratory, the Company shall provide samples of the same lot of GAC from its manufacturing retain samples and submit them to a mutually acceptable second independent laboratory for testing. Should the test results from the second independent laboratory indicate that the GAC meets specification, it shall be determined that the GAC does meet specification and no further actions shall be taken. Should the test results from the second independent laboratory confirm the results of the testing from the first independent laboratory, it shall be determined that the GAC does not meet specification. In the case that it is determined that the GAC does not meet specification, the Parties shall discuss all possible financial and/or physical remedies, up to and including partial or total replacement of the GAC which failed the testing. The Parties shall in good faith negotiate and execute a mutually agreeable settlement. All costs associated with the failed testing shall be borne by the Company. Three (3) "significant" failed test reports within any twelve (12) month period may, at the City's discretion, result in the City terminating this Contract for cause. "Significant" failed test reports are defined as test results which are out of compliance with a specification parameter by more than 10% of the numeric value of the parameter. Without limiting any of the City's rights under this Contract with respect to any failure of Company compliance with the Performance Standards, other specifications listed in the Performance Standards may also be tested pursuant to this Section but shall not be cause for rejection of GAC.

3.3 CITY OBLIGATIONS GENERALLY

(A) General City Obligations. The City, in addition to the obligations it has undertaken elsewhere in this Contract, shall:

Provide the Company access to the Water Treatment Facilities to the extent necessary for the performance of the Company's obligations hereunder, subject to the terms and conditions of this Contract;

Perform the obligations of the City specified in Exhibit B, Appendix 1 with respect to GAC media washing; and

Pay the Company for the performance of the GAC Services in accordance with and subject to the terms and conditions set forth in Section 4.

(B) Exclusivity. During the Term of this Contract, the City shall direct all of its required thermal GAC reactivation needs associated with its Water Treatment Facilities exclusively to the Company. Without limiting any of the City's rights under this Contract with respect to any breach of the Company's obligations hereunder, the Company's failure to meet the City's local reactivation needs more than three (3) times during the Term of this Contract, subject to the terms and conditions of subsection 3.4(A) below, may, at the City's discretion, result in this Contract becoming non-exclusive for the purpose of the City meeting some or all of its reactivation needs from a source other than the Company, with non-exclusivity applying

only during the period in which the Company is unable to meet the City's local reactivation needs. The Company acknowledges and agrees that the exclusivity requirements of this subsection do not apply to the purchase of Virgin GAC and that the City may purchase Virgin GAC from the Company pursuant to this Contract or from any other source. It is the City's intention that the Virgin GAC shall materially meet the same specifications as that of the Virgin GAC originally supplied for each Water Treatment Facility. Should the City purchase Virgin GAC from a source other than the Company, the City shall provide to the Company upon request a copy of the Certificate of Analysis for the Virgin GAC, as well as documentation confirming that the Virgin GAC is of bituminous coal origin manufactured via a re-agglomeration process. This documentation shall be used to confirm that the Virgin GAC is of suitable quality to be reactivated to the specified parameters for Thermal Reactivated GAC, with Virgin GAC make-up requirements falling within the range considered normal for Thermal Reactivated GAC.

- (C) Scheduling of GAC Filter Exchanges. The City shall have the right to demand a GAC Filter Exchange at any time, by written notice from the City Representative to the Company, subject to the terms and conditions of this Section. The City shall provide the Company with at least seven (7) days written notice prior to the commencement of any GAC Filter Exchange. The Company may request a longer period prior to commencement (not to exceed 30 days), subject to the reasonable approval of the City.
- (D) Demand Forecasting. The City shall provide a Commitment Volume, a Volume Forecast, and a Long Term Planning Forecast (collectively, the "Demand Forecast") to the Company in order to facilitate demand management for the Thermal GAC Reactivation Facility in accordance with subsection 3.4, below.

3.4 DEMAND MANAGEMENT

- (A) Commitment Volume. The "Commitment Volume" shall be the quantity of pounds of GAC that the City shall commit to reactivate for a given six-month period, expressed in monthly quantities and subject to the terms and conditions of this subsection. The Commitment Volume shall be a guaranteed volume with a variance of no more than 20% over the six-month period. The City shall provide the Commitment Volume to the Company in May for the July to December period and in November for the January to June period. The Company shall review the proposed commitment and verify that the City's demand as projected can be met utilizing the capacity of the local Thermal GAC Reactivation Facility, considering the committed pounds of the City plus the committed pounds of other customers. Should the analysis indicate that the City's proposed demand exceeds the Thermal GAC Reactivation Facility's ability due to the demand pattern (i.e., an excessive amount being scheduled in a single month or condensed time frame or the total demand being in excess of the available plant capacity [given the total capacity of the Thermal GAC Reactivation Facility less the committed pounds of other customers] over the projection time period), then the sourcing and scheduling mechanisms within subsection 3.4(D)(2), below, will be applied to resolve the overage. Otherwise, should the actual volume add up to a quantity of up to 110% of the Commitment Volume, the Company will be responsible for meeting the City's Commitment Volume at the Local Pricing and per the agreed upon schedule. Should the actual variance result in a volume greater than 110% but no more than 120% of the City's Commitment Volume, the City shall pay a price for such variance volume which is the average of the Non-Local Pricing and Local Pricing.
- (B) Volume Forecast. The "Volume Forecast" is a rolling six-month forecast of expected demand, based on the most current information available and expressed in monthly

quantities. The City shall provide the Company with the Volume Forecast, and the City and the Company shall review the Volume Forecast, on a monthly basis. The rolling Volume Forecast is a planning tool and not used to determine price basis as is associated with the Commitment Volume as outlined in subsection 3.4(A), above.

- (C) Long-Term Planning Forecast. The “Long Term Planning Forecast” shall be developed and updated quarterly by the City to give a two-year forecast, based upon the latest water quality data, of anticipated GAC usage and reactivation demand. These data will be combined with other forecasts by regional partners to help anticipate thermal regeneration capital expansion needs. Planning associated with the Long Term Planning Forecast will help ensure proper expansions of the Thermal GAC Reactivation Facility pursuant to subsection 2.3, above.
- (D) Reconciling Actual Demand with Demand Forecast. During the monthly Volume Forecast review, when comparing the actual quantity and most recent forecast quantities with the current Commitment Volume quantities:
 - (1) Actual Quantity within Specified Range of Commitment Volume. Where the actual quantity is not less than 80% nor more than 120% of the Commitment Volume quantity, reactivation shall proceed at the Thermal GAC Reactivation Facility as planned. Should the actual volume add up to a quantity of up to 110% of the Commitment Volume, the Company will be responsible for meeting the Committed Volume at the Local Pricing and per the agreed upon schedule. Should the actual variance result in a volume greater than 110% but no more than 120% of the Commitment Volume, the City shall pay a price which is the average of the Non-Local Pricing and Local Pricing for such variance volume.
 - (2) Actual Quantity in Excess of 120% of Commitment Volume. Where the actual quantity exceeds the Commitment Volume quantity by more than 20% and the Company does not have the capacity to handle such demand at the Thermal GAC Reactivation Facility, the City may, in its sole discretion: (a) agree to reschedule GAC Filter Exchanges in order to accommodate the excess demand situation at the Thermal GAC Reactivation Facility without incurring any additional charge beyond the Local Service Price for the performance of the excess GAC Filter Exchanges; or (b) direct the Company to perform GAC Filter Exchanges in excess of 120% of the Commitment Volume quantity at other Company GAC thermal reactivation facilities at the Non-Local Service Price. The Company shall be required to handle such excess demand at other Company GAC thermal reactivation facilities at the Non-Local Service Price. The Company must demonstrate the lack of local capacity prior to the City agreeing to or paying the Non-Local Service Price.
 - (3) Actual Quantity Less than 80% of Commitment Volume. Where the actual quantity is less than 80% of the Commitment Volume quantity, the Company shall make reasonable efforts to make up for the shortfall with GAC from another reactivation customer. If the Company is successful in making up for the shortfall with GAC from another customer or fails to make reasonable efforts to make up for the shortfall, the City shall have no payment responsibility to the Company with respect to the fact that the actual quantity is less than 80% of the Commitment Volume quantity. If, however, the Company demonstrates to the reasonable satisfaction of the

City that it has made reasonable efforts to make up for the shortfall but has not been successful in making up for the shortfall, the Company reserves the right to charge the City at the Local Service Price for the amount of the shortfall in GAC quantity less than 80% of the Commitment Volume quantity, as reduced by the extent to which the Company is able to make up for the shortfall pursuant to the terms and conditions of this subsection.

3.5 SERVICE COORDINATION AND CONTRACT ADMINISTRATION

- (A) Company's Service Manager. The Company shall appoint a full-time service manager for the performance of the GAC Services (the "Service Manager") who shall be licensed, trained, experienced and proficient in the performance of the GAC Services. The Company acknowledges that the performance of the individual serving from time to time as the Service Manager will have a material bearing on the quality of service provided hereunder, and that effective cooperation between the City and the Service Manager will be essential to effectuating the intent and purposes of this Contract. The Company shall promptly notify the City in writing of a change in the Service Manager. As such, the Company agrees that if the City reports that an unworkable or very difficult working relationship has developed between the Service Manager and the City, that the Company will look closely and seriously into such reports and shall seriously consider replacing the Service Manager after meeting with the City to attempt to mutually work out any issues regarding the Service Manager.
- (B) Company's Senior Corporate Representatives. The Company shall appoint and inform the City from time to time of the identity of the corporate officials of the Company with direct, senior supervisory responsibility for the performance of this Contract (the "Senior Corporate Representatives"). The Company shall promptly notify the City in writing of the appointment of any successor Senior Corporate Representatives. The Senior Corporate Representatives shall cooperate with the City in resolving any issues that may arise in connection with the performance of the GAC Services over the Term.
- (C) City Representative. The City shall designate an employee or employees to administer this Contract and act as the City's liaison with the Company in connection with the GAC Services (the "City Representative"). The Company understands and agrees that the City Representative has only limited authority with respect to the implementation of this Contract, and cannot bind the City with respect to any Amendment or to incurring costs in excess of the amounts appropriated therefor.
- (D) Communications and Meetings. The Company shall inform the City of the telephone, cellular telephone, fax numbers, e-mail addresses and other means by which the Service Manager and Senior Corporate Representatives may be contacted. The City shall furnish to the Company comparable communications information with respect to the City Representative. On a monthly basis, the Company shall meet with the City to review the Demand Forecasts and the performance of the GAC Services generally. The Service Manager shall personally attend these monthly operations meetings with the City. If requested by the City, the Senior Corporate Representatives shall attend one such monthly operations meeting per calendar quarter during the Term. In addition, the City shall have the right to require special meetings in its reasonable discretion to review performance and planning matters arising with respect to this Contract. The Service Manager and, if requested by the City, the Senior Corporate Representatives or a duly designated representative shall each attend all such special meetings. The Parties agree to use their best good faith efforts to resolve any disputes. The resolution of any disputes shall be reflected in a Contract Administration Memorandum or an addendum to this Contract, as applicable.

3.6 PERSONNEL

- (A) Account Staffing. The Company agrees to assign experienced personnel to provide for successful and timely accomplishment of the GAC Services. The City reserves the right at any time and for any reason during the Term to reject any Company or Subcontractor personnel from performing services under this Contract.
- (B) Background Screening. All Company and Subcontractor employees performing services under this Contract are subject to the background screening requirements set forth in Exhibit B, Appendix 3.
- (C) Water Treatment Facilities Access Requirements. All Company and Subcontractor employees performing services at the Water Treatment Facilities under this Contract are subject to the current access control requirements established by the City at each of its Water Treatment Facilities.

3.7 SUBCONTRACTORS

- (A) Use Restricted. The Company shall operate the Thermal GAC Reactivation Facility with its own employees and in accordance with this Contract. Additionally, all GAC Services performed at the Water Treatment Facilities shall be performed by Company personnel. Subcontractors may be used to perform other services under this Contract, subject to the City's right of approval identified in subsection 3.7 (B).
- (B) Limited City Review and Approval of Permitted Subcontractors. Except as provided in the next sentence of this subsection, the City shall have the right, based solely on the criteria provided below in this subsection, to approve all Subcontractors, which approval shall not be unreasonably withheld. The Company shall furnish the City with written notice of its intention to engage any Subcontractor, together with all information reasonably requested by the City pertaining to the demonstrated responsibility of the proposed Subcontractor in the following areas: (1) any conflicts of interest; (2) any record of felony criminal convictions or pending felony criminal investigations; (3) any final judicial or administrative finding or adjudication of illegal employment discrimination; (4) any unpaid federal, state or local Taxes; and (5) any final judicial or administrative findings or adjudication of non-performance in contracts with the City, the State or the federal government. The approval or withholding thereof by the City of any proposed Subcontractor shall not create any liability of the City to the Company, to third parties or otherwise. In no event shall any Subcontract be awarded to any person debarred, suspended or disqualified from federal, State or City contracting.
- (C) Subcontract Terms and Subcontractor Actions. The Company shall retain full responsibility to the City under this Contract for all matters related to the GAC Services notwithstanding the execution or terms and conditions of any Subcontract. Except as set forth in Section 3.4 of the Contract (Force Majeure), no failure of any Subcontractor used by the Company in connection with the provision of the GAC Services shall relieve the Company from its obligations hereunder to perform the GAC Services. The Company shall be responsible for settling and resolving with all Subcontractors all claims arising out of delay, disruption, interference, hindrance, or schedule extension caused by the Company or inflicted on the Company or a Subcontractor by the actions of another Subcontractor. Subcontracts entered into by the Company for the performance of the GAC Services shall neither supersede nor abrogate any of the terms or provisions of this Contract.

- (D) Payments to Subcontractors. The Company shall pay or cause to be paid to all direct Subcontractors all amounts due in accordance with their respective Subcontracts and the requirements of Applicable Law. No Subcontractor shall have any right against the City for labor, services, materials or equipment furnished for the GAC Services. The Company acknowledges that its indemnity obligations under the Contract shall extend to all claims for payment or damages by any Subcontractor who furnishes or claims to have furnished any labor, services, materials or equipment in connection with the GAC Services.

SECTION 4

PAYMENT FOR GAC SERVICES

4.1 UNIT PRICING

- (A) Generally. The City shall pay the Company for the performance of the GAC Services on a unit price basis per pound of thermally reactivated GAC in accordance with the terms and conditions of this Section. The unit price per pound of thermally reactivated GAC, as determined in accordance with this Section, shall serve as the sole compensation to the Company for the performance of all obligations under this Contract. Without limiting the generality of the foregoing, the pricing set forth in this Section is inclusive of all costs associated with: labor; materials; transportation; incidentals; equipment; space; risk, administration, overhead and profit; operation and maintenance of the Thermal GAC Reactivation Facility; and any other services or items necessary to effectively perform and complete the GAC Services in accordance with this Contract. The Company agrees that consideration for such costs has been included in the pricing set forth in this Section.
- (B) Unit Pricing for Local GAC Services. The Local Service Price shall be applicable for all GAC Services performed by the Company through the expiration or earlier termination of this Contract, subject to subsection (C) of this Section. As of the Contract Date, the unit price for the performance of the Local GAC Services (the "Local Service Price") is \$0.651 per pound of reactivated GAC. The Local Service Price shall be subject to adjustment annually from the Contract Date in accordance with subsection (F) of this Section. Except as provided in subsection (E) of this Section, the Local Service Price includes all compensation to the Company for providing necessary make-up Virgin Carbon.
- (C) Unit Pricing for Non-local GAC Services. The Company shall be entitled to the Non-Local Service Price, as determined in accordance with this Section, solely to the extent provided in Section 2.1, Fee Schedule, of this Contract. As of the Contract Date, the unit price for the performance of such non-local GAC Services (the "Non-Local Service Price") is \$1.02 per pound of reactivated GAC. The Non-Local Service Price shall be subject to adjustment annually from the Contract Date in accordance with subsection (F) of this Section. Except as provided in subsection (E) of this Section, the Non-Local Service Price includes all compensation to the Company for providing necessary make-up Virgin Carbon. The Company acknowledges and agrees that, except as provided in subsections 3.4(D)(1) and 3.4(D)(2), above, the Non-Local Service Price shall not be applicable to any GAC Filter Exchange scheduled by the City, even if the Company is required to meet such demand by thermally reactivating GAC at Company facilities other than the Thermal GAC Reactivation Facility.
- (D) Fuel Surcharge Applicable to Non-local GAC Services. Additionally, to the extent the Non-Local Service Price is applicable pursuant to subsection (C) of this Section, if the cost of

diesel fuel is equal to or greater than \$4.00 per gallon, according to the U.S. National Average On-Highway Diesel Price, the Company shall be entitled to a surcharge on non-local GAC Services (“Non-Local Fuel Surcharge”) in accordance with Exhibit B, Appendix 5. The Company acknowledges and agrees that the Non-Local Fuel Surcharge shall only be applicable to the extent provided in Exhibit B, Appendix 5.

- (E) Virgin GAC Required for City Operational GAC Losses. The Company acknowledges and agrees that, except with respect to City Operational GAC Losses and as otherwise directed by the City pursuant to this subsection (E), the Interim Service Price, the Local Service Price and the Non-Local Service Price include all compensation to the Company with respect to the Company’s obligation to provide makeup Virgin GAC in accordance with this subsection (E). The Company shall be entitled to additional compensation associated with Virgin GAC on a unit price basis in accordance with this subsection solely to the extent such Virgin GAC is required in order to make up for City Operational GAC Losses or as otherwise directed by the City, as determined in accordance with this subsection (E). As of the Contract Date, the unit price for the Virgin GAC required to make up for City Operational GAC Losses is \$1.233 per pound of Virgin GAC (the “Additional GAC Price”). The Additional Virgin GAC Price shall be subject to adjustment annually from the Contract Date in accordance with subsection (F) of this Section.

- (F) Annual Adjustments to Unit Prices. The Local Service Price, the Non-Local Service Price and the Additional Virgin GAC Price shall each be subject to annual adjustment in accordance with Exhibit B, Appendix 5. In no event shall any such annual adjustment increase such prices by more than ten percent (10%) or decrease such prices by more than five percent (5%). Any increase or reduction that is not made as a result of the limitations established by the preceding sentence shall carry forward and be applied to the next Contract Year’s adjustment, subject to the same percentage limitations. The Interim Service Price shall not be subject to annual adjustment.

EXHIBIT B

**APPENDICES
TO THE
SERVICE CONTRACT
FOR THE
SUPPLY, PLACEMENT, REMOVAL AND THERMAL REACTIVATION
OF GRANULAR ACTIVATED CARBON**

APPENDIX 1

PERFORMANCE STANDARDS

PERFORMANCE STANDARDS

1.1 APPLICABILITY, STRINGENCY AND CONSISTENCY

The Company shall be obligated to comply only with those Performance Standards which are applicable in any particular case. Where more than one Performance Standard applies to any particular performance obligation of the Company hereunder, the Company shall comply with each such applicable Performance Standard. In the event there are different levels of stringency among such applicable Performance Standards, the most stringent of the applicable Performance Standards shall govern. In the event of any inconsistency among the Performance Standards, the City's determination as to the applicable standard shall be binding.

1.2 FILTER PREPARATION

The Company shall thoroughly clean each filter before any GAC is placed and shall keep each filter clean throughout placement operations. The Company shall thoroughly clean and sweep the filter walls and underdrains and shall verify that all openings of the underdrain porous plates are open and free of obstructions. The Company shall keep clean the GAC unloading area external to each filter throughout the placement operations.

1.3 THERMALLY REGENERATED GAC REPLACEMENT

1.3.1 Placing GAC

Placing of GAC, as applicable, shall conform to:

AWWA B604-05: Virgin Granular Activated Carbon

AWWA B605-07: Reactivation of Granular Activated Carbon

AWWA B100-09: Granular Filter Media

The procedure for placement of the thermally regenerated GAC media shall be reviewed and approved by the City prior to media placement in the basins.

Special care shall be taken in transporting and placing the GAC to prevent it from being contaminated and to prevent damage to the GAC.

The Company shall mark the top level of the GAC before removing the spent GAC from the filters. During delivery, the Company shall ensure that the delivered GAC is filled up to the marked top level in the filter. To ensure proper comparison, the filter bed shall be backwashed and drained prior to marking the media depth. Makeup Virgin GAC shall be provided by the Company to compensate for any loss of GAC that might have occurred during transportation, handling, and thermal reactivation of the spent GAC.

Basins shall be filled to a water depth 12-15 inches above the top surface of the underdrain.

GAC media shall be placed as directed by the City Representative at each facility who will dictate the sequencing of filling and backwashing best suited to the operation of the facility.

1.3.2 Properties of Thermally Reactivated Carbon

The thermally reactivated carbon shall have the following properties prior to placement in the plants filters:

Iodine Number – Target value of greater than or equal to 90% of the existing virgin carbon Iodine Number, with a minimum value of 800 milligrams/gram. It is assumed that some fraction of the thermally reactivated material will be comprised of virgin make-up carbon.

Abrasive Number (Stirring Abrasion Test or Ro-Tap Abrasion Test as described in AWWA Standard for Granular Activated Carbon ANSI/AWWA B604-05). – Target value greater than or equal to 95% of the Abrasive Number prior to the thermal regeneration process, with a minimum value of 70. It is assumed that some fraction of the thermally reactivated material will be comprised of virgin make-up carbon.

Apparent Density (AD) of thermally reactivated material only – Target value of 0.54g/cc to 0.60g/cc. The Apparent Density shall be similar to that of the virgin material. It is assumed that Virgin GAC will be added after this value has been met.

The GAC shall conform to the National Sanitation Foundation Standard 61.

Maximum Total Ash: Less than or equal to 10 percent by weight.

The molasses number shall be no less than 170.

1.3.3 GAC Media Washing

City staff shall operate all basin backwash controls when washing the new GAC media placed in the basin.

The Company is responsible for coordinating the scheduling of GAC media washing through the City. The City shall govern scheduling the use of the backwash system. The Company is responsible for this coordination to avoid delays to his schedule.

The Company shall coordinate initial backwash of GAC media with the City to confirm that GAC fines have been sufficiently washed.

Service water required for placement of the GAC shall be supplied by the City.

Workers shall not stand or walk directly on media. Workers shall walk on plywood mats that will sustain their weight without displacing the media. All materials in contact with the GAC media, including plywood, boots, and implements, shall be disinfected by spraying high concentration of chlorine solution.

After placing, the GAC shall be soaked overnight prior to backwashing.

1.4 REFERENCE STANDARDS

The GAC Services shall comply with applicable provisions and recommendations of the following, except as otherwise shown or specified:

ASTM D 2854 Standard Test Method for Apparent Density of Activated Carbon.

ASTM D 2862 Standard Test Method for Psection Size Distribution of Granular Activated Carbon.

ASTM D 2866 Standard test Method for Total Ash Content of Activated Carbon.

ASTM D 2867 Standard Test Method for Moisture in Activated Carbon.

ASTM D 3802 Standard Test Method for Ball-Pan Hardness of Activated Carbon.

ASTM D 3838 Standard Test Method for pH of Activated Carbon.

ASTM D 4607, Test Method for Determination of Iodine Number of Activated Carbon.

ASTM E 11 Specification for Wire Cloth and Sieves for Testing Purposes.

AWWA B100-09 Filtering Material, including any addenda.

AWWA B604-05 Granular Activated Carbon, including any addenda.

Food Chemical Codex: Third Edition.

NSF International Standard 61 - Drinking Water System Components - Health Effects.

1.5 VIRGIN GAC

1.5.1 Quality

The Virgin or makeup GAC shall conform to ANSI/AWWA B604-05 in addition to the modifications listed herein. Virgin GAC shall also conform to Section 4 (Testing Methods) of the most current AWWA Standard B604, the Food Chemical Codex protocol when tested under the conditions outlined in the Food Chemical Codex, Third Edition.

Controlled activation shall produce a material having a high internal surface area with optimum pore size for the effective adsorption of a broad range of high and low molecular weight organic material. Carbon shall have a minimum iodine number of 900 milligrams/gram.

Carbon shall be based on bituminous coal only. Carbons based on wood, lignite, sub-bituminous, peat, or coconut shall not be permitted. GAC shall be manufactured from only select grades of bituminous coal combined with suitable binders as required to produce a highly active, durable granular material capable of withstanding the abrasion and dynamics associated with repeated backwashing, surface washing and hydraulic transport. Activation shall be carefully controlled to produce a material having a high internal surface area with optimum pore size for effective adsorption of a broad range of high and low molecular weight organic contaminants. The material shall be visually free of foreign materials.

To assure a high initial hardness and durability of the material for future reprocessing, the carbon must be manufactured by re-agglomerating powdered bituminous coal that is bound and briquetted, then crushed to final size and thermally processed via steam activation. The carbon must be irregularly shaped and granular (not pellet material that has been broken or crushed) to provide a filtration benefit in addition to adsorptive capacity.

Carbon shall be composed of hard, durable grains with an abrasion resistance of no less than 75 by the RO-tap method.

The maximum moisture content of the as-packed GAC shall be two percent.

Carbon shall be thoroughly washed, screened, and free of clay, loam, dust, dirt, organic matter, and other foreign material prior to delivery to the site.

Manufacturing process shall include re-agglomeration by a supplier with a minimum experience of five years. Product shall have five years history in water treatment. Manufacturing of virgin GAC SHALL NOT employ the direct activation process.

Extruded or pelletized carbon to include broken pellets shall not be accepted.

Maximum Total Ash: Less than or equal to 10 percent by weight.

Carbon shall be NSF/ANSI 61 certified for potable water applications. The GAC shall contain no substances in quantities capable of producing deleterious or injurious effects upon the health of those consuming the water treated using the GAC or cause the water so treated to fail to meet the requirements of county, state or federal drinking water regulations.

Possess a unique product identifier.

The molasses number shall be no less than 170.

1.5.2 Size *The contactor GAC shall meet the following requirements:*

12 x 40 mesh with not more than 5% of the material retained on a 12 mesh screen, and not more than 4% of material passing through a 40 mesh screen.

Effective size between: 0.55 and 0.75mm.

Uniformity Coefficient: For 12 x 40 mesh, Maximum of two (2.0).

Apparent Density: Between twenty seven and twenty nine pounds per cubic foot (27 – 29 lbs/cf).

Abrasion Number: Minimum of seventy five (75).

Fines: Less than one percent (1%).

Moisture Content: Less than two percent (2%) by weight.

APPENDIX 2

INFORMATION CONCERNING WATER TREATMENT FACILITIES

<i>Site</i>	<i># of Contactors</i>	<i>Individual Capacity</i>	<i>Contactor</i>	<i>EBCT</i>	<i>Contactor Capacity</i>
<i>Cholla</i>	<i>6</i>	<i>MGD</i>	<i>5.6</i>	<i>6.4 min</i>	<i>3,334.5 Cubic Feet</i>
<i>Oasis</i>	<i>5</i>	<i>MGD</i>	<i>3.1</i>	<i>9.6 min</i>	<i>2,760.0 Cubic Feet</i>

INFORMATION CONCERNING WATER TREATMENT FACILITIES

WATER TREATMENT FACILITIES IDENTIFIED

The Water Treatment Facilities include the following:

- Cholla WTP
- Oasis WTP

ESTIMATED THERMAL GAC REACTIVATION QUANTITIES

The estimated thermal GAC reactivation quantities associated with each Water Treatment Facility are set forth in the Table 2-1. The quantities in Table 2-1 are only presented as an estimate of the amount of carbon the City may need to thermally regenerate in any year. The Company acknowledges that these quantities do not represent a guarantee of the amount of the carbon the City will actually need to thermally regenerate in any year. The City shall have no liability to the Company associated with actual thermal regeneration needs not meeting the estimated needs set forth in Table 2-1.

Table 2-1

Potential GAC Volume Needs Summary

SITE	No. Contactor	Pounds GAC per Contactor	Total Pounds GAC	Contactors Thermally Regenerated /Year	Total Pounds Spent GAC /Year
Cholla WTP	6	88,000	528,000	12	1,056,000
Oasis WTP	5	80,000	400,000	5	400,000
Total	11	168,000	928,000	17	1,456,000

APPENDIX 3

EMPLOYEE BACKGROUND SCREENING

EMPLOYEE BACKGROUND SCREENING

COMPANY AND SUBCONTRACTOR WORKER BACKGROUND SCREENING

Security Generally. The Parties acknowledge that security measures required in this Appendix are necessary in order to preserve and protect the public health, safety and welfare. In addition to the specific measures set forth below, the Company shall take such other measures as it deems reasonable and necessary to further preserve and protect the public health, safety and welfare.

Security Inquiries. The Company acknowledges that all of the employees that it provides pursuant to the Contract shall, at the request of the City, be subject to background and security checks and screening ("Security Inquiries"). The City shall perform all such Security Inquiries, as it deems appropriate, for all employees considered for performing work (including supervision and oversight) under this Contract. The City may, at its sole, absolute and unfettered discretion, accept or reject any or all of the employees proposed by the Company for performing work under this Contract. Employees rejected by the City for performing GAC Services under this Contract may still be engaged by the Company for other work not involving the City. An employee rejected for work under this Contract shall not be proposed to perform work under other City agreements or engagements without the City's prior written approval.

Additional City Rights Regarding Security Inquiries. In addition to the foregoing, the City reserves the right, but not the obligation to: (1) have an employee and/or prospective employee of the Company be required to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information pursuant to Arizona Revised Statutes (A.R.S.) § 41-1750(G)(4); (2) act on newly acquired information whether or not such information should have been previously discovered; (3) unilaterally change its standards and criteria relative to the acceptability of the Company's employees and/or prospective employees; and (4) object, at any time and for any reason, to an employee of the Company performing work (including supervision and oversight) under the Contract.

Terms Applicable to All of the Company's Agreements and Subcontracts. The Company shall include the terms of this Appendix for employee background and security checks and screening in all agreements and subcontracts for work performed under this Contract, including supervision and oversight.

MATERIALITY OF SECURITY INQUIRIES PROVISIONS

Notwithstanding any provisions to the contrary, the Security Inquiries provisions in this Appendix are material to the City's entry into the Contract, and any breach thereof by the Company may, at the City's option and sole and unfettered discretion, be considered to be a breach of contract of sufficient magnitude to terminate the Contract for cause. Such termination shall subject the Company to liability for its breach of contract pursuant to Section 5 of Exhibit A and Section 3 of the Contract.

DOCUMENT/INFORMATION RELEASE

Documents and materials released to the Company, which are identified by the City as sensitive and confidential, are the property of the City of Glendale Water Resources Division. The document/material must be issued by and returned to the Water Resources Division upon completion of its intended release purposes. Secondary dissemination, disclosure, copying, or duplication in any manner is prohibited without the approval of the Water Resources Division. The document/material must be kept secure at all times. This directive is applicable to all City of Glendale documents, whether in photographic, printed, or electronic data format.

APPENDIX 4
WATER TREATMENT FACILITIES
ACCESS CONTROLS

WATER TREATMENT FACILITIES ACCESS CONTROLS

COMPANY/ CONTRACTOR EMPLOYEE ACCESS

Access Generally. All Company workers (“Contract Workers”) entering the City’s WTP facilities to execute GAC services or any other purpose, shall comply with all City Security requirements established for each facility requiring GAC Reactivation.

Restricted Areas. All Contract Workers are forbidden access to designated restricted areas. Beyond meeting rooms and other areas open to the public, access to particular operational premises shall be as directed by the City’s authorized representative.

Authorized Employee Access. Only authorized Contract Workers are allowed on the premises of the City’s buildings. The Company’s employees are not to be accompanied in the work area by acquaintances, family members, assistants or any other person unless said person has been so authorized by the Company’s employee.

COMPANY’S DEFAULT; LIQUIDATED DAMAGES; RESERVATION OF REMEDIES FOR MATERIAL BREACH

The Company’s default under this Appendix shall include, but is not limited to the following: (1) Contract Worker gains access to a City facility without the proper access granted by City Water Services Staff; (2) Contract Worker commences GAC Services under the Service Contract without being properly granted access per this Contract; (3) Contract Worker or the Company submits false information or negligently submits wrong information to the City to obtain access to the City’s facilities or to complete the Security Inquiries. The Company acknowledges and agrees that City WTP site security is necessary to preserve and protect public health, safety and welfare. Accordingly, the Company agrees to properly cure any default under this Appendix within three (3) business days from the date notice of default is sent by the City. The Parties agree that the Company’s failure to properly cure any default under this Appendix shall constitute a breach of this Appendix. In addition to any other remedy available to the City at law or in equity, the Company shall be liable for and shall pay to the City the sum of one thousand dollars (\$1,000.00) for each breach by the Company of this Appendix. The Parties further agree that the sum fixed above is reasonable and approximates the actual or anticipated loss to the City at the time and making of this Contract in the event that the Company breaches this Appendix. Further, the Parties expressly acknowledge and agree to the fixed sum set forth above because of the difficulty of proving the City’s actual damages in the event that the Company breaches this Appendix. The Parties further agree that three (3) breaches by the Company of this Appendix arising out of any default within a consecutive period of three (3) months or three (3) breaches by the Company of this Appendix arising out of the same default within a period of twelve (12) consecutive months shall constitute a material breach of this Contract by the Company, and the City expressly reserves all of its rights, remedies and interests under this Contract, at law and in equity, including, but not limited to, termination of this Contract, in accordance with Section 5 of Exhibit A and Section 3 of this Contract.

APPENDIX 5

PRICE ADJUSTMENTS

PRICE ADJUSTMENTS

LOCAL SERVICE PRICE ADJUSTMENTS

Annual Adjustment to Local Service Price. The Local Service Price shall be adjusted on July 1 of each Contract Year following the Contract Date by multiplying the Local Service Price applicable in the prior Contract Year by the adjustment factors applicable for the upcoming Contract Year, as determined in accordance with this subsection. That is:

$$\text{LSP}_n = \text{LSP}_{(n-1)} \times [(0.7 \times \text{NGAF}_n) + (0.3 \times \text{CPIAF}_n)]$$

Where,

LSP_n = Local Service Price for Contract Year “n”

NGAF_n = Natural Gas Adjustment Factor applicable for Contract Year “n”

CPIAF_n = CPI Adjustment Factor applicable for Contract Year “n”

The “Natural Gas Adjustment Factor” and the “CPI Adjustment Factor” are as set forth, respectively, as follows:

Natural Gas Adjustment Factor. The Natural Gas Adjustment Factor shall be determined as follows:

$$\text{NGAF}_n = \text{NGP}_{n-1} \div \text{NGP}_{n-2}$$

Where,

NGAF_n = The Natural Gas Adjustment Factor for Contract Year “n”

NGP_{n-1} = Natural gas price based upon the Platt’s Gas Market Report inside FERC First of the Month Index El Paso Natural Gas Permian Basins Index for Contract Year

NGP_{n-2} = The natural gas price one year prior based upon the Platt’s Gas Market Report inside FERC First of the Month Index El Paso Natural Gas Permian Basins Index

CPI Adjustment Factor. The CPI Adjustment Factor shall be determined as follows:

$$\text{CPIAF}_n = \text{CPI}_{n-1} \div \text{CPI}_{n-2}$$

Where,

CPIAF_n = The CPI Adjustment Factor for Contract Year “n”

CPI_{n-1} = The average of the 12-month CPI values occurring in the Contract Year preceding the Contract Year with respect to which a calculation is to be made thereunder, based upon the U.S. Department of Labor CPI for Urban Wage Earners and Clerical Work, specific to the West (CWUR040SA0)

CPI_{n-2} = The average of the 12-month CPI values occurring in the Contract

Year two years preceding the Contract Year with respect to which a calculation is to be made thereunder, based upon the U.S. Department of Labor CPI for Urban Wage Earners and Clerical Work, specific to the West (CWUR040SA0)

ANNUAL ADJUSTMENT TO NON-LOCAL SERVICE PRICE

The Non-Local Service Price shall be adjusted on July 1 of each Contract Year following the Contract Date in the same manner as the Local Service Price set forth above.

ADDITIONAL VIRGIN GAC PRICE ADJUSTMENTS

Annual Adjustment to Additional Virgin GAC Price. The Additional Virgin GAC Price shall be adjusted on July 1 of each Contract Year following the Contract Date by multiplying the Additional Virgin GAC Price applicable in the prior Contract Year by the adjustment factors applicable for the upcoming Contract Year, as determined in accordance with this subsection. That is:

$$AVGACP_n = AVGACP_{(n-1)} \times [(0.5 \times PIAF_n) + (0.5 \times OCIAF_n)]$$

Where

$$AVGACP_n = \text{Local Service Price for Contract Year "n"}$$

$$PIAF_n = \text{Petroleum Index Adjustment Factor applicable for Contract Year "n"}$$

$$OCIAF_n = \text{Organic Chemical Index Adjustment Factor applicable for Contract Year "n"}$$

The "Petroleum Index Adjustment Factor" and the "Organic Chemical Index Adjustment Factor" are as set forth, respectively, as follows:

Petroleum Index Adjustment Factor. The Petroleum Index Adjustment Factor shall be determined as follows:

$$PLAF_n = PIP_{n-1} \div PIP_{n-2}$$

Where,

$$PLAF_n = \text{The Petroleum Index Adjustment Factor for Contract Year "n"}$$

$$PIP_{n-1} = \text{The average of the 12-month PIAF values occurring in the Contract Year preceding the Contract Year with respect to which a calculation is to be made thereunder, based upon the Producer Price Index for Other Petroleum & Coal Products Manufacturing (CCWUR0400SA0)}$$

$$PIP_{n-2} = \text{The average of the 12-month PIAF values occurring in the Contract Year two years preceding the Contract Year with respect to which a calculation is to be made thereunder, based upon the Producer Price Index for Other Petroleum & Coal Products Manufacturing (CCWUR0400SA0)}$$

Organic Chemical Index Adjustment Factor. The Organic Chemical Index Adjustment Factor shall be determined as follows:

$$\text{OCIAF}_n = \text{OCI}_{n-1} \div \text{OCI}_{n-2}$$

Where,

OCIAF_n = The OCI Adjustment Factor for Contract Year “n”

OCI_{n-1} = The average of the 12-month OCIAF values occurring in the Contract Year preceding the Contract Year with respect to which a calculation is to be made thereunder, based upon the Producer Price Index for Basic Organic Chemicals (WPU0614)

OCI_{n-2} = The average of the 12-month OCIAF values occurring in the Contract Year two years preceding the Contract Year with respect to which a calculation is to be made thereunder, based upon the Producer Price Index for Basic Organic Chemicals (WPU0614)

INDICES

If the final value of any component of the formula for any Adjustment Factor in this section of this Appendix is not available for the applicable period when required hereunder, the amount of the adjustment to be made shall be estimated by using the preliminary value of the index for the applicable period or the final value of the index for the latest available period. All calculations and payments based on such estimate shall be adjusted as soon as reasonably practicable after the final value of the index for the applicable period is published. The Company shall set forth the calculation of the estimated values of the index in its invoices until the final values are published. The Company shall set forth the calculation of the final values of the index and the resulting calculation of the adjustment, if any, to payments made based on the estimated values during the Contract Year in an invoice as soon as practicable after the final value is published. If the index is no longer published at the time that an adjustment is to be calculated, or if the base or method of calculation used for the index is substantially altered, the calculation shall be made using a comparable similar index or method mutually agreed upon by the Company and the City.

NON-LOCAL FUEL SURCHARGE

The Non-Local Fuel Surcharge shall consist of a \$200.00 charge per order from all Water Treatment Facilities plus a mileage charge based on the difference between the base of \$4.00/gallon and the fuel index at time of actual delivery in accordance with Table 6-1 in this Appendix. The mileage and surcharge amount will be established at time of delivery by the Company.

Each Monday at 5:00pm Eastern Standard Time, the Company will determine the Average Diesel Price. The Non-Local Fuel Surcharge will become effective on Tuesday of that week (except if Monday is a National Holiday, then it will be Wednesday) and will be effective for the following seven (7) day period.

In computing charges, fractions of less than one-half cent will be dropped and fractions of one-half cent or more will be increased to the next whole cent.

If the Average Diesel Price is greater than \$5.50 per gallon, the Non-Local Fuel Surcharge will increase one (1) cent for every five (5) cent increase of the Average Diesel Price exceeding \$5.50. If the Average Diesel Price is less than \$4.00 per gallon, the Company will not charge a Non-Local Fuel Surcharge.

TABLE 5-1

When the Fuel Index Is:		Fuel Surcharge	When the Fuel Index Is:		Fuel Surcharge	When the Fuel Index Is:		Fuel Surcharge
At Least	But Less Than		At Least	But Less Than		At Least	But Less Than	
\$4.00	\$4.05	1 Cent per Mile	\$4.50	\$4.55	11 Cents per Mile	\$5.00	\$5.05	21 Cents per Mile
\$4.05	\$4.10	2 Cents per Mile	\$4.55	\$4.60	12 Cents per Mile	\$5.05	\$5.10	22 Cents per Mile
\$4.10	\$4.15	3 Cents per Mile	\$4.60	\$4.65	13 Cents per Mile	\$5.10	\$5.15	23 Cents per Mile
\$4.15	\$4.20	4 Cents per Mile	\$4.65	\$4.70	14 Cents per Mile	\$5.15	\$5.20	24 Cents per Mile
\$4.20	\$4.25	5 Cents per Mile	\$4.70	\$4.75	15 Cents per Mile	\$5.20	\$5.25	25 Cents per Mile
\$4.25	\$4.30	6 Cents per Mile	\$4.75	\$4.80	16 Cents per Mile	\$5.25	\$5.30	26 Cents per Mile
\$4.30	\$4.35	7 Cents per Mile	\$4.80	\$4.85	17 Cents per Mile	\$5.30	\$5.35	27 Cents per Mile
\$4.35	\$4.40	8 Cents per Mile	\$4.85	\$4.90	18 Cents per Mile	\$5.35	\$5.40	28 Cents per Mile
\$4.40	\$4.45	9 Cents per Mile	\$4.90	\$4.95	19 Cents per Mile	\$5.40	\$5.45	29 Cents per Mile
\$4.45	\$4.50	10 Cents per Mile	\$4.95	\$5.00	20 Cents per Mile	\$5.45	\$5.50	30 Cents per Mile



CITY COUNCIL REPORT

Meeting Date: **9/24/2013**
Meeting Type: **Voting**
Title: **EXPENDITURE AUTHORIZATION FOR PURCHASE COSTS FOR RAW WATER FROM SALT RIVER PROJECT AND CENTRAL ARIZONA PROJECT**
Staff Contact: **Craig Johnson, P.E., Executive Director, Water Services**

Purpose and Recommended Action

This is a request for City Council to approve expenditure authorization by the City Manager for the purchase costs for raw water from the Salt River Project (SRP) and Central Arizona Project (CAP) in an amount not to exceed \$3,570,000 for fiscal year (FY) 2013-14.

Background

The Water Services Department functions to provide safe and reliable water and wastewater services for City of Glendale residents and businesses. The water production process begins by procuring raw, untreated water to produce safe, clean drinking water for public use.

The City of Glendale's water portfolio includes surface water sources from the Salt River Project (SRP) originating in the Salt and Verde Rivers, and Central Arizona Project (CAP) water received from the Colorado River via the CAP Canal. Raw, or natural untreated, water is purchased under Council-approved contracts with SRP and CAP and is treated to produce safe high-quality drinking water.

Payments for raw water purchases have previously been authorized through an administrative process at the beginning of each fiscal year. This process was initiated after Council approved the annual budget book, which details departmental budget expenditures. These items are detailed, by line item, in the department's annual budget that was presented and approved by Council on May 28, 2013.

Analysis

Staff recommends approval of this expenditure authorization to allow Water Services to continue the daily production of drinking water. Seeking Council approval of the expenditures exceeding \$50,000 aligns with city ordinance and policies on purchasing practices and is necessary to ensure cost transparency.



CITY COUNCIL REPORT

Previous Related Council Action

Council approval has been granted for SRP and CAP contracts at the December 14, 1994 and February 13, 2007 evening meetings respectively.

Budget and Financial Impacts

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

Cost	Fund-Department-Account
\$3,570,000	2400-17230-518200, Raw Water Usage

Capital Expense? Yes No

Budgeted? Yes No

Requesting Budget or Appropriation Transfer? Yes No

If yes, where will the transfer be taken from?

Attachments

None



CITY COUNCIL REPORT

Meeting Date: **9/24/2013**
Meeting Type: **Voting**
Title: **EXPENDITURE AUTHORIZATION FOR ARIZONA MUNICIPAL WATER USERS ASSOCIATION FOR ORGANIZATIONAL MEMBERSHIP**
Staff Contact: **Craig Johnson, P.E., Executive Director, Water Services**

Purpose and Recommended Action

This is a request for City Council to approve expenditure authorization by the City Manager to Arizona Municipal Water Users Association (AMWUA) in an amount not to exceed \$100,000 for fiscal year (FY) 2013-14 organizational membership.

Background

The mission of the Water Services Department is to provide safe and reliable water and wastewater services for City of Glendale residents and businesses. The water and wastewater treatment industry is heavily monitored by county, state, and federal agencies which have stringent regulations in place to ensure that safe and efficient water services are provided to the public. Rules and regulations are continually changing and being updated as environmental standards are revised.

Organizational membership in AMWUA allows the city to remain current and maintain a proactive approach to upcoming issues for the water industry, and to develop and pursue policies to safeguard water supplies for the future. AMWUA is a non-profit corporation governed by a Board of Directors composed of mayors and council members representing its 10 member cities and towns. Vice-Mayor Knaack currently serves as Secretary-Treasurer for AMWUA. Glendale will chair this water conservation and advocacy group in FY 2015-16.

Since 1969, AMWUA has advanced the interests of its 10 municipal members on policy and regulatory issues affecting water. AMWUA advocates for its members at the Arizona Legislature, the Governor's Office, the U.S. Bureau of Reclamation, the Arizona Department of Water Resources, other state agencies, the Central Arizona Project and the Greater Phoenix Chamber of Commerce. AMWUA also works collaboratively with other water stakeholders to devise practical solutions to water and wastewater problems to ensure sustainable growth for Arizona. Membership in AMWUA allows Glendale to participate in and benefit from these joint efforts to enhance and conserve the Valley's water supply.

Memberships cover the fiscal year, and are invoiced in two payments due July 31 and December 31. Payments for this membership have been authorized through an administrative process at the beginning of each fiscal year. This process was initiated after Council approved the annual budget



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book, which details departmental budget expenditures for memberships. This item is detailed, by line item, in the department's annual budget that was presented and approved by Council on May 28, 2013.

Analysis

Seeking Council approval of the expenditures exceeding \$50,000 aligns with city ordinance and policies on purchasing practices and is necessary to ensure cost transparency.

Staff recommends approval of this expenditure authorization to allow Water Services to continue the monitoring of federal, state, and county compliance regulations.

Budget and Financial Impacts

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

Cost	Fund-Department-Account
\$100,000	2360-17110-529000, Memberships (Arizona Municipal Water Users Association)

Capital Expense? Yes No

Budgeted? Yes No

Requesting Budget or Appropriation Transfer? Yes No

If yes, where will the transfer be taken from?

Attachments

None



CITY COUNCIL REPORT

Meeting Date: **9/24/2013**
Meeting Type: **Voting**
Title: **EXPENDITURE AUTHORIZATION FOR COSTS ASSOCIATED WITH PARTIAL OWNERSHIP IN THE SUB-REGIONAL WASTEWATER TREATMENT PLANT**
Staff Contact: **Craig Johnson, P.E., Executive Director, Water Services**

Purpose and Recommended Action

This is a request for City Council to approve expenditure authorization for the City Manager for costs associated with partial ownership in the sub-regional wastewater treatment plant (SROG) in an amount not to exceed \$3,700,000 for fiscal year (FY) 2013-14.

Background

One of the Water Services Department functions is to safely treat and transport wastewater.

On September 25, 1979, Council authorized Glendale to enter into a partnership of cities to form the Sub-Regional Operating Group (SROG) to safely process and transport wastewater. The five cities (Glendale, Tempe, Phoenix, Mesa, and Scottsdale) own and operate the 91st Avenue Wastewater Treatment Plant and associated interceptor systems. Glendale owns a 7% share in SROG which dictates the percentage of costs which must be contributed annually for maintenance and associated charges. These items are detailed, by line item, in the department's annual budget that was presented and approved by Council on May 28, 2013.

The most recent change to the 1979 Agreement (#22699) was Addendum No. 6, dated in March 1993, which allowed for recommended changes to financial operations and accounting procedures regarding the jointly used sewage treatment and transportation facilities.

Analysis

Staff recommends approval of this expenditure authorization to allow Water Services to continue the continual safe treatment of wastewater. Seeking Council approval of expenditures exceeding \$50,000 aligns with city ordinance and policies on purchasing practices and is necessary to ensure cost transparency.

Previous Related Council Action

On September 25, 1979, Council approval was given for Glendale to enter into a partnership of five cities to form the Sub-Regional Operating Group (SROG) to own and operate the 91st Avenue Wastewater Treatment Plant and associated interceptor systems.



CITY COUNCIL REPORT

Budget and Financial Impacts

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

Cost	Fund-Department-Account
\$3,700,000	2420-17620-518200, SROG (91st Ave) Plant 2420-17625-518200, 99th Avenue Interceptor 2420-63010-551000, 91st Ave. Construction

Capital Expense? Yes No

Budgeted? Yes No

Requesting Budget or Appropriation Transfer? Yes No

If yes, where will the transfer be taken from?

Attachments

None



CITY COUNCIL REPORT

Meeting Date: **9/24/2013**
Meeting Type: **Voting**
Title: **EXPENDITURE AUTHORIZATION FOR LEAGUE OF ARIZONA CITIES AND TOWNS 2013-14 MEMBERSHIP DUES**
Staff Contact: **Brent Stoddard, Intergovernmental Programs Director**

Purpose and Recommended Action

This is a request for City Council to approve expenditure authorization by the City Manager to the Arizona League of Cities and Towns (LACT) for the Fiscal Year (FY) 2013-14 membership dues and assessments for the City of Glendale in an amount not to exceed \$88,250.

Background

The LACT is a voluntary membership organization of all 91 incorporated municipalities in Arizona. The LACT is the only organization that connects each and every municipality, regardless of size or geographic location. The LACT represents the collective interests of cities and towns at the state legislature, provides timely information on important municipal issues, creates skill-sharpening workshops, and develops networking opportunities.

At the LACT Executive Committee meeting on February 15, 2013, a budget was approved that called for no increases in dues assessments for FY 2013-14. The current dues formula calls for a \$3,750 base fee plus a varying per capita rate ranging from \$.45 to \$.48 depending on population. Cities over a 200,000 population (Chandler, Gilbert, Glendale, Mesa, Phoenix, Scottsdale and Tucson) pay on a capped-dues formula. Due to the economic downturn in FY 2010-11, the LACT approved a 5% reduction to membership rates. Since then, dues have gradually increased as shown in the tables below:

Fiscal Year	Amount
2013-2014	\$88,250
2012-2013	\$88,250
2011-2012	\$88,000

Fiscal Year	Amount
2010-2011	\$80,750
2009-2010	\$85,000
2008-2009	\$85,000

Analysis

The LACT provides its members services in the following areas:

Legislative Issues - During the legislative session and throughout the year, in coordination with the Intergovernmental Programs staff of each city, the LACT meets with legislators and other special interest groups to represent the interests of cities and towns. The LACT carefully monitors



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and tracks each bill of municipal concern that is introduced during the session. The LACT attend and testify at committee hearings on bills of municipal interest.

Information and Inquiry Service - The LACT is a resource and information service for every city and town. To help keep municipal government well informed in a constantly changing government landscape, the LACT provides reports on matters affecting cities and towns, as well as reminders on such items as budget and election deadlines and new federal regulations.

League Publications - The LACT provides a variety of publications and resources pertaining to municipal government in Arizona. These include:

- Arizona City and Town Connection electronic newsletter
- Local Government Directory
- Municipal Policy Statement
- So You Got Elected... So Now What?
- You as a Public Official
- Salary & Benefit Survey
- Municipal Budget & Finance Manual
- Municipal Election Manual
- Guide to Preparing and Adopting Local Laws/Municipal Publication Requirements
- Exploring Charter Government for Your City
- Charter Government Provisions in Arizona
- A Guide for Annexation
- Model City Tax Code

Events and Training - The LACT sponsors at least one different training session each month of the year for city staff and elected officials. These sessions cover a variety of topics and are designed to help participants to sharpen skill sets, share ideas and gather current information pertinent to cities and towns.

The Annual Conference - The Annual Conference is the LACT's showcase event and is held in a different city or town each year. This four day meeting brings together more than 900 mayors, council members, appointed officials and guests. The Annual Conference allows members and other municipal officials to share experiences and discuss current local, regional, and national trends affecting municipal government in Arizona.

Affiliate Groups - The LACT works hand in hand with affiliate organizations including:

- Arizona City/County Management Association (ACMA)
- Government Finance Officers' Association of Arizona (GFOAZ)
- Arizona Municipal Clerks' Association



CITY COUNCIL REPORT

Previous Related Council Action

On June 2013, City Council approved funds for the LACT membership dues as part of the FY 2013-14 City of Glendale budget.

Community Benefit/Public Involvement

The LACT provides valuable services that benefit cities and towns in the state, focusing primarily on representation and advocacy at the state legislature, and also providing educational classes, publications, legal work, research, inquiry services, pooled programs and meetings and conferences. The LACT abides by the state open meeting law requirements and all information is available to the public.

Budget and Financial Impacts

The LACT dues are paid out of the Non-Departmental Fund of the City.

Cost	Fund-Department-Account
\$88,250	1000-11801-529000, Non-Departmental

Capital Expense? Yes No

Budgeted? Yes No

Requesting Budget or Appropriation Transfer? Yes No

If yes, where will the transfer be taken from?

Attachments

FY 2013-14 League Dues Structure

PROPOSED FY 13-14 Dues

CITY/TOWN	JULY 1, 2010 CENSUS FIGURES	\$3,750 BASE	PER CAPITA	TOTAL DUES FY 13-14	Amt Paid in FY12-13	Difference
APACHE JUNCTION	35,840	\$3,750	\$16,845	\$20,595	\$20,595	\$0
AVONDALE	76,238	\$3,750	\$35,069	\$38,819	\$38,819	\$0
BENSON	5,105	\$3,750	\$2,450	\$6,200	\$6,200	\$0
BISBEE	5,575	\$3,750	\$2,676	\$6,426	\$6,426	\$0
BUCKEYE	50,876	\$3,750	\$23,403	\$27,153	\$27,153	\$0
BULLHEAD CITY	39,540	\$3,750	\$18,584	\$22,334	\$22,334	\$0
CAMP VERDE	10,873	\$3,750	\$5,219	\$8,969	\$8,969	\$0
CAREFREE	3,363	\$3,750	\$1,614	\$5,364	\$5,364	\$0
CASA GRANDE	48,571	\$3,750	\$22,828	\$26,578	\$26,578	\$0
CAVE CREEK	5,015	\$3,750	\$2,407	\$6,157	\$6,157	\$0
CHANDLER	236,123			\$88,250	\$88,250	\$0
CHINO VALLEY	10,817	\$3,750	\$5,192	\$8,942	\$8,942	\$0
CLARKDALE	4,097	\$3,750	\$1,967	\$5,717	\$5,717	\$0
CLIFTON	3,311	\$3,750	\$1,589	\$5,339	\$5,339	\$0
COLORADO CITY	4,821	\$3,750	\$2,314	\$6,064	\$6,064	\$0
COOLIDGE	11,825	\$3,750	\$5,676	\$9,426	\$9,426	\$0
COTTONWOOD	11,265	\$3,750	\$5,407	\$9,157	\$9,157	\$0
DEWEY-HUMBOLDT	3,894	\$3,750	\$1,869	\$5,619	\$5,619	\$0
DOUGLAS	17,378	\$3,750	\$8,341	\$12,091	\$12,091	\$0
DUNCAN	696	\$3,750	\$334	\$4,084	\$4,084	\$0
EAGAR	4,885	\$3,750	\$2,345	\$6,095	\$6,095	\$0
EL MIRAGE	31,797	\$3,750	\$14,945	\$18,695	\$18,695	\$0
ELOY	16,631	\$3,750	\$7,983	\$11,733	\$11,733	\$0
FLAGSTAFF	65,870	\$3,750	\$30,300	\$34,050	\$34,050	\$0
FLORENCE	25,536	\$3,750	\$12,002	\$15,752	\$15,752	\$0
FOUNTAIN HILLS	22,489	\$3,750	\$10,795	\$14,545	\$14,545	\$0
FREDONIA	1,314	\$3,750	\$631	\$4,381	\$4,381	\$0
GILA BEND	1,922	\$3,750	\$923	\$4,673	\$4,673	\$0
GILBERT	208,453			\$88,250	\$88,250	\$0
GLENDALE	226,721			\$88,250	\$88,250	\$0
GLOBE	7,532	\$3,750	\$3,615	\$7,365	\$7,365	\$0
GOODYEAR	65,275	\$3,750	\$30,027	\$33,777	\$33,777	\$0
GUADALUPE	5,523	\$3,750	\$2,651	\$6,401	\$6,401	\$0
HAYDEN	662	\$3,750	\$318	\$4,068	\$4,068	\$0
HOLBROOK	5,053	\$3,750	\$2,425	\$6,175	\$6,175	\$0
HUACHUCA CITY	1,853	\$3,750	\$889	\$4,639	\$4,639	\$0
JEROME	444	\$3,750	\$213	\$3,963	\$3,963	\$0
KEARNY	1,950	\$3,750	\$936	\$4,686	\$4,686	\$0
KINGMAN	28,068	\$3,750	\$13,192	\$16,942	\$16,942	\$0
LAKE HAVASU CITY	52,527	\$3,750	\$24,162	\$27,912	\$27,912	\$0
LITCHFIELD PARK	5,476	\$3,750	\$2,628	\$6,378	\$6,378	\$0
MAMMOTH	1,426	\$3,750	\$684	\$4,434	\$4,434	\$0
MARANA	34,961	\$3,750	\$16,432	\$20,182	\$20,182	\$0
MARICOPA	43,482	\$3,750	\$20,437	\$24,187	\$24,187	\$0
MESA	439,041			\$102,250	\$102,250	\$0
MIAMI	1,837	\$3,750	\$882	\$4,632	\$4,632	\$0
NOGALES	20,837	\$3,750	\$10,002	\$13,752	\$13,752	\$0
ORO VALLEY	41,011	\$3,750	\$19,275	\$23,025	\$23,025	\$0
PAGE	7,247	\$3,750	\$3,479	\$7,229	\$7,229	\$0
PARADISE VALLEY	12,820	\$3,750	\$6,154	\$9,904	\$9,904	\$0
PARKER	3,083	\$3,750	\$1,480	\$5,230	\$5,230	\$0
PATAGONIA	913	\$3,750	\$438	\$4,188	\$4,188	\$0
PAYSON	15,301	\$3,750	\$7,344	\$11,094	\$11,094	\$0
PEORIA	154,065	\$3,750	\$69,329	\$73,079	\$73,079	\$0
PHOENIX	1,445,632			\$142,250	\$142,250	\$0
PIMA	2,387	\$3,750	\$1,146	\$4,896	\$4,896	\$0

PROPOSED FY 13-14 Dues

CITY/TOWN	JULY 1, 2010 CENSUS FIGURES	\$3,750 BASE	PER CAPITA	TOTAL DUES FY 13-14	Amt Paid in FY12-13	Difference
PINETOP-LAKESIDE	4,282	\$3,750	\$2,055	\$5,805	\$5,805	\$0
PRESCOTT	39,843	\$3,750	\$18,726	\$22,476	\$22,476	\$0
PRESCOTT VALLEY	38,822	\$3,750	\$18,246	\$21,996	\$21,996	\$0
QUARTZSITE	3,677	\$3,750	\$1,765	\$5,515	\$5,515	\$0
QUEEN CREEK	26,361	\$3,750	\$12,390	\$16,140	\$16,140	\$0
SAFFORD	9,566	\$3,750	\$4,592	\$8,342	\$8,342	\$0
SAHUARITA	25,259	\$3,750	\$11,872	\$15,622	\$15,622	\$0
SAN LUIS	25,505	\$3,750	\$11,987	\$15,737	\$15,737	\$0
SCOTTSDALE	217,385			\$88,250	\$88,250	\$0
SEDONA	10,031	\$3,750	\$4,815	\$8,565	\$8,565	\$0
SHOW LOW	10,660	\$3,750	\$5,117	\$8,867	\$8,867	\$0
SIERRA VISTA	43,888	\$3,750	\$20,627	\$24,377	\$24,377	\$0
SNOWFLAKE	5,590	\$3,750	\$2,683	\$6,433	\$6,433	\$0
SOMERTON	14,287	\$3,750	\$6,858	\$10,608	\$10,608	\$0
SOUTH TUCSON	5,652	\$3,750	\$2,713	\$6,463	\$6,463	\$0
SPRINGERVILLE	1,961	\$3,750	\$941	\$4,691	\$4,691	\$0
ST. JOHNS	3,480	\$3,750	\$1,670	\$5,420	\$5,420	\$0
STAR VALLEY	2,310	\$3,750	\$1,109	\$4,859	\$4,859	\$0
SUPERIOR	2,837	\$3,750	\$1,362	\$5,112	\$5,112	\$0
SURPRISE	117,517	\$3,750	\$52,883	\$56,633	\$56,633	\$0
TAYLOR	4,112	\$3,750	\$1,974	\$5,724	\$5,724	\$0
TEMPE	161,719	\$3,750	\$72,774	\$76,524	\$76,524	\$0
THATCHER	4,865	\$3,750	\$2,335	\$6,085	\$6,085	\$0
TOLLESON	6,545	\$3,750	\$3,142	\$6,892	\$6,892	\$0
TOMBSTONE	1,380	\$3,750	\$662	\$4,412	\$4,412	\$0
TUCSON	520,116			\$102,250	\$102,250	\$0
TUSAYAN*	558	\$3,750	\$268	\$4,018	\$4,018	\$0
WELLTON	2,882	\$3,750	\$1,383	\$5,133	\$5,133	\$0
WICKENBURG	6,363	\$3,750	\$3,054	\$6,804	\$6,804	\$0
WILLCOX	3,757	\$3,750	\$1,803	\$5,553	\$5,553	\$0
WILLIAMS	3,023	\$3,750	\$1,451	\$5,201	\$5,201	\$0
WINKELMAN	353	\$3,750	\$169	\$3,919	\$3,919	\$0
WINSLOW	9,655	\$3,750	\$4,634	\$8,384	\$8,384	\$0
YOUNGTOWN	6,156	\$3,750	\$2,955	\$6,705	\$6,705	\$0
YUMA	93,064	\$3,750	\$42,809	\$46,559	\$46,559	\$0
	5,022,708			\$1,818,423	\$1,818,423	

Current dues formula was adopted by the Executive Committee at their October 27, 2006 meeting.

*For FY 09-10, the Executive Committee approved to keep dues at the same rate as 08-09.

*For FY 10-11, the Executive Committee approved a 5% reduction to the 09-10 rate.

*For FY 11-12, the Executive Committee approved a base increase to \$3500; a per capita increase of .025; with dues figures calculated using the 2009 DES estimate figures; also increased the caps by ~3%.

*For FY 12-13, the Executive Committee approved a base increase to \$3750 with dues figures calculated using the 2010 census figures; also increased the caps by \$250.

PER CAPITA RATES	FY09, FY10, FY11	FY12	FY13
0 - 25,000	.455	.48	.48
25,001 - 50,000	.445	.47	.47
50,001 - 100,000	.435	.46	.46
100,001 - 200,000	.425	.45	.45

DUES CAP FORMULA	FY09, FY10, FY11	FY12	FY13
Populations over 1.5 million	\$138,000	\$142,000	\$142,250
Populations over 1 million	\$115,000	\$119,000	\$119,250
Populations 400,000 - 999,999	\$99,000	\$102,000	\$102,250
Populations 200,000 - 399,999	\$85,000	\$88,000	\$88,250



CITY COUNCIL REPORT

Meeting Date: **9/24/2013**
 Meeting Type: **Voting**
 Title: **EXPENDITURE AUTHORIZATION FOR PAYMENT TO HARALSON, MILLER, PITT, FELDMAN & MCANALLY, P.L.C. FOR EXTERNAL AUDIT SERVICES**
 Staff Contact: **Brent Stoddard, Intergovernmental Programs Director**

Purpose and Recommended Action

This is a request for City Council to approve expenditure authorization by the City Manager to the firm of Haralson, Miller, Pitt, Feldman & McAnally, P.L.C. (HMPFM) for services rendered on the Council's special external audit project in the amount of \$75,884.89.

Background

The Council discussed and determined the need to retain the services of a firm to conduct an external audit investigation as a special project of the Council. The Council approved a contract with HMPFM on March 26, 2013 to examine various funds and services within the city, to report back to Council on a regular basis to receive additional guidance, and to provide a final report and recommendations once the audit was completed.

An invoice was received in Fiscal Year (FY) 2013-14 that represents work completed by HMPFM their subcontractors from July 15, 2013 through August 22, 2013, for the amount of \$75,884.89.

Analysis

In total, the cost of the audit is \$513,406.87. As this continues to be an unbudgeted project, the amount requested in this expenditure authorization, will be presented to Council as part of the FY 2013-14 budget amendments. The billing chart below details the payments associated with the project.

Special Audit Project Cost	
Billing Date	Amount
5/8/2013	\$ 64,837.02
6/20/2013	\$ 108,499.33
6/30/2013	\$ 101,059.78
6/30/2013	\$ 163,125.85
9/4/2013	\$ 75,884.89
Total	\$ 513,406.87



CITY COUNCIL REPORT

Previous Related Council Action

In August 2013 the Council accepted the final audit report and recommendations of the external auditors, released the report to the public and provided a copy to the State Attorney General's Office.

From February 2013 through August 2013, the Council met with José de Jesús Rivera of HMPFM for legal advice, discussion and consultation regarding the external audit.

At the February 5, 2013 workshop, the Council heard a presentation on the draft scope of work for the special audit project.

On June 11, 2013 the Council approved a FY 2012-13 budget amendment of \$500,000 for the special audit project.

The Council provided direction in December 2012 to begin the process to start an audit of city funds.

Community Benefit/Public Involvement

The external audit provided an opportunity for the Council, city employees and the public to learn from an independent firm what had occurred with the management of certain funds within the city and to make recommendations so that appropriate processes and controls can be implemented.

Budget and Financial Impacts

The ongoing cost of this audit was not included in the adopted budget for FY 2013-14. A budget amendment will be brought to Council during the 4th quarter of this fiscal year to identify appropriation authority within the General Fund operating budget to cover this unbudgeted expense. As an unbudgeted Council project, the invoice will be paid out of the Non-Departmental Fund which is administered by the Finance Department.

Cost	Fund-Department-Account
\$75,884.89	1000-11801-518200, Non-Departmental

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

None



CITY COUNCIL REPORT

Meeting Date: **9/24/2013**
 Meeting Type: **Voting**
 Title: **EXPENDITURE AUTHORIZATION FOR PAYMENT TO DICKINSON WRIGHT MARISCAL WEEKS FOR PROFESSIONAL SERVICES**
 Staff Contact: **Michael D. Bailey, City Attorney**

Purpose and Recommended Action

This is a request for City Council to approve expenditure authorization by the City Manager to Dickinson Wright Mariscal Weeks for professional services rendered through July 31, 2013 in an amount not to exceed \$60,565.45.

Background

The City of Glendale engaged the law firm of Dickinson Wright Mariscal Weeks for professional legal services relating to the arena management agreement, which was approved by Council on July 2, 2013. The agreement has the effect of keeping the National Hockey League's (NHL) Coyotes playing at the city-owned Jobing.com Arena in Glendale. The agreement allows for IceArizona Acquisition, a company owned by Renaissance Sports & Entertainment Group (RSE), to use and manage the arena as the new owner of the Coyotes team.

Dickinson Wright Mariscal Weeks provided legal advice and services relating to the Coyote documents with the goal of protecting the city's best interest relating to this matter. The services rendered through July 31, 2013 total \$60,565.45.

Budget and Financial Impacts

Funding for professional legal services is available in the City Attorney's Outside Legal Fees fund.

Cost	Fund-Department-Account
\$60,565.45	1000-10615-518200, Outside Legal Fees

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

None



CITY COUNCIL REPORT

Meeting Date: **9/24/2013**
Meeting Type: **Voting**
Title: **EXPENDITURE AUTHORIZATION FOR ELECTRICITY AND NATURAL GAS
UTILITY PAYMENTS**
Staff Contact: **Stuart Kent, Executive Director, Public Works**

Purpose and Recommended Action

This is a request for City Council to approve expenditure authorization by the City Manager for electricity and natural gas payments over \$50,000 to various utility companies in fiscal year 2013-14.

Background

The City of Glendale expends approximately \$7.5 million a year to Arizona Public Service Company (APS) and Salt River Project (SRP) for electricity services, and to Southwest Gas Corporation for natural gas services. The utility service companies provide electricity and natural gas to all city facilities, traffic signals and street lighting, and to landscaped right-of-ways. The primary departments that have annual utility expenditures are Public Works, Water Services and Transportation.

Payments to these three utility companies previously have been authorized through an administrative process at the beginning of each fiscal year. This administrative process was initiated after Council approved the annual budget book, which includes all departmental budget expenditures for electric and natural gas utilities.

Analysis

In accordance with city ordinance and policies on purchasing, Council approval is required to authorize the payment of expenses greater than \$50,000 to any single vendor. The city-wide utility expense amounts to approximately \$625,000 monthly. Therefore, staff is seeking approval from Council to authorize the City Manager to make utility payments exceeding \$50,000 annually each to APS, SRP, and Southwest Gas Corporation.

Community Benefit/Public Involvement

The electricity and natural gas purchased by the city from these local utility companies maintains the vitality of Glendale's facilities and infrastructure. Council approval of the utility expenditures exceeding \$50,000 is necessary to ensure cost transparency.



CITY COUNCIL REPORT

Budget and Financial Impacts

These utility charges are ongoing costs associated with the operation of the City of Glendale.

Cost	Fund-Department-Account
Approx. \$7,500,000	1000-12438-513400, Fire, Emergency Management
	1000-12438-513600, Fire, Emergency Management
	1000-12438-513900, Fire, Emergency Management
	1000-13420-513600, Cemetery
	1000-13450-513600, Facilities Management
	1000-13450-513800, Facilities Management
	1000-13430-513600, Manistee Ranch Maintenance
	1000-13461-513600, Downtown Parking Garage
	1080-17910-513600, Community Housing
	1280-13470-513600, Youth Sports Complex – Facilities Management
	1320-31028-513400, Community Partnerships
	1340-16710-513600, Right of Way Maintenance
	1340-16810-513600, Traffic Signals
	1660-16590-513600, Transportation CIP O&M
	1760-16410-513600, Airport Operations
	2360-17150-513600, Property Management
	2360-17150-513800, Property Management
	2360-17170-513600, West Area Plant
	2400-17240-513600, Central System Control
	2400-17250-513600, Pyramid Peak Plant
	2400-17260-513600, Cholla Treatment Plant
	2400-17310-513600, Oasis Surface WTP
	2400-17310-513800, Oasis Surface WTP
	2420-17630-513400, Wastewater Collections
	2440-17710-513600, Landfill
	2440-17750-513600, MRF Operations
	2500-17910-513600, Community Housing
	2530-12590-513800, PS Training Op's - Fire
	2530-13480-513600, PS Training Op's - Fire
	2530-13480-513800, PS Training Op's - Fire
	2538-12711-513600, Glendale Health Center - Fire
	2538-12711-513800, Glendale Health Center - Fire



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Capital Expense? Yes No

Budgeted? Yes No

Requesting Budget or Appropriation Transfer? Yes No

If yes, where will the transfer be taken from?

Attachments

None



CITY COUNCIL REPORT

Meeting Date: **9/24/2013**
Meeting Type: **Voting**
Title: **CONTRACT AMOUNT INCREASE FOR SECURITY AND FIRE ALARM SERVICE WITH ACCESS SECURITY SYSTEMS INTERNATIONAL OF ARIZONA**
Staff Contact: **Stuart Kent, Executive Director, Public Works**

Purpose and Recommended Action

This is a request for City Council to increase the contract amount for Security and Fire Alarm Service with Access Security Systems International, Inc. (ASSI) in an amount not to exceed \$125,000 annually to provide security and fire alarm monitoring, testing, maintenance, repair and installation of new systems at various city facilities.

Background

On March 25, 2008, Council awarded a Request for Proposal (RFP) 07-47 for Security and Fire Alarm Service with ASSI for a two year period. The proposal contained an option permitting the city to extend this award for four additional years in one-year increments. The award in fiscal year (FY) 2007-08 was for an amount not to exceed \$115,588.37 and was for the installation of equipment at the city's Community Action Program (CAP) Office, as well as to provide security and fire alarm monitoring, testing, maintenance, and repair services at various city facilities. The authorized award for subsequent years was set at \$70,000 annually.

The current award is set to expire on March 25, 2014. Staff will work with Materials Management and participating city departments to draft a new RFP for Security and Fire Alarm Service and bring the proposal forward for Council consideration and approval prior to March 25, 2014 when the current contract is set to expire.

Analysis

The current contract with ASSI is for \$70,000 annually, with an appropriation value of \$30,000 dedicated for annual fire and security alarm monitoring services by Facilities Management. The remaining \$40,000 is to be used for incidental repairs and facility enhancements related to security for various departments. Public Works currently has quotes totaling nearly \$47,000 for the following repair/enhancement projects:

- Water Services is requesting appropriation to replace the hardware on two exterior security doors at the Pyramid Peak Water Treatment Plant which have failed due to prolonged exposure to the elements, and add automated access control card readers and



CITY COUNCIL REPORT

closed circuit television (CCTV) equipment at the Oasis Water Campus and Arrowhead Ranch Water Reclamation Facility.

- Landfill is requesting appropriation to replace an outdated camera, six failing digital video recorders (DVR) with hard drives, installation of a new camera at the outbound scale with a hard drive, and to clean and test existing cameras and replace connectors as needed.

Staff recommends an increase to the existing contract amount with ASSI for Security and Fire Alarm Service in an amount not to exceed \$125,000 annually, which leaves \$48,000 of additional appropriation for citywide unplanned incidental repairs and projects that would need to be addressed prior to the contract expiration date of March 25, 2014. Any unplanned service must be deemed essential and funding must be available in the department’s operating budget.

Previous Related Council Action

On March 25, 2008, Council awarded RFP 07-47 for fire alarm monitoring, testing, maintenance, repair and installation of new systems to ASSI in an amount not to exceed \$115,588.37 for FY 2007-08 and \$70,000 annually thereafter.

Community Benefit/Public Involvement

The monitoring, testing, maintenance, repair and installation of the various security and fire systems, including card access systems, security and fire alarm signaling systems, DVR and CCTV systems help ensure a safe environment for citizens and employees at city facilities. It also aids in the protection of city resources and assists in maintaining continuity of operations.

Budget and Financial Impacts

The requested contract increase is for a total amount not to exceed \$125,000 annually, through the remainder of the contract with ASSI which expires on March 25, 2014.

Cost	Fund-Department-Account
\$37,000	2360-17140-518200, Water Services
\$10,000	2440-17710-518200, Landfill

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

None



CITY COUNCIL REPORT

Meeting Date: **9/24/2013**
Meeting Type: **Voting**
Title: **ACCEPTANCE OF GRANTS FROM THE STATE OF ARIZONA OFFICE OF THE ATTORNEY GENERAL FOR THE VICTIM'S RIGHTS PROGRAM**
Staff Contact: **Debora Black, Police Chief**

Purpose and Recommended Action

This is a request for City Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to accept two grants from the State of Arizona Office of the Attorney General for the Victim's Rights Program in the approximate amount of \$94,100.

Background

Funding from these grants will be used to help the Glendale Police Department and City Prosecutor's Office offset costs associated with the performance of duties that are mandated under victims' rights laws. Victims' rights laws require timely notification to victims as their cases move through the criminal justice system.

Analysis

The Police Department will be receiving a grant in the amount of \$84,000. The Prosecutor's Office will be receiving a grant in the amount of \$10,100. The Police Department's grant will continue to fund a majority of the salary and benefits for a current full-time Victim Assistance Caseworker, as well as operating costs for the victim notification database, the publication and distribution of victims' rights brochures and costs associated with victim notification. The Prosecutor's Office grant will continue to fund the costs associated with victim notification, which includes letterhead, envelopes, forms, postage, and office supplies.

Victims' rights laws require notification to victims. If authorization to accept the grant is not received, the Police Department and the Prosecutor's Office will have to find another way to fund the costs associated with these mandatory duties. Staff is requesting Council adopt a resolution authorizing the City Manager to accept two grants from the State of Arizona Office of the Attorney General for the Victim's Rights Program.

Previous Related Council Action

On September 11, 2012, Council approved the acceptance of the Fiscal Year 2012-13 Victim's Rights Program Grants for the Glendale Police Department and City Prosecutor's Office.



CITY COUNCIL REPORT

Community Benefit/Public Involvement

The Victim Assistance Program, which is supported by these grants, provides direct services to Glendale residents, and their families, who have become crime victims. Services offered through the Victim Assistance Program include resource referrals, crisis counseling, court accompaniment, crime prevention, and advocacy services.

Budget and Financial Impacts

There are no financial matches required for these grants.

Attachments

Resolution

Agreement

Agreement

RESOLUTION NO. 4724 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, ACCEPTING TWO GRANT OFFERS TOTALING APPROXIMATELY \$94,100 FROM THE STATE OF ARIZONA, OFFICE OF THE ATTORNEY GENERAL, FOR THE VICTIM'S RIGHTS PROGRAM.

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

SECTION 1. That the City of Glendale hereby accepts two grant offers totaling approximately \$94,100 from the State of Arizona, Office of the Attorney General, for the Victim's Rights Program. The Glendale Police Department is the recipient of a grant Agreement in the approximate amount of \$84,000; and the Glendale City Prosecutor's Office is the recipient of a grant in the approximate amount of \$10,100.

SECTION 2. That the Glendale Police Chief Debora Black and the Glendale City Attorney Michael Bailey are hereby authorized to execute any and all documents necessary for the acceptance of said grants.

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:

City Manager

g_pd_vrp14



**State of Arizona
Office of the Attorney General
FY 2014 Victims' Rights Program (VRP)**

AWARD AGREEMENT

A.G. #: 2014-044

RECIPIENT

Name:	Glendale Police Department
Contact:	Larry Castrovinci
Address:	6835 North 57th Drive, Glendale, AZ 85301
Award Amount:	\$ 84,000
Purpose:	To support the direct costs of implementing victims' rights laws pursuant to those provisions of Arizona Revised Statutes Title 13, Chapter 40 and Title 8, Chapter 3, Article 7 impacting Law Enforcement/Custodial as an entity type.

Monies having been deposited and received by the Attorney General pursuant to Arizona Revised Statutes § 41-2401, § 8-418 and legislative appropriations, this AGREEMENT is made under the authority of the Attorney General pursuant to Arizona Revised Statutes § 41-191.08 -- *Victims' Rights Fund*.

This AGREEMENT is made this first day of July 2013, by and between the Arizona Attorney General, and the AGENCY, the "Contractor", to commence on July 1, 2013 and terminate June 30, 2014. The Attorney General, having been satisfied as to the qualifications of Contractor, agrees to pay Contractor the above shown AWARD subject to Contractor's agreement as follows:

I. The Contractor agrees:

- A. Award funds will not be used to supplant state, local and federal funds that would otherwise be available to provide services to victims of crime as mandated by A.R.S. Title 13, Chapter 40 and Title 8, Chapter 3, Article 7.
- B. Award funds will be used only for *allowable costs* that can be proven necessary and essential to effect the direct provision or performance of those statutorily mandated victims' rights duties (*services*), as described in the *Program Guidelines - Section IV*, and as specified in Contractor's approved \$84,000 award budget as follows:

Personnel:	\$35,340.00	VA CW - 70%
Benefits:	\$15,570.00	
Consulting:	\$16,854.00	VINE contracted services
Operating:	\$16,236.00	postage, envelopes, brochures and victim satisfaction survey completion
Equipment:	\$ 0.00	

- C. To complete and submit, on or before August 8, 2014, an annual report to the Attorney General as prescribed in A.R.S. § 41-191.08(F).
- D. To comply with FY 2014 Victims' Rights Program Guidelines, as well as the applicable provisions of A.R.S. Title 13, Chapter 40 and A.R.S. Title 8, Chapter 3, Article 7.
- E. To allow (a) representative(s) of the Attorney General to complete program and financial audits as the Attorney General believes necessary to ensure Contractor compliance with this agreement and with State law.
- F. To retain all records relating to the agreement, and performance under the agreement, for a period of five years after the completion of the project, and to allow inspection and audit of all such documents at reasonable times, pursuant to A.R.S. § 35-214.
- G. To comply with all applicable nondiscrimination requirements of A.R.S. § 41-1463, Arizona State Executive Order 2009-09, and all other applicable state and federal civil rights laws.

- H. In the event that a federal or state court or administrative agency, after a due process hearing, makes a finding of discrimination on the grounds of race, color, religion, national origin, sex, age, or handicap against the program, the Contractor will forward a copy of the findings to the Attorney General within ten calendar days of the written findings.
- I. In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with AAC Section A.R.S. § 23-214, Subsection A.
- J. To retain ownership interest in all equipment acquired with VRP funds (or in the proceeds resulting from the sale of such equipment) provided that: (1) the equipment purchase was not in violation of the VRP Award Agreement; and (2) the useful life of the equipment in question has not elapsed.

II. It is further agreed between the parties as follows:

- A. To use arbitration in the event of disputes and to the extent required by A.R.S. § 12-1518.
- B. Except as provided in paragraph C below, if the Attorney General finds that the Contractor has not complied with the requirements of this agreement, the Contractor will receive a notice which identifies the area(s) of non-compliance and the appropriate corrective action to be taken. If the Contractor does not respond within thirty calendar days to this notice, or does not provide sufficient information concerning the steps which are being taken to correct the problem, the Attorney General may terminate the contract and require the return of all funds which are found to have been spent in violation of this agreement.
- C. The Attorney General may reduce or discontinue funding to the Contractor in subsequent fiscal years, at the Attorney General's discretion, for the Contractor's failure to complete and submit, on or before August 8, 2014, the report that is required pursuant to A.R.S. § 41-191.08(F) or for other reasons such as available funding. Every payment obligation of the Attorney General under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the Attorney General at the end of the period for which funds are available. No liability shall accrue to the Attorney General in the event this provision is exercised, and the Attorney General shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.
- D. Any and all award funds not expended by June 30, 2014, will be returned to the Attorney General.
- E. This agreement is subject to cancellation pursuant to A.R.S. § 38-511.

IN WITNESS WHEREOF, the parties have made and executed this AGREEMENT on the day and year first above written.

FOR THE ATTORNEY GENERAL: _____
Jerry Connolly, Procurement Manager Date

FOR THE CONTRACTOR:

 Authorized Signature Date Printed Name and Title

ATTEST:

APPROVED AS TO FORM:

 Clerk of the Governing Board (if applicable) Date Legal Counsel (if applicable) Date



**State of Arizona
Office of the Attorney General
FY 2014 Victims' Rights Program (VRP)**

AWARD AGREEMENT

A.G. #: 2014-031

RECIPIENT

Name:	Glendale City Prosecutor's Office
Contact:	P. Robert Walecki
Address:	5705 West Glendale Avenue, Glendale, AZ 85301
Award Amount:	\$ 10,100
Purpose:	To support the direct costs of implementing victims' rights laws pursuant to those provisions of Arizona Revised Statutes Title 13, Chapter 40 and Title 8, Chapter 3, Article 7 impacting Prosecutorial as an entity type.

Monies having been deposited and received by the Attorney General pursuant to Arizona Revised Statutes § 41-2401, § 8-418 and legislative appropriations, this AGREEMENT is made under the authority of the Attorney General pursuant to Arizona Revised Statutes § 41-191.08 -- *Victims' Rights Fund*.

This AGREEMENT is made this first day of July 2013, by and between the Arizona Attorney General, and the AGENCY, the "Contractor", to commence on July 1, 2013 and terminate June 30, 2014. The Attorney General, having been satisfied as to the qualifications of Contractor, agrees to pay Contractor the above shown AWARD subject to Contractor's agreement as follows:

I. The Contractor agrees:

- A. Award funds will not be used to supplant state, local and federal funds that would otherwise be available to provide services to victims of crime as mandated by A.R.S. Title 13, Chapter 40 and Title 8, Chapter 3, Article 7.
- B. Award funds will be used only for *allowable costs* that can be proven necessary and essential to effect the direct provision or performance of those statutorily mandated victims' rights duties (*services*), as described in the *Program Guidelines - Section IV*, and as specified in Contractor's approved \$10,100 award budget as follows:

Personnel:	\$ 0.00	
Benefits:	\$ 0.00	
Consulting:	\$ 0.00	
Operating:	\$10,100.00	Letterhead, envelopes, postage, office supplies, database letters
Equipment:	\$ 0.00	

- C. To complete and submit, on or before August 8, 2014, an annual report to the Attorney General as prescribed in A.R.S. § 41-191.08(F).
- D. To comply with FY 2014 Victims' Rights Program Guidelines, as well as the applicable provisions of A.R.S. Title 13, Chapter 40 and A.R.S. Title 8, Chapter 3, Article 7.
- E. To allow (a) representative(s) of the Attorney General to complete program and financial audits as the Attorney General believes necessary to ensure Contractor compliance with this agreement and with State law.
- F. To retain all records relating to the agreement, and performance under the agreement, for a period of five years after the completion of the project, and to allow inspection and audit of all such documents at reasonable times, pursuant to A.R.S. § 35-214.
- G. To comply with all applicable nondiscrimination requirements of A.R.S. § 41-1463, Arizona State Executive Order 2009-09, and all other applicable state and federal civil rights laws.

- H. In the event that a federal or state court or administrative agency, after a due process hearing, makes a finding of discrimination on the grounds of race, color, religion, national origin, sex, age, or handicap against the program, the Contractor will forward a copy of the findings to the Attorney General within ten calendar days of the written findings.
- I. In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants it compliance with AAC Section A.R.S. § 23-214, Subsection A.
- J. To retain ownership interest in all equipment acquired with VRP funds (or in the proceeds resulting from the sale of such equipment) provided that: (1) the equipment purchase was not in violation of the VRP Award Agreement; and (2) the useful life of the equipment in question has not elapsed.

II. It is further agreed between the parties as follows:

- A. To use arbitration in the event of disputes and to the extent required by A.R.S. § 12-1518.
- B. Except as provided in paragraph C below, if the Attorney General finds that the Contractor has not complied with the requirements of this agreement, the Contractor will receive a notice which identifies the area(s) of non-compliance and the appropriate corrective action to be taken. If the Contractor does not respond within thirty calendar days to this notice, or does not provide sufficient information concerning the steps which are being taken to correct the problem, the Attorney General may terminate the contract and require the return of all funds which are found to have been spent in violation of this agreement.
- C. The Attorney General may reduce or discontinue funding to the Contractor in subsequent fiscal years, at the Attorney General's discretion, for the Contractor's failure to complete and submit, on or before August 8, 2014, the report that is required pursuant to A.R.S. § 41-191.08(F) or for other reasons such as available funding. Every payment obligation of the Attorney General under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the Attorney General at the end of the period for which funds are available. No liability shall accrue to the Attorney General in the event this provision is exercised, and the Attorney General shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.
- D. Any and all award funds not expended by June 30, 2014, will be returned to the Attorney General.
- E. This agreement is subject to cancellation pursuant to A.R.S. § 38-511.

IN WITNESS WHEREOF, the parties have made and executed this AGREEMENT on the day and year first above written.

FOR THE ATTORNEY GENERAL: _____
Jerry Connolly, Procurement Manager Date

FOR THE CONTRACTOR:

 Authorized Signature Date Printed Name and Title

ATTEST:

APPROVED AS TO FORM:

 Clerk of the Governing Board (if applicable) Date Legal Counsel (if applicable) Date



CITY COUNCIL REPORT

Meeting Date: **9/24/2013**
 Meeting Type: **Voting**
 Title: **LICENSE AGREEMENT RENEWAL FOR NEW CINGULAR WIRELESS PCS, LLC**
 Staff Contact: **Gregory Rodzenko, P.E., City Engineer**

Purpose and Recommended Action

This is a request for the City Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to execute a license agreement between the City of Glendale and New Cingular Wireless PCS, LLC (New Cingular) for a wireless communication site within public right-of-way.

Background

New Cingular contacted the city to request permission to maintain its existing network facilities at 5901 West Greenbriar Drive, located on an Arizona Public Service transmission pole. The agreement for this site expired in September 2010 and New Cingular has been paying month-to-month since that time.

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

CATEGORY	DESCRIPTION	FEE RANGE
A	Utility company owned transmission poles (i.e. SRP, APS) within public right-of-way and require minimal space for additional facilities or enclosures. There are currently 11 sites within this category.	\$10,000-\$15,000
B	City-owned traffic signal poles within public right-of-way and require minimal space for additional facilities or enclosures. There are currently two sites within this category.	\$13,000-\$18,000
C	City parks; wireless facilities are placed on existing field light poles, mono poles, or mono palm trees. Additional space required for equipment and enclosures. There are currently three sites within this category.	\$35,000-\$40,000
D	Other city-owned property; wireless facilities are placed on existing flag poles, mono poles, or mono palm trees. Additional space required for equipment and enclosures. There are currently three sites within this category.	\$25,000-\$30,000



CITY COUNCIL REPORT

Analysis

- This license agreement falls within Category A of the guidelines and is being charged accordingly.
- There will be no impact to any city departments, staff, or service levels.
- There are no costs incurred as a result of this action.
- The license agreement is for a five year term with no more than four consecutive five year renewals.

Previous Related Council Action

On September 12, 2000, the city entered into a 10-year license agreement with AT&T Wireless PCS, L.L.C. (New Cingular) to operate a wireless communication site at 5901 West Greenbriar Drive.

Community Benefit/Public Involvement

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

Budget and Financial Impacts

This license agreement has a value of \$15,000 for the first year, with a 3% annual increase for subsequent years. The revenue generated from the agreement during the first five years, including the annual increases, is projected at \$82,344. All revenue will be deposited into the General Fund.

Attachments

Resolution

Agreement

Map

RESOLUTION NO. 4725 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE CITY MANAGER TO EXECUTE A NEW LICENSE AGREEMENT WITH NEW CINGULAR WIRELESS PCS, LLC FOR THE WIRELESS COMMUNICATIONS SITE LOCATED AT 56TH AVENUE SOUTH OF GREENBRIAR DRIVE IN GLENDALE, ARIZONA.

WHEREAS, the City entered into a License Agreement on September 12, 2000 for a wireless communications site located at 56th Avenue south of Greenbriar Drive in Glendale, Arizona; and

WHEREAS, the parties wish to enter into a new License Agreement for the site located at 56th Avenue south of Greenbriar Drive in Glendale, Arizona.

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

SECTION 1. That the City Manager or her designee is hereby authorized to execute and deliver a new License Agreement with New Cingular Wireless PCS, LLC for the wireless communications site located at 56th Avenue south of Greenbriar Drive in Glendale, Arizona.

SECTION 2. That said license agreement is now on file with the City Clerk.

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

MAYOR

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

REVIEWED BY:

City Manager

**CITY OF GLENDALE RIGHT-OF-WAY
LICENSE AGREEMENT
FOR NEW CINGULAR WIRELESS PCS, LLC,
A DELAWARE LIMITED LIABILITY COMPANY CITY**

This License Agreement for New Cingular Wireless PCS, LLC, a Delaware limited liability company in City Right-of-Way (“Agreement”) is executed to be effective the ____ day of _____, 2013 (“Effective Date”), between the City of Glendale, an Arizona municipal corporation (“City”), and New Cingular Wireless PCS, LLC, a Delaware limited liability company authorized to do business in the State of Arizona (“Licensee”).

WHEREAS, the City is the owner of certain right-of-way located within 56th Avenue, located immediately south of Greenbriar Drive (“Licensed Area”), as more particularly described in Exhibit A attached hereto;

WHEREAS, the City and the Licensee were previously parties to a License Agreement, dated October 1, 2000, whereby the City granted to the Licensee a license to use the Licensed Area (the “Initial License”); and

WHEREAS, the City is willing to grant to the Licensee a license to use the Licensed Area for the operation of Licensee’s Facility (“Facility”) in accordance with the terms of this Agreement, subject to the approval of the Glendale City Council, and all as implemented by the City’s Project Manager (“Project Manager”), whose approvals shall not be unreasonably withheld.

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

1. LICENSED AREA.

- A. The Licensed Area includes and is limited to the following areas depicted in Exhibit A:
 - i) The area on, or in which the Facility is located, or an alternative area in the right-of-way, as approved by the City.
 - ii) Reasonable access to the Facility through the public right-of-way.

2. CITY’S REPRESENTATIONS AND WARRANTIES.

- A. The City represents and warrants to the Licensee that: i) the City, and its duly authorized signatory, have full right, power and authority to execute this Agreement on behalf of the City; and ii) the City has good and unencumbered title to the Licensed Area free and clear of any liens or mortgages, except those disclosed to the Licensee that will not interfere with Licensee’s right to use the

Licensed Area; and iii) the City's execution and performance of this Agreement will not violate any laws, ordinances, covenants, mortgages, licenses or other agreements binding on the City.

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

3. GRANT OF LICENSE; TERM.

- A. Nothing in this Agreement will be construed as granting the Licensee the authority to use any property that is owned by any person or entity other than the City.
- B. The initial term of this Agreement shall be for a period of five (5) years (the "Initial Term"), commencing on the Effective Date and ending on the fifth anniversary thereof, unless sooner terminated as stated herein. This Agreement may be renewed for no more than four successive five-year year Renewal Terms unless City notifies Licensee, in writing of City's intent to not renew this Agreement at least thirty (30) days prior to the expiration of the Initial Term or any Renewal Term due to: a violation by Licensee of any term of this Agreement not cured within thirty (30) days written notice; any subsequent violation of the same term since the original Effective Date of this Agreement which is not cured within thirty (30) days written notice; or for any of the reasons listed under Section 16; or for any operations or incidents caused by Licensee which the City's Project Manager considers, in good faith, to be an imminent danger to public safety, and Licensee fails to remove the imminent danger to public safety within thirty (30) days following receipt of written notice from the City's Project Manager describing the danger.
- C. If Licensee continues to occupy the Licensed Area after the expiration or termination of this Agreement, holding over will not be considered to operate as a renewal or extension of this Agreement, but shall be a month to month license and the Licensee must pay the City rent in an amount that is double the amount of rent that would otherwise be due under Section 4.
- D. Notwithstanding any provision in this Agreement to the contrary or any negotiation, correspondence, course of performance or dealing, or other statements or acts by or between the parties, Licensee's rights in the Licensed Area are limited to the rights created by this Agreement, which create only a license in the Licensed Area, which is revocable only as set forth expressly herein. The City and the Licensee do not by this instrument intend to create a

lease, easement or other real property interest. The Licensee has no real property interest in the Licensed Area. Licensee's sole remedy for any breach or threatened breach of this Agreement by the City will be an action for damages. Licensee's rights are subject to all covenants, restrictions, easements, agreements, reservations and encumbrances upon, and all other conditions of title to, the Licensed Area. Licensee's rights under this Agreement are further subject to all present and future building restrictions, regulations, zoning laws, ordinances, resolutions and orders of any local, state or federal agency, now or later having jurisdiction over the Licensed Area or the Licensee's use of the Licensed Area; provided, however, City shall not approve any ordinance or regulation that would have the effect of materially limiting or prohibiting the Licensee's use of the Licensed Area for the Facility so long as Licensee is not in default under this Agreement beyond the applicable periods of notice and cure.

4. RENT; FEES; COSTS.

- A. Licensee shall pay, without notice and free from all claims, deductions and setoffs against the City, rent in the amount of \$15,000.00 per year, plus all appropriate taxes (See Section 23 below) beginning on the Effective Date, and each subsequent year of the term of this Agreement, up to and including the expiration or earlier termination thereof.
- B. Rent will increase by 3.0% annually on the anniversary of the Effective Date.
- C. Rent is due on the first day of the anniversary date month of the Effective Date of this Agreement. Licensee shall pay the rent due for the current year in advance on the first business day of each anniversary month. If the Effective Date is not on the first day of a month, the Licensee's rent will be prorated accordingly.
- D. If the Licensee fails to pay any rent in full within ten (10) business days of the due date, the Licensee is responsible for interest on the unpaid rent balance at the rate of eighteen percent (18%) per annum from the due date until payment is made in full.
- E. Upon submission of plans in connection with the approval of this Agreement Licensee shall pay the City a dry utility permit fee in accordance with the City's Community Development Fee Schedule.
- F. Licensee shall pay the City actual costs for inspections, materials testing and other costs incurred by the City related to the construction, repair, alteration or relocation of the Facility. All costs shall be paid in full within thirty (30) days of invoice.

5. UTILITIES.

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

6. USE RESTRICTIONS.

- A. Subject to the interference provisions set forth below, Licensee shall at all times use reasonable efforts to minimize any impact that its use of the Licensed Area will have on other uses of the Licensed Area.
- B. Licensee shall not remove, damage, or alter in any way, any improvements or personal property of the City upon the Licensed Area without providing notice to the City. Licensee shall repair any damage or alteration to the City's property caused by Licensee's use of the Licensed Area to the same condition that existed before the damage or alteration.
- C. Whenever the Licensee performs construction activities within the Licensed Area, the Licensee shall obtain all necessary construction permits and promptly, upon completion of construction, restore the remaining Licensed Area to the condition existing prior to construction to the satisfaction of the City's Project Manager. If the Licensee fails to restore the Licensed Area as required, the City may take all reasonable actions necessary to restore the Licensed Area, and the Licensee, within twenty (20) days of demand and receipt of an invoice from the City, together with reasonable supporting documentation, will pay all of the City's reasonable costs of restoration.
- D. Licensee shall use the Licensed Area solely for constructing, installing, operating, maintaining, repairing, modifying and removing the Facility. The Facility is limited to the equipment and facilities listed in Section 1 above and other items as may be approved by the City, in its sole discretion, in writing.
- E. Licensee shall have a non-exclusive right for ingress and egress, seven (7) days a week, twenty-four (24) hours a day, for the construction, installation, operation, maintenance, modification and removal of the Facility. In no event shall the City's use of the Licensed Area be unreasonably interrupted by the Licensee's work. Prior to entering upon the Licensed Area, the Licensee shall give the Property Manager or designee at least forty-eight (48) hours advance notice in the manner provided in Section 21 of this Agreement or, in the event of emergency repairs, any prior notice as is practical.
- F. Licensee shall at all times have on call and at the City's access an active, qualified and experienced representative to supervise the Facility, who is authorized to act for the Licensee in matters pertaining to all emergencies and the day-to-day operation of the Facility. The Licensee shall provide the Project Manager or

designee with the names, addresses and 24-hour telephone numbers of designated persons in writing.

- G. In the vicinity of any above-ground facilities Licensee may have in the Licensed Area, Licensee shall keep the Licensed Area maintained, orderly and clean at all times.
- H. Licensee acknowledges that: i) the Licensee's use of the Licensed Area is subject and subordinate to, and shall not adversely affect, the City's use of the Licensed Area; and ii) the City reserves the right to further develop, maintain, repair or improve the Licensed Area; provided, however, City shall not use the Licensed Area in a manner which would have the effect of materially limiting or prohibiting the Licensee's use of the Licensed Area for the Facility so long as Licensee is not in default under this Agreement beyond the applicable period of notice and cure.
- I. Licensee shall not install any signs in the Licensed Area other than required safety or warning signs or other signs necessary for the use of the Licensed Area as requested or approved by the City. Licensee bears all costs pertaining to the erection, installation, maintenance and removal of all of its signs.

7. HAZARDOUS WASTE.

The Licensee shall not produce, dispose, transport, treat, use or store any hazardous waste or toxic substance upon or about the Licensed Area in violation of the Arizona Hazardous Waste Management Act, A.R.S. § 49-901 *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. 2601 *et seq.*, or any other federal, state or local law pertaining to hazardous waste or toxic substances. Licensee shall not use the Licensed Area in a manner inconsistent with any regulations, permits or approvals issued by any state agency. The Licensee shall defend, indemnify and hold the City harmless against any loss or liability incurred by reason of any hazardous waste or toxic substance release on or affecting the Licensed Area to the extent caused by the Licensee, and shall immediately notify the City of any hazardous waste or toxic substance release at any time discovered or existing upon the Licensed Area. Licensee shall promptly and without request provide the City with copies of all written communications between the Licensee and any governmental agency concerning environmental inquiries, reports or problems in the Licensed Area.

8. LICENSEE'S IMPROVEMENTS; GENERAL REQUIREMENTS.

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

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

- vii) All of the Licensee's Improvements shall be designed so as to present uniformity of design, function, appearance and quality throughout and consistency with other improvements located in the Licensed Area.
 - viii) Licensee shall properly mark and sign all excavations and maintain barriers and traffic control in accordance with applicable laws, regulations and best management practices.
- B. The following procedure governs the Licensee's submission to the City of all plans for the Licensed Area and the Licensee's Improvements, including any proposed changes by the Licensee of previously approved plans:
- i) Licensee shall coordinate with the City as necessary on significant design issues prior to submission of plans.
 - ii) Upon execution of this Agreement, the City and the Licensee shall each designate a project manager to coordinate the parties' participation in designing and constructing Licensee's Improvements. The City's Project Manager or designee will serve as Project Manager for the City. Each project manager shall devote time and efforts to the project as may be necessary for timely, good faith and convenient coordination among all persons involved with the project and compliance with this Agreement. The City's Project Manager will not be exclusively assigned to this Agreement or the Licensee's Improvements.
 - iii) No plans are considered finally submitted until the Licensee delivers to the City a formal certification by an engineer licensed in Arizona, acceptable to the Project Manager, to the effect that all of the Licensee's Improvements are properly designed to be safe and functional as designed and as required by this Agreement. The certification shall be accompanied by and refer to any backup information and analysis as the Project Manager may reasonably require.
 - iv) Except for those plans attached as exhibits to this Agreement, no plans are considered approved until stamped "APPROVED" and dated by the City's Project Manager.
 - v) Licensee acknowledges that the Project Manager's authority with respect to the Licensed Area is limited to the administration of the requirements of this Agreement. Licensee is responsible to secure all zoning approvals, design revisions or other governmental approvals and to satisfy all governmental requirements pertaining to the project and may not rely on the City or Project Manager to initiate or suggest any particular process or course of action.

- vi) The City's issuance of building permits shall not be considered valid unless the plans have been approved as stated in subsection (iv) above. The City's Project Manager shall be reasonably available to coordinate and assist the Licensee in working through issues that may arise in connection with such plan approvals and requirements.
- vii) The Licensee shall, in the submittal of all plans, allow adequate time for all communications and plan revisions necessary to obtain approvals and shall schedule its performances and revise its plans as necessary to timely obtain all approvals and make payment of all applicable fees.
- viii) Any delay in City's review of or marking Licensee's plans with changes necessary to approve the plans, or approve the revised plans in accordance with the City's normal plan-review procedures, will not be considered approval of the plans but may operate to extend Licensee's construction deadlines. The City agrees to use reasonable efforts to review, mark or approve Licensee's plans in a prompt and timely manner and in conformance with established policies and procedures.
- ix) The Licensee shall provide the City with two (2) complete sets of detailed plans and specifications of the work as completed.
- x) The parties shall use reasonable efforts to resolve any design and construction issues to their mutual satisfaction but, in the event of an impasse for any reason, final decision authority regarding all design and construction issues shall rest with the City in its discretion.
- xi) Prior to the commencement of any construction on the Licensed Area, the Licensee shall provide the City with performance bonds, and if considered necessary by the City, payment bonds, in amounts equal to the full amount of the written construction contract pursuant to which such construction is to be done. The payment bond shall be solely for the protection of claimants supplying labor or materials for the required construction work and the performance bond shall be solely for the protection of the City, conditioned upon the faithful performance of the required construction work. Bonds shall be executed by a surety company duly authorized to do business in Arizona, and acceptable to the City and shall be kept in place for the duration of the work.

9. LICENSEE'S INITIAL CONSTRUCTION.

No later than eighteen (18) months after the Effective Date and the City's issuance of all necessary approvals, the Licensee shall install the Facility in the Licensed Area in accordance with all of the specifications contained in the attached Exhibit A. Equipment already in place from previous authorization will also be reflected in Exhibit A.

10. MAINTENANCE.

- A. The Licensee has, at its own cost, all responsibilities for improvements to and maintenance of the Facility in the Licensed Area during the term of this Agreement.
- B. Licensee, at its expense, shall use reasonable efforts to minimize the visual and operational impacts of the equipment as required by any City Ordinance, permit, or other permission necessary for the installation or use of the Licensed Area.

11. CO-LOCATION.

- A. Subject to subsection (B) below, the Licensee shall at all times use reasonable efforts to cooperate with the City or any third parties with regard to the possible co-location of additional equipment, facilities or structures in and around the Licensed Area (“Co-location”). If a Co-location is feasible, the City may, in its sole discretion, negotiate a Co-location license agreement with any third party on terms as the City considers appropriate, not inconsistent with the rights and obligations of the parties under this Agreement. Licensee’s consent in connection with the final determination of Co-location of a third party is not required. Any rent or fees paid by an additional Co-locator belong solely to the City.
- B. Prior to permitting the installation of a Co-location by any third party in or around the Licensed Area which may interfere with the Licensee’s operations, the City shall give the Licensee thirty (30) days notice of the proposed Co-location so that the Licensee can determine if the Co-location will interfere with the Facility. If the Licensee determines that interference is likely, the Licensee shall, within the notice period, give the City a detailed written explanation of the anticipated interference, including supporting documentation as may be reasonably necessary for the City to evaluate the Licensee's position. The City and the Licensee shall promptly use reasonable efforts to resolve any interference problems before the City permits a Co-location to the third party. If a subsequent licensee is permitted to operate near the Licensed Area, and the subsequent licensee’s operations materially interfere with Licensee’s Facility, then the City shall direct the subsequent licensee to remedy the interference within seventy-two (72) hours. If the interference is not resolved within this period, then the City will direct the subsequent licensee to cease its operation until the interference is resolved. These same procedures apply to any interference caused by Licensee with respect to any Co-location existing and as configured prior to the installation of Licensee’s Facility.

12. ASSIGNMENT.

- A. Licensee may assign this Agreement, upon thirty (30) days written notice to the City, to any person or entity controlling, controlled by or under common ownership with the Licensee or Licensee’s parent company, or to any person or

entity that, acquires the Licensee's business in the City's area and assumes all obligations of the Licensee under this Agreement. Other assignments require City approval. For assignments requiring City approval, the City may, as a condition of approval, postpone the effective date of the assignment and require that any potential transferee submit reasonable evidence of its financial ability to fully perform under the terms of this Agreement to the City at least thirty (30) days prior to any transfer of the Licensee's interest.

- B. The Licensee may, upon notice to the City, mortgage or grant a security interest in this Agreement and the Facility, and may assign this Agreement and the Facility to any mortgagees, deed of trust beneficiaries or holders of security interests, including their successors or assigns ("Mortgagees"), so long as the Mortgagees agree to be bound by the terms of this Agreement. If so, the City shall execute consent to leasehold or other financing as may be reasonably required by Mortgagees. In no event will Licensee grant or attempt to grant a security interest in any of the real property underlying the Licensed Area.
- C. Subject to subsections (A) and (B) above, Licensee shall not assign or sublease any of its interest under this Agreement, nor permit any other person to occupy the Licensed Area.

13. PERFORMANCE BOND.

In addition to any other bond required by this Agreement, the Licensee shall, no later than thirty (30) days after the Effective Date, provide the City with a cash deposit, letter of credit or performance bond in the amount of \$5,000.00. The performance bond shall be conditioned upon the Licensee's faithful performance of all of its obligations under this Agreement. The bond shall be executed by a surety company duly authorized to do business in the State of Arizona and acceptable to the City's Project Manager.

14. REGULATORY AGENCIES, SERVICES, FINANCIALS AND BANKRUPTCY.

- A. The Licensee shall provide to the City:
 - i) All relevant petitions, applications, communications and reports submitted by the Licensee to the Arizona Corporation Commission, inclusive of any requirements under A.R.S. § 40-441 *et seq.*, or other state or federal authority having jurisdiction that directly relates to Licensee's operations in the Licensed Area when requested by the City from time to time, as they relate to this Agreement;
 - ii) Licensing documentation concerning all services of whatever nature being offered or provided by the Licensee over facilities in the Licensed Area. Copies of responses from regulatory agencies to the Licensee shall be available to the City upon request. To the extent permitted by Arizona's Public Records Law, A.R.S. § 39-121 *et seq.*, the City will treat all

documentation and information obtained pursuant to this Section 14 as proprietary and confidential.

- B. The Licensee shall provide the City, upon request, copies of any petition, application, communications or other documents related to any filing by the Licensee of bankruptcy, receivership or trusteeship.

15. DEFAULT; TERMINATION BY CITY.

- A. The City may terminate this Agreement for any of the following reasons upon thirty (30) days written notice to Licensee:
 - i) Failure of Licensee to perform any obligation under this Agreement, after Licensee fails to cure default within the notice and cure period. However, if cure cannot reasonably be implemented within the notice period, Licensee must commence and diligently pursue to cure within ninety (90) days of the City's notice.
 - ii) The taking of possession for a period of ten (10) days or more of substantially all of Licensee's personal property in the Licensed Area by or pursuant to lawful authority of any legislative act, resolution, rule, order or decree or any act, resolution, rule, order or decree of any court or governmental board, agency, officer, receiver, trustee or liquidator.
 - iii) The filing of any lien against the Licensed Area due to any act or omission of the Licensee that is not discharged or fully bonded within thirty (30) days of receipt of actual notice by the Licensee.
- B. The City may place the Licensee in default of this Agreement by giving the Licensee thirty (30) days written notice of the Licensee's failure to timely pay the rent required under this Agreement or any other charges required to be paid by the Licensee pursuant to this Agreement. If Licensee does not cure the default within the notice period the City may terminate this Agreement or exercise any other remedy allowed by law or equity.
- C. If the Licensee, through any fault of its own, at any time fails to maintain all insurance coverage required by this Agreement, the City may, upon written notice to the Licensee, immediately terminate this Agreement or secure the required insurance at Licensee's expense.
- D. Failure by a party to take any authorized action upon default by the other party does not constitute a waiver of the default nor of any subsequent default by the other party. Acceptance of rent and other fees by the City for any period after a default by the Licensee is not considered a waiver or estoppel of the City's right to terminate this Agreement for any subsequent failure by the Licensee to comply with its obligations.

- E. Upon the termination of this Agreement for any reason, all rights of the Licensee terminate, including all rights of the Licensee's creditors, trustees and assigns and all others similarly situated as to the Licensed Area.

16. TERMINATION.

- A. This Agreement may be terminated for any of the following reasons:
 - i) By either party upon issuance by a court of competent jurisdiction of an injunction in any way preventing or restraining the Licensee's use of any portion of the Licensed Area and remaining in force for a period of thirty (30) consecutive days.
 - ii) By either party upon the inability of the Licensee to use any substantial portion of the Licensed Area for a period of ninety (90) consecutive days due to the enactment or enforcement of any law or regulation or because of fire, earthquake or similar casualty, or Acts of God or the public enemy.
 - iii) By either party upon ninety (90) days written notice, if the Licensee is unable to obtain or maintain any license, permit or governmental approval necessary for the construction, installation or operation of the Facility or the Licensee's business.
 - iii) By Licensee, if the Licensed Area or Facility is destroyed or damaged so as in Licensee's party's reasonable judgment the use of the Facility is substantially and adversely affected.
 - iv) By Licensee upon sixty (60) days prior written notice to City if Licensee determines it shall no longer operate at the Licensed Premises.
- B. In order to exercise the termination provisions above the party exercising termination must not itself be in default under the terms of this Agreement beyond any applicable grace or cure period and, if not otherwise stated above, provide reasonable written notice to the other party.

17. INDEMNIFICATION.

The Licensee shall defend, indemnify and hold harmless the City and its elected or appointed officials, agents, boards, commissions and employees (hereinafter referred to collectively as the "City" in this Section) from all loss, damages or claims of whatever nature, including attorney's fees, expert witness fees and costs of litigation, that arise out of any act or omission of the Licensee or its agents, employees and invitees (hereinafter referred to collectively as "Licensee" in this Section) in connection with the Licensee's operations in the Licensed Area and that result directly or indirectly in the injury to or death of any person or the damage to or loss of any property, or that arise out of the

failure of Licensee to comply with any provision of this Agreement. The City shall in all instances, except for loss, damages or claims resulting from the negligence or fault of the City, be indemnified by Licensee against all losses, damages or claims. The City shall give the Licensee prompt notice of any claim made or suit instituted that may subject the Licensee to liability under this Section, and Licensee shall have the right to compromise and defend the same to the extent of its own interest. The City shall have the right, but not the duty, to participate in the defense of any claim or litigation with attorneys of the City's selection and at the City's sole cost without relieving the Licensee of any obligations under this Agreement. Licensee's obligations under this Section survive any termination of this Agreement or the Licensee's activities in the Licensed Area.

18. INSURANCE.

- A. The Licensee shall procure and at all times maintain the following types and amounts of insurance for its operations in the Licensed Area:
 - i) Commercial general liability and property damage insurance in the minimum amount of \$5,000,000 combined single limit, \$5,000,000 aggregate.
- B. Insurance shall:
 - i) Include the City as an additional insured on the insurance policy and maintain coverage through the term of the Agreement;
 - ii) Instruct the insurer to provide 30 days written notice to the City prior to cancellation (10 days due to non-payment);
 - iii) Include contractual liability coverage for the obligation of indemnity assumed in this Agreement, subject to standard policy provisions and exclusions; and
 - iv) Be primary and non-contributory with respect to all other available sources, as relates to Licensee's negligence.
- C. Licensee shall provide appropriate certificates of insurance to the City for all insurance policies required by this Section. Absence of City request for proof of initial or renewal coverage does not waive any insurance requirements under this paragraph.

19. DAMAGE OR DESTRUCTION.

The City has no obligation to reimburse the Licensee for the loss of or damage to fixtures, equipment or other personal property of the Licensee, except for loss or damage caused by the negligence or fault of the City or its officers, employees or agents. The

Licensee may insure such fixtures, equipment or other personal property for its own protection if it so desires.

20. SURRENDER OF POSSESSION.

Upon the expiration or termination of this Agreement, the Licensee's right to occupy the Licensed Area and exercise the privileges and rights granted under this Agreement shall cease, and it shall surrender and leave the Licensed Area in good condition, normal wear and tear excepted. Unless otherwise provided, all trade fixtures, equipment, and other personal property installed or placed by the Licensee on the Licensed Area shall remain the property of the Licensee, and the Licensee may, at any time during the term of this Agreement, and for an additional period of ninety (90) days after its expiration, remove the same from the Licensed Area so long as Licensee is not in default of any of its obligations, and repairs at its sole cost, any damage caused by the removal. Any property not removed by the Licensee within the 90-day period becomes a part of the Licensed Area, and ownership vests in the City, or the City may, at the Licensee's expense, have the property removed. Licensee's indemnity under this Agreement applies to any post termination removal operations. Footings, foundations, and concrete will be removed to a depth of three feet below grade.

21. NOTICE.

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

TO THE CITY:

City of Glendale
5850 W. Glendale Avenue
Glendale, AZ 85301
Attention: Property Manager

WITH A COPY TO:

City of Glendale
5850 W. Glendale Avenue
Glendale, AZ 85301
Attention: City Attorney

TO THE LICENSEE:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #: PHNXAZP190; Cell Site Name: APS Greenbriar (AZ)
Fixed Asset No: 10091176
12555 Cingular Way, Suite 1300
Alpharetta, Georgia 30004

Emergency Contact Phone Numbers:

Network Operations Center
1-866-539-1483

WITH A COPY TO:

New Cingular Wireless PCS, LLC
Attn: AT&T Legal Department
Re: Cell Site # PHNXAZP190; Cell Site Name: APS Greenbriar (AZ)
Fixed Asset No.: 10091176
PO Box 97061
Redmond, WA 98073-9761

Or, if sent via nationally recognized overnight carrier:

New Cingular Wireless PCS, LLC
Attn: Legal Department
Re: Cell Site # PHNXAZP190; Cell Site Name: APS Greenbriar (AZ)
Fixed Asset No.: 10091176
16331 NE 72nd Way
Redmond, WA 98052-7827

With a copy to Local Contact:

New Cingular Wireless PCS, LLC
Attn: AZ/NM Network Property Management
20830 N. Tatum Blvd. #400
Phoenix, AZ 85050

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

22. SEVERABILITY.

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

23. TAXES AND LICENSES.

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

24. LITIGATION.

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

25. RULES AND REGULATIONS.

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

26. RIGHT OF ENTRY RESERVED.

- A. The City may, at any time, enter upon the Licensed Area for any lawful purpose, so long as the action does not unreasonably interfere with the Licensee's use or occupancy of the Licensed Area. The City shall have access to the Facility itself only in emergencies or upon reasonable notice to the Licensee.
- B. Without limiting the generality of the foregoing, the City and any furnisher of utilities and other services shall have the right, at their own cost, to maintain existing and future utility, mechanical, electrical and other systems and to enter upon the Licensed Area at any time to make repairs, replacements or alterations that may, in the opinion of the City, be necessary or advisable and from time to time to construct or install over, in or under the Licensed Area systems or parts and in connection with maintenance, use the Licensed Area for access to other parts in and around the Licensed Area. Exercise of rights of access to repair, to

make alterations or commence new construction will not unreasonably interfere with the use and occupancy of the Licensed Area by the Licensee.

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

27. RELOCATION.

- A. The City shall not bear any cost of relocation of existing facilities, irrespective of the function served, where the City facilities or other facilities occupying the Licensed Area or right-of-way in close proximity to the Licensed Area, are already located and the conflict between the Licensee's potential Facility and existing facilities can only be resolved expeditiously, as determined by the City, by the movement of the existing City or other permitted facilities.
- B. The City shall not bear any cost of relocation of Licensee's Facility, where in the City's discretion, relocation is reasonable and necessary in connection with City right-of-way repairs, improvements or other capital projects affecting the Licensed Area. City shall provide Licensee no less than ninety (90) days advance notice of a requirement to relocate. If the City becomes aware of a potential delay involving the Licensee's relocation, the City shall notify the Licensee within thirty (30) days of becoming aware of the potential delay. The Licensee may object in writing to the determination of relocation to the City's Project Manager within ten (10) days of receipt of the notice to relocate. The Project Manager shall consider the objection and respond in writing to Licensee within thirty (30) days of receipt of the objection. The Project Manager's determination is final.

28. CONFLICTS OF INTEREST.

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

29. MISCELLANEOUS.

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

shall constitute a single instrument. The terms of this Agreement are binding upon and inure to the benefit of the parties' successors and assigns.

CITY OF GLENDALE, an Arizona
municipal corporation

Brenda S. Fischer, City Manager

ATTEST:

Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

New Cingular Wireless PCS, LLC,
a Delaware limited liability company
By: AT&T Mobility Corporation
Its: Manager

By: Todd E. Daoust
Its: Area Manager

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

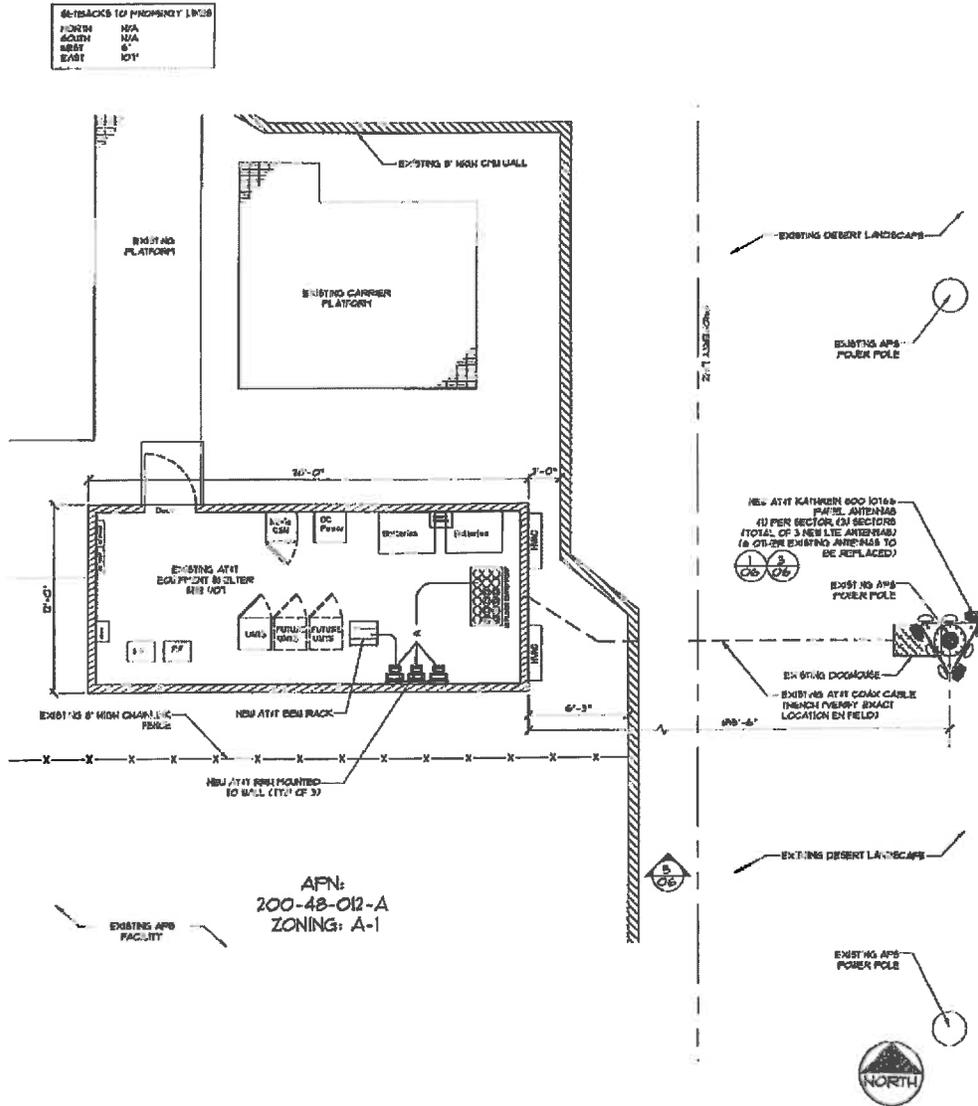
The foregoing document was acknowledged before me this ____ day of _____, 2013, by Todd E. Daoust, in his capacity as Area Manager of AT&T Mobility Corporation, the Manager of New Cingular Wireless PCS, LLC, a Delaware limited liability company, the Licensee named in the attached instrument.

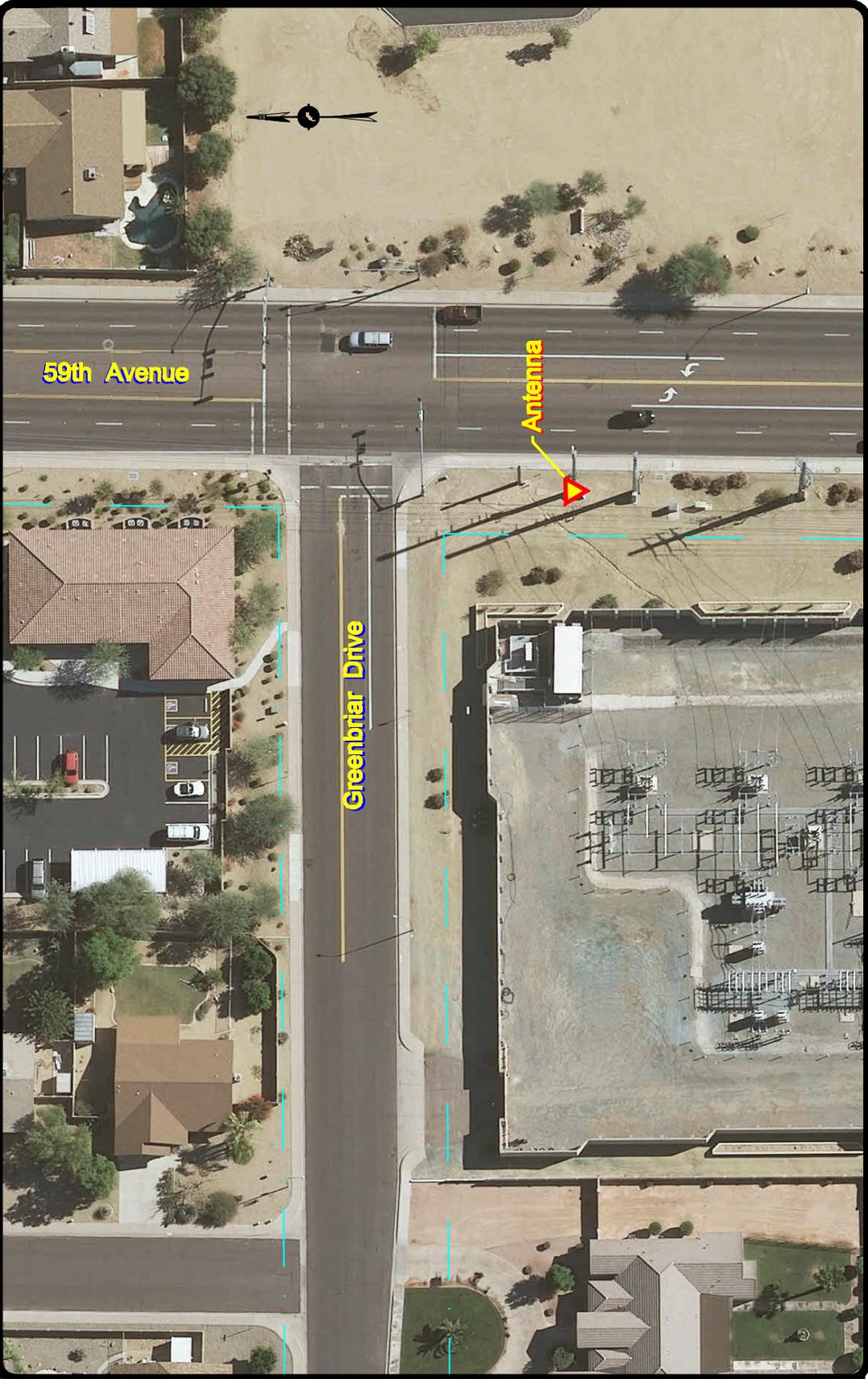
Notary Public

My Commission Expires:

EXHIBIT A

To the License Agreement dated _____, 2013, by and between City of Glendale, an Arizona municipal corporation, as Licensor, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Licensee.





**GRANT LICENSE AGREEMENT
NEW CINGULAR WIRELESS PCS, LLC
59TH & GREENBRIAR**



CITY COUNCIL REPORT

Meeting Date: **9/24/2013**
Meeting Type: **Voting**
Title: **LICENSE AGREEMENTS FOR NEW CINGULAR WIRELESS PCS, LLC**
Staff Contact: **Gregory Rodzenko, P.E., City Engineer**

Purpose and Recommended Action

This is a request for the City Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to execute three license agreements between the City of Glendale and New Cingular Wireless PCS, LLC (New Cingular) for the installation of new wireless communication sites within public right-of-way.

Background

New Cingular is requesting permission to install three new cell sites to their existing network facilities in Glendale. These facilities will be at the following locations: Union Hills Drive immediately east of 54th Avenue; Glendale Avenue immediately east of 81st Avenue; and 55th Avenue south of Greenway Road. All of the sites will be placed on existing Arizona Public Service transmission poles within city right-of-way, and two of the sites will require additional construction.

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

CATEGORY	DESCRIPTION	FEE RANGE
A	Utility company owned transmission poles (i.e. SRP, APS) within public right-of-way and require minimal space for additional facilities or enclosures. There are currently 11 sites within this category.	\$10,000-\$15,000
B	City-owned traffic signal poles within public right-of-way and require minimal space for additional facilities or enclosures. There are currently two sites within this category.	\$13,000-\$18,000
C	City parks; wireless facilities are placed on existing field light poles, mono poles, or mono palm trees. Additional space required for equipment and enclosures. There are currently three sites within this category.	\$35,000-\$40,000



CITY COUNCIL REPORT

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

- These license agreements fall within Category A of the guidelines and are being charged accordingly.
- There will be no impact to any city departments, staff, or service levels.
- There are no costs incurred as a result of this action.
- There will be construction needed as a result of this action.
- The new license agreements are each for a five year term with no more than four consecutive five year renewals.

Community Benefit/Public Involvement

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

Budget and Financial Impacts

Each license agreement has a value of \$15,000 for the first year, with a 3% annual increase for subsequent years. The revenue generated from each agreement during the first five years, including the annual increases, is projected at \$82,344 per site. The total value of the three agreements during the first five years is projected at \$247,034. All revenue will be deposited into the General Fund.

Attachments

Resolution

Agreement- Union Hills Drive east of 54th Avenue

Agreement- Glendale Avenue east of 81st Avenue

Agreement-55th Avenue south of Greenway Road

Map-Union Hills Drive east of 54th Avenue

Map-Glendale Avenue east of 81st Avenue

Map-55th Avenue south of Greenway Road

RESOLUTION NO. 4726 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE CITY MANAGER TO EXECUTE THREE SEPARATE LICENSE AGREEMENTS FOR WIRELESS COMMUNICATIONS SITES WITH NEW CINGULAR WIRELESS PCS, LLC FOR THE FOLLOWING RIGHTS-OF-WAY: 55TH AVENUE SOUTH OF GREENWAY ROAD; UNION HILLS DRIVE EAST OF 54TH AVENUE; AND GLENDALE AVENUE EAST OF 81ST AVENUE.

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

SECTION 1. That the City Manager or her designee is hereby authorized to execute and deliver three separate license agreements for New Cingular Wireless PCS, LLC in the following City rights-of-way:

- 55th Avenue south of Greenway Road
- Union Hills Drive east of 54th Avenue
- Glendale Avenue east of 81st Avenue

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

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

M A Y O R

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

REVIEWED BY:

City Manager

**CITY OF GLENDALE RIGHT-OF-WAY
LICENSE AGREEMENT
FOR NEW CINGULAR WIRELESS PCS, LLC,
A DELAWARE LIMITED LIABILITY COMPANY**

This License Agreement for New Cingular Wireless PCS, LLC, a Delaware limited liability company in City Right-of-Way (“Agreement”) is executed to be effective the ____ day of _____, 2013 (“Effective Date”), between the City of Glendale, an Arizona municipal corporation (“City”), and New Cingular Wireless PCS, LLC, a Delaware limited liability company authorized to do business in the State of Arizona (“Licensee”).

WHEREAS, the City is the owner of certain right-of-way located within Union Hills Drive, located immediately east of 54th Avenue (“Licensed Area”), as more particularly described in Exhibit A attached hereto;

WHEREAS, the City is willing to grant to the Licensee a license to use the Licensed Area for the operation of Licensee’s Facility (“Facility”) in accordance with the terms of this Agreement, subject to the approval of the Glendale City Council, and all as implemented by the City’s Project Manager (“Project Manager”), whose approvals shall not be unreasonably withheld.

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

1. LICENSED AREA.

A. The Licensed Area includes and is limited to the following areas depicted in Exhibit A:

- i) The area on, and in which the Facility is located, or an alternative area in the right-of-way, as approved by the City.
- ii) Reasonable access to the Facility through the public right-of-way.

2. CITY’S REPRESENTATIONS AND WARRANTIES.

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

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

3. GRANT OF LICENSE; TERM.

- A. Nothing in this Agreement will be construed as granting the Licensee the authority to use any property that is owned by any person or entity other than the City.
- B. The initial term of this Agreement shall be for a period of five (5) years (the “Initial Term”), commencing on the Effective Date and ending on the fifth anniversary thereof, unless sooner terminated as stated herein. This Agreement may be renewed for no more than four successive five-year Renewal Terms unless City notifies Licensee, in writing of City’s intent to not renew this Agreement at least thirty (30) days prior to the expiration of the Initial Term or any Renewal Term due to: a violation by Licensee of any term of this Agreement not cured within thirty (30) days written notice; any subsequent violation of the same term since the original Effective Date of this Agreement which is not cured within thirty (30) days written notice; or for any of the reasons listed under Section 16; or for any operations or incidents caused by Licensee which the City’s Project Manager considers, in good faith, to be an imminent danger to public safety, and Licensee fails to remove the imminent danger to public safety within thirty (30) days following receipt of written notice from the City’s Project Manager describing the danger.
- C. If Licensee continues to occupy the Licensed Area after the expiration or termination of this Agreement, holding over will not be considered to operate as a renewal or extension of this Agreement, but shall be a month to month license and the Licensee must pay the City rent in an amount that is double the amount of rent that would otherwise be due under Section 4.
- D. Notwithstanding any provision in this Agreement to the contrary or any negotiation, correspondence, course of performance or dealing, or other statements or acts by or between the parties, Licensee’s rights in the Licensed Area are limited to the rights created by this Agreement, which create only a license in the Licensed Area, which is revocable only as set forth expressly herein. The City and the Licensee do not by this instrument intend to create a lease, easement or other real property interest. The Licensee has no real property interest in the Licensed Area. Licensee’s sole remedy for any breach or threatened breach of this Agreement by the City will be an action for damages. Licensee’s rights are subject to all covenants, restrictions, easements, agreements,

reservations and encumbrances upon, and all other conditions of title to, the Licensed Area. Licensee's rights under this Agreement are further subject to all present and future building restrictions, regulations, zoning laws, ordinances, resolutions and orders of any local, state or federal agency, now or later having jurisdiction over the Licensed Area or the Licensee's use of the Licensed Area; provided, however, City shall not approve any ordinance or regulation that would have the effect of materially limiting or prohibiting the Licensee's use of the Licensed Area for the Facility so long as Licensee is not in default under this Agreement beyond the applicable periods of notice and cure.

4. RENT; FEES; COSTS.

- A. Licensee shall pay, without notice and free from all claims, deductions and setoffs against the City, rent in the amount of \$15,000.00 per year, plus all appropriate taxes (See Section 23 below) beginning on the Effective Date, and each subsequent year of the term of this Agreement, up to and including the expiration or earlier termination thereof.
- B. Rent will increase by 3.0% annually on the anniversary of the Effective Date.
- C. Rent is due on the first day of the anniversary date month of the Effective Date of this Agreement. Licensee shall pay the rent due for the current year in advance on the first business day of each anniversary month. If the Effective Date is not on the first day of a month, the Licensee's rent will be prorated accordingly.
- D. If the Licensee fails to pay any rent in full within ten (10) business days of the due date, the Licensee is responsible for interest on the unpaid rent balance at the rate of eighteen percent (18%) per annum from the due date until payment is made in full.
- E. Upon submission of plans in connection with the approval of this Agreement Licensee shall pay the City a dry utility permit fee in accordance with the City's Community Development Fee Schedule.
- F. Licensee shall pay the City actual costs for inspections, materials testing and other costs incurred by the City related to the construction, repair, alteration or relocation of the Facility. All costs shall be paid in full within thirty (30) days of invoice.

5. UTILITIES.

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

6. USE RESTRICTIONS.

- A. Subject to the interference provisions set forth below, Licensee shall at all times use reasonable efforts to minimize any impact that its use of the Licensed Area will have on other uses of the Licensed Area.
- B. Licensee shall not remove, damage, or alter in any way, any improvements or personal property of the City upon the Licensed Area without providing notice to the City. Licensee shall repair any damage or alteration to the City's property caused by Licensee's use of the Licensed Area to the same condition that existed before the damage or alteration.
- C. Whenever the Licensee performs construction activities within the Licensed Area, the Licensee shall obtain all necessary construction permits and promptly, upon completion of construction, restore the remaining Licensed Area to the condition existing prior to construction to the satisfaction of the City's Project Manager. If the Licensee fails to restore the Licensed Area as required, the City may take all reasonable actions necessary to restore the Licensed Area, and the Licensee, within twenty (20) days of demand and receipt of an invoice from the City, together with reasonable supporting documentation, will pay all of the City's reasonable costs of restoration.
- D. Licensee shall use the Licensed Area solely for constructing, installing, operating, maintaining, repairing, modifying and removing the Facility. The Facility is limited to the equipment and facilities listed in Section 1 above and other items as may be approved by the City, in its sole discretion, in writing.
- E. Licensee shall have a non-exclusive right for ingress and egress, seven (7) days a week, twenty-four (24) hours a day, for the construction, installation, operation, maintenance, modification and removal of the Facility. In no event shall the City's use of the Licensed Area be unreasonably interrupted by the Licensee's work. Prior to entering upon the Licensed Area, the Licensee shall give the Property Manager or designee at least forty-eight (48) hours advance notice in the manner provided in Section 21 of this Agreement or, in the event of emergency repairs, any prior notice as is practical.
- F. Licensee shall at all times have on call and at the City's access an active, qualified and experienced representative to supervise the Facility, who is authorized to act for the Licensee in matters pertaining to all emergencies and the day-to-day operation of the Facility. The Licensee shall provide the Project Manager or designee with the names, addresses and 24-hour telephone numbers of designated persons in writing.
- G. In the vicinity of any above-ground facilities Licensee may have in the Licensed Area, Licensee shall keep the Licensed Area maintained, orderly and clean at all times.

- H. Licensee acknowledges that: i) the Licensee's use of the Licensed Area is subject and subordinate to, and shall not adversely affect, the City's use of the Licensed Area; and ii) the City reserves the right to further develop, maintain, repair or improve the Licensed Area; provided, however, City shall not use the Licensed Area in a manner which would have the effect of materially limiting or prohibiting the Licensee's use of the Licensed Area for the Facility so long as Licensee is not in default under this Agreement beyond the applicable period of notice and cure.
- I. Licensee shall not install any signs in the Licensed Area other than required safety or warning signs or other signs necessary for the use of the Licensed Area as requested or approved by the City. Licensee bears all costs pertaining to the erection, installation, maintenance and removal of all of its signs.

7. HAZARDOUS WASTE.

The Licensee shall not produce, dispose, transport, treat, use or store any hazardous waste or toxic substance upon or about the Licensed Area in violation of the Arizona Hazardous Waste Management Act, A.R.S. § 49-901 *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. 2601 *et seq.*, or any other federal, state or local law pertaining to hazardous waste or toxic substances. Licensee shall not use the Licensed Area in a manner inconsistent with any regulations, permits or approvals issued by any state agency. The Licensee shall defend, indemnify and hold the City harmless against any loss or liability incurred by reason of any hazardous waste or toxic substance release on or affecting the Licensed Area to the extent caused by the Licensee, and shall immediately notify the City of any hazardous waste or toxic substance release at any time discovered or existing upon the Licensed Area. Licensee shall promptly and without request provide the City with copies of all written communications between the Licensee and any governmental agency concerning environmental inquiries, reports or problems in the Licensed Area.

8. LICENSEE'S IMPROVEMENTS; GENERAL REQUIREMENTS.

- A. The following provisions govern all improvements, repairs, installation and other construction, removal, demolition or similar work of any description by the Licensee related to the Facility or the Licensed Area (collectively referred to as the "Licensee's Improvements"):
 - i) In no event, including termination of this Agreement for any reason, is the City obligated to compensate the Licensee in any manner for any of Licensee's Improvements or other work provided by the Licensee during or related to this Agreement, except as provided in this Agreement. The Licensee shall timely pay for all labor, materials and work and all professional and other services related to Licensee's Improvements and

defend, indemnify and hold harmless the City against any mechanics or materialmen's liens resulting from the same.

- ii) All work performed by Licensee must be in a workmanlike manner, and be diligently pursued to completion and in conformance with all building codes and similar requirements. Licensee's Improvements shall be commensurate with high quality industry standards as approved by the City, which approval shall not be unreasonably withheld, conditioned or delayed.
- iii) Licensee acknowledges that as of the Effective Date of this Agreement, the City has not approved or promised to approve any plans for the Licensee's Improvements, except for those improvements already in place or to the extent expressly stated in this Agreement.
- iv) Licensee shall make no structural or grading alterations, or similar structural modifications or additions or other significant construction work to the Licensed Area without having first received the written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. Licensee acknowledges that it has approved those plans attached as exhibits hereto. Review shall include all improvements, equipment, fixtures, paint and other construction work of any description as described in all plans delivered by the Licensee to the City. All such plans and construction are subject to inspection and final approval by the City as to materials, design, function and appearance.
- v) Licensee shall keep as-built records of the Licensee's Improvements and furnish copies of records to the City, at no cost to the City, upon completion of improvements and any changes to the same. Licensee shall participate as a member of the Blue Stake Center under A.R.S. § 40-360.21, *et seq.*, regarding underground facilities, and submit proof of participation to the Project Manager upon request.
- vi) All changes to utility facilities shall be limited to the Licensed Area and shall be undertaken by the Licensee only with the written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.
- vii) All of the Licensee's Improvements shall be designed so as to present uniformity of design, function, appearance and quality throughout and consistency with other improvements located in the Licensed Area.
- viii) Licensee shall properly mark and sign all excavations and maintain barriers and traffic control in accordance with applicable laws, regulations and best management practices.

- B. The following procedure governs the Licensee's submission to the City of all plans for the Licensed Area and the Licensee's Improvements, including any proposed changes by the Licensee of previously approved plans:
- i) Licensee shall coordinate with the City as necessary on significant design issues prior to submission of plans.
 - ii) Upon execution of this Agreement, the City and the Licensee shall each designate a project manager to coordinate the parties' participation in designing and constructing Licensee's Improvements. The City's Project Manager or designee will serve as project manager for the City. Each project manager shall devote time and efforts to the project as may be necessary for timely, good faith and convenient coordination among all persons involved with the project and compliance with this Agreement. The City's Project Manager will not be exclusively assigned to this Agreement or the Licensee's Improvements.
 - iii) No plans are considered finally submitted until the Licensee delivers to the City a formal certification by an engineer licensed in Arizona, acceptable to the Project Manager, to the effect that all of the Licensee's Improvements are properly designed to be safe and functional as designed and as required by this Agreement. The certification shall be accompanied by and refer to any backup information and analysis as the Project Manager may reasonably require.
 - iv) Except for those plans attached as exhibits to this Agreement, no plans are considered approved until stamped "APPROVED" and dated by the City's Project Manager.
 - v) Licensee acknowledges that the Project Manager's authority with respect to the Licensed Area is limited to the administration of the requirements of this Agreement. Licensee is responsible to secure all zoning approvals, design revisions or other governmental approvals and to satisfy all governmental requirements pertaining to the project and may not rely on the City or Project Manager to initiate or suggest any particular process or course of action.
 - vi) The City's issuance of building permits shall not be considered valid unless the plans have been approved as stated in subsection (iv) above. The City's Project Manager shall be reasonably available to coordinate and assist the Licensee in working through issues that may arise in connection with such plan approvals and requirements.
 - vii) The Licensee shall, in the submittal of all plans, allow adequate time for all communications and plan revisions necessary to obtain approvals and

shall schedule its performances and revise its plans as necessary to timely obtain all approvals and make payment of all applicable fees.

- viii) Any delay in City's review of or marking Licensee's plans with changes necessary to approve the plans, or approve the revised plans in accordance with the City's normal plan-review procedures, will not be considered approval of the plans but may operate to extend Licensee's construction deadlines. The City agrees to use reasonable efforts to review, mark or approve Licensee's plans in a prompt and timely manner and in conformance with established policies and procedures.
- ix) The Licensee shall provide the City with two (2) complete sets of detailed plans and specifications of the work as completed.
- x) The parties shall use reasonable efforts to resolve any design and construction issues to their mutual satisfaction but, in the event of an impasse for any reason, final decision authority regarding all design and construction issues shall rest with the City in its discretion.
- xi) Prior to the commencement of any construction on the Licensed Area, the Licensee shall provide the City with performance bonds, and if considered necessary by the City, payment bonds, in amounts equal to the full amount of the written construction contract pursuant to which such construction is to be done. The payment bond shall be solely for the protection of claimants supplying labor or materials for the required construction work and the performance bond shall be solely for the protection of the City, conditioned upon the faithful performance of the required construction work. Bonds shall be executed by a surety company duly authorized to do business in Arizona, and acceptable to the City and shall be kept in place for the duration of the work.

9. LICENSEE'S INITIAL CONSTRUCTION.

No later than eighteen (18) months after the Effective Date and the City's issuance of all necessary approvals, the Licensee shall install the Facility in the Licensed Area in accordance with all of the specifications contained in the attached Exhibit A. Equipment already in place from previous authorization will also be reflected in Exhibit A.

10. MAINTENANCE.

- A. The Licensee has, at its own cost, all responsibilities for improvements to and maintenance of the Facility in the Licensed Area during the term of this Agreement.

- B. Licensee, at its expense, shall use reasonable efforts to minimize the visual and operational impacts of the equipment as required by any City Ordinance, permit, or other permission necessary for the installation or use of the Licensed Area.

11. CO-LOCATION.

- A. Subject to subsection (B) below, the Licensee shall at all times use reasonable efforts to cooperate with the City or any third parties with regard to the possible co-location of additional equipment, facilities or structures in and around the Licensed Area (“Co-location”). If Co-location is feasible, the City may, in its sole discretion, negotiate a Co-location license agreement with any third party on terms as the City considers appropriate, not inconsistent with the rights and obligations of the parties under this Agreement. Licensee’s consent in connection with the final determination of Co-location of a third party is not required. Any rent or fees paid by an additional Co-locator belong solely to the City.
- B. Prior to permitting the installation of a Co-location by any third party in or around the Licensed Area which may interfere with the Licensee’s operations, the City shall give the Licensee thirty (30) days’ notice of the proposed Co-location so that the Licensee can determine if the Co-location will interfere with the Facility. If the Licensee determines that interference is likely, the Licensee shall, within the notice period, give the City a detailed written explanation of the anticipated interference, including supporting documentation as may be reasonably necessary for the City to evaluate the Licensee’s position. The City and the Licensee shall promptly use reasonable efforts to resolve any interference problems before the City permits a Co-location to the third party. If a subsequent licensee is permitted to operate near the Licensed Area, and the subsequent licensee’s operations materially interfere with Licensee’s Facility, then the City shall direct the subsequent licensee to remedy the interference within seventy-two (72) hours. If the interference is not resolved within this period, then the City will direct the subsequent licensee to cease its operation until the interference is resolved. These same procedures apply to any interference caused by Licensee with respect to any Co-location existing and as configured prior to the installation of Licensee’s Facility.

12. ASSIGNMENT.

- A. Licensee may assign this Agreement, upon thirty (30) days written notice to the City, to any person or entity controlling, controlled by or under common ownership with the Licensee or Licensee’s parent company, or to any person or entity that, acquires the Licensee’s business in the City’s area and assumes all obligations of the Licensee under this Agreement. Other assignments require City approval. For assignments requiring City approval, the City may, as a condition of approval, postpone the effective date of the assignment and require that any potential transferee submit reasonable evidence of its financial ability to fully

perform under the terms of this Agreement to the City at least thirty (30) days prior to any transfer of the Licensee's interest.

- B. The Licensee may, upon notice to the City, mortgage or grant a security interest in this Agreement and the Facility, and may assign this Agreement and the Facility to any mortgagees, deed of trust beneficiaries or holders of security interests, including their successors or assigns ("Mortgagees"), so long as the Mortgagees agree to be bound by the terms of this Agreement. If so, the City shall execute consent to leasehold or other financing as may be reasonably required by Mortgagees. In no event will Licensee grant or attempt to grant a security interest in any of the real property underlying the Licensed Area.
- C. Subject to subsections (A) and (B) above, Licensee shall not assign or sublease any of its interest under this Agreement, nor permit any other person to occupy the Licensed Area.

13. PERFORMANCE BOND.

In addition to any other bond required by this Agreement, the Licensee shall, no later than thirty (30) days after the Effective Date, provide the City with a cash deposit, letter of credit or performance bond in the amount of \$5,000.00. The performance bond shall be conditioned upon the Licensee's faithful performance of all of its obligations under this Agreement. The bond shall be executed by a surety company duly authorized to do business in the State of Arizona and acceptable to the City's Project Manager.

14. REGULATORY AGENCIES, SERVICES, FINANCIALS AND BANKRUPTCY.

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

- B. The Licensee shall provide the City, upon request, copies of any petition, application, communications or other documents related to any filing by the Licensee of bankruptcy, receivership or trusteeship.

15. DEFAULT; TERMINATION BY CITY.

- A. The City may terminate this Agreement for any of the following reasons upon thirty (30) days' written notice to Licensee:
 - i) Failure of Licensee to perform any obligation under this Agreement, after Licensee fails to cure default within the notice and cure period. However, if cure cannot reasonably be implemented within the notice period, Licensee must commence and diligently pursue to cure within ninety (90) days of the City's notice.
 - ii) The taking of possession for a period of ten (10) days or more of substantially all of Licensee's personal property in the Licensed Area by or pursuant to lawful authority of any legislative act, resolution, rule, order or decree or any act, resolution, rule, order or decree of any court or governmental board, agency, officer, receiver, trustee or liquidator.
 - iii) The filing of any lien against the Licensed Area due to any act or omission of the Licensee that is not discharged or fully bonded within thirty (30) days of receipt of actual notice by the Licensee.
- B. The City may place the Licensee in default of this Agreement by giving the Licensee thirty (30) days written notice of the Licensee's failure to timely pay the rent required under this Agreement or any other charges required to be paid by the Licensee pursuant to this Agreement. If Licensee does not cure the default within the notice period the City may terminate this Agreement or exercise any other remedy allowed by law or equity.
- C. If the Licensee, through any fault of its own, at any time fails to maintain all insurance coverage required by this Agreement, the City may, upon written notice to the Licensee, immediately terminate this Agreement or secure the required insurance at Licensee's expense.
- D. Failure by a party to take any authorized action upon default by the other party does not constitute a waiver of the default nor of any subsequent default by the other party. Acceptance of rent and other fees by the City for any period after a default by the Licensee is not considered a waiver or estoppel of the City's right to terminate this Agreement for any subsequent failure by the Licensee to comply with its obligations.

- E. Upon the termination of this Agreement for any reason, all rights of the Licensee terminate, including all rights of the Licensee's creditors, trustees and assigns and all others similarly situated as to the Licensed Area.

16. TERMINATION.

- A. This Agreement may be terminated for any of the following reasons:
 - i) By either party upon issuance by a court of competent jurisdiction of an injunction in any way preventing or restraining the Licensee's use of any portion of the Licensed Area and remaining in force for a period of thirty (30) consecutive days.
 - ii) By either party upon the inability of the Licensee to use any substantial portion of the Licensed Area for a period of ninety (90) consecutive days due to the enactment or enforcement of any law or regulation or because of fire, earthquake or similar casualty, or Acts of God or the public enemy.
 - iii) By either party upon ninety (90) days written notice, if the Licensee is unable to obtain or maintain any license, permit or governmental approval necessary for the construction, installation or operation of the Facility or the Licensee's business.
 - iii) By Licensee, if the Licensed Area or Facility is destroyed or damaged so as in Licensee's party's reasonable judgment the use of the Facility is substantially and adversely affected.
 - iv) By Licensee upon sixty (60) days prior written notice to City if Licensee determines it shall no longer operate at the Licensed Premises.
- B. In order to exercise the termination provisions above the party exercising termination must not itself be in default under the terms of this Agreement beyond any applicable grace or cure period and, if not otherwise stated above, provide reasonable written notice to the other party.

17. INDEMNIFICATION.

The Licensee shall defend, indemnify and hold harmless the City and its elected or appointed officials, agents, boards, commissions and employees (hereinafter referred to collectively as the "City" in this Section) from all loss, damages or claims of whatever nature, including attorney's fees, expert witness fees and costs of litigation, that arise out of any act or omission of the Licensee or its agents, employees and invitees (hereinafter referred to collectively as "Licensee" in this Section) in connection with the Licensee's operations in the Licensed Area and that result directly or indirectly in the injury to or death of any person or the damage to or loss of any property, or that arise out of the failure of Licensee to comply with any provision of this Agreement. The City shall in all

instances, except for loss, damages or claims resulting from the negligence or fault of the City, be indemnified by Licensee against all losses, damages or claims. The City shall give the Licensee prompt notice of any claim made or suit instituted that may subject the Licensee to liability under this Section, and Licensee shall have the right to compromise and defend the same to the extent of its own interest. The City shall have the right, but not the duty, to participate in the defense of any claim or litigation with attorneys of the City's selection and at the City's sole cost without relieving the Licensee of any obligations under this Agreement. Licensee's obligations under this Section survive any termination of this Agreement or the Licensee's activities in the Licensed Area.

18. INSURANCE.

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

Commercial general liability and property damage insurance in the minimum amount of \$5,000,000 combined single limit, \$5,000,000 aggregate.

B. Insurance shall:

- i) Include the City as an additional insured on the insurance policy and maintain coverage through the term of the Agreement;
- ii) Instruct the insurer to provide 30 days written notice to the City prior to cancellation (10 days due to non-payment);
- iii) Include contractual liability coverage for the obligation of indemnity assumed in this Agreement, subject to standard policy provisions and exclusions; and
- iv) Be primary and non-contributory with respect to all other available sources, as relates to Licensee's negligence.

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

19. DAMAGE OR DESTRUCTION.

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

20. SURRENDER OF POSSESSION.

Upon the expiration or termination of this Agreement, the Licensee's right to occupy the Licensed Area and exercise the privileges and rights granted under this Agreement shall cease, and it shall surrender and leave the Licensed Area in good condition, normal wear and tear excepted. Unless otherwise provided, all trade fixtures, equipment, and other personal property installed or placed by the Licensee on the Licensed Area shall remain the property of the Licensee, and the Licensee may, at any time during the term of this Agreement, and for an additional period of ninety (90) days after its expiration, remove the same from the Licensed Area so long as Licensee is not in default of any of its obligations, and repairs at its sole cost, any damage caused by the removal. Any property not removed by the Licensee within the 90-day period becomes a part of the Licensed Area, and ownership vests in the City, or the City may, at the Licensee's expense, have the property removed. Licensee's indemnity under this Agreement applies to any post termination removal operations. Footings, foundations, and concrete will be removed to a depth of three feet below grade.

21. NOTICE.

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

TO THE CITY:

City of Glendale
5850 West Glendale Avenue
Glendale, AZ 85301
Attention: Property Manager

WITH A COPY TO:

City of Glendale
5850 West Glendale Avenue
Glendale, AZ 85301
Attention: City Attorney

TO THE LICENSEE:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #: PHNXAZW371; Cell Site Name: APS Union Station (AZ)
Fixed Asset No: 10140976
12555 Cingular Way, Suite 1300
Alpharetta, Georgia 30004

Emergency Contact Phone Numbers:
Network Operations Center
1-866-539-1483

WITH A COPY TO:

New Cingular Wireless PCS, LLC
Attn: AT&T Legal Department
Re: Cell Site # PHNXAZW371; Cell Site Name: APS Union Station (AZ)
Fixed Asset No.: 10140976
PO Box 97061
Redmond, WA 98073-9761

Or, if sent via nationally recognized overnight carrier:

New Cingular Wireless PCS, LLC
Attn: Legal Department
Re: Cell Site # PHNXAZW371; Cell Site Name: APS Union Station (AZ)
Fixed Asset No.: 10140976
16331 NE 72nd Way
Redmond, WA 98052-7827

With a copy to Local Contact:

New Cingular Wireless PCS, LLC
Attn: AZ/NM Network Property Management
20830 N. Tatum Blvd. #400
Phoenix, AZ 85050

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

22. SEVERABILITY.

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

23. TAXES AND LICENSES.

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

24. LITIGATION.

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

25. RULES AND REGULATIONS.

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

26. RIGHT OF ENTRY RESERVED.

- A. The City may, at any time, enter upon the Licensed Area for any lawful purpose, so long as the action does not unreasonably interfere with the Licensee's use or occupancy of the Licensed Area. The City shall have access to the Facility itself only in emergencies or upon reasonable notice to the Licensee.
- B. Without limiting the generality of the foregoing, the City and any furnisher of utilities and other services shall have the right, at their own cost, to maintain existing and future utility, mechanical, electrical and other systems and to enter upon the Licensed Area at any time to make repairs, replacements or alterations that may, in the opinion of the City, be necessary or advisable and from time to time to construct or install over, in or under the Licensed Area systems or parts and in connection with maintenance, use the Licensed Area for access to other parts in and around the Licensed Area. Exercise of rights of access to repair, to

make alterations or commence new construction will not unreasonably interfere with the use and occupancy of the Licensed Area by the Licensee.

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

27. RELOCATION.

- A. The City shall not bear any cost of relocation of existing facilities, irrespective of the function served, where the City facilities or other facilities occupying the Licensed Area or right-of-way in close proximity to the Licensed Area, are already located and the conflict between the Licensee's potential Facility and existing facilities can only be resolved expeditiously, as determined by the City, by the movement of the existing City or other permitted facilities.
- B. The City shall not bear any cost of relocation of Licensee's Facility, where in the City's discretion, relocation is reasonable and necessary in connection with City right-of-way repairs, improvements or other capital projects affecting the Licensed Area. City shall provide Licensee no less than ninety (90) days advance notice of a requirement to relocate. If the City becomes aware of a potential delay involving the Licensee's relocation, the City shall notify the Licensee within thirty (30) days of becoming aware of the potential delay. The Licensee may object in writing to the determination of relocation to the City's Project Manager within ten (10) days of receipt of the notice to relocate. The Project Manager shall consider the objection and respond in writing to Licensee within thirty (30) days of receipt of the objection. The Project Manager's determination is final.

28. CONFLICTS OF INTEREST.

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

29. MISCELLANEOUS.

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

EXHIBIT A
Page 1 of 2

to the License Agreement dated _____, 2013, by and between City of Glendale, an Arizona municipal corporation, as Licensor, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Licensee.



**CITY OF GLENDALE RIGHT-OF-WAY
LICENSE AGREEMENT
FOR NEW CINGULAR WIRELESS PCS, LLC,
A DELAWARE LIMITED LIABILITY COMPANY**

C _____

This License Agreement for New Cingular Wireless PCS, LLC, a Delaware limited liability company in City Right-of-Way ("Agreement") is executed to be effective the ____ day of _____, 2013("Effective Date"), between the City of Glendale, an Arizona municipal corporation ("City"), and New Cingular Wireless PCS, LLC, a Delaware limited company authorized to do business in the State of Arizona ("Licensee").

WHEREAS, the City is the owner of certain right-of-way located within Glendale Avenue, located immediately east of 81st Avenue ("Licensed Area"), as more particularly described in Exhibit A attached hereto; and

WHEREAS, the City is willing to grant to the Licensee a license to use the Licensed Area for the operation of Licensee's Facility ("Facility") in accordance with the terms of this Agreement, subject to the approval of the Glendale City Council, and all as implemented by the City's Project Manager ("Project Manager"), whose approvals shall not be unreasonably withheld.

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

1. LICENSED AREA.

A. The Licensed Area includes and is limited to the following areas depicted in Exhibit A:

i) The area on which the Facility is located, or an alternative area in the right-of-way, as approved by the City.

ii) Reasonable access to the Facility through the public right-of-way.

2. CITY'S REPRESENTATIONS AND WARRANTIES.

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

warranties contained in subsection (A) immediately above, including any warranties or representations by the City as to its condition or fitness for any particular use. The Licensee has inspected the Licensed Area and obtained information and professional advice as the Licensee has determined to be necessary related to this Agreement.

3. GRANT OF LICENSE; TERM.

- A. Nothing in this Agreement will be construed as granting the Licensee the authority to use any property that is owned by any person or entity other than the City.
- B. The initial term of this Agreement shall be for a period of five (5) years (the "Initial Term"), commencing on the Effective Date and ending on the fifth anniversary thereof, unless sooner terminated as stated herein. This Agreement may be renewed for no more than four successive five-year Renewal Terms unless City notifies Licensee, in writing of City's intent to not renew this Agreement at least thirty (30) days prior to the expiration of the Initial Term or any Renewal Term due to: a violation by Licensee of any term of this Agreement not cured within thirty (30) days written notice; any subsequent violation of the same term since the original Effective Date of this Agreement which is not cured within thirty (30) days written notice; or for any of the reasons listed under Section 16; or for any operations or incidents caused by Licensee which the City's Project Manager considers, in good faith, to be an imminent danger to public safety, and Licensee fails to remove the imminent danger to public safety within thirty (30) days following receipt of written notice from the City's Project Manager describing the danger.
- C. If Licensee continues to occupy the Licensed Area after the expiration or termination of this Agreement, holding over will not be considered to operate as a renewal or extension of this Agreement, but shall be a month to month license and the Licensee must pay the City rent in an amount that is double the amount of rent that would otherwise be due under Section 4.
- D. Notwithstanding any provision in this Agreement to the contrary or any negotiation, correspondence, course of performance or dealing, or other statements or acts by or between the parties, Licensee's rights in the Licensed Area are limited to the rights created by this Agreement, which create only a license in the Licensed Area, which is revocable only as set forth expressly herein. The City and the Licensee do not by this instrument intend to create a lease, easement or other real property interest. The Licensee has no real property interest in the Licensed Area. Licensee's sole remedy for any breach or threatened breach of this Agreement by the City will be an action for damages. Licensee's rights are subject to all covenants, restrictions, easements, agreements, reservations and encumbrances upon, and all other conditions of title to, the Licensed Area. Licensee's rights under this Agreement are further subject to all present and future building restrictions, regulations, zoning laws, ordinances, resolutions and orders of any local, state or federal agency, now or later having

jurisdiction over the Licensed Area or the Licensee's use of the Licensed Area; provided, however, City shall not approve any ordinance or regulation that would have the effect of materially limiting or prohibiting the Licensee's use of the Licensed Area for the Facility so long as Licensee is not in default under this Agreement beyond the applicable periods of notice and cure.

4. RENT; FEES; COSTS.

- A. Licensee shall pay, without notice and free from all claims, deductions and setoffs against the City, rent in the amount of \$15,000.00 per year, plus all appropriate taxes (see Section 23 below) beginning on the Effective Date, and each subsequent year of the term of this Agreement, up to and including the expiration or earlier termination thereof.
- B. Rent will increase by 3.0% annually on the anniversary of the Effective Date.
- C. Rent is due on the first day of the anniversary date month of the Effective Date of this Agreement. Licensee shall pay the rent due for the current year in advance on the first business day of each anniversary month. If the Effective Date is not on the first day of a month, the Licensee's rent will be prorated accordingly.
- D. If the Licensee fails to pay any rent in full within ten (10) business days of the due date, the Licensee is responsible for interest on the unpaid rent balance at the rate of eighteen percent (18%) per annum from the due date until payment is made in full.
- E. Upon submission of plans in connection with the approval of this Agreement Licensee shall pay the City a dry utility permit fee in accordance with the City's Community Development Fee Schedule.
- F. Licensee shall pay the City actual costs for inspections, materials testing and other costs incurred by the City related to the construction, repair, alteration or relocation of the Facility. All costs shall be paid in full within thirty (30) days of invoice.

5. UTILITIES.

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

6. USE RESTRICTIONS.

- A. Subject to the interference provisions set forth below, Licensee shall at all times use reasonable efforts to minimize any impact that its use of the Licensed Area will have on other uses of the Licensed Area.
- B. Licensee shall not remove, damage or alter in any way any improvements or personal property of the City upon the Licensed Area without providing notice to

the City. Licensee shall repair any damage or alteration to the City's property caused by Licensee's use of the Licensed Area to the same condition that existed before the damage or alteration.

- C. Whenever the Licensee performs construction activities within the Licensed Area, the Licensee shall obtain all necessary construction permits and promptly, upon completion of construction, restore the remaining Licensed Area to the condition existing prior to construction to the satisfaction of the City's Project Manager. If the Licensee fails to restore the Licensed Area as required, the City may take all reasonable actions necessary to restore the Licensed Area, and the Licensee, within twenty (20) days of demand and receipt of an invoice from the City, together with reasonable supporting documentation, will pay all of the City's reasonable costs of restoration.
- D. Licensee shall use the Licensed Area solely for constructing, installing, operating, maintaining, repairing, modifying and removing the Facility. The Facility is limited to the equipment and facilities listed in Section 1 above and other items as may be approved by the City, in its sole discretion, in writing.
- E. Licensee shall have a non-exclusive right for ingress and egress, seven (7) days a week, twenty-four (24) hours a day, for the construction, installation, operation, maintenance, modification and removal of the Facility. In no event shall the City's use of the Licensed Area be unreasonably interrupted by the Licensee's work. Prior to entering upon the Licensed Area, the Licensee shall give the Property Manager or designee at least forty-eight (48) hours advance notice in the manner provided in Section 21 of this Agreement or, in the event of emergency repairs, any prior notice as is practical.
- F. Licensee shall at all times have on call and at the City's access an active, qualified and experienced representative to supervise the Facility, who is authorized to act for the Licensee in matters pertaining to all emergencies and the day-to-day operation of the Facility. The Licensee shall provide the Project Manager or designee with the names, addresses and 24-hour telephone numbers of designated persons in writing.
- G. In the vicinity of any above-ground facilities Licensee may have in the Licensed Area, Licensee shall keep the Licensed Area maintained, orderly and clean at all times.
- H. Licensee acknowledges that: i) the Licensee's use of the Licensed Area is subject and subordinate to, and shall not adversely affect, the City's use of the Licensed Area; and ii) the City reserves the right to further develop, maintain, repair or improve the Licensed Area; provided, however, City shall not use the Licensed Area in a manner which would have the effect of materially limiting or prohibiting the Licensee's use of the Licensed Area for the Facility so long as Licensee is not in default under this Agreement beyond the applicable period of notice and cure.

- I. Licensee shall not install any signs in the Licensed Area other than required safety or warning signs or other signs necessary for the use of the Licensed Area as requested or approved by the City. Licensee bears all costs pertaining to the erection, installation, maintenance and removal of all of its signs.

7. HAZARDOUS WASTE.

The Licensee shall not produce, dispose, transport, treat, use or store any hazardous waste or toxic substance upon or about the Licensed Area in violation of the Arizona Hazardous Waste Management Act, A.R.S. § 49-901 *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. 2601 *et seq.*, or any other federal, state or local law pertaining to hazardous waste or toxic substances. Licensee shall not use the Licensed Area in a manner inconsistent with any regulations, permits or approvals issued by any state agency. The Licensee shall defend, indemnify and hold the City harmless against any loss or liability incurred by reason of any hazardous waste or toxic substance release on or affecting the Licensed Area to the extent caused by the Licensee, and shall immediately notify the City of any hazardous waste or toxic substance release at any time discovered or existing upon the Licensed Area. Licensee shall promptly and without request provide the City with copies of all written communications between the Licensee and any governmental agency concerning environmental inquiries, reports or problems in the Licensed Area.

8. LICENSEE'S IMPROVEMENTS; GENERAL REQUIREMENTS.

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

- i) In no event, including termination of this Agreement for any reason, is the City obligated to compensate the Licensee in any manner for any of Licensee's Improvements or other work provided by the Licensee during or related to this Agreement, except as provided in this Agreement. The Licensee shall timely pay for all labor, materials and work and all professional and other services related to Licensee's Improvements and defend, indemnify and hold harmless the City against any mechanics or materialmen's liens resulting from the same.
- ii) All work performed by Licensee must be in a workmanlike manner, and be diligently pursued to completion and in conformance with all building codes and similar requirements. Licensee's Improvements shall be commensurate with high quality industry standards as approved by the City, which approval shall not be unreasonably withheld, conditioned or delayed.
- iii) Licensee acknowledges that as of the Effective Date of this Agreement, the City has not approved or promised to approve any plans for the

Licensee's Improvements, except for those improvements already in place or to the extent expressly stated in this Agreement.

- iv) Licensee shall make no structural or grading alterations, or similar structural modifications or additions or other significant construction work to the Licensed Area without having first received the written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. Licensee acknowledges that it has approved those plans attached as exhibits hereto. Review shall include all improvements, equipment, fixtures, paint and other construction work of any description as described in all plans delivered by the Licensee to the City. All such plans and construction are subject to inspection and final approval by the City as to materials, design, function and appearance.
 - v) Licensee shall keep as-built records of the Licensee's Improvements and furnish copies of records to the City, at no cost to the City, upon completion of improvements and any changes to the same. Licensee shall participate as a member of the Blue Stake Center under A.R.S. § 40-360.21, *et seq.*, regarding underground facilities, and submit proof of participation to the Project Manager upon request.
 - vi) All changes to utility facilities shall be limited to the Licensed Area and shall be undertaken by the Licensee only with the written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.
 - vii) All of the Licensee's Improvements shall be designed so as to present uniformity of design, function, appearance and quality throughout and consistency with other improvements located in the Licensed Area.
 - viii) Licensee shall properly mark and sign all excavations and maintain barriers and traffic control in accordance with applicable laws, regulations and best management practices.
- B. The following procedure governs the Licensee's submission to the City of all plans for the Licensed Area and the Licensee's Improvements, including any proposed changes by the Licensee of previously approved plans:
- i) Licensee shall coordinate with the City as necessary on significant design issues prior to submission of plans.
 - ii) Upon execution of this Agreement, the City and the Licensee shall each designate a project manager to coordinate the parties' participation in designing and constructing Licensee's Improvements. The City's Project Manager or designee will serve as Project Manager for the City. Each project manager shall devote time and efforts to the project as may be necessary for timely, good faith and convenient coordination among all persons involved with the project and compliance with this Agreement.

The City's Project Manager will not be exclusively assigned to this Agreement or the Licensee's Improvements.

- iii) No plans are considered finally submitted until the Licensee delivers to the City a formal certification by an engineer licensed in Arizona, acceptable to the Project Manager, to the effect that all of the Licensee's Improvements are properly designed to be safe and functional as designed and as required by this Agreement. The certification shall be accompanied by and refer to any backup information and analysis as the Project Manager may reasonably require.
- iv) Except for those plans attached as exhibits to this Agreement, no plans are considered approved until stamped "APPROVED" and dated by the City's Project Manager.
- v) Licensee acknowledges that the Project Manager's authority with respect to the Licensed Area is limited to the administration of the requirements of this Agreement. Licensee is responsible to secure all zoning approvals, design revisions or other governmental approvals and to satisfy all governmental requirements pertaining to the project and may not rely on the City or Project Manager to initiate or suggest any particular process or course of action.
- vi) The City's issuance of building permits shall not be considered valid unless the plans have been approved as stated in subsection (iv) above. The City's Project Manager shall be reasonably available to coordinate and assist the Licensee in working through issues that may arise in connection with such plan approvals and requirements.
- vii) The Licensee shall, in the submittal of all plans, allow adequate time for all communications and plan revisions necessary to obtain approvals and shall schedule its performances and revise its plans as necessary to timely obtain all approvals and make payment of all applicable fees.
- viii) Any delay in City's review of or marking Licensee's plans with changes necessary to approve the plans, or approve the revised plans in accordance with the City's normal plan-review procedures, will not be considered approval of the plans but may operate to extend Licensee's construction deadlines. The City agrees to use reasonable efforts to review, mark or approve Licensee's plans in a prompt and timely manner and in conformance with established policies and procedures.
- ix) The Licensee shall provide the City with two (2) complete sets of detailed plans and specifications of the work as completed.
- x) The parties shall use reasonable efforts to resolve any design and construction issues to their mutual satisfaction but, in the event of an

impasse for any reason, final decision authority regarding all design and construction issues shall rest with the City in its discretion.

- xi) Prior to the commencement of any construction on the Licensed Area, the Licensee shall provide the City with performance bonds, and if considered necessary by the City, payment bonds, in amounts equal to the full amount of the written construction contract pursuant to which such construction is to be done. The payment bond shall be solely for the protection of claimants supplying labor or materials for the required construction work and the performance bond shall be solely for the protection of the City, conditioned upon the faithful performance of the required construction work. Bonds shall be executed by a surety company duly authorized to do business in Arizona, and acceptable to the City and shall be kept in place for the duration of the work.

9. LICENSEE'S INITIAL CONSTRUCTION.

No later than eighteen (18) months after the Effective Date and the City's issuance of all necessary approvals, the Licensee shall install the Facility in the Licensed Area in accordance with all of the specifications contained in the attached Exhibit A. Equipment already in place from previous authorization will also be reflected in Exhibit A.

10. MAINTENANCE.

- A. The Licensee has, at its own cost, all responsibilities for improvements to and maintenance of the Facility in the Licensed Area during the term of this Agreement.
- B. Licensee, at its expense, shall use reasonable efforts to minimize the visual and operational impacts of the equipment as required by any City Ordinance, permit, or other permission necessary for the installation or use of the Licensed Area.

11. CO-LOCATION.

- A. Subject to subsection (B) below, the Licensee shall at all times use reasonable efforts to cooperate with the City or any third parties with regard to the possible co-location of additional equipment, facilities or structures in and around the Licensed Area ("Co-location"). If Co-location is feasible, the City may, in its sole discretion, negotiate a Co-location license agreement with any third party on terms as the City considers appropriate, not inconsistent with the rights and obligations of the parties under this Agreement. Licensee's consent in connection with the final determination of Co-location of a third party is not required. Any rent or fees paid by an additional Co-locator belong solely to the City.
- B. Prior to permitting the installation of a Co-location by any third party in or around the Licensed Area which may interfere with the Licensee's operations, the City shall give the Licensee thirty (30) days notice of the proposed Co-location so that the Licensee can determine if the Co-location will interfere with the Facility. If

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

12. ASSIGNMENT.

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

13. PERFORMANCE BOND.

In addition to any other bond required by this Agreement, the Licensee shall, no later than thirty (30) days after the Effective Date, provide the City with a cash deposit, letter of credit or performance bond in the amount of \$5,000.00. The performance bond shall be conditioned upon the Licensee's faithful performance of all of its obligations under

this Agreement. The bond shall be executed by a surety company duly authorized to do business in the State of Arizona and acceptable to the City's Project Manager.

14. REGULATORY AGENCIES, SERVICES, FINANCIALS AND BANKRUPTCY.

A. The Licensee shall provide to the City:

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

B. The Licensee shall provide the City, upon request, copies of any petition, application, communications or other documents related to any filing by the Licensee of bankruptcy, receivership or trusteeship.

15. DEFAULT; TERMINATION BY CITY.

A. The City may terminate this Agreement for any of the following reasons upon thirty (30) days written notice to Licensee:

- i) Failure of Licensee to perform any obligation under this Agreement, after Licensee fails to cure default within the notice and cure period. However, if cure cannot reasonably be implemented within the notice period, Licensee must commence and diligently pursue to cure within ninety (90) days of the City's notice.
- ii) The taking of possession for a period of ten (10) days or more of substantially all of Licensee's personal property in the Licensed Area by or pursuant to lawful authority of any legislative act, resolution, rule, order or decree or any act, resolution, rule, order or decree of any court or governmental board, agency, officer, receiver, trustee or liquidator.
- iii) The filing of any lien against the Licensed Area due to any act or omission of the Licensee that is not discharged or fully bonded within thirty (30) days of receipt of actual notice by the Licensee.

- B. The City may place the Licensee in default of this Agreement by giving the Licensee thirty (30) days written notice of the Licensee's failure to timely pay the rent required under this Agreement or any other charges required to be paid by the Licensee pursuant to this Agreement. If Licensee does not cure the default within the notice period the City may terminate this Agreement or exercise any other remedy allowed by law or equity.
- C. If the Licensee, through any fault of its own, at any time fails to maintain all insurance coverage required by this Agreement, the City may, upon written notice to the Licensee, immediately terminate this Agreement or secure the required insurance at Licensee's expense.
- D. Failure by a party to take any authorized action upon default by the other party does not constitute a waiver of the default nor of any subsequent default by the other party. Acceptance of rent and other fees by the City for any period after a default by the Licensee is not considered a waiver or estoppel of the City's right to terminate this Agreement for any subsequent failure by the Licensee to comply with its obligations.
- E. Upon the termination of this Agreement for any reason, all rights of the Licensee terminate, including all rights of the Licensee's creditors, trustees and assigns and all others similarly situated as to the Licensed Area.

16. TERMINATION.

- A. This Agreement may be terminated for any of the following reasons:
 - i) By either party upon issuance by a court of competent jurisdiction of an injunction in any way preventing or restraining the Licensee's use of any portion of the Licensed Area and remaining in force for a period of thirty (30) consecutive days.
 - ii) By either party upon the inability of the Licensee to use any substantial portion of the Licensed Area for a period of ninety (90) consecutive days due to the enactment or enforcement of any law or regulation or because of fire, earthquake or similar casualty, or Acts of God or the public enemy.
 - iii) By either party upon ninety (90) days written notice, if the Licensee is unable to obtain or maintain any license, permit or governmental approval necessary for the construction, installation or operation of the Facility or the Licensee's business.
 - iii) By Licensee, if the Licensed Area or Facility is destroyed or damaged so as in Licensee's party's reasonable judgment the use of the Facility is substantially and adversely affected.
 - iv) By Licensee upon sixty (60) days prior written notice to City if Licensee determines it shall no longer operate at the Licensed Premises.

- B. In order to exercise the termination provisions above the party exercising termination must not itself be in default under the terms of this Agreement beyond any applicable grace or cure period and, if not otherwise stated above, provide reasonable written notice to the other party.

17. INDEMNIFICATION.

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

18. INSURANCE.

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

- i) Commercial general liability and property damage insurance in the minimum amount of \$5,000,000 combined single limit, \$5,000,000 aggregate.

- B. Insurance shall:

- i) Include the City as an additional insured on the insurance policy and maintain coverage through the term of the Agreement;
- ii) Instruct the insurer to provide 30 days written notice to the City prior to cancellation (10 days due to non-payment);
- iii) Include contractual liability coverage for the obligation of indemnity assumed in this Agreement, subject to standard policy provisions and exclusions; and

iv) Be primary and non-contributory with respect to all other available sources, as relates to Licensee's negligence.

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

19. DAMAGE OR DESTRUCTION.

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

20. SURRENDER OF POSSESSION.

Upon the expiration or termination of this Agreement, the Licensee's right to occupy the Licensed Area and exercise the privileges and rights granted under this Agreement shall cease, and it shall surrender and leave the Licensed Area in good condition, normal wear and tear excepted. Unless otherwise provided, all trade fixtures, equipment, and other personal property installed or placed by the Licensee on the Licensed Area shall remain the property of the Licensee, and the Licensee may, at any time during the term of this Agreement, and for an additional period of ninety (90) days after its expiration, remove the same from the Licensed Area so long as Licensee is not in default of any of its obligations, and repairs at its sole cost, any damage caused by the removal. Any property not removed by the Licensee within the 90-day period becomes a part of the Licensed Area, and ownership vests in the City, or the City may, at the Licensee's expense, have the property removed. Licensee's indemnity under this Agreement applies to any post termination removal operations. Footings, foundations, and concrete will be removed to a depth of three feet below grade.

21. NOTICE.

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

TO THE CITY:

City of Glendale
5850 W. Glendale Avenue
Glendale, AZ 85301
Attention: Property Manager

WITH A COPY TO:

City of Glendale
5850 W. Glendale Avenue
Glendale, AZ 85301
Attention: City Attorney

TO THE LICENSEE:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #: PHNXAZX048; Cell Site Name: Glendale Self Storage (AZ)
Fixed Asset No: 10112201
12555 Cingular Way, Suite 1300
Alpharetta, Georgia 30004

Emergency Contact Phone Numbers:

Network Operations Center
1-866-539-1483

WITH A COPY TO:

New Cingular Wireless PCS, LLC
Attn: AT&T Legal Department
Re: Cell Site # PHNXAZX048; Cell Site Name: Glendale Self Storage (AZ)
Fixed Asset No.: 10112201
PO Box 97061
Redmond, WA 98073-9761

Or, if sent via nationally recognized overnight carrier:

New Cingular Wireless PCS, LLC
Attn: Legal Department
Re: Cell Site # PHNXAZX048; Cell Site Name: Glendale Self Storage (AZ)
Fixed Asset No.: 10112201
16331 NE 72nd Way
Redmond, WA 98052-7827

WITH A COPY TO LOCAL CONTACT:

New Cingular Wireless PCS, LLC
Attn: AZ/NM Network Property Management
20830 N. Tatum Blvd. #400
Phoenix, AZ 85050

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

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

22. SEVERABILITY.

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

23. TAXES AND LICENSES.

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

24. LITIGATION.

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

25. RULES AND REGULATIONS.

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

26. RIGHT OF ENTRY RESERVED.

- A. The City may, at any time, enter upon the Licensed Area for any lawful purpose, so long as the action does not unreasonably interfere with the Licensee's use or

occupancy of the Licensed Area. The City shall have access to the Facility itself only in emergencies or upon reasonable notice to the Licensee.

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

27. RELOCATION.

- A. The City shall not bear any cost of relocation of existing facilities, irrespective of the function served, where the City facilities or other facilities occupying the Licensed Area or right-of-way in close proximity to the Licensed Area, are already located and the conflict between the Licensee's potential Facility and existing facilities can only be resolved expeditiously, as determined by the City, by the movement of the existing City or other permitted facilities.
- B. The City shall not bear any cost of relocation of Licensee's Facility, where in the City's discretion, relocation is reasonable and necessary in connection with City right-of-way repairs, improvements or other capital projects affecting the Licensed Area. City shall provide Licensee no less than ninety (90) days advance notice of a requirement to relocate. If the City becomes aware of a potential delay involving the Licensee's relocation, the City shall notify the Licensee within thirty (30) days of becoming aware of the potential delay. The Licensee may object in writing to the determination of relocation to the City's Project Manager within ten (10) days of receipt of the notice to relocate. The Project Manager shall consider the objection and respond in writing to Licensee within thirty (30) days of receipt of the objection. The Project Manager's determination is final

28. CONFLICTS OF INTEREST.

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

29. MISCELLANEOUS.

This Agreement constitutes the entire agreement between the parties concerning the subject matter stated and supersedes all prior negotiations, understandings and

EXHIBIT A
Page 1 of 3

To the License Agreement dated _____, 2013, by and between City of Glendale, an Arizona municipal corporation, as Licensor, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Licensee.

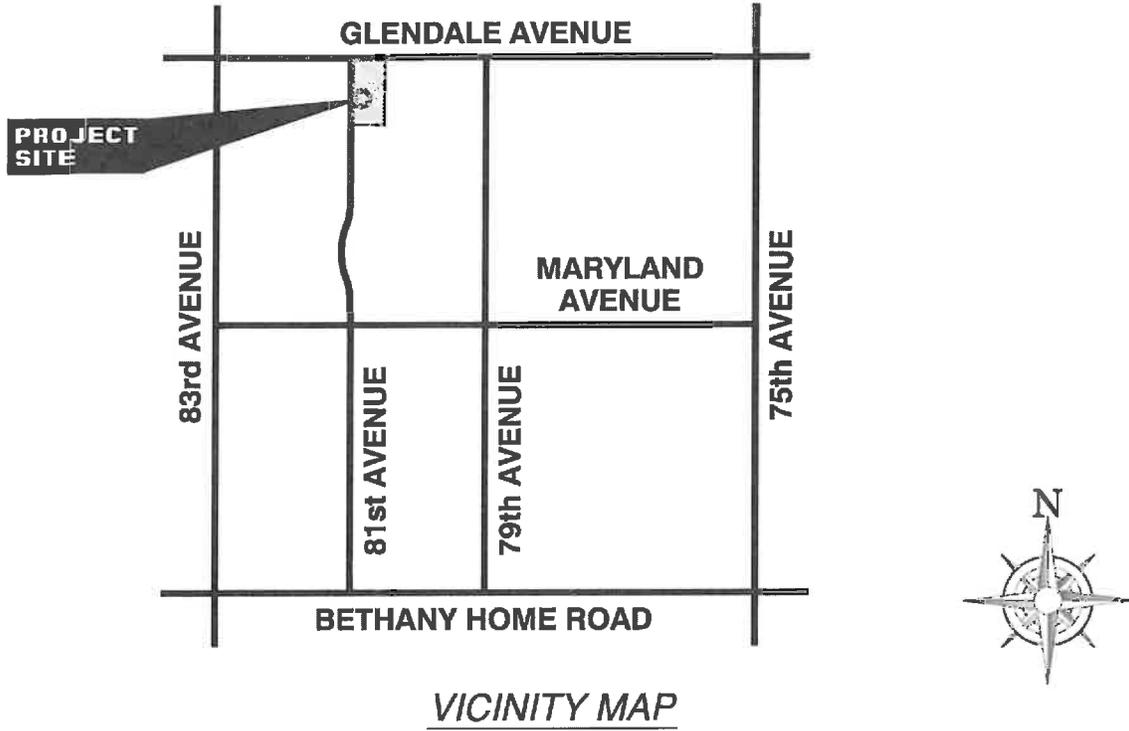


EXHIBIT A
Page 2 of 3

To the License Agreement dated _____, 2013, by and between City of Glendale, an Arizona municipal corporation, as Landlord, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Tenant.

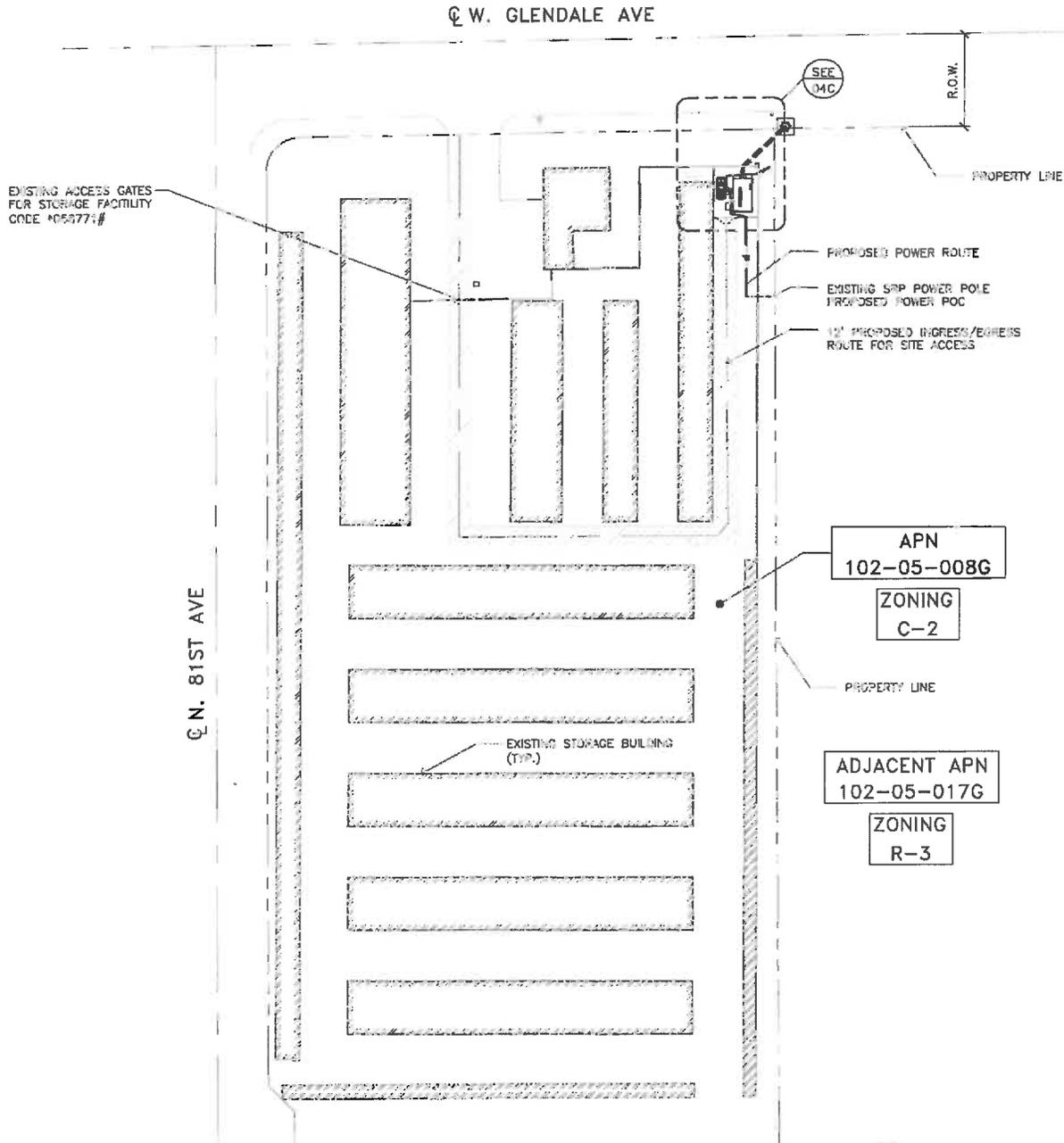
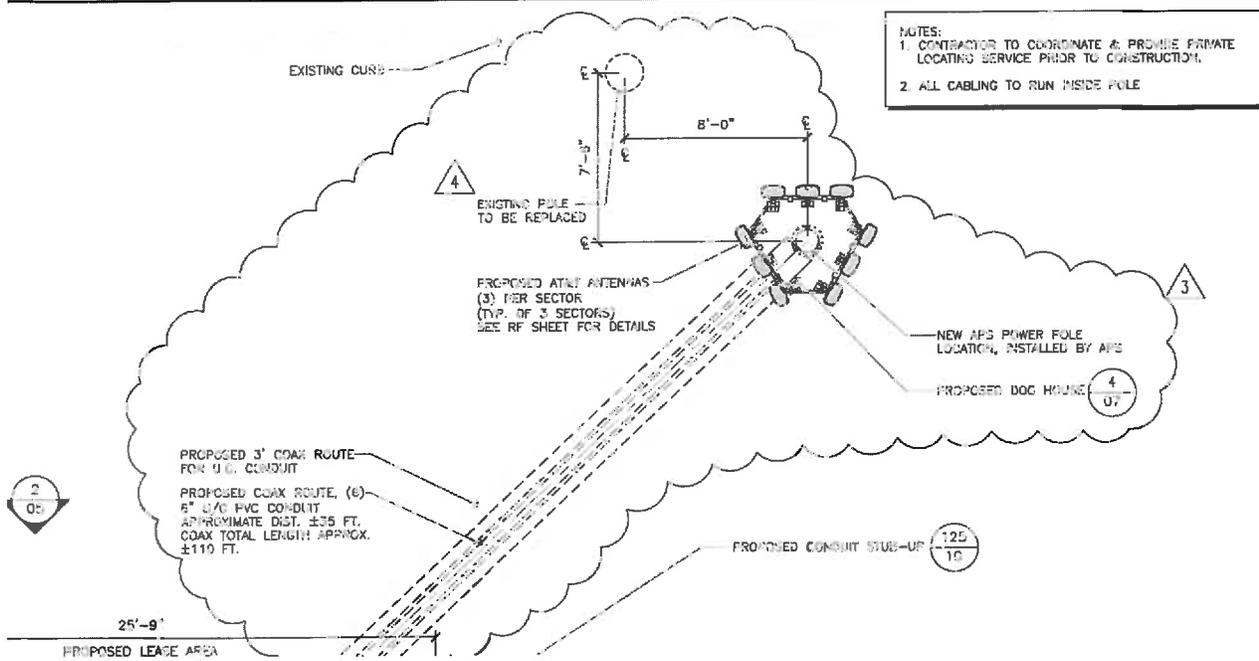


EXHIBIT A
Page 3 of 3

To the License Agreement dated _____, 2013, by and between City of Glendale, an Arizona municipal corporation, as Landlord, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Tenant.



**CITY OF GLENDALE RIGHT-OF-WAY
LICENSE AGREEMENT
FOR NEW CINGULAR WIRELESS PCS, LLC,
A DELAWARE LIMITED LIABILITY COMPANY**

This License Agreement for New Cingular Wireless PCS, LLC, a Delaware limited liability company in City Right-of-Way (“Agreement”) is executed to be effective the _____ day of _____, 2013 (“Effective Date”), between the City of Glendale, an Arizona municipal corporation (“City”), and New Cingular Wireless PCS, LLC, a Delaware limited liability company authorized to do business in the State of Arizona (“Licensee”).

WHEREAS, the City is the owner of certain right-of-way located within 55th Avenue, located immediately south of Greenway Road (“Licensed Area”), as more particularly described in Exhibit A attached hereto; and

WHEREAS, the City is willing to grant to the Licensee a license to use the Licensed Area for the operation of Licensee’s Facility (“Facility”) in accordance with the terms of this Agreement, subject to the approval of the Glendale City Council, and all as implemented by the City’s Project Manager (“Project Manager”), whose approvals shall not be unreasonably withheld.

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

1. LICENSED AREA.

- A. The Licensed Area includes and is limited to the following areas depicted in Exhibit A:
- i) The area on, or in which the Facility is located, or an alternative area in the right-of-way, as approved by the City.
 - ii) Reasonable access to the Facility through the public right-of-way.

2. CITY’S REPRESENTATIONS AND WARRANTIES.

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

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

3. GRANT OF LICENSE; TERM.

- A. Nothing in this Agreement will be construed as granting the Licensee the authority to use any property that is owned by any person or entity other than the City.
- B. The initial term of this Agreement shall be for a period of five (5) years (the “Initial Term”), commencing on the Effective Date and ending on the fifth anniversary thereof, unless sooner terminated as stated herein. This Agreement may be renewed for no more than four successive five-year Renewal Terms unless City notifies Licensee, in writing of City’s intent to not renew this Agreement at least thirty (30) days prior to the expiration of the Initial Term or any Renewal Term due to: a violation by Licensee of any term of this Agreement not cured within thirty (30) days written notice; any subsequent violation of the same term since the original Effective Date of this Agreement which is not cured within thirty (30) days written notice; or for any of the reasons listed under Section 16; or for any operations or incidents caused by Licensee which the City’s Project Manager considers, in good faith, to be an imminent danger to public safety, and Licensee fails to remove the imminent danger to public safety within thirty (30) days following receipt of written notice from the City’s Project Manager describing the danger.
- C. If Licensee continues to occupy the Licensed Area after the expiration or termination of this Agreement, holding over will not be considered to operate as a renewal or extension of this Agreement, but shall be a month-to-month license and the Licensee must pay the City rent in an amount that is double the amount of rent that would otherwise be due under Section 4.
- D. Notwithstanding any provision in this Agreement to the contrary or any negotiation, correspondence, course of performance or dealing, or other statements or acts by or between the parties, Licensee's rights in the Licensed Area are limited to the rights created by this Agreement, which create only a license in the Licensed Area, which is revocable only as set forth expressly herein. The City and the Licensee do not by this instrument intend to create a lease, easement or other real property interest. The Licensee has no real property interest in the Licensed Area. Licensee’s sole remedy for any breach or threatened breach of this Agreement by the City will be an action for damages. Licensee’s rights are subject to all covenants, restrictions, easements, agreements, reservations and encumbrances upon, and all other conditions of title to, the Licensed Area. Licensee’s rights under this Agreement are further subject to all

present and future building restrictions, regulations, zoning laws, ordinances, resolutions and orders of any local, state or federal agency, now or later having jurisdiction over the Licensed Area or the Licensee's use of the Licensed Area; provided, however, City shall not approve any ordinance or regulation that would have the effect of materially limiting or prohibiting the Licensee's use of the Licensed Area for the Facility so long as Licensee is not in default under this Agreement beyond the applicable periods of notice and cure.

4. RENT; FEES; COSTS.

- A. Licensee shall pay, without notice and free from all claims, deductions and setoffs against the City, rent in the amount of \$15,000.00 per year, plus all appropriate taxes (See Section 23 below) beginning on the Effective Date, and each subsequent year of the term of this Agreement, up to and including the expiration or earlier termination thereof.
- B. Rent will increase by 3.0% annually on the anniversary of the Effective Date.
- C. Rent is due on the first day of the anniversary date month of the Effective Date of this Agreement. Licensee shall pay the rent due for the current year in advance on the first business day of each anniversary month. If the Effective Date is not on the first day of a month, the Licensee's rent will be prorated accordingly.
- D. If the Licensee fails to pay any rent in full within ten (10) business days of the due date, the Licensee is responsible for interest on the unpaid rent balance at the rate of eighteen percent (18%) per annum from the due date until payment is made in full.
- E. Upon submission of plans in connection with the approval of this Agreement Licensee shall pay the City a dry utility permit fee in accordance with the City's Community Development Fee Schedule.
- F. Licensee shall pay the City actual costs for inspections, materials testing and other costs incurred by the City related to the construction, repair, alteration or relocation of the Facility. All costs shall be paid in full within thirty (30) days of invoice.

5. UTILITIES.

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

6. USE RESTRICTIONS.

- A. Subject to the interference provisions set forth below, Licensee shall at all times use reasonable efforts to minimize any impact that its use of the Licensed Area will have on other uses of the Licensed Area.

- B. Licensee shall not remove, damage, or alter in any way, any improvements or personal property of the City upon the Licensed Area without providing notice to the City. Licensee shall repair any damage or alteration to the City's property caused by Licensee's use of the Licensed Area to the same condition that existed before the damage or alteration.
- C. Whenever the Licensee performs construction activities within the Licensed Area, the Licensee shall obtain all necessary construction permits and promptly, upon completion of construction, restore the remaining Licensed Area to the condition existing prior to construction to the satisfaction of the City's Project Manager. If the Licensee fails to restore the Licensed Area as required, the City may take all reasonable actions necessary to restore the Licensed Area, and the Licensee, within twenty (20) days of demand and receipt of an invoice from the City, together with reasonable supporting documentation, will pay all of the City's reasonable costs of restoration.
- D. Licensee shall use the Licensed Area solely for constructing, installing, operating, maintaining, repairing, modifying and removing the Facility. The Facility is limited to the equipment and facilities listed in Section 1 above and other items as may be approved by the City, in its sole discretion, in writing.
- E. Licensee shall have a non-exclusive right for ingress and egress, seven (7) days a week, twenty-four (24) hours a day, for the construction, installation, operation, maintenance, modification and removal of the Facility. In no event shall the City's use of the Licensed Area be unreasonably interrupted by the Licensee's work. Prior to entering upon the Licensed Area, the Licensee shall give the Property Manager or designee at least forty-eight (48) hours advance notice in the manner provided in Section 21 of this Agreement or, in the event of emergency repairs, any prior notice as is practical.
- F. Licensee shall at all times have on call and at the City's access an active, qualified and experienced representative to supervise the Facility, who is authorized to act for the Licensee in matters pertaining to all emergencies and the day-to-day operation of the Facility. The Licensee shall provide the Project Manager or designee with the names, addresses and 24-hour telephone numbers of designated persons in writing.
- G. In the vicinity of any above-ground facilities Licensee may have in the Licensed Area, Licensee shall keep the Licensed Area maintained, orderly and clean at all times.
- H. Licensee acknowledges that: i) the Licensee's use of the Licensed Area is subject and subordinate to, and shall not adversely affect, the City's use of the Licensed Area; and ii) the City reserves the right to further develop, maintain, repair or improve the Licensed Area; provided, however, City shall not use the Licensed Area in a manner which would have the effect of materially limiting or prohibiting the Licensee's use of the Licensed Area for the Facility so long as

Licensee is not in default under this Agreement beyond the applicable period of notice and cure.

- I. Licensee shall not install any signs in the Licensed Area other than required safety or warning signs or other signs necessary for the use of the Licensed Area as requested or approved by the City. Licensee bears all costs pertaining to the erection, installation, maintenance and removal of all of its signs.

7. HAZARDOUS WASTE.

The Licensee shall not produce, dispose, transport, treat, use or store any hazardous waste or toxic substance upon or about the Licensed Area in violation of the Arizona Hazardous Waste Management Act, A.R.S. § 49-901 *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. 2601 *et seq.*, or any other federal, state or local law pertaining to hazardous waste or toxic substances. Licensee shall not use the Licensed Area in a manner inconsistent with any regulations, permits or approvals issued by any state agency. The Licensee shall defend, indemnify and hold the City harmless against any loss or liability incurred by reason of any hazardous waste or toxic substance release on or affecting the Licensed Area to the extent caused by the Licensee, and shall immediately notify the City of any hazardous waste or toxic substance release at any time discovered or existing upon the Licensed Area. Licensee shall promptly and without request provide the City with copies of all written communications between the Licensee and any governmental agency concerning environmental inquiries, reports or problems in the Licensed Area.

8. LICENSEE'S IMPROVEMENTS; GENERAL REQUIREMENTS.

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

- i) In no event, including termination of this Agreement for any reason, is the City obligated to compensate the Licensee in any manner for any of Licensee's Improvements or other work provided by the Licensee during or related to this Agreement, except as provided in this Agreement. The Licensee shall timely pay for all labor, materials and work and all professional and other services related to Licensee's Improvements and defend, indemnify and hold harmless the City against any mechanics or materialmen's liens resulting from the same.
- ii) All work performed by Licensee must be in a workmanlike manner, and be diligently pursued to completion and in conformance with all building codes and similar requirements. Licensee's Improvements shall be commensurate with high quality industry standards as approved by the City, which approval shall not be unreasonably withheld, conditioned or delayed.

- iii) Licensee acknowledges that as of the Effective Date of this Agreement, the City has not approved or promised to approve any plans for the Licensee's Improvements, except for those improvements already in place or to the extent expressly stated in this Agreement.
- iv) Licensee shall make no structural or grading alterations, or similar structural modifications or additions or other significant construction work to the Licensed Area without having first received the written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. Licensee acknowledges that it has approved those plans attached as exhibits hereto. Review shall include all improvements, equipment, fixtures, paint and other construction work of any description as described in all plans delivered by the Licensee to the City. All such plans and construction are subject to inspection and final approval by the City as to materials, design, function and appearance.
- v) Licensee shall keep as-built records of the Licensee's Improvements and furnish copies of records to the City, at no cost to the City, upon completion of improvements and any changes to the same. Licensee shall participate as a member of the Blue Stake Center under A.R.S. § 40-360.21, et seq., regarding underground facilities, and submit proof of participation to the Project Manager upon request.
- vi) All changes to utility facilities shall be limited to the Licensed Area and shall be undertaken by the Licensee only with the written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.
- vii) All of the Licensee's Improvements shall be designed so as to present uniformity of design, function, appearance and quality throughout and consistency with other improvements located in the Licensed Area.
- viii) Licensee shall properly mark and sign all excavations and maintain barriers and traffic control in accordance with applicable laws, regulations and best management practices.

B. The following procedure governs the Licensee's submission to the City of all plans for the Licensed Area and the Licensee's Improvements, including any proposed changes by the Licensee of previously approved plans:

- i) Licensee shall coordinate with the City as necessary on significant design issues prior to submission of plans.
- ii) Upon execution of this Agreement, the City and the Licensee shall each designate a project manager to coordinate the parties' participation in designing and constructing Licensee's Improvements. The City's Project Manager or designee will serve as Project Manager for the City. Each

project manager shall devote time and efforts to the project as may be necessary for timely, good faith and convenient coordination among all persons involved with the project and compliance with this Agreement. The City's Project Manager will not be exclusively assigned to this Agreement or the Licensee's Improvements.

- iii) No plans are considered finally submitted until the Licensee delivers to the City a formal certification by an engineer licensed in Arizona, acceptable to the Project Manager, to the effect that all of the Licensee's Improvements are properly designed to be safe and functional as designed and as required by this Agreement. The certification shall be accompanied by and refer to any backup information and analysis as the Project Manager may reasonably require.
- iv) Except for those plans attached as exhibits to this Agreement, no plans are considered approved until stamped "APPROVED" and dated by the City's Project Manager.
- v) Licensee acknowledges that the Project Manager's authority with respect to the Licensed Area is limited to the administration of the requirements of this Agreement. Licensee is responsible to secure all zoning approvals, design revisions or other governmental approvals and to satisfy all governmental requirements pertaining to the project and may not rely on the City or Project Manager to initiate or suggest any particular process or course of action.
- vi) The City's issuance of building permits shall not be considered valid unless the plans have been approved as stated in subsection (iv) above. The City's Project Manager shall be reasonably available to coordinate and assist the Licensee in working through issues that may arise in connection with such plan approvals and requirements.
- vii) The Licensee shall, in the submittal of all plans, allow adequate time for all communications and plan revisions necessary to obtain approvals and shall schedule its performances and revise its plans as necessary to timely obtain all approvals and make payment of all applicable fees.
- viii) Any delay in City's review of or marking Licensee's plans with changes necessary to approve the plans, or approve the revised plans in accordance with the City's normal plan-review procedures, will not be considered approval of the plans but may operate to extend Licensee's construction deadlines. The City agrees to use reasonable efforts to review, mark or approve Licensee's plans in a prompt and timely manner and in conformance with established policies and procedures.
- ix) The Licensee shall provide the City with two (2) complete sets of detailed plans and specifications of the work as completed.

- x) The parties shall use reasonable efforts to resolve any design and construction issues to their mutual satisfaction but, in the event of an impasse for any reason, final decision authority regarding all design and construction issues shall rest with the City in its discretion.
- xi) Prior to the commencement of any construction on the Licensed Area, the Licensee shall provide the City with performance bonds, and if considered necessary by the City, payment bonds, in amounts equal to the full amount of the written construction contract pursuant to which such construction is to be done. The payment bond shall be solely for the protection of claimants supplying labor or materials for the required construction work and the performance bond shall be solely for the protection of the City, conditioned upon the faithful performance of the required construction work. Bonds shall be executed by a surety company duly authorized to do business in Arizona, and acceptable to the City and shall be kept in place for the duration of the work.

9. LICENSEE'S INITIAL CONSTRUCTION.

No later than eighteen (18) months after the Effective Date and the City's issuance of all necessary approvals, the Licensee shall install the Facility in the Licensed Area in accordance with all of the specifications contained in the attached Exhibit A. Equipment already in place from previous authorization will also be reflected in Exhibit A.

10. MAINTENANCE.

- A. The Licensee has, at its own cost, all responsibilities for improvements to and maintenance of the Facility in the Licensed Area during the term of this Agreement.
- B. Licensee, at its expense, shall use reasonable efforts to minimize the visual and operational impacts of the equipment as required by any City Ordinance, permit, or other permission necessary for the installation or use of the Licensed Area.

11. CO-LOCATION.

- A. Subject to subsection (B) below, the Licensee shall at all times use reasonable efforts to cooperate with the City or any third parties with regard to the possible co-location of additional equipment, facilities or structures in and around the Licensed Area ("Co-location"). If Co-location is feasible, the City may, in its sole discretion, negotiate a Co-location license agreement with any third party on terms as the City considers appropriate, not inconsistent with the rights and obligations of the parties under this Agreement. Licensee's consent in connection with the final determination of Co-location of a third party is not required. Any rent or fees paid by an additional Co-locator belong solely to the City.
- B. Prior to permitting the installation of a Co-location by any third party in or around the Licensed Area which may interfere with the Licensee's operations, the City

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

12. ASSIGNMENT.

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

13. PERFORMANCE BOND.

In addition to any other bond required by this Agreement, the Licensee shall, no later than thirty (30) days after the Effective Date, provide the City with a cash deposit, letter of credit or performance bond in the amount of \$5,000.00. The performance bond shall

be conditioned upon the Licensee's faithful performance of all of its obligations under this Agreement. The bond shall be executed by a surety company duly authorized to do business in the State of Arizona and acceptable to the City's Project Manager.

14. REGULATORY AGENCIES, SERVICES, FINANCIALS AND BANKRUPTCY.

A. The Licensee shall provide to the City:

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

B. The Licensee shall provide the City, upon request, copies of any petition, application, communications or other documents related to any filing by the Licensee of bankruptcy, receivership or trusteeship.

15. DEFAULT; TERMINATION BY CITY.

A. The City may terminate this Agreement for any of the following reasons upon thirty (30) days written notice to Licensee:

- i) Failure of Licensee to perform any obligation under this Agreement, after Licensee fails to cure default within the notice and cure period. However, if cure cannot reasonably be implemented within the notice period, Licensee must commence and diligently pursue to cure within ninety (90) days of the City's notice.
- ii) The taking of possession for a period of ten (10) days or more of substantially all of Licensee's personal property in the Licensed Area by or pursuant to lawful authority of any legislative act, resolution, rule, order or decree or any act, resolution, rule, order or decree of any court or governmental board, agency, officer, receiver, trustee or liquidator.
- iii) The filing of any lien against the Licensed Area due to any act or omission of the Licensee that is not discharged or fully bonded within thirty (30) days of receipt of actual notice by the Licensee.

- B. The City may place the Licensee in default of this Agreement by giving the Licensee thirty (30) days written notice of the Licensee's failure to timely pay the rent required under this Agreement or any other charges required to be paid by the Licensee pursuant to this Agreement. If Licensee does not cure the default within the notice period the City may terminate this Agreement or exercise any other remedy allowed by law or equity.
- C. If the Licensee, through any fault of its own, at any time fails to maintain all insurance coverage required by this Agreement, the City may, upon written notice to the Licensee, immediately terminate this Agreement or secure the required insurance at Licensee's expense.
- D. Failure by a party to take any authorized action upon default by the other party does not constitute a waiver of the default nor of any subsequent default by the other party. Acceptance of rent and other fees by the City for any period after a default by the Licensee is not considered a waiver or estoppel of the City's right to terminate this Agreement for any subsequent failure by the Licensee to comply with its obligations.
- E. Upon the termination of this Agreement for any reason, all rights of the Licensee terminate, including all rights of the Licensee's creditors, trustees and assigns and all others similarly situated as to the Licensed Area.

16. TERMINATION.

- A. This Agreement may be terminated for any of the following reasons:
 - i) By either party upon issuance by a court of competent jurisdiction of an injunction in any way preventing or restraining the Licensee's use of any portion of the Licensed Area and remaining in force for a period of thirty (30) consecutive days.
 - ii) By either party upon the inability of the Licensee to use any substantial portion of the Licensed Area for a period of ninety (90) consecutive days due to the enactment or enforcement of any law or regulation or because of fire, earthquake or similar casualty, or Acts of God or the public enemy.
 - iii) By either party upon ninety (90) days written notice, if the Licensee is unable to obtain or maintain any license, permit or governmental approval necessary for the construction, installation or operation of the Facility or the Licensee's business.
 - iii) By Licensee, if the Licensed Area or Facility is destroyed or damaged so as in Licensee's party's reasonable judgment the use of the Facility is substantially and adversely affected.
 - iv) By Licensee upon sixty (60) days prior written notice to City if Licensee determines it shall no longer operate at the Licensed Premises.

- B. In order to exercise the termination provisions above the party exercising termination must not itself be in default under the terms of this Agreement beyond any applicable grace or cure period and, if not otherwise stated above, provide reasonable written notice to the other party.

17. INDEMNIFICATION.

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

18. INSURANCE.

- A. The Licensee shall procure and at all times maintain the following types and amounts of insurance for its operations in the Licensed Area:
 - i) Commercial general liability and property damage insurance in the minimum amount of \$5,000,000 combined single limit, \$5,000,000 aggregate.
- B. Insurance shall:
 - i) Include the City as an additional insured on the insurance policy and maintain coverage through the term of the Agreement;
 - ii) Instruct the insurer to provide 30 days written notice to the City prior to cancellation (10 days due to non-payment);
 - iii) Include contractual liability coverage for the obligation of indemnity assumed in this Agreement, subject to standard policy provisions and exclusions; and

iv) Be primary and non-contributory with respect to all other available sources, as relates to Licensee's negligence.

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

19. DAMAGE OR DESTRUCTION.

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

20. SURRENDER OF POSSESSION.

Upon the expiration or termination of this Agreement, the Licensee's right to occupy the Licensed Area and exercise the privileges and rights granted under this Agreement shall cease, and it shall surrender and leave the Licensed Area in good condition, normal wear and tear excepted. Unless otherwise provided, all trade fixtures, equipment, and other personal property installed or placed by the Licensee on the Licensed Area shall remain the property of the Licensee, and the Licensee may, at any time during the term of this Agreement, and for an additional period of ninety (90) days after its expiration, remove the same from the Licensed Area so long as Licensee is not in default of any of its obligations, and repairs at its sole cost, any damage caused by the removal. Any property not removed by the Licensee within the 90-day period becomes a part of the Licensed Area, and ownership vests in the City; or the City may, at the Licensee's expense, have the property removed. Licensee's indemnity under this Agreement applies to any post termination removal operations. Footings, foundations, and concrete will be removed to a depth of three feet below grade.

21. NOTICE.

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

TO THE CITY:

City of Glendale
5850 West Glendale Avenue
Glendale, AZ 85301
Attention: Property Manager

WITH A COPY TO:

City of Glendale
5850 W. Glendale Avenue
Glendale, AZ 85301
Attention: City Attorney

TO THE LICENSEE:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #: PHNXAZX055; Cell Site Name: APS Greenway Substation (AZ)
Fixed Asset No: 10112194
12555 Cingular Way, Suite 1300
Alpharetta, Georgia 30004

Emergency Contact Phone Numbers:

Network Operations Center
1-866-539-1483

WITH A COPY TO:

New Cingular Wireless PCS, LLC
Attn: AT&T Legal Department
Re: Cell Site # PHNXAZX055; Cell Site Name: APS Greenway Substation(AZ)
Fixed Asset No.: 10112194
PO Box 97061
Redmond, WA 98073-9761

Or, if sent via nationally recognized overnight carrier:

New Cingular Wireless PCS, LLC
Attn: Legal Department
Re: Cell Site # PHNXAZX055; Cell Site Name: APS Greenway Substation (AZ)
Fixed Asset No.: 10112194
16331 NE 72nd Way
Redmond, WA 98052-7827

WITH A COPY TO LOCAL CONTACT:

New Cingular Wireless PCS, LLC
Attn: AZ/NM Network Property Management
20830 N. Tatum Blvd. #400
Phoenix, AZ 85050

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

22. SEVERABILITY.

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

23. TAXES AND LICENSES.

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

24. LITIGATION.

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

25. RULES AND REGULATIONS.

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

26. RIGHT OF ENTRY RESERVED.

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

27. RELOCATION.

- A. The City shall not bear any cost of relocation of existing facilities, irrespective of the function served, where the City facilities or other facilities occupying the Licensed Area or right-of-way in close proximity to the Licensed Area, are already located and the conflict between the Licensee's potential Facility and existing facilities can only be resolved expeditiously, as determined by the City, by the movement of the existing City or other permitted facilities.
- B. The City shall not bear any cost of relocation of Licensee's Facility where, in the City's discretion, relocation is reasonable and necessary in connection with City right-of-way repairs, improvements or other capital projects affecting the Licensed Area. City shall provide Licensee no less than ninety (90) days advance notice of a requirement to relocate. If the City becomes aware of a potential delay involving the Licensee's relocation, the City shall notify the Licensee within thirty (30) days of becoming aware of the potential delay. The Licensee may object in writing to the determination of relocation to the City's Project Manager within ten (10) days of receipt of the notice to relocate. The Project Manager shall consider the objection and respond in writing to Licensee within thirty (30) days of receipt of the objection. The Project Manager's determination is final.

28. CONFLICTS OF INTEREST.

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

30. MISCELLANEOUS.

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

(Signatures Appear on Following Page.)

CITY OF GLENDALE, an Arizona
municipal corporation

Brenda S. Fischer
City Manager

ATTEST:

Pamela Hanna, (SEAL)
City Clerk

APPROVED AS TO FORM:

City Attorney

New Cingular Wireless PCS, LLC,
a Delaware limited liability company
By: AT&T Mobility Corporation
Its: Manager

By: Todd E. Daoust
Its: Area Manager

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

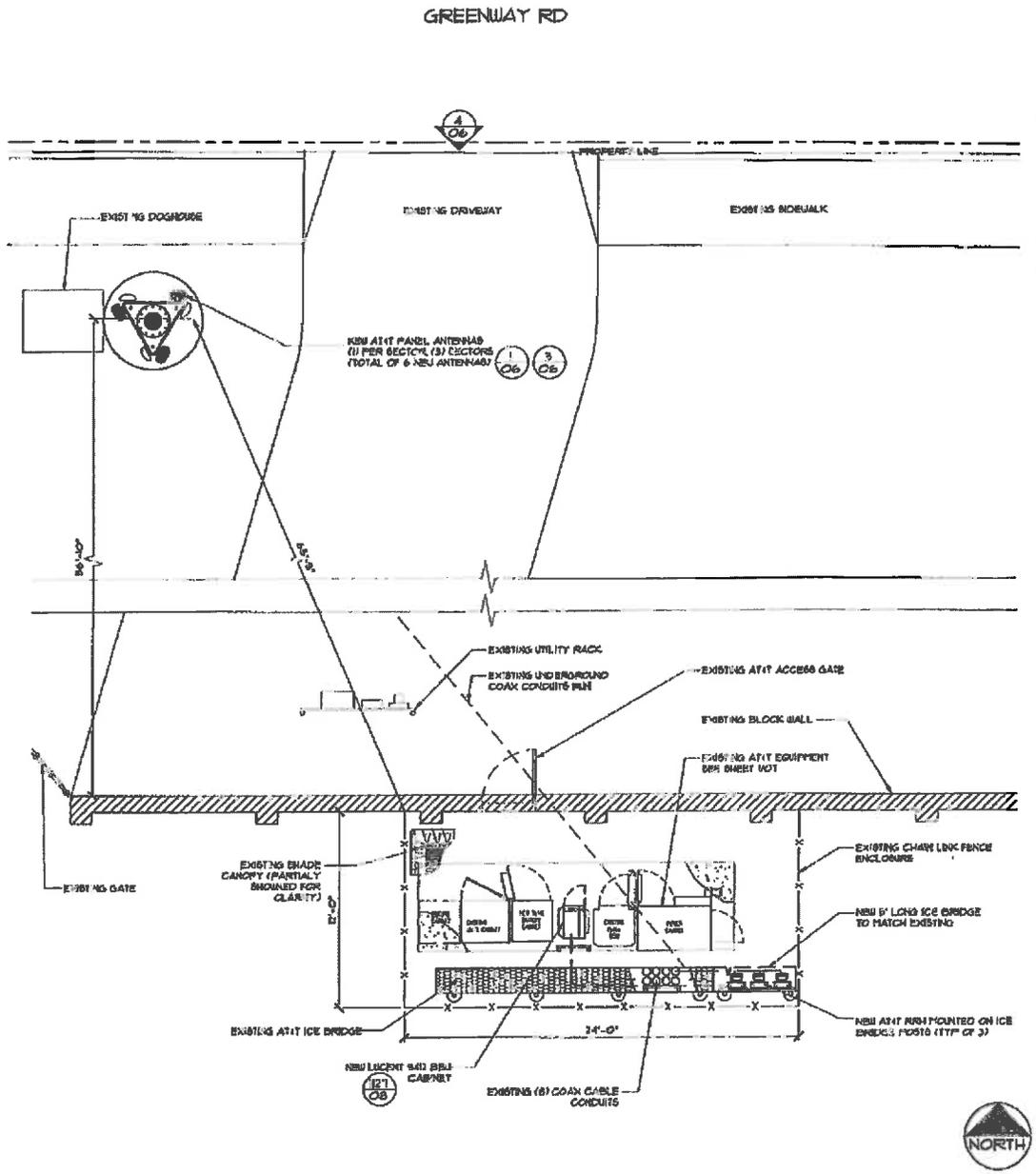
The foregoing document was acknowledged before me this ____ day of _____, 2013, by Todd E. Daoust, in his capacity as Area Manager of AT&T Mobility Corporation, the Manager of New Cingular Wireless PCS, LLC, a Delaware limited liability company, the Licensee named in the attached instrument.

Notary Public

My Commission Expires:

EXHIBIT A

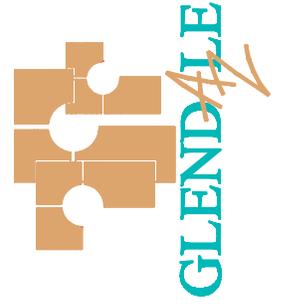
To the License Agreement dated _____, 2013, by and between City of Glendale, an Arizona municipal corporation, as Licensor, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Licensee.



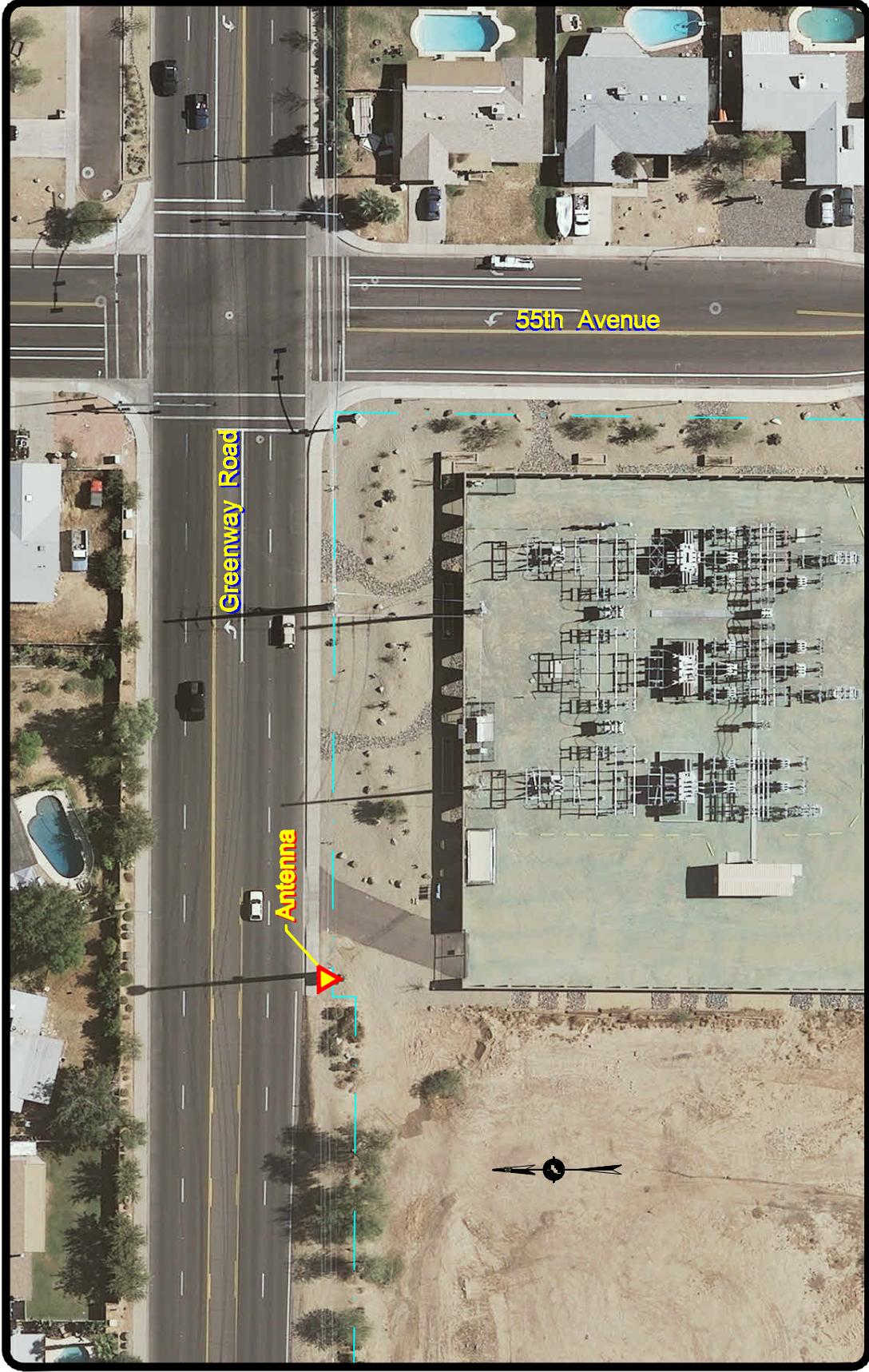


**GRANT LICENSE AGREEMENT
NEW CINGULAR WIRELESS PCS, LLC
54TH & UNION HILLS**





**GRANT LICENSE AGREEMENT
NEW CINGULAR WIRELESS PCS, LLC
81ST & GLENDALE**



**GRANT LICENSE AGREEMENT
NEW CINGULAR WIRELESS PCS, LLC
55TH & GREENWAY**



CITY COUNCIL REPORT

Meeting Date: **9/24/2013**
Meeting Type: **Voting**
Title: **FINAL PLAT APPLICATION FP13-01: RE-PLAT OF COPPER COVE PHASE 1 – 9251 WEST MISSOURI AVENUE**
Staff Contact: **Jon M. Froke, AICP, Planning Director**

Purpose and Recommended Action

This is a request by Bowman Consulting Group, representing Klondike Land Portfolio LLC, for City Council to approve the final plat of Copper Cove Phase 1, a Planned Residential Development, located approximately 240 feet west of the southwest corner of 93rd and Missouri avenues.

Staff recommends approval of Final Plat Application FP13-01.

Background

Copper Cove Phase 1 is a 36 lot single-family subdivision on 18 acres with a density of two dwelling units per acre. Lot sizes vary from 11,639 square feet to 27,168 square feet with an average lot size of 12,277 square feet.

A Final Plat application for this subdivision was approved in 2008; however, the subdivision was never constructed. The subdivision plat included private streets, as the previous owner's intention was to develop a gated community. The current owner wishes to construct a non-gated subdivision with public streets, and this re-plat application will dedicate the right-of-way and streets to the city.

Analysis

- The proposed plat is consistent with the General Plan land use designation of Low Density Residential (1-2.5 dwelling units per acre) and the existing R1-10 PRD (Single Residence, Planned Residential Development) zoning district.
- This request meets the requirements of the Subdivision and Minor Land Division Ordinance and is consistent with the Residential Design and Development Manual.
- The request is consistent with the approved Copper Cove Development Plan.

Previous Related Council Action

On June 27, 2006, Council approved Rezoning Application ZON04-13 for this subdivision.



CITY COUNCIL REPORT

On February 12, 2008, Council approved Final Plat Application FP07-01 for this subdivision.

Community Benefit/Public Involvement

This project provides for the development of a vacant infill property and a subdivision that is designed to be compatible with the surrounding neighborhoods.

The applicant held a neighborhood meeting on September 27, 2004. Issues discussed include: property values, home sizes and prices, access to 95th and Missouri avenues, and phasing of the development. The applicant held a second neighborhood meeting on November 30, 2005. Similar issues were discussed at this meeting. The applicant was able to answer all questions and address all concerns between the two meetings.

Final plat applications do not require citizen participation; therefore, no public notification was conducted specifically for this application. On September 10, 2013, Copper Cove Phase 2, directly south of the subject site, received approval through the rezoning process to amend the development standards. Development of Phase 1 was discussed during the citizen participation process for the rezoning application. City staff responded to telephone calls and met with nearby property owners leading up to the Planning Commission hearing on August 1, 2013. All questions and concerns were addressed at that time.

Attachments

Final Plat Narrative

Proposed Final Plat

Vicinity Zoning Map

Aerial Photograph

August 19, 2013

August 14th, 2013

**RE: Replat of Copper Cove Phase 1
9251 W. Missouri Avenue
Application FP13-01**

Project Narrative:

Copper Cove Phase 1 is a proposed 36 lot single family residential development on approximately 18-acres located west of the southwest corner of 91st and Missouri Avenue.

The uniquely designed project is bound on the south by Copper Canyon High School and Copper Cove Phase 2; residential to the east; and vacant land to the west. To the north of the property, across Missouri Avenue, is an existing single-family subdivision within Maricopa County. This Planned Residential Development (PRD) will feature a variety of lot sizes, decorative walls, landscaped entry features, ramadas, a tot lot and themed landscaping. Copper Cove Phase 1 will be linked to Copper Cove Phase 2 by open space and amenities. Copper Cove Phase 1 will have a single entrance off of Missouri Avenue. The lots adjacent to Missouri Avenue will be buffered by enhanced landscaping within a dedicated open space tract. In addition, a 6-foot high theme wall will be provided along the back of the lots along Missouri Avenue.

Copper Cove Phases 1 and 2 were previously approved and recorded as separate subdivisions. Copper Cove Phase 1 was originally platted as a gated subdivision with private streets. This replat removes the gated community aspect and dedicates the streets for public use.

Respectfully submitted,

A handwritten signature in black ink that reads "Shelby JM Duplessis".

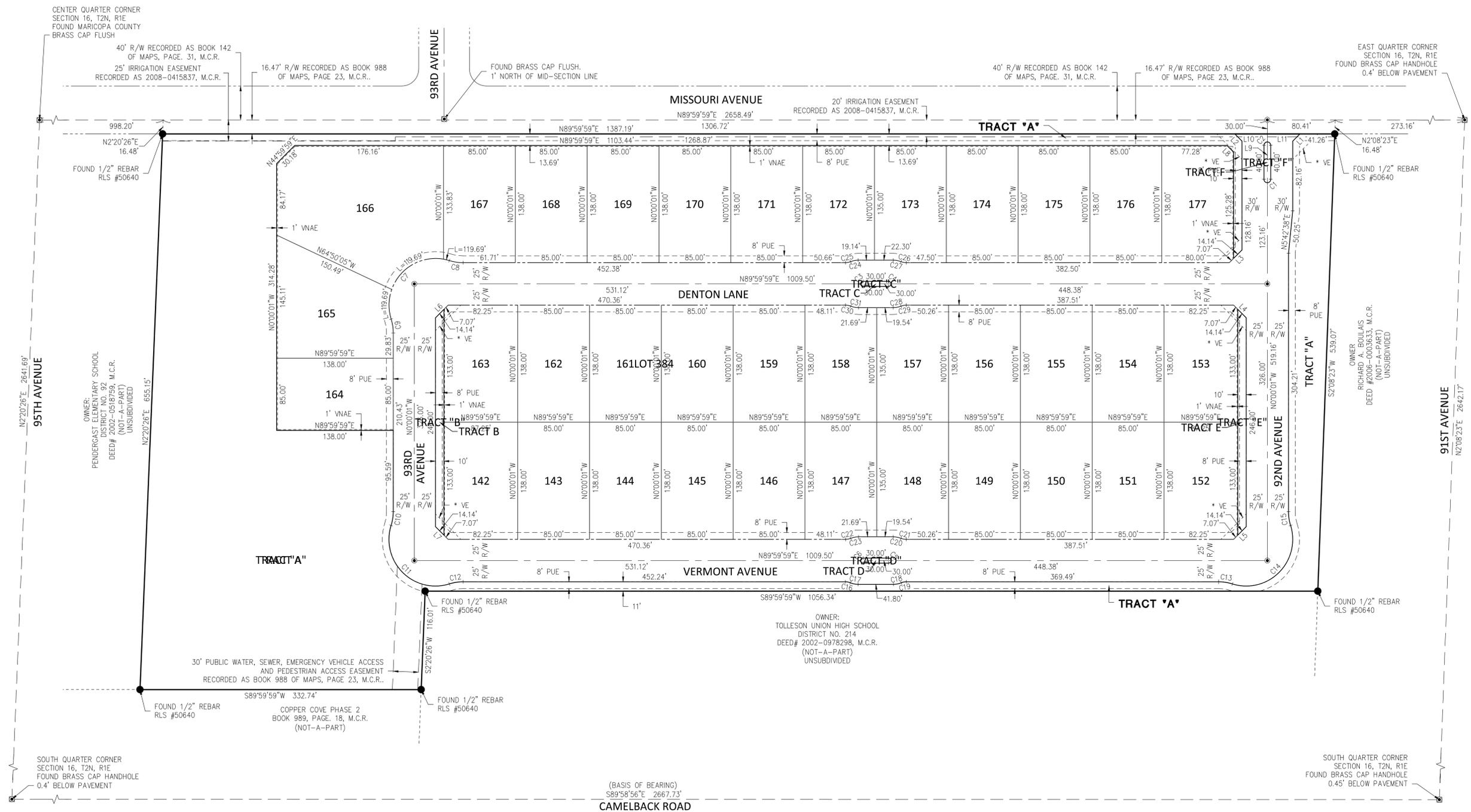
Bowman Consulting Group
Shelby JM Duplessis, PE, LEED AP
Senior Project Manager Project: Copper Cove



RE-PLAT
FINAL PLAT OF COPPER COVE PHASE 1
CITY OF GLENDALE, ARIZONA

REVISION	DATE

DATE: 08-16-13
PROJ NO: 9700-01-001
TASK NUM: 001
DRAWN BY: AG
CHECKED: CH
QUALITY: JD
CLIENT NO:
SCALE
1" = 60'
FP02 OF 2



LINE TABLE

LINE #	LENGTH	DIRECTION
L1	12.06'	N44°59'59"E
L2	12.06'	S45°00'01"E
L3	21.21'	S44°59'59"W
L4	21.21'	S45°00'01"E
L5	21.21'	N44°59'59"E
L6	21.21'	S44°59'59"W
L7	21.21'	S45°00'01"E
L8	10.92'	S45°00'00"E
L9	40.00'	N00°00'01"W
L10	38.53'	N89°59'59"E
L11	38.53'	N89°59'59"E

CURVE TABLE

CURVE #	LENGTH	RADIUS	DELTA
C1	12.57'	4.00'	180°00'00"
C2	12.57'	4.00'	180°00'00"
C3	9.42'	3.00'	180°00'00"
C4	9.42'	3.00'	180°00'00"
C5	9.42'	3.00'	180°00'00"
C6	9.42'	3.00'	180°00'00"
C7	119.69'	55.00'	124°40'58"
C8	16.65'	55.00'	017°20'29"
C9	16.65'	55.00'	017°20'29"
C10	16.65'	55.00'	017°20'29"
C11	119.69'	55.00'	124°40'58"

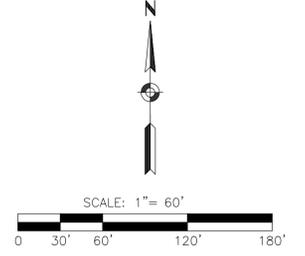
CURVE TABLE

CURVE #	LENGTH	RADIUS	DELTA
C12	16.65'	55.00'	017°20'29"
C13	16.65'	55.00'	017°20'29"
C14	119.69'	55.00'	124°40'58"
C15	16.65'	55.00'	017°20'29"
C16	6.24'	16.00'	022°19'54"
C17	9.35'	24.00'	022°19'54"
C18	9.35'	24.00'	022°19'54"
C19	6.24'	16.00'	022°19'54"
C20	9.35'	24.00'	022°19'54"
C21	6.24'	16.00'	022°19'54"
C22	6.24'	16.00'	022°19'54"

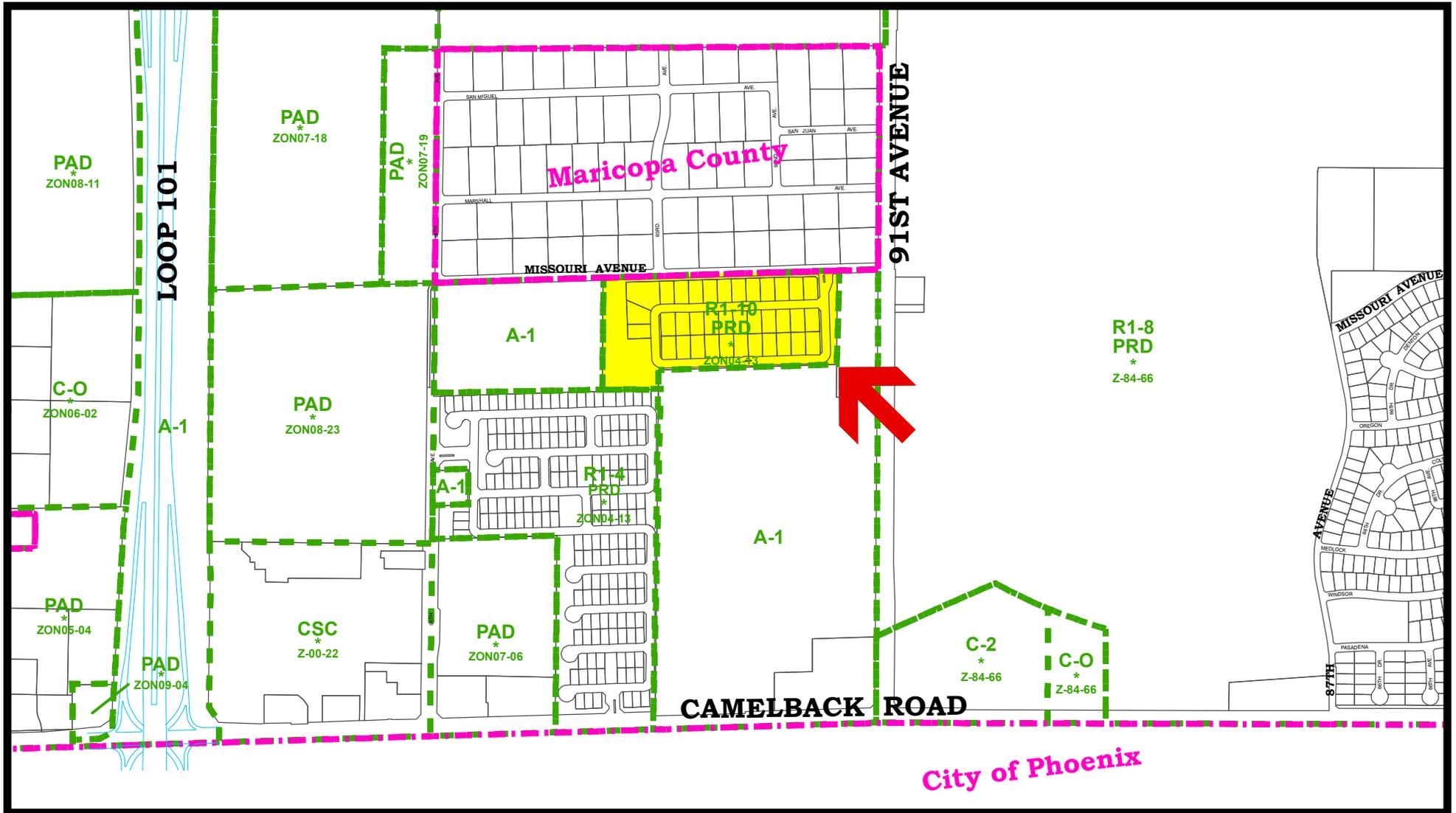
CURVE TABLE

CURVE #	LENGTH	RADIUS	DELTA
C23	9.35'	24.00'	022°19'54"
C24	9.35'	24.00'	022°19'54"
C25	6.24'	16.00'	022°19'54"
C26	6.24'	16.00'	022°19'54"
C27	9.35'	24.00'	022°19'54"
C28	9.35'	24.00'	022°19'54"
C29	6.24'	16.00'	022°19'54"
C30	6.24'	16.00'	022°19'54"
C31	9.35'	24.00'	022°19'54"

- LEGEND
- FOUND BRASS CAP AS NOTED
 - SET SURVEY MONUMENT PER MAG STD.
 - DETAIL 120-1, TYPE 'B'
 - FOUND REBAR AS NOTED
 - MARICOPA COUNTY RECORDER
 - PUBLIC UTILITY EASEMENT
 - RIGHT-OF-WAY
 - VEHICLE NO-ACCESS EASEMENT
 - 30' X 30' VISIBILITY EASEMENT
 - EASEMENT LINE (AS NOTED)
 - PUBLIC UTILITY EASEMENT
 - VEHICLE NO-ACCESS EASEMENT
 - SECTION LINE
 - RIGHT-OF-WAY
 - PROPERTY LINE
 - SUBDIVISION BOUNDARY



COUNTY RECORDER



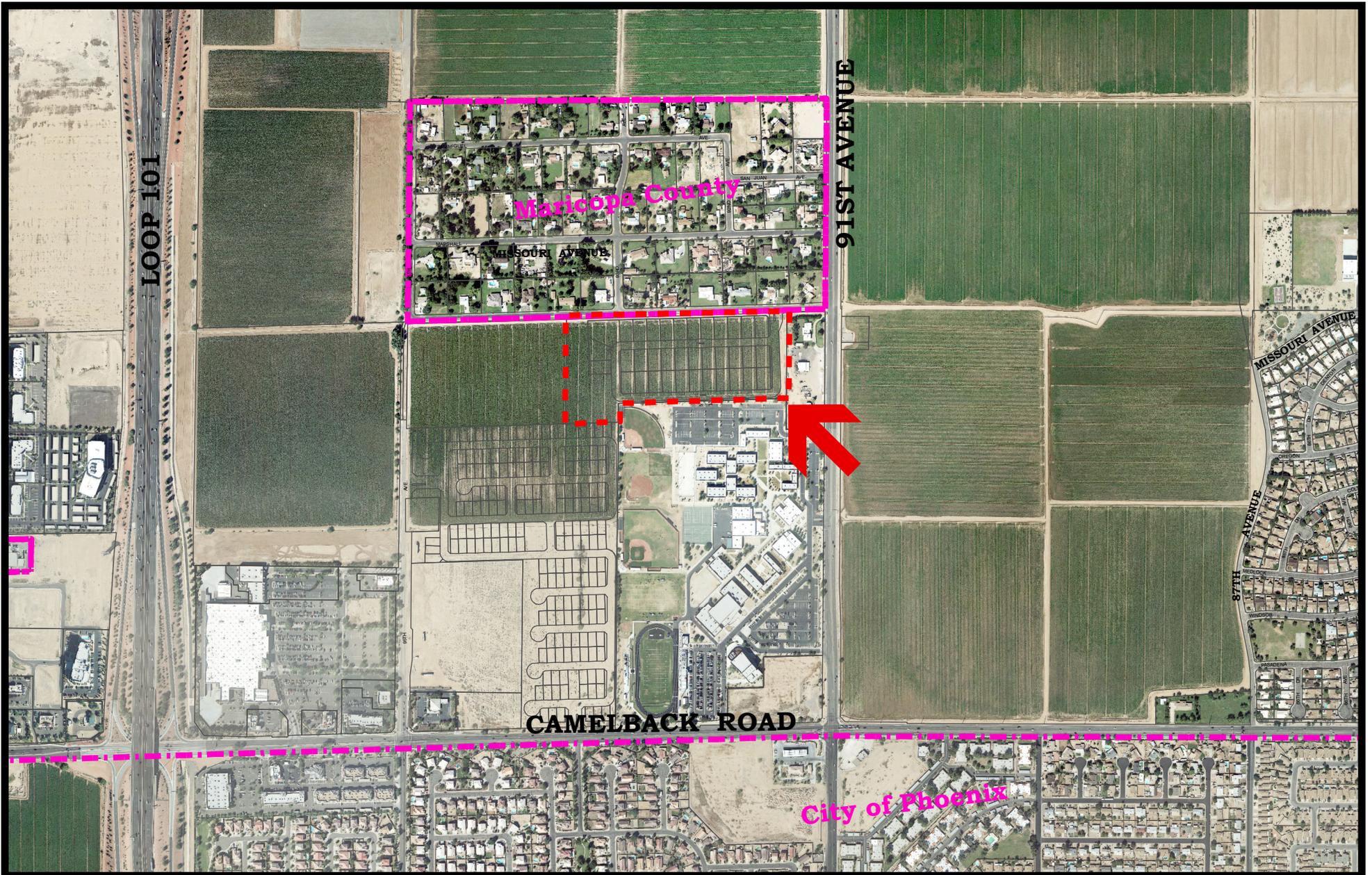
CASE NUMBER
FP13-01



REQUEST
FINAL PLAT APPROVAL FOR REPLAT
OF "COPPER COVE PHASE I"

LOCATION

9251 W. MISSOURI AVENUE



Aerial Date: November 2012



CASE NUMBER
FP13-01





CITY COUNCIL REPORT

Meeting Date: **9/24/2013**
Meeting Type: **Voting**
Title: **AMENDMENT TO GLENDALE CITY CODE CHAPTER 18 - GARBAGE AND TRASH (CONTAINERS AND PRECOLLECTION PRACTICES)**
Staff Contact: **Stuart Kent, Executive Director, Public Works**

Purpose and Recommended Action

This is a request for City Council to waive reading beyond title and adopt an ordinance modifying Chapter 18, Article II, Division 2, Section 18-53 of the Glendale City Code relating to container service location. Specifically, the modification directs the placement of residential refuse and recycling containers to be placed in the street against the curb and not on the sidewalk. The ordinance has an effective date of January 1, 2014.

Background

At the February 5, 2013 Council Workshop, Vice Mayor Knaack requested staff evaluate changing the placement of residential refuse and recycling containers from the sidewalk to the street so the pedestrian public would have full access to the sidewalk. At the March 5, 2013 Council Workshop, staff responded to the request and provided a report to City Council. Council directed staff to present the issue to the Commission on Persons with Disabilities (Commission) for their input and recommendations.

Staff from Public Works and the City Attorney's Office met with the Commission on three occasions between March-June 2013 and the Commission voted on June 18, 2013 to recommend a change to the City Code. Residents will be required to place their refuse and recycling containers in the street against the curb, at least three feet apart and at least 10 feet away from a vehicle, mailbox or other obstruction. Residents who do not have a curb or sidewalk are asked to place the container at the edge of the property or on their driveway. In no instance should a resident whose service is provided from an arterial street place the container in the street, the container should be placed at the curb on the sidewalk.

Council received the report from the Commission at the August 20, 2013 Council Workshop and directed staff to prepare the item for Council approval at a future voting meeting.

Analysis

The Commission analyzed two specific issues: 1) whether there are any legal requirements governing the placement of sanitation containers on city sidewalks and 2) the operational impacts of having the containers placed in the street against the curb. After extensive research was



CITY COUNCIL REPORT

conducted, the City Attorney’s Office was unable to find any legal provision the current practice is in violation of any federal, state, or local laws including the Americans with Disabilities Act. Public Works’ staff reviewed the issue and confirmed there are no operational impacts with this proposed change.

In order to facilitate this change, a variety of methods will be used to notify residents of the new procedures. Information will be posted on the city’s website, articles will highlight the change in the *Glendale Connection*, the issue will be the feature article of the Sanitation Division’s *Clean and Green* newsletter that is mailed to every homeowner in December, and a notification written in Spanish and English will be attached to every refuse and recycling container. The January 1, 2014 implementation date will also allow time for sanitation staff to work with any residents who have concerns or questions about the change in placement of refuse and recycling containers.

Previous Related Council Action

The proposed change was presented to Council at the August 20, 2013 Workshop and staff was directed to bring the issue forward for adoption of an ordinance modifying the Glendale City Code.

Community Benefit/Public Involvement

This modification will provide unrestricted access to the city sidewalks to all pedestrians in the community and will reduce the need for pedestrians to navigate around sanitation containers and onto private property or city streets. The issue was initiated at the request of a blind citizen who shared his experience with the Commission.

Budget and Financial Impacts

It is estimated to cost \$8,000 for the production of the notification cards that will be attached to each refuse and recycling container. Funds for this are available in the fiscal year (FY) 2013-14 Sanitation Enterprise Fund operating budget.

Cost	Fund-Department-Account
\$8,000	2480-17830-518200 Sanitation Enterprise Fund

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

Ordinance

ORDINANCE NO. 2861 NEW SERIES

AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AMENDING GLENDALE CITY CODE, CHAPTER 18, ARTICLE II, DIVISION 2, SECTION 18-53 RELATING TO CONTAINER SERVICE LOCATION AND SETTING FORTH AN EFFECTIVE DATE.

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

SECTION 1. That Glendale City Code, Chapter 18, Article II, Division 2, Sec. 18-53 to read as follows:

Sec. 18-53. Container service location.

...

(d) ~~Where there is neither alley nor side entrance, the containers shall be placed near the curb in front of the premises, or if there is no curb, they shall be placed at or near the property line at a location approved by the administrator.~~ In locations where there is neither alley nor side entrance, containers shall be placed in the street in front of the house to which containers are assigned with the wheels against the curb, and the lid opening facing the street. In locations where there is no curb, the container should be placed at the edge of the property within two (2) feet of the street or improved surface. Containers must not be placed within fifteen (10) feet of a vehicle, mailbox, or other obstruction as may be determined by the administrator. Containers must not be placed on arterial streets for service; rather, they should be placed on the property at the edge of the curb with the lid opening facing the street or in a location selected by the administrator. Containers should not block or impede access to the sidewalk.

(e) When it is not possible to place a container on a street, the container should be placed on the driveway adjacent to the sidewalk unless otherwise directed by the administrator.

(f) Refuse and recycling containers that are placed out for service must be at least three (3) feet apart to allow proper service. Lids for containers must be entirely closed.

SECTION 2. That the provisions of this ordinance shall become effective January 1, 2014.

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:

City Manager

c_18-53_container service

[Additions are indicated by underline; deletions by ~~strikeout~~.]



CITY COUNCIL REPORT

Meeting Date: **9/24/2013**
Meeting Type: **Voting**
Title: **INDUSTRIAL DEVELOPMENT AUTHORITY REVENUE BONDS FOR
MIDWESTERN UNIVERSITY**
Staff Contact: **Jessi Pederson, Economic Development Specialist**

Purpose and Recommended Action

This is a request for City Council to waive reading beyond the title and adopt a resolution authorizing the issuance of Industrial Development Authority (IDA) revenue bonds for Midwestern University in an amount not to exceed \$120,000,000.

Background

The Glendale IDA was formed in 1982 with the permission of the City of Glendale. Under the Arizona Industrial Development Financing Act (Act), the Glendale IDA can issue revenue bonds to finance a wide range of eligible projects listed in the applicable statutes. The proceeds received from the sale of bonds are then loaned to finance a project and the bonds are secured by and paid from scheduled loan payments.

IDA revenue bonds used to finance facilities for a non-profit 501(c)(3) educational institution that is not otherwise funded with State monies constitutes an eligible project within the meaning of the Act. Additionally, the financing of a project or a portion thereof which is located outside of the State of Arizona can be done if the IDA Board of Directors determines that it will provide a benefit within the State.

Midwestern University is a not-for-profit corporation recognized as a 501(c)(3) and is not funded with State monies.

The Glendale IDA has been instrumental in assisting Midwestern University in financing the development of its campus in Glendale. Midwestern enrolled its first class of 100 students at the Glendale Campus in 1996; for the upcoming 2014 academic year, Midwestern anticipates enrollment will reach approximately 2,920 students on the Glendale Campus alone. The growing campus occupies nearly 150 acres, offers 15 degree programs and employs over 600 faculty and staff, resulting in a direct economic impact of over \$300 million to the Valley of the Sun.

The proceeds of the requested Bonds will be used to assist the University in financing, refinancing or reimbursing itself for costs incurred for capital projects at the Glendale and Downer's Grove Campuses. Those costs include and are related to, without limitation, the various acquisition, demolition, design, construction, renovation and equipping projects throughout the campuses,



CITY COUNCIL REPORT

including a classroom building, laboratory building and veterinary clinic facility at the Glendale Campus as well as a multispecialty clinic facility and auditorium at the Downer's Grove Campus.

Analysis

Under the provisions of A.R.S. § 35-721(B), the proceedings of the IDA for its issuance of bonds require the approval of the Council, as the governing body of the IDA. In addition, under the provision of A.R.S. § 35-742, Glendale is not liable or obligated for the payment of the debt obligations issued by the IDA.

Staff supports the actions of the IDA approved by the Board of Directors at the September 11, 2013 Public Meeting and recommend that Council adopt a resolution authorizing the issuance of IDA revenue bonds for Midwestern University in an amount not to exceed \$120,000,000.

Previous Related Council Action

On August 23, 2011, Council adopted a resolution authorizing the issuance of IDA revenue bonds for Midwestern University in the amount not to exceed \$50,000,000 to assist the University in financing or reimbursing itself for costs incurred for capital projects.

On April 13, 2010, Council adopted a resolution authorizing the issuance of IDA revenue bonds for Midwestern University in the amount not to exceed \$160,000,000 to pay outstanding commercial paper notes in full.

Since 1996, the IDA issued a number of series of revenue bonds or commercial paper revenue notes to assist Midwestern in financing the development of the improvements which comprise the Midwestern Campus in Glendale.

Community Benefit/Public Involvement

Midwestern University is a highly-respected university attracting both students and visitors, positively impacting revenues to the city. Midwestern University creates a professional, well-educated medical workforce for Glendale. This action will benefit the community by providing a financing mechanism for Midwestern University, a long-time partner with the City of Glendale.

The IDA held a special open board meeting on July 9, 2013 to preliminarily approve the financing for the issuance of revenue bonds. On September 11, 2013, the Authority Board held an open board meeting to act by Resolution to grant final approval to the financing and to approve the issuance of the Bonds. On September 11, 2013, prior to the meeting, a representative of the IDA conducted a public hearing as required by §147(f) of the Internal Revenue Code of 1986. There was no public input at that time.



CITY COUNCIL REPORT

Budget and Financial Impacts

Under the provision of A.R.S. § 35-742, Glendale is not liable or obligated for the payment of the debt obligations issued by the IDA. Additionally, this action does not affect, in any way, the city's financial position or bond rating status.

Attachments

Resolution

Other

RESOLUTION NO. 4727 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, APPROVING THE ISSUANCE BY THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF GLENDALE, ARIZONA OF ITS REVENUE BONDS, MIDWESTERN UNIVERSITY, IN ONE OR MORE SERIES AND IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$120,000,000.

WHEREAS, the Industrial Development Authority of the City of Glendale, Arizona (the "Authority") proposes to issue not to exceed \$120,000,000 in aggregate principal amount of its Revenue Bonds, Midwestern University, in one or more series (the "Series 2013 Bonds"), for the purposes of (a) financing, refinancing or reimbursing Midwestern University, an Illinois not-for-profit corporation (the "University") for certain of the costs of the design, acquisition (including related land costs), improvement, construction and equipping (including, but not limited to, medical, dental and optometry equipment, computer equipment, office equipment and general building equipment and fixtures) of certain educational facilities owned by the University and located on its Glendale, Arizona campus (the "*Glendale Campus*") and on its Downers Grove, Illinois campus (the "*Downers Grove Campus*"), (b) refunding all or a portion of the Authority's Adjustable Rate Demand Revenue Bonds, Midwestern University, Series 2011, issued in an original aggregate principal amount of \$50,000,000, (c) refunding all or a portion of the Authority's Adjustable Rate Demand Revenue Refunding Bonds, Midwestern University, Series 2008, issued in an original aggregate principal amount of \$28,600,000, (d) funding one or more debt service reserve funds for the benefit of the Series 2013 Bonds, if deemed desirable by the Authority and the University, and (e) paying certain costs incurred in connection with the issuance of the Series 2013 Bonds, if deemed desirable by the Authority and the University, all in accordance with the Industrial Development Financing Act, Title 35, Chapter 5, Arizona Revised Statutes, as amended (the "Act"); and

WHEREAS, pursuant to Section 35-721.B of the Act, the proceedings under which the Series 2013 Bonds are to be issued require the approval of this Council; and

WHEREAS, a public hearing with respect to the plan of financing and the proposed issuance of the Series 2013 Bonds was held by the Authority, following reasonable public notice at least 14 days in advance of such hearing (the "Notice of Public Hearing"), for the purpose of satisfying the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended, which Notice of Public Hearing is incorporated herein and attached hereto as *Exhibit A*; and

WHEREAS, a Resolution adopted by the Board of Directors of the Authority approving the issuance and sale of the Series 2013 Bonds has been presented to this Council; and

WHEREAS, this Council has had presented to it information regarding the plan of financing and the Series 2013 Bonds and the public hearing held with regard thereto, and is fully advised regarding the plan of financing and the Series 2013 Bonds; and

WHEREAS, the undersigned Mayor is the highest elected public official of the governmental unit in which the educational facilities of the University on its Glendale Campus to be financed or refinanced with the proceeds of the Series 2013 Bonds are located.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Glendale, Maricopa County, Arizona, as follows:

SECTION 1. That the issuance and sale by the Authority of the Series 2013 Bonds in an aggregate principal amount not to exceed \$120,000,000, having such terms and provisions as have been approved by the Authority in accordance with and subject to the conditions and limitations set forth in the Resolution of the Board of Directors of the Authority presented at this meeting, for the purposes and at the locations set forth in the Notice of Public Hearing, and the use of the proceeds thereof as contemplated thereby, are hereby approved for all purposes under the Act and Section 147(f) of the Internal Revenue Code of 1986, as amended.

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:

City Manager

b_ida_midwestern

EXHIBIT A

NOTICE OF PUBLIC HEARING ON PROPOSED REVENUE BOND FINANCING BY THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF GLENDALE, ARIZONA

Notice is hereby given that an authorized representative of The Industrial Development Authority of the City of Glendale, Arizona (the “*Authority*”), will hold a public hearing regarding a plan for the Authority to issue, pursuant to the Industrial Development Financing Act, Title 35, Chapter 5, Arizona Revised Statutes, as amended and supplemented (the “*Act*”), its Revenue Bonds, Midwestern University, in one or more series and in an aggregate principal amount not to exceed \$120,000,000 (the “*Bonds*”). The proceeds of the Bonds will be loaned to Midwestern University, an Illinois not-for-profit corporation (the “*University*”), to provide the University with all or a portion of the funds necessary to (a) finance, refinance or reimburse the University for certain of the costs of the design, acquisition (including related land costs), improvement, construction and equipping (including, but not limited to, medical, dental and optometry equipment, computer equipment, office equipment and general building equipment and fixtures) of certain educational facilities owned by the University on its Glendale, Arizona campus (the “*Glendale Campus*”) and on its Downers Grove, Illinois campus (the “*Downers Grove Campus*”), all as more specifically described below, (b) refund all or a portion of the Authority’s Adjustable Rate Demand Revenue Bonds, Midwestern University, Series 2011, issued in an original aggregate principal amount of \$50,000,000, (c) refund all or a portion of the Authority’s Adjustable Rate Demand Revenue Refunding Bonds, Midwestern University, Series 2008, issued in an original aggregate principal amount of \$28,600,000, (d) fund one or more debt service reserve funds for the benefit of the Bonds, if deemed desirable by the Authority and the University, and (e) pay certain costs incurred in connection with the issuance of the Bonds, if deemed desirable by the Authority and the University, all as permitted under the Act.

The educational facilities being financed, refinanced or reimbursed with the proceeds of the Bonds are or will be owned or operated by the University and are or will be located on land owned by the University (a) on its Glendale Campus, bordered generally by 59th Avenue on the West, 55th Avenue (extended) on the East, the Agua Fria Freeway (Route 101) on the North, and the Honeywell property south of the University’s property south of Utopia Road on the South and including, but not limited to, (i) the following addresses: 19349, 19359, 19369, 19379, 19389, 19555 and 19777 North 59th Avenue and 20000 North 57th Avenue in Glendale, Maricopa County, Arizona, and (ii) the Arizona College of Osteopathic Medicine, the College of Health Sciences, the College of Pharmacy/Glendale, the Arizona College of Optometry, the College of Dental Medicine and the College of Veterinary Medicine, and (b) on its Downers Grove Campus located at 555 31st Street, Downers Grove, Illinois and at 3450 Lacey Road, Downers Grove, Illinois (this location, referred to herein as the “*Clinic Property*,” currently consists of the University’s clinical campus, including a multispecialty clinic, a dental clinic and related facilities), and including, but not limited to, the Chicago College of Osteopathic Medicine, the College of Health Sciences, the Chicago College of Pharmacy and the College of Dental Medicine-Illinois.

The educational facilities on the Glendale Campus to be so financed, refinanced or reimbursed consist of various acquisition, demolition, design, construction, renovation and equipping projects throughout the campus, including, without limitation, (a) projects relating to the general acquisition and construction of the Glendale Campus (including, but not limited to, the pharmacy building, the student services building, the central plant, the faculty research building, the skills lab, the omm clinic and the college of allied health building) dental clinic, the optometry clinic, the campus parking deck, the clinic parking deck, the classroom/lab building and the veterinary clinic, and (b) miscellaneous land improvements. The educational facilities on the Downers Grove Campus to be so financed, refinanced or reimbursed consist of various acquisition, demolition, design, construction, renovation and equipping projects throughout the campus, including, without limitation, (a) projects relating to the living learning center, computer lab, pharmacy building, central plant, faculty and staff offices, allied health building, omm building, student housing, basic science building, the parking deck expansion, the Clinic Property, the commons addition and the auditorium, and (b) miscellaneous land improvements.

The principal amount of the Bonds allocable to the facilities being financed and refinanced on the University's Glendale Campus (including Bonds allocable to funding the corresponding portions of the costs of issuance and debt service reserves, if any) is not expected to exceed \$75,000,000. The principal amount of the Bonds allocable to the facilities being financed and refinanced on the University's Downers Grove Campus (including Bonds allocable to funding the corresponding portions of the costs of issuance and debt service reserves, if any) is in not expected to exceed \$95,000,000 (\$25,000,000 with respect to the Clinic Property).

The public hearing, which may be continued or adjourned, will be held at 3 p.m. on Wednesday, September 11 , 2013, in the First Floor Lobby of the Glendale Municipal Complex, 5850 West Glendale Avenue, Glendale, Arizona. The public hearing is required by Section 147(f) of the Internal Revenue Code of 1986, as amended. The Bonds will be special limited obligations of the Authority and will not constitute a debt or a pledge of the faith and credit of the Authority or of the City of Glendale, but will be payable solely from revenues derived from or on behalf of the University and other sources pledged therefor. Any person interested in the issuance of the Bonds or the location, nature or purposes of the educational facilities being financed or refinanced with the proceeds of the Bonds may appear and present his or her views or may submit his or her views in writing prior to the hearing. At the time and place set for the public hearing, residents, taxpayers and other interested persons will be given the opportunity to express their views for or against the proposed plan of financing. Written comments may also be submitted to the Authority in care of William Wilder at Ryley, Carlock & Applewhite, One North Central Avenue, Suite 1200, Phoenix, Arizona 85004, until 5:00 p.m. on Tuesday, September 10, 2013.

NOTICE DATED: August 28, 2013

THE INDUSTRIAL DEVELOPMENT AUTHORITY OF
THE CITY OF GLENDALE, ARIZONA

By: /s/ Howard A. McKenna
President

William F. Wilder
Direct Line: 602-440-4802
Direct Fax: 602-257-6902
E-mail: wwilder@rcalaw.com

August 29, 2013

Mayor and City Council Members
City of Glendale, Arizona
5850 West Glendale Avenue
Glendale, Arizona 85301

Re: Not to Exceed \$120,000,000 The Industrial Development Authority of
the City of Glendale Arizona Revenue Bonds, Midwestern University,
Series 2013

Ladies and Gentlemen:

As you are aware, our firm serves as legal counsel to The Industrial Development Authority of the City of Glendale, Arizona (the "Authority") and I am writing to you on behalf of the Authority.

The Authority is requesting that on September 24, 2013, the City Council adopt a resolution approving the proceedings of the Authority for the issuance of the Authority's revenue bonds, as described above (the "Bonds"), for the benefit of Midwestern University ("Midwestern"). The purpose of this letter is to provide you with a report from the Authority regarding the proposed financing.

The Authority and Its Powers

The Authority is an Arizona nonprofit corporation incorporated under the provisions of the Industrial Development Financing Act, Title 35, Chapter 5, and Title 10, Arizona Nonprofit Corporation Act, Arizona Revised Statutes, as amended. The Authority is designated by law as a political subdivision of the State of Arizona. Under the terms of the Industrial Development Financing Act (the "Act"), the City Council of the City of Glendale is the governing body of the Authority, is responsible for electing the Directors of the Authority, and must approve the proceedings of the Authority for the issuance of the Bonds.

The Authority is empowered to issue the Bonds and loan the proceeds from the sale of the Bonds to finance "projects" as such term is defined in A.R.S. § 35-701. Facilities for a nonprofit 501(c)(3) educational institution that is not otherwise funded with State monies constitute a "project" within the meaning of the Act. A "project" may be within or without the State of Arizona so long as the Board of Directors of the Authority finds that the financing of a "project," or portion thereof, located outside the State of Arizona will provide a benefit within the State.

The Authority Board of Directors has consistently found and determined that Midwestern University provides a benefit to the residents of the City of Glendale and the

Mayor and City Council Members
August 29, 2013
Page 2

RYLEY CARLOCK
& APPLEWHITE
Attorneys

State of Arizona and that it is desirable to assist Midwestern in providing financing, through the issuance of bonds for facilities located both at the Midwestern Glendale as well as Downers Grove campuses.

Under the provisions of A.R.S. § 35-742, the City of Glendale is not liable or obligated for the payment of the debt obligations issued by the Authority.

Applicant for Financing

The Applicant for financing is Midwestern, an Illinois not-for-profit corporation recognized as an exempt organization under Section 501(c)(3) of the Internal Revenue Code. Midwestern is a private educational institution and is not funded with State monies.

Midwestern has owned and operated a medical school in Illinois for over a hundred years, and in the mid 1990's decided to open a new medical school and selected the City of Glendale as the site for the new school. In the process, Midwestern acquired a large site on the East side of North 59th Avenue, South of Loop 101, for the development of its campus.

Midwestern enrolled its first class at the Glendale campus in 1996, the class consisted of 100 full-time students. Midwestern anticipates the enrollment at the Glendale campus for the 2014 academic year will be approximately 2,920 students and the Downers Grove, Illinois Campus will be approximately 2,697 students.

The Glendale Campus now occupies 150 acres, currently offers 15 degree programs and currently employs over 600 faculty and staff. The Downers Grove Campus now occupies 117 acres, has 11 degree programs and employs approximately 515 faculty and staff.

Since 1996, the Authority issued a number of series of revenue bonds or commercial paper notes to assist Midwestern in financing the development of the improvements which comprise the Midwestern campuses in Glendale and Downers Grove.

Midwestern operates on a very financially conservative basis. For the next five years, Midwestern has planned capital expenditures of approximately \$300,000,000 (for projects at both the Glendale and Downers Grove campuses) with only about 10% of the cost currently planned to be financed.

Purposes of Financing

The Bonds are being issued, at the request of Midwestern, to provide approximately \$30,000,000 to finance or reimburse Midwestern for the costs of new educational facilities as discussed in more detail below and with the balance of the Bond

proceeds to be used to refund refinanced bonds previously issued for the benefit of Midwestern, as discussed in more detail below.

Glendale, Arizona Campus. A portion of the proceeds received from the sale of the Bonds will be used to assist Midwestern in financing or reimbursing itself for costs heretofore incurred for capital projects at the Glendale campus, including the costs of construction and equipping of a classroom and laboratory building and a veterinary clinic facility.

Downer's Grove, Illinois Campus. A portion of the proceeds received from the sale of the Bonds will be used to assist Midwestern in financing or reimbursing itself for costs heretofore incurred for capital projects at the Downers Grove campus, including the costs of construction and equipping of a multispecialty clinic facility and an auditorium.

Refunding of Authority's Series 2008 and Series 2011 Bonds. A portion of the proceeds received from the sale of the Bonds will be used to refund, on a current basis, all or a portion of the Authority's Adjustable Rate Demand Revenue Refunding Bonds, Midwestern University, Series 2008, issued in an original principal amount of \$28,600,000 (the "Series 2008 Bonds") and the Authority's Adjustable Rate Demand Revenue Bonds, Midwestern University, Series 2011, issued in an original principal amount of \$50,000,000 (the "Series 2011 Bonds"). There will be a direct economic and financial benefit to Midwestern as a result of the refunding transactions in that Midwestern will realize an approximately \$800,000 savings over a five year period.

No Requirement To Obtain Allocation for Tax Exempt Financing

Since Midwestern is a nonprofit 501(c)(3) corporation, it is exempt from the requirements of federal tax law and Arizona law that it obtain an allocation of the State of Arizona's volume cap or "state ceiling" applicable to tax exempt financing transactions for entities which are not exempt. This means that the financing for Midwestern will not utilize any of Arizona's volume cap or "state ceiling" and therefore will not restrict other entities from undertaking private activity revenue bond financings.

Satisfaction of Public Hearing Requirement

On September 11, 2013, an authorized representative of the Authority will conduct a public hearing, as prescribed by Section 147(f) of the Internal Revenue Code of 1986, as amended, with respect to the proposed issuance of the Bonds. A Report of the Public Hearing will be provided to you.

Authority Approval Process

On September 11, 2013, the Authority Board is scheduled to act by Resolution to grant final approval to the financing and to approve the issuance of the Bonds. A copy of the Authority's approving Resolution will be provided to you.

Notification to Arizona Attorney General

As required by the provisions of A.R.S. § 35-721.F., the Authority has notified the Arizona Attorney General of the Authority's intention to issue the Bonds and within the time period prescribed by law, the Arizona Attorney General has not objected.

No Liability On The City Of Glendale

Under the provisions of A.R.S. § 35-742, the City of Glendale shall not in any event be liable for the payment of the principal or interest on the bonds of the Authority or for the performance by the Authority of any of its obligations with respect to its bonds nor shall any agreements or obligations of the Authority constitute an indebtedness of the City of Glendale within the meaning of any constitutional or statutory provision whatsoever.

Financing Participants

<u>Document</u>	<u>Parties</u>
Applicant/Borrower	Midwestern University
Applicant/Borrower's Counsel	Locke, Lord, Bissell & Liddell
Authority/Issuer	The Industrial Development Authority of the City of Glendale, Arizona
Authority/Issuer Counsel	Ryley, Carlock & Applewhite
Bond Counsel	Chapman and Cutler LLP
Bond Trustee	The Bank of New York Mellon Trust Company, N.A.
Master Trustee	The Bank of New York Mellon Trust Company, N.A.
Placement Agent	RBC Capital Markets LLC

Bond Purchaser	JP Morgan Chase Bank, N.A.
Bond Purchaser Counsel	Katten Muchin Rosenman LLP

Principal Financing Documents

<u>Document</u>	<u>Parties</u>
Master Trust Indenture and One or more Supplemental Master Trust Indentures	Borrower and Master Trustee
One or more Bond Trust Indentures	Issuer and Bond Trustee
One or more Loan Agreements	Issuer and Borrower
Tax Exemption Certificate and Agreement	Issuer, Borrower and Bond Trustee

Plan of Financing

Midwestern, in connection with the management of its business and affairs, including its financings, utilizes a Master Trust Indenture whereby Midwestern and other related entities comprise the "Obligated Group." The Master Trust Indenture and Supplemental Master Trust Indentures set forth various financial covenants and agreements of the Obligated Group, including agreements specifically relating to the obligation to make payments sufficient to provide for timely payment of interest and principal on the Bonds.

It is currently planned that the Bonds will be issued in three separate series, Series 2013A, Series 2013B and Series 2013C, with each of such Series being authorized under the Resolution adopted by the Authority on September 11, 2013 and with each of such Series being issued under a separate Bond Trust Indenture.

Under the terms of the Bond Trust Indentures, the Bonds may only be sold or transferred to qualified institutional purchasers or accredited investors as such terms are defined in applicable security laws.

The Bonds of all three Series will be purchased by JP Morgan Chase Bank, N.A. which will be purchasing the Bonds for its own account. JP Morgan Chase Bank, N.A. will, in connection with the purchase of the Bonds, execute in favor of the Authority acceptable forms of Investor Letters.

The proceeds derived from the sale of the Bonds will be loaned to Midwestern under the terms of the separate Loan Agreements. The proceeds of the Series 2013A Bonds will be used to finance or reimburse Midwestern for the costs of the new facilities at the

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RYLEY CARLOCK
& A P P L E W H I T E
Attorneys

Glendale and Downers Grove campuses, as identified above, and the proceeds of the Series 2013B and Series 2013C Bonds will be used to refund the Series 2008 and Series 2011 Bonds identified above.

Since the Bonds will be sold to JP Morgan Chase Bank, N.A. in a private placement transaction, the Bonds will not be rated.

It is expected the Bonds will have maturities not to exceed thirty five years, to be determined prior to the Bonds being issued. The Bonds will bear interest at fixed rates based upon a recognized index, although based on the index used, the interest rates will periodically adjust.

The Bonds will be secured by and under the Master Trust Indenture, as supplemented and on a parity basis with other debt of Midwestern.

Glendale City Council Approval

Under the provisions of A.R.S. § 35-721.B., the proceedings of the Authority for its issuance of the Bonds requires the approval of the Glendale City Council, as the governing body of the Authority.

Through City staff, the Authority has requested this matter be on the Agenda for the Glendale City Council meeting on September 24, 2011.

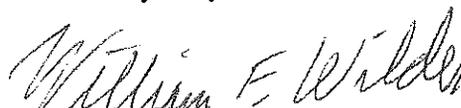
The form of Resolution for adoption by the Glendale City Council has been submitted on a timely basis to the Glendale City Attorney.

Transaction Closing

If the required approvals of the Authority and the Glendale City Council of the City of Glendale are received, it is currently anticipated that the Bonds will be issued in October 2013.

Representatives of the Authority and Midwestern will be present at the City Council meeting on September 24, 2013. If, prior to the meeting, you have any questions, please feel free to contact me.

Yours very truly,


William F. Wilder

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& APPLEWHITE
Attorneys

cc: Mr. Brian Friedman
Ms. Pam Hanna
Ms. Julie Frisoni
Office of the City Attorney
Glendale IDA Board
of Directors.