

City of Glendale Council Meeting Agenda

September 25, 2012 – 7:00 p.m.

City Council meetings are telecast live at 7:00 p.m. on the second and fourth Tuesday of the month. Repeat broadcasts are telecast the second and fourth week of the month – Wednesday at 2:30 p.m., Thursday at 8:00 a.m., Friday at 8:00 a.m., Saturday at 2:00 p.m., Sunday at 9:00 a.m. and Monday at 1:30 p.m. on Glendale Channel 11.

Welcome!

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

Form of Government

The City of Glendale has a Council-Manager form of government. Legislative policy is set by the elected Council and administered by the Council-appointed City Manager.

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

Council Meeting Schedule

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

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

Questions or Comments

If you have any questions about the agenda, please call the City Manager's Office at (623) 930-2870. If you have a concern you would like to discuss with your District Councilmember, please call (623) 930-2249, Monday - Friday, 8:00 a.m. – 5:00 p.m.

Public Rules of Conduct

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

How to Participate

The Glendale City Council values citizen comments and input. If you wish to speak on a matter concerning Glendale city government that is not on the printed agenda, please fill out a blue Citizen Comments Card located at the back of the Council Chambers and give it to the City Clerk before the meeting starts. The Mayor will call your name when the Citizen Comments portion of the agenda is reached. Because these matters are not listed on the posted agenda, the City Council may not act on the information during the meeting but may refer the matter to the City Manager for follow-up.

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

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



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

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

Councilmembers

Norma S. Alvarez - Ocotillo District
H. Philip Lieberman - Cactus District
Manuel D. Martinez - Cholla District
Joyce V. Clark - Yucca District
Yvonne J. Knaack – Barrel District



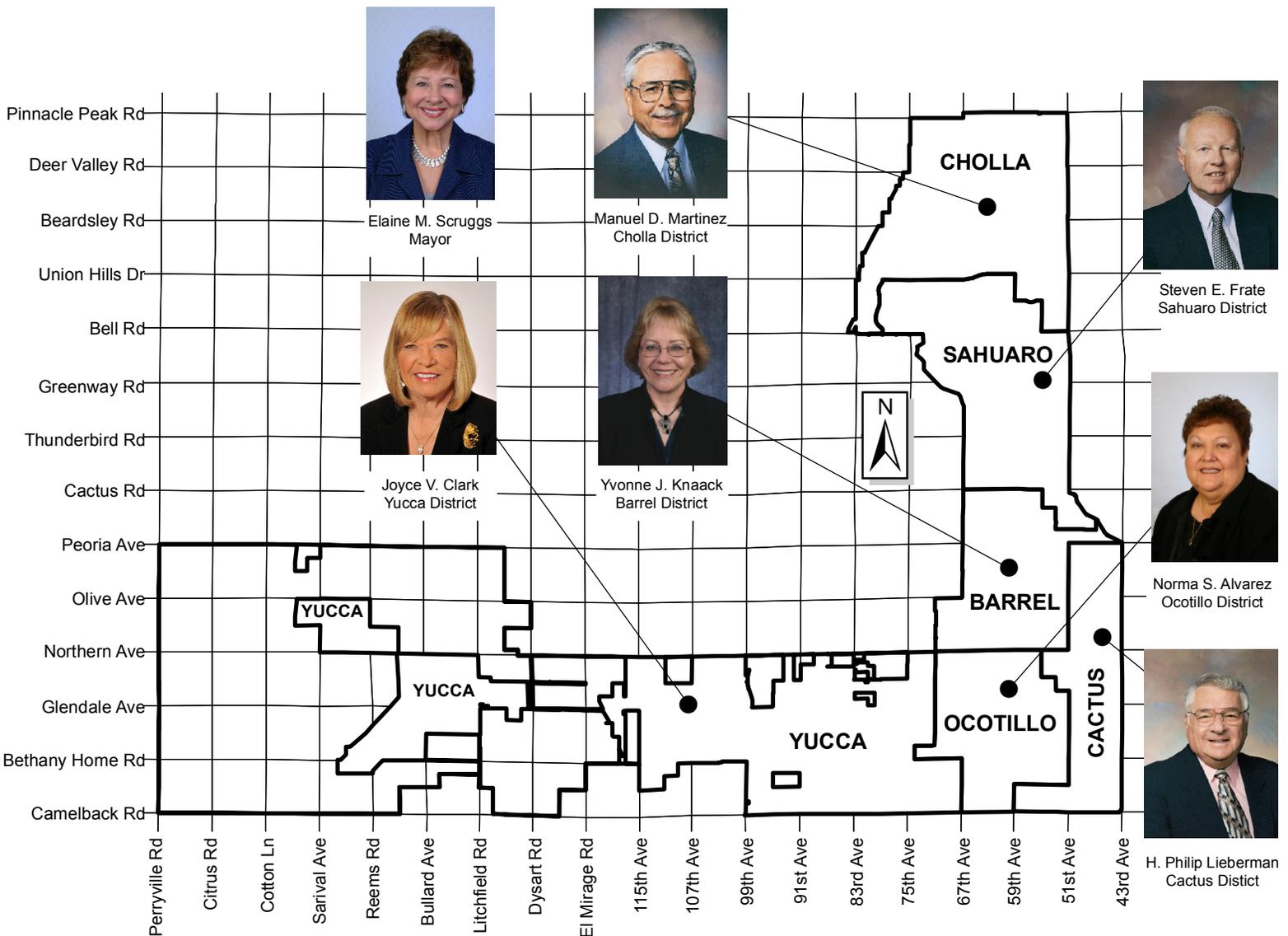
MAYOR ELAINE M. SCRUGGS
Vice Mayor Steven E. Frate - Sahuaro District

Appointed City Staff

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



Council District Boundaries





**GLENDALE CITY COUNCIL MEETING
Council Chambers
5850 West Glendale Avenue
September 25, 2012
7:00 p.m.**

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

CALL TO ORDER

PLEDGE OF ALLEGIANCE AND MOMENT OF SILENCE

APPROVAL OF THE MINUTES OF August 14, 2012 and September 11, 2012

BOARDS, COMMISSIONS AND OTHER BODIES

BOARDS, COMMISSIONS AND OTHER BODIES

PRESENTED BY: Councilmember Joyce Clark

PROCLAMATIONS AND AWARDS

DOMESTIC VIOLENCE AWARENESS MONTH PROCLAMATION

PRESENTED BY: Office of the Mayor

ACCEPTED BY: Rob Walecki, Glendale City Prosecutor, and Paul Ferguson, Glendale Domestic Violence Assistant City Prosecutor

FIRE PREVENTION MONTH PROCLAMATION

PRESENTED BY: Office of the Mayor

ACCEPTED BY: Bill Epps, Chief Executive Officer, American Red Cross Grand Canyon Chapter

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, ST. RAPHAEL CATHOLIC CHURCH

PRESENTED BY: Susan Matousek, Revenue Administrator

2. LIQUOR LICENSE NO. 5-6572, MAMA LUPITAS RESTAURANT & BAR

PRESENTED BY: Susan Matousek, Revenue Administrator

3. LIQUOR LICENSE NO. 5-7002, KIKU REVOLVING SUSHI BAR

PRESENTED BY: Susan Matousek, Revenue Administrator

4. APPEAL OF DECISION IN GILA RIVER INDIAN COMMUNITY, et al., v. DEPARTMENT OF INTERIOR AND TOHONO O'ODHAM NATION, et al.

PRESENTED BY: Craig Tindall, City Attorney

CONSENT RESOLUTIONS

5. ARIZONA CRIMINAL JUSTICE COMMISSION GRANT

PRESENTED BY: Debora Black, Interim Police Chief

RESOLUTION: 4614

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

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

RESOLUTION: 4615

BIDS AND CONTRACTS

7. AWARD OF BID 12-41, STREETLIGHT MAINTENANCE

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

8. AWARD OF PROPOSAL 12-36, COLLECTION SERVICES

PRESENTED BY: Diane Goke, Chief Financial Officer

9. PROFESSIONAL SERVICES AGREEMENT WITH TETRA TECH BAS, INC. FOR LANDFILL GENERAL ENGINEERING SERVICES

PRESENTED BY: Stuart Kent, Executive Director, Public Works

10. AUTHORIZATION TO PURCHASE TASERS

PRESENTED BY: Rick St. John, Interim Assistant Police Chief

ORDINANCES

11. ABANDONMENT OF AN INGRESS/EGRESS AND UTILITY EASEMENT FOR CARMEL ESTATES

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

ORDINANCE: 2815

12. LAND EXCHANGE: TOPEKA DRIVE, EAST OF 54TH LANE
PRESENTED BY: Gregory Rodzenko, P.E., Acting City Engineer
ORDINANCE: 2816

13. WATERLINE EASEMENT ABANDONMENT AT 59TH AVENUE AND UNION
HILLS DRIVE
PRESENTED BY: Gregory Rodzenko, P.E., Acting City Engineer
ORDINANCE: 2817

RESOLUTIONS

14. JOINT PROJECT AGREEMENT WITH ADOT FOR AIRPORT RUNWAY PAVEMENT
PRESERVATION
PRESENTED BY: Jamsheed Mehta, AICP, Executive Director, Transportation Services
RESOLUTION: 4616

REQUEST FOR FUTURE WORKSHOP AND EXECUTIVE SESSION

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.

COUNCIL COMMENTS AND SUGGESTIONS

ADJOURNMENT

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

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

(vi) discussing or consulting with designated representatives of the city in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property (A.R.S. § 38-431.03(A)(7)).

Items Respectfully Submitted,



Horatio Skeete
Acting City Manager



**GLENDALE CITY COUNCIL MEETING
Council Chambers
5850 West Glendale Avenue
August 14, 2012
7:00 p.m.**

The meeting was called to order by Mayor Elaine M. Scruggs, with Vice Mayor Steven E. Frate and the following Councilmembers present: Joyce V. Clark, Yvonne J. Knaack, and Manuel D. Martinez.

Councilmembers Norma S. Alvarez and H. Philip Lieberman were absent.

Also present were Horatio Skeete, Acting City Manager; Craig Tindall, City Attorney; and Pamela Hanna, City Clerk.

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

COMPLIANCE WITH ARTICLE VII, SECTION 6(c) OF THE GLENDALE CHARTER

A statement was filed by the City Clerk that the 3 resolutions and 3 ordinances to be considered at the meeting were available for public examination and the titles posted at City Hall more than 72 hours in advance of the meeting.

APPROVAL OF THE MINUTES OF THE JUNE 26, 2012 CITY COUNCIL MEETING

It was moved by Martinez, and seconded by Knaack, to dispense with the reading of the minutes of the June 26, 2012 Regular City Council meeting, as each member of the Council had been provided copies in advance, and approve them as written. The motion carried unanimously.

PROCLAMATIONS AND AWARDS

NATIONAL PREPAREDNESS MONTH PROCLAMATION

PRESENTED BY: Office of the Mayor

ACCEPTED BY: Mark Fooks, Volunteer with the Glendale Citizen Corps

This is a request for City Council to proclaim September 2012 as National Preparedness Month to encourage preparedness for disasters or emergencies in homes, businesses and communities.

National Preparedness Month is sponsored by the Federal Emergency Management Agency (FEMA's) Ready Campaign in partnership with Citizens Corps. Mark Fooks, a resident of Glendale and volunteer with the Glendale Citizen Corps, will be present to accept the proclamation.

Mayor Scruggs called Mark Fooks forward and presented the proclamation.

Mark Fooks thanked the Mayor and Council for passing this proclamation. He said the Preparedness Team of Glendale Fire and Police are always working hard to be prepared for anything that comes down the pike. Their major goal is to educate citizens on how to handle a major disaster. Mayor Scruggs talked about her own experience on how to prepare for a disaster and what people need to do yearly.

CONSENT AGENDA

Items on the consent agenda are of a routine nature or have been previously studied by the City Council at a workshop. They are intended to be acted upon in one motion.

Mr. Horatio Skeete, Acting City Manager, read agenda item numbers 1 through 8 and Ms. Pamela Hanna, City Clerk, read consent agenda resolution item numbers 9 and 10 by number and title.

Councilmember Clark asked that item number 5 be heard separately.

1. SPECIAL EVENT LIQUOR LICENSE, ST. HELEN'S COUNCIL 11738 KNIGHTS OF COLUMBUS

PRESENTED BY: Susan Matousek, Revenue Administrator

This is a request for City Council to approve a special event liquor license for St. Helen's Council 11738 Knights of Columbus. The event will be held at St. Helen's Social Center located at 5510 West Cholla Street on Saturday, August 25, 2012, from 6 p.m. to 11 p.m. The purpose of this special event liquor license is for a fundraiser to be held indoors.

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

2. SPECIAL EVENT LIQUOR LICENSE, ST. LOUIS THE KING SCHOOL/CHURCH

PRESENTED BY: Susan Matousek, Revenue Administrator

This is a request for City Council to approve a special event liquor license for St. Louis the King School/Church. The event will be held at St. Louis the King Church/School located at 4331 West Maryland Avenue on Friday, October 5 from 5 p.m. to 11 p.m.; and Saturday and Sunday, October 6 and 7, 2012, from 11 a.m. to 11 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.

3. LIQUOR LICENSE NO. 5-2455, GAS LIGHT INN
PRESENTED BY: Susan Matousek, Revenue Administrator

This is a request for City Council to approve a new, non-transferable series 11 (Hotel/Motel) license for Gas Light Inn located at 5747 West Glendale Avenue. The Arizona Department of Liquor Licenses and Control application (No. 11077023) was submitted by Chad Alan LaMont.

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

4. LIQUOR LICENSE NO. 5-6452, LF MARKET & ORIENTAL SEAFOOD
PRESENTED BY: Susan Matousek, Revenue Administrator

This is a request for City Council to approve a new, non-transferable series 10 (Liquor Store - Beer and Wine) license for LF Market Oriental & Seafood located at 5350 West Bell Road, Suite 115. The Arizona Department of Liquor Licenses and Control application (No. 10076280) was submitted by Max Phat Lam.

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

5. LIQUOR LICENSE NO. 5-6594, ROSE LANE MARKET
PRESENTED BY: Susan Matousek, Revenue Administrator

This item was heard after the consent agenda items.

6. LIQUOR LICENSE NO. 5-6703, MARISCOS VUELVE A LA VIDA FISH/MEAT MARKET & RESTAURANT
PRESENTED BY: Susan Matousek, Revenue Administrator

This is a request for City Council to approve a new, non-transferable series 10 (Liquor Store - Beer and Wine) license for Mariscos Vuelve A La Vida Fish/Meat Market & Restaurant located at 5630 West Camelback Road, Suite 101-102. The Arizona Department of Liquor Licenses and Control application (No. 10076292) was submitted by Theresa June Morse.

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

7. LIQUOR LICENSE NO. 5-6876, CIRCLE K STORE #3448
PRESENTED BY: Susan Matousek, Revenue Administrator

This is a request for City Council to approve a location-to-location transferable series 9 (Liquor Store - All Liquor) license for Circle K Store #3448 located west of the SWC of 51st and Olive

Avenues. The Arizona Department of Liquor Licenses and Control application (No. 09070223) was submitted by Kim Kenneth Kwiatkowski.

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

8. AUTHORIZATION OF PURCHASE OF AV EQUIPMENT FOR CITY HALL COMPLEX
PRESENTED BY: Julie Frisoni, Communications Executive Director

This is a request for City Council to authorize the expenditure to replace audio equipment for Council Chambers and B3, in the City Hall Complex. Staff is requesting Council authorize the approval of the expenditure from EAR Professional Audio, a local company on state contract, in an amount not to exceed \$117,714.

CONSENT RESOLUTIONS

9. FEDERAL AVIATION ADMINISTRATION GRANT
PRESENTED BY: Jamsheed Mehta, AICP, Executive Director, Transportation Services
RESOLUTION: 4599

Staff is requesting City Council waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into a grant agreement with the Federal Aviation Administration (FAA) in the anticipated amount of approximately \$217,798 for additional runway safety improvements at Glendale Municipal Airport.

Staff expects the FAA to offer the grant prior to September 30, 2012. However, because the FAA allows only a few days to formally accept the grant once the offer is made, staff is requesting Council's approval to accept the grant prior to receiving the new grant offer from the FAA.

Resolution No. 4599 New Series was read by number and title only, it being A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, ACCEPTING AN ANTICIPATED GRANT OFFER FROM THE U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, IN THE APPROXIMATE AMOUNT OF \$217,798 FOR RUNWAY IMPROVEMENTS AT THE GLENDALE MUNICIPAL AIRPORT; AND AUTHORIZING THE CITY MANAGER TO EXECUTE ANY AND ALL DOCUMENTS NECESSARY TO EFFECTUATE THE GRANT.

10. EQUITABLE SHARING AGREEMENT WITH UNITED STATES DEPARTMENT OF JUSTICE
PRESENTED BY: Debora Black, Interim Police Chief
RESOLUTION: 4600

This is a request for City Council to adopt a Resolution authorizing the City Manager to enter into an agreement with the United States Department of Justice (DOJ) for the equitable sharing of Racketeering Influenced Corrupt Organizations (RICO) assets.

Staff is requesting Council waive reading beyond the title and authorize the City Manager to enter into an agreement with the United States Department of Justice for the equitable sharing of Racketeering Influenced Corrupt Organizations assets.

Resolution No. 4600 New Series was read by number and title only, it being A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF AN EQUITABLE SHARING AGREEMENT WITH THE DEPARTMENT OF JUSTICE CONCERNING SHARED ASSETS INVOLVING THE GLENDALE POLICE DEPARTMENT.

It was moved by Frate and seconded by Clark, to approve the recommended actions on Consent Agenda Item Nos. 1 through 4 and 6 through 10, including the approval and adoption of Resolution No. 4599 New Series and Resolution No. 4600 New Series; and to forward Special Event Liquor License Applications for St. Helen's Council 11738 Knights of Columbus, St. Louis the King School/Church and Liquor License Application No. 5-2455 For the Gas Light Inn, No. 5-6452 for LF Market and Oriental Seafood, No. 5-6703 for Mariscos Vuelve A La Vida Fish/Meat Market and Restaurant and No. 5-6876 for Circle K Store #3448 to the State of Arizona Department of Liquor Licenses and Control, with the recommendation for approval. The motion carried unanimously.

5. LIQUOR LICENSE NO. 5-6594, ROSE LANE MARKET
PRESENTED BY: Susan Matousek, Revenue Administrator

This is a request for City Council to approve a new, non-transferable series 10 (Liquor Store - Beer and Wine) license for Rose Lane Market located at 6205 North 59th Avenue, Suite A & B. The Arizona Department of Liquor Licenses and Control application (No. 10076289) was submitted by Anthony Ronald Makhol.

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

Councilmember Clark stated she would like to ask the applicant some questions. Mr. Anthony Makhol came forward to answer questions. Councilmember Clark noted some of the findings which must be met before granting a liquor license are the convenience, need, or necessity of the license. Mr. Makhol said his store services many patrons who don't have a car and walk to his location to buy groceries, liquor and tobacco. Councilmember Clark noted the many other stores with liquor licenses in the area. Mr. Makhol mentioned he applied for the food stamp program to help enhance his grocery productivity.

Councilmember Clark stated the Council was charged with looking at these liquor licenses in terms of how they will benefit the community. She believes there are an excess number of established liquor stores in that area. She does not believe a need, convenience or necessity is served by approving another license since there are already 20 in that area.

Vice Mayor Frate and Councilmember Knaack agreed to approve this license since no protests were recorded and Mr. Makhol has been a model businessman in the community. He has also applied for the food stamp program to become more of a grocery store.

It was moved by Martinez, and seconded by Knaack to forward Liquor License Application No. 5-6594 for Rose Lane Market to the State of Arizona Department of Liquor Licenses and Control, with the recommendation for approval. The motion carried. Aye: Frate, Knaack, Martinez, Scruggs. Nay: Clark.

BIDS AND CONTRACTS

11. CBI SECURITY SERVICES INCREASE

PRESENTED BY: Debora Black, Interim Police Chief

This is a request for City Council to authorize the City Manager to enter into Amendment No. 1 to the Agreement with CBI Security Services, increasing the amount by 5% (\$28,550), bringing the not-to-exceed amount to a total of \$599,550.

It was moved by Frate, and seconded by Knaack, to authorize the City Manager to enter into Amendment No. 1 to the Agreement with CBI Security Services, increasing the amount by 5% (\$28,550), bringing the not-to-exceed amount to a total of \$599,550. The motion carried unanimously.

12. AMENDMENT OF DESIGN SERVICES FOR MULTIUSE PATHWAYS ALONG NEW RIVER AND GRAND CANAL

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

Staff is requesting City Council approve and authorize the City Manager to enter into Amendment No. 1 to the Professional Services Agreement with CH2M Hill, Inc. for the design of the New River and Grand Canal Multiuse Pathways in an amount not to exceed \$81,197. This amendment is necessary in order to amend the design of the pathways due to the postponement of the development of Ballpark Boulevard.

Since money restraints were issues these days, Councilmember Clark asked Mr. Mehta to expand on where the money was coming from for this project and how much grant money has been received. Mr. Mehta explained they have received \$750,000 for the Grand Canal Multiuse Pathways and \$2 million for the New River in federal grant money. The total sum of these two projects was in the area of \$4.7 million. Councilmember Clark asked where the \$81,197 for this project was coming from. Mr. Mehta replied the money was in the old Transportation CIP program that has previously identified for this purpose. Councilmember Clark noted this was separate from the city's general fund CIP program which has been frozen for five years. Mr. Mehta stated she was correct.

Mayor Scruggs said she'd like to follow on what Councilmember Clark is talking about. Everybody's worried and concerned about money and where it comes from. Only she'd like to take this in a different direction. She knew a lot of staff members have been working very hard

on our new agenda and the way Council receives the material for the backup for our agenda. And this is a really good example, of how the public can get more information than they were ever able to get in the past. Now, some of people here may have noticed that we don't have all the backup material in the back of the room. This is because extra paper copies were being thrown away and quite honestly it was very costly. So, on the city's website they can get all of these same agenda materials that Council has, right off the website. So print off what you want and bring that with you or don't print anything, whatever.

Mayor Scruggs said she'd like to compliment staff because this was a good example of where this works well. The first thing Council gets is a City Council report and under Budget and Financial Impact, it has the cost broken up as \$81,197 that was being discussed. It has it broken up into the two components with the account number for each one and it says it comes from the GO funds and what each component is used for. She thinks that is critical, yes it's a capital expense, yes it was already budgeted and no there was no appropriation fund transfer which we are all very sensitive to right now. So that's very good. So then another really good thing in this is that in the staff report, there has been a lot of talk for years and request for this, why don't we ever see what the options are? We always see what the recommendations are but why don't we see the options? So now in staff's report under analysis, it says, "an option to delay construction of these multiuse pathways until Ballpark Boulevard is completed was considered". But federal funds for these planned projects would be lost if we choose that option. So the recommendation was made to go ahead and spend \$81,197 so that we didn't lose the \$2 million.

Mayor Scruggs said for everybody that says "well the federal government shouldn't be spending this money anyway". Well, it would be going someplace else anyway, to some other state. Mayor Scruggs addressed Mr. Skeete, stating that she was going to use this as an example to compliment and to ask him to pass this along to all of the staff members who have been working on this new process. Council will probably find bugs along the way and find things they want tweaked a little bit here and there. But this is a good example of how this really provides the public with more information than they've ever had before. Mr. Skeete thanked the Mayor and said he will pass her comments along to staff.

It was moved by Clark, and seconded by Martinez, to approve and authorize the City Manager to enter into Amendment No. 1 to the Professional Services Agreement with CH2M Hill, Inc. for the design of the New River and Grand Canal Multiuse Pathways in an amount not to exceed \$81,197. The motion carried unanimously.

13. AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT WITH C & S ENGINEERS, INC. FOR AIRPORT RUNWAY IMPROVEMENTS

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

In order to complete runway safety improvements required by Federal Aviation Administration (FAA) airport design standards, staff is requesting City Council approve and authorize the City Manager to enter into Amendment No. 1 to the professional services agreement with C & S Engineers, Inc. to provide design and construction administration services in an amount not to exceed \$70,000 for runway safety improvements at Glendale Municipal Airport.

It was moved by Clark, and seconded by Knaack, to approve and authorize the City Manager to enter into Amendment No. 1 to the professional services agreement with C & S Engineers, Inc. to provide design and construction administration services in an amount not to exceed \$70,000 for runway safety improvements at Glendale Municipal Airport. The motion carried unanimously.

14. AWARD OF BID TO R.K. SANDERS, INC. FOR AIRPORT RUNWAY IMPROVEMENTS
PRESENTED BY: Jamsheed Mehta, AICP, Executive Director, Transportation Services

In order to complete runway safety improvements required by Federal Aviation Administration (FAA) airport design standards, staff is requesting that the City Council award the bid and authorize the City Manager to enter into a construction agreement with R.K. Sanders, Inc. in an amount not to exceed \$406,603.50 for the construction of runway safety improvements at Glendale Municipal Airport.

It was moved by Knaack, and seconded by Martinez, to award the bid and authorize the City Manager to enter into a construction agreement with R.K. Sanders, Inc. in an amount not to exceed \$406,603.50 for the construction of runway safety improvements at Glendale Municipal Airport. The motion carried unanimously.

15. PROFESSIONAL SERVICES AGREEMENT WITH DICK & FRITSCHE DESIGN GROUP, INC. FOR NORTH GLENDALE PARK AND RIDE/TRANSIT CENTER
PRESENTED BY: Jamsheed Mehta, AICP, Executive Director, Transportation Services

Staff is requesting City Council authorize the City Manager to enter into a professional services agreement with Dick & Fritsche Design Group, Inc. (DFDG), in an amount not to exceed \$722,735, for planning and design services for the North Glendale Park and Ride/Transit Center project. A park and ride/transit center is needed in north Glendale due to the high demand for transit service and the lack of a permanent transit facility in this area.

Councilmember Martinez stated most of his questions had been answered by the backup material. However, he was still unclear as to the timeline of this project. Mr. Jamsheed Mehta, AICP, Executive Director, Transportation Services, explained that staff was limited to nine months on this particular phase in the project. He added this phase only dealt with federal money for the planning and design phase. He talked about the challenges with the FTA and other agencies they have to work with for clearance and have this project moving on schedule.

Councilmember Martinez inquired how staff determines certain site locations. Mr. Mehta explained staff has identified several locations that work well for them. He indicated that any locations have to be rigorously screened to be compatible with the current transit system as well as go through the selection process acceptable by the FTA.

Mayor Scruggs thanked Mr. Mehta for answering her questions since she has serious concerns about how this whole project has been proposed by the consultants. You have to get to a 30% completion within nine months. The way she read it, there is not a lot of opportunity for citizen

input until the end, after they have gone through so many things. But yet there are some locations that will just not be acceptable. To bring a transit center into a neighborhood is something that is just an overwhelming integration of people from many, many places and this really conflicts with neighborhoods. We do have one location that continually offers itself for all sorts of inappropriate uses and it is a big concern. She continued that she didn't see the citizen input coming until way down the road but yet it has to have the 30% completion done by July of 2013 so it can have 100% completion by April of 2014 to get all the funds.

Mayor Scruggs said it's already August of 2012 and the city was still talking about this. She is not comfortable with this even if Mr. Mehta assured her there will be a lot of citizen input and she sees a lot of input by our Citizen Transportation Oversight Committee, but not from the people that are going to be impacted by this infrastructure coming into their neighborhood. Even though this talks about Bell Road and 101 and then immediately discounts Bell and the 101 because it doesn't work at the mall. So really this isn't for Bell and the 101, which means it must be going by somebody's neighborhood and she's really not comfortable with this, at least not the input portion of it. Because to go through all these tasks and then say okay these are the best ones and the citizens have not provided their input up to that point, she thought wastes a lot of the nine months.

Mr. Mehta explained one of their first tasks will be public involvement with two public meetings, five CTOC meetings, Council workshop interaction as well as website and newsletter information available. Their objective is to have sufficient work done ahead of time on the sites available for citizen input.

Mayor Scruggs said well, she was not suggesting asking the citizens what they would like to see but she thought that the citizens might be able to point out some fatal flaws that the consultants just don't see. She asked Mr. Mehta if he was here during the 59th Avenue and Thunderbird Park Roadway Improvement project.

Mr. Mehta replied no.

Mayor Scruggs said there may be still people left on the city staff who participated in that. It was planned beautifully from an in-house staff perspective and everything went in order and so forth and it blew up, because the citizen input was left until the end. She suggested he find people that were here during that time and sit and talk about how that one might have been handled differently so it wouldn't have blown up then he might apply it to this. The consultants as great as they are, when it comes to neighborhoods, she thinks they cannot pick out fatal flaws. She thought staff needed to bring in people much more quickly or they're never going to get that July 2013 deadline much less the April 2014 deadline.

Vice Mayor Frate stated he agreed with staff's initiative to use these federal funds but also supports more citizen input. He said he looks forward to seeing staff recommendations on these locations.

Mayor Scruggs offered that these possible sites may be presented to a larger group of people to get reactions to begin with versus spending a lot of time going through the technical analysis.

Mr. Skeete noted he did remember what occurred with the 59th Avenue and Thunderbird Park Roadway Improvement project and understands the Mayor's concerns. He noted staff will be proceed with this project very carefully to minimize any potential difficulties in the process.

Mayor Scruggs said she is glad Skeete remembered it and she felt comfortable that he will work with staff to not have a reoccurrence.

Councilmember Martinez stated he too remembers that project and even though there were difficulties, most was politically motivated and because some people were spreading misinformation. He offered his support of this project.

It was moved by Frate, and seconded by Martinez, to authorize the City Manager to enter into a professional services agreement with Dick & Fritsche Design Group, Inc. (DFDG), in an amount not to exceed \$722,735, for planning and design services for the North Glendale Park and Ride/Transit Center project. A park and ride/transit center is needed in north Glendale due to the high demand for transit service and the lack of a permanent transit facility in this area. The motion carried unanimously.

16. AWARD OF PROPOSAL 12-39, DUPLICATING AND MAILING SERVICES
PRESENTED BY: Diane Goke, Chief Financial Officer

This is a request for City Council to award proposal 12-39 and authorize the City Manager to enter into a contract for duplicating and mail services with Pitney Bowes Management Services, Inc., in an amount not to exceed \$500,000 annually.

Staff is requesting Council to award proposal 12-39 and authorize the City Manager to enter into a contract with Pitney Bowes Management Services, Inc., in an amount not to exceed \$500,000 annually for duplicating and mail services and to renew the contract, at his discretion, for up to an additional four years, in one-year increments.

Mayor Scruggs thanked Ms. Goke thank for answering her questions. She had asked her what the expense was for this year and it was either \$317,000 or \$371,000.

Ms. Diane Goke, Chief Financial Officer, replied it was \$370,000.

Mayor Scruggs said she asked why staff was asking for \$500,000 if the city spends \$370,000 and the city really shrunk tremendously. And Ms. Goke said, well we go high and then Council just sets a maximum. Mayor Scruggs said she was still curious since the budget is so tight; it kind of ties up some extra money somewhere that may be used in another location. So she still didn't understand why staff was going 1/3 above of what was spent this year.

Ms. Goke agreed staff did go about \$100,000 higher than what they have been currently spending. However, this does not tie up any money; this is just an amount not to exceed \$500,000 for this item.

Mayor Scruggs said she thought it was capturing appropriation that could be used in other areas, however, that is not the case here.

Councilmember Clark said she was still not convinced as to why they were asking for more money and was not sure of its use.

Ms. Goke reiterated staff was simply asking for an amount not to exceed, however, will probably end up spending around \$300,000 to \$400,000 depending on the needs of the organization. Ms. Goke explained they were simply planning for that authority if the need arose. Mr. Skeete explained further on the benefits of having a safety net or the flexibility without coming back to Council even if it was not used.

Councilmember Clark remarked she would rather they stay within their means than having to spend more money. She sees this as giving them carte blanche to spend up to that point. She has been hearing from many residents that everyone should start living within their means, and she believes they should start somewhere. She will be willing to approve an amount not to exceed \$400,000 but will not support the \$500,000.

Mayor Scruggs said she started this mess so would like to go back to it a little bit since there are a couple of things going on here. Her concern is that built into the budget is money that exceeds the \$500,000 even though the city was not going to use it. Well its handy then when staff is going to the departments and they each need to cut their budgets. And so they have put some extra in mail and duplicating so that will just get cut out. That's handy, but probably not the best way to do things when the city was cutting back on other things and services. So her concern was that the \$500,000 translated into other budgets built with a little bit of surplus because extra duplicating and mailing funds are allowed. She continued that Ms. Goke is saying that didn't happen but when Mr. Skeete started talking it sounded like yes that was built into the budget. So that is her concern, not about them running over it. They have a lot of slop in there, she asked Mr. Skeete to address it and then she has another way to go on this subject.

Mr. Skeete explained that an accumulation of overage was not included in the budget as Ms Goke has stated.

Mayor Scruggs assured everybody that she isn't mistrusting or distrusting staff. She supported them totally. She just wanted to understand so please don't mistake her remarks on this.

Mayor Scruggs said she would like to discuss something she thought would help this and help the concerns of Councilmember Clark that she is hearing from the citizens. When Council went through the departmental budgets reduction exercises, the city has in the Mayor's office budget virtually nothing to cut because they don't have accounts to do this or do that and also do not have people. So, what her staff did was look at this mail situation because what happens if they don't have enough money in the contract our mail does not get delivered in or out. And so Mr. Methvin, her assistant, sat with the staff that report to him and saw all this stuff that comes in, these magazines that were never ordered or asked for and nobody reads and then they go into the waste basket. And so he did something, she didn't know what to make that stop because every piece of mail that is delivered to an office, that department is charged for. So he said here is one

way we are going to meet our budget reduction, we are going to stop this nonsense. So she suggests that one way that the city can address some of the issues Councilmember Clark brought up and that are her concerns too are that there be a greater awareness or a sort of outreach program for the departments. She didn't know if everybody realizes all this stuff that comes in unsolicited is costing them money. The city might consider an outreach program so they can stop all of this and that could stop some of this waste.

Councilmember Martinez commented on the budget process and supports staff's recommendation since the amount being asked was simply a "not to exceed".

Councilmember Knaack noted she was still not clear why they were increasing the amount when books and paper were being reduced. She agrees with Councilmember Clark that the amount should be moving the opposite way because of the trend in electronics. She asked how the previous contracts had gone out. Ms. Goke replied they had been the same, not to exceed \$500,000.

Mayor Scruggs said one thing that kind of makes her feel more comfortable with the \$500,000 is that the city can't control the post office. Because the US Post Office is in such a mess so who knows, the postage might be 55 cents in the next three months. And that is something that does give her some reason to believe there should be some leeway in there. She thought everyone was all seeing the same thing. And that is why she sent Ms. Goke and Mr. Skeete the question of why, if the city was generating less mail, have less people, why was more money needed?

Councilmember Knaack remarked they could have eliminated much of this discussion if she had known this was how the contracts have always read with the not to exceed limit of \$500,000. She stated staff was doing a good job of staying within reason and not trying to get close to the \$500,000.

Councilmember Clark asked what would be the effect if the Council rejects the bid of not to exceed \$500,000. Ms. Goke responded that the Council would have to amend the amount with a new one. However, if they go over that amount they would have to come back to Council for approval which might take some time.

Mayor Scruggs reiterated that her earlier concerns had been put to rest. She will support this item.

Councilmember Clark offered an amendment to award a proposal for duplicating and mail services with Pitney Bowes Management Services, Inc. in an amount not to exceed \$400,000 annually.

Mayor Scruggs said the motion fails for lack of a second.

It was moved by Martinez, and seconded by Knaack, to award proposal 12-39 and authorize the City Manager to enter into a contract with Pitney Bowes Management Services, Inc., in an amount not to exceed \$500,000 annually for duplicating and mail services and to renew the contract, at his discretion, for up to an additional four years, in

one-year increments. The motion carried. Aye: Frate, Knaack, Martinez, Scruggs. Nay: Clark.

Mayor Scruggs said this has been a healthy discussion because it has pointed out that everybody is very focused on not building in extra charges just so when there are cuts we are not just taking out the surpluses that have been put in. But the other thing, what really made her feel more comfortable besides staff saying they're not budgeted, was the discussion on the cost of postage. With the US Postal Service in bankruptcy or whatever they are, she assumed they are going to be raising those rates.

17. AGREEMENT WITH M.R. TANNER MINING, INC., FOR MINING AND FLOOD PROTECTION WORK IN THE AGUA FRIA RIVER
PRESENTED BY: Gregory Rodzenko, P.E., Acting City Engineer

This is a request for City Council to authorize the City Manager to enter into an agreement with M.R. Tanner Mining, Inc. for mining and flood protection work in the Agua Fria River south of Glendale Avenue, west of 115th Avenue.

Councilmember Clark wondered why this was needed when they do not have much flooding problems in that area. Gregory Rodzenko, P.E., Acting City Engineer, explained the flood problems were uncommon; however, this will enhance flood protection and was also a revenue generating item.

It was moved by Clark, and seconded by Knaack, to authorize the City Manager to enter into an agreement with M.R. Tanner Mining, Inc. for mining and flood protection work in the Agua Fria River south of Glendale Avenue and west of 115th Avenue. The motion carried unanimously.

ORDINANCES

18. CENTURY LINK EASEMENT: SIERRA VERDE PARK, 71ST AVENUE AND ROSE GARDEN LANE
PRESENTED BY: Gregory Rodzenko, P.E., Acting City Engineer
ORDINANCE: 2812

This is a request for City Council to adopt an ordinance authorizing the City Manager to execute an easement. Staff is requesting Council waive reading beyond the title and adopt an ordinance authorizing the City Manager to execute an easement in favor of Century Link for its cabinets and facilities at the northeast corner of Sierra Verde Park, located at 71st Avenue and Rose Garden Lane.

Vice Mayor Frate commented on how some cabinets seem to be targeted for graffiti.

Mayor Scruggs asked staff to report back to Council on how they are working to combat this type of situation.

Ordinance No. 2812 New Series was read by number and title only, it being AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE CITY MANAGER TO EXECUTE A UTILITY EASEMENT IN FAVOR OF QWEST CORPORATION, DBA CENTURYLINK QC, AT SIERRA VERDE PARK LOCATED AT 71ST AVENUE AND ROSE GARDEN LANE; AND ORDERING THAT A CERTIFIED COPY OF THIS ORDINANCE BE RECORDED.

It was moved by Martinez, and seconded by Knaack, to approve Ordinance No. 2812 New Series. Motion carried on a roll call vote, with the following Councilmembers voting “aye”: Clark, Knaack, Martinez, Frate, and Scruggs. Members voting “nay”: none.

19. SALE OF CITY PROPERTY LOCATED AT THE SOUTHWEST CORNER OF 63RD AND PEORIA AVENUES

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

ORDINANCE: 2813

This is a request for City Council to adopt an ordinance authorizing the City Manager to complete the sale of a city-owned parcel located at the southwest corner of 63rd and Peoria Avenues to Salt River Project. Staff is requesting Council waive reading beyond the title and adopt an ordinance authorizing the City Manager to execute the documents necessary to complete the sale.

Ordinance No. 2813 New Series was read by number and title only, it being AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE SALE OF REAL PROPERTY LOCATED AT THE SOUTHWEST CORNER OF 63RD AND PEORIA AVENUES CONSISTING OF APPROXIMATELY 6,606 SQUARE FEET TO SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT; AND DIRECTING THE EXECUTION OF ALL DOCUMENTS NECESSARY FOR THE SALE OF SAID REAL PROPERTY.

It was moved by Knaack, and seconded by Martinez, to approve Ordinance No. 2813 New Series. Motion carried on a roll call vote, with the following Councilmembers voting “aye”: Clark, Knaack, Martinez, Frate, and Scruggs. Members voting “nay”: none.

20. RIGHT-OF-ENTRY AGREEMENT WITH MARICOPA COUNTY – NORTHERN PARKWAY

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

ORDINANCE: 2814

Staff is requesting City Council waive reading beyond the title and adopt an ordinance authorizing the City Manager to enter into a right-of-entry agreement with Maricopa County to permit county personnel to enter city-owned property to perform geotechnical testing, environmental testing and investigation and historical documentation. This standard testing is necessary to complete engineering plans for Northern Parkway construction.

Ordinance No. 2814 New Series was read by number and title only, it being AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE CITY MANAGER TO EXECUTE AN “AGREEMENT FOR RIGHT OF ENTRY” IN FAVOR OF MARICOPA COUNTY TO PERFORM GEOTECHNICAL AND ENVIRONMENTAL TESTING AND HISTORICAL DOCUMENTATION ON CITY-OWNED PROPERTY LOCATED ALONG THE SOUTH SIDE OF THE PROPOSED NORTHERN PARKWAY BETWEEN DYSART ROAD AND 111TH AVENUE; AND ORDERING THAT A CERTIFIED COPY OF THIS ORDINANCE BE RECORDED.

It was moved by Clark, and seconded by Frate, to approve Ordinance No. 2814 New Series. Motion carried on a roll call vote, with the following Councilmembers voting “aye”: Clark, Knaack, Martinez, Frate, and Scruggs. Members voting “nay”: none.

RESOLUTIONS

21. EDUCATIONAL SERVICES AGREEMENT WITH THE MARICOPA COUNTY COMMUNITY COLLEGE DISTRICT

PRESENTED BY: Chris DeChant, Assistant Fire Chief

RESOLUTION: 4601

This is a request for City Council to enter into an Educational Services Agreement with the Maricopa County Community College District (College). Staff is requesting Council waive reading beyond title and adopt a resolution authorizing the entering into the Educational Services Agreement.

Councilmember Clark asked if these courses were needed for recertification purposes. Chris DeChant, Assistant Fire Chief, replied no. He said these were increased educational opportunity classes which will help firefighters prepare to become a supervisor or captain. He explained the process in which GCC bills the city, the city sends a check to GCC, and then in return GCC will send a check back to the city. Therefore, there is no cost for this program. He added instructors were employees like him fitting that time into their schedule. Councilmember Clark asked if anyone will be pulled off duty for any of these classes. Assistant Fire Chief DeChant replied no.

Mayor Scruggs said to tell the truth, she didn't understand it when she read it and it still doesn't. The training that the firefighters are getting somehow, somewhere, right now and this whole transferring of money back and forth, she really doesn't understand it but she guessed it would have had to originate from somewhere and she's sure this has been sitting around for a year on a desk somewhere and finally got dislodged from the pipeline and it seems to be working every place else. She guessed this is one of those trust issues. But she doesn't understand at all what the heck the city was doing or why GCC is involved in this and can afford to use their instructor time, she didn't know. She asked where did the firefighters get this training now.

Assistant Fire Chief DeChant explained the employees are receiving their instruction from GCC, however, before the employees were getting reimbursed for their classes. The city at this time is

unable to reimburse the employees therefore they are entering into this agreement in order for employees to be able to take the classes at no cost to them.

Mayor Scruggs said she still doesn't understand fully and she couldn't believe it's that simple. She guesses it must be something good since everybody else is doing it. Okay, thank you.

Resolution No. 4601 New Series was read by number and title only, it being A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF AN EDUCATIONAL SERVICES AGREEMENT WITH THE MARICOPA COUNTY COMMUNITY COLLEGE DISTRICT ON BEHALF OF GLENDALE COMMUNITY COLLEGE FOR THE PURPOSE OF TRAINING GLENDALE FIRE DEPARTMENT EMPLOYEES IN ALL PHASES OF FIREFIGHTING AND ASSOCIATED SERVICES.

It was moved by Frate, and seconded by Knaack, to pass, adopt and approve Resolution No. 4601 New Series. The motion carried unanimously.

REQUEST FOR FUTURE WORKSHOP AND EXECUTIVE SESSION

It was moved by Frate, and seconded by Knaack, to hold a City Council Workshop at 1:30 p.m. in Room B-3 of the City Council Chambers on Tuesday, August 21, 2012, to be followed by an Executive Session pursuant to A.R.S. 38-431.03. It was further moved to hold a Special City Council Workshop at 9:00 a.m. in Room B-3 of the City Council Chambers on Monday, August 27, 2012, to be followed by an Executive Session pursuant to A.R.S. 38-431.03. It was additionally moved to vacate the regularly scheduled City Council Meeting on Tuesday, August 28, 2012, for the primary elections. It was finally moved to hold a City Council Workshop at 1:30 p.m. in Room B-3 of the City Council Chambers on Tuesday, September 4, 2012, to be followed by an Executive Session pursuant to A.R.S. 38-431.03. The motion carried unanimously.

MOTION TO EXCUSE COUNCILMEMBERS ALVAREZ AND LIEBERMAN

It was moved by Frate, and seconded by Martinez, to excuse Councilmembers Alvarez and Lieberman from tonight's Council meeting. The motion carried unanimously.

CITIZEN COMMENTS

There were no citizen comments.

COUNCIL COMMENTS AND SUGGESTIONS

Councilmember Clark stated it was nice to be back and is looking forward to a very productive six months. She congratulated Mr. Skeete on a wonderful beginning to a new year. She especially liked the great job done on the staff reports and the thorough material that has been presented to Council. She personally would like to thank him very much for his attention to detail.

Vice Mayor Frate commented on the current heat. He thanked the many city employees working out in this tremendous heat in order to keep the city running smoothly. He also congratulated everyone involved in getting the F-35 located at Luke Air Force Base. He reminded everyone to watch children around water.

Mayor Scruggs said she would just like to echo the comments made by Vice Mayor Frate on city employees and their excellent work. She came in complaining about the heat and being miserable. She complained to someone about it. And she wanted to also echo what Councilmember Clark said too. She met with citizens over the last couple of months and she always tells them the same thing. It's a new day around here and the amount of information that is available to anybody who wants to read it. In fact, what is probably going to happen is that there is so much information that they would not want to spend that much time reading it.

Mayor Scruggs thanked Mr. Skeete, he told Council that he was going to do some things and he is producing and delivering and it's absolutely wonderful. She was learning an awful lot about what is going on in the city and did not realize all of what staff was doing. So congratulations to each and every one of staff. There are great things going on in every department and Council is just so proud to hear about them and to celebrate them with you. And you know what, life in the City of Glendale is a whole lot more than a certain animal that a team is named after. She is just so glad that staff is getting to tell the world about everything that they are doing. So thank you to everybody involved, the meeting is adjourned.

ADJOURNMENT

There being no further business, the meeting was adjourned at 9:14 p.m.

Pamela Hanna - City Clerk



**MINUTES OF THE
GLENDALE CITY COUNCIL MEETING
Council Chambers
5850 West Glendale Avenue
September 11, 2012
7:00 p.m.**

The meeting was called to order by Mayor Elaine M. Scruggs, with Vice Mayor Steven E. Frate and the following Councilmembers present: Norma S. Alvarez, Joyce V. Clark, Yvonne J. Knaack, H. Philip Lieberman and Manuel D. Martinez.

Also present were Horatio Skeete, Acting City Manager; Nick DiPiazza, Deputy City Attorney; and Pamela Hanna, City Clerk.

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

COMPLIANCE WITH ARTICLE VII, SECTION 6(c) OF THE GLENDALE CHARTER

A statement was filed by the City Clerk that the 12 resolutions to be considered at the meeting were available for public examination and the title posted at City Hall more than 72 hours in advance of the meeting.

PROCLAMATIONS AND AWARDS

NATIONAL HISPANIC HERITAGE MONTH PROCLAMATION

PRESENTED BY: Office of the Mayor

ACCEPTED BY: Mr. Joseph Pompa, Glendale Business Owner, La Perla Café

This is a request by the Glendale Hispanic Network (GHN) for City Council to recognize September 15th through October 15th 2012 as National Hispanic Heritage Month.

Mr. Joseph “Butch” Pompa, Owner of La Perla Café, will be present to accept the Proclamation. La Perla Café was founded in 1946 by Mr. Pompa’s parents, Joseph and Eva Pompa. The Pompa family members are active in the Glendale community and have been for over 66 years.

Mayor Scruggs called Rebecca Daniels forward and she accepted the proclamation on behalf of Mr. Pompa.

Rebecca Daniels thanked the Mayor and Council for the proclamation. She was very proud to receive it on behalf of the community.

CONSENT AGENDA

Items on the consent agenda are of a routine nature or have been previously studied by the City Council at a workshop. They are intended to be acted upon in one motion.

Mr. Horatio Skeete, Acting City Manager, read agenda item numbers 1 through 8 and Ms. Pamela Hanna, City Clerk, read consent agenda resolution item numbers 9 through 18 by number and title.

Councilmember Lieberman wanted item #7 to be heard separately.

1. SPECIAL EVENT LIQUOR LICENSE, ASSYRIAN CHURCH OF THE EAST
PRESENTED BY: Susan Matousek, Revenue Administrator

This is a request for City Council to approve a special event liquor license for the Assyrian Church of the East. The event will be held at Assyrian Church of the East located at 17334 North 63rd Avenue on Sunday, September 23; Saturday, November 3; and Monday, December 31, 2012, from 6 p.m. to 1 a.m. The purpose of this special event liquor license is for fundraising.

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

2. SPECIAL EVENT LIQUOR LICENSE, FRIENDS OF PUBLIC RADIO ARIZONA
PRESENTED BY: Susan Matousek, Revenue Administrator

This is a request for City Council to approve a special event liquor license for the Friends of Public Radio Arizona. The event will be held at Westgate City Center located at 6770 North Sunrise Boulevard on Friday, September 28, 2012, from 5 p.m. to 9:30 p.m. The purpose of this special event liquor license is for fundraising.

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

3. LIQUOR LICENSE NO. 5-1580, SPROUTS FARMERS MARKET #9
PRESENTED BY: Susan Matousek, Revenue Administrator

This is a request for City Council to approve a new, non-transferable series 10 (Liquor Store - Beer and Wine) license for Sprouts Farmers Market #9 located at 5120 West Peoria Avenue. The Arizona Department of Liquor Licenses and Control application (No. 10076302) was submitted by Randy D. Nations.

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

4. LIQUOR LICENSE NO. 5-1581, SPROUTS FARMERS MARKET #3
PRESENTED BY: Susan Matousek, Revenue Administrator

This is a request for City Council to approve a new, non-transferable series 10 (Liquor Store - Beer and Wine) license for Sprouts Farmers Market #3 located at 5665 West Bell Road. The Arizona Department of Liquor Licenses and Control application (No. 10076307) was submitted by Randy D. Nations.

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

5. LIQUOR LICENSE NO. 5-7020, ANGELINA'S VIETNAMESE CUISINE PHO' & GRILL
PRESENTED BY: Susan Matousek, Revenue Administrator

This is a request for City Council to approve a new, non-transferable series 12 (Restaurant) license for Angelina's Vietnamese Cuisine Pho' & Grill located at 5350 West Bell Road, Suites 123-124. The Arizona Department of Liquor Licenses and Control application (No. 12079198) was submitted by Long Duy Nguyen.

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

6. PURCHASE OF HANDHELD WATER METER READING UNITS
PRESENTED BY: Craig Johnson, P.E., Executive Director, Water Services

This is a request for City Council to approve the purchase of 14 hand-held electronic computer units which are used for gathering monthly meter reads from the city-owned water meters. These units will be purchased from Mountain States Pipe & Supply Co. in an amount not to exceed \$75,665.21.

7. APPEAL OF DECISION IN SAVE GLENDALE NOW v. CITY OF GLENDALE et al.
PRESENTED BY: Nick DiPiazza, Deputy City Attorney

This item was heard after the consent agenda items.

8. AUTHORIZATION TO PURCHASE AUDIOLOG EQUIPMENT
PRESENTED BY: Debora Black, Interim Police Chief

This is a request for City Council to approve a purchase from Verint for audiolog equipment in an amount not to exceed \$98,332.75.

This equipment will replace the Police Department's current 48 channel 911 recording server. Staff is requesting Council approve the purchase from Verint for audiolog equipment in an amount not to exceed \$98,332.75.

CONSENT RESOLUTIONS

9. INTERGOVERNMENTAL AGREEMENTS WITH U.S. DRUG ENFORCEMENT ADMINISTRATION

PRESENTED BY: Debora Black, Interim Police Chief

RESOLUTION: 4602

This is a request for City Council to authorize the City Manager to enter into two intergovernmental agreements (IGAs) with the United States Department of Justice, Drug Enforcement Administration (DEA). The IGAs allow for the assignment of two Glendale detectives to a DEA Task Force in the Phoenix area.

Staff is requesting Council waive reading beyond the title and adopt a Resolution authorizing the City Manager to enter into two intergovernmental agreements with the United States Department of Justice, Drug Enforcement Administration.

Resolution No. 4602 New Series was read by number and title only, it being A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE ENTERING INTO OF TWO INTERGOVERNMENTAL AGREEMENTS WITH THE UNITED STATES DEPARTMENT OF JUSTICE, DRUG ENFORCEMENT ADMINISTRATION (DEA) FOR ASSIGNMENT OF ONE GLENDALE POLICE DETECTIVE TO THE DEA PHOENIX TASK FORCE GROUP AND ONE GLENDALE POLICE DETECTIVE TO THE DEA TUCSON TASK FORCE GROUP.

10. WEST VALLEY DOMESTIC VIOLENCE FATALITY REVIEW TEAM INTERGOVERNMENTAL AGREEMENT

PRESENTED BY: Debora Black, Interim Police Chief

RESOLUTION: 4603

This is a request for City Council to authorize the City Manager to enter into an intergovernmental agreement (IGA) with the cities and towns of Avondale, Buckeye, El Mirage, Goodyear, Peoria, Surprise, Tolleson, and Wickenburg to establish a West Valley Domestic Violence Fatality Review Team. The West Valley Domestic Violence Fatality Review Team will conduct confidential review of domestic violence fatality and near fatality situations and make recommendations to improve the system.

Staff is requesting Council waive reading beyond the title and adopt a Resolution authorizing the City Manager to enter into an intergovernmental agreement with the cities and towns of Avondale, Buckeye, El Mirage, Goodyear, Peoria, Surprise, Tolleson, and Wickenburg to establish a West Valley Domestic Violence Fatality Review Team.

Resolution No. 4603 New Series was read by number and title only, it being A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF AN INTERGOVERNMENTAL AGREEMENT REGARDING THE CREATION AND PARTICIPATION IN THE WEST VALLEY DOMESTIC VIOLENCE FATALITY

REVIEW TEAM WITH THE CITIES/TOWNS OF AVONDALE, BUCKEYE, EL MIRAGE, GOODYEAR, PEORIA, SURPRISE, TOLLESON AND WICKENBURG ON BEHALF OF THE GLENDALE POLICE DEPARTMENT.

11. VICTIM'S RIGHTS PROGRAM GRANTS

PRESENTED BY: Debora Black, Interim Police Chief

RESOLUTION: 4604

This is a request for City Council to authorize the City Manager to enter into two grant agreements from the State of Arizona Office of the Attorney General for the Victim's Rights Program.

Funding from these grants will be used to help the Police Department and Prosecutor's Office offset costs associated with the performance of duties that are mandated under victims' rights laws. Staff is requesting Council waive reading beyond the title and adopt a Resolution authorizing the City Manager to enter into two grant agreements from the State of Arizona Office of the Attorney General.

Resolution No. 4604 New Series was read by number and title only, it being A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, ACCEPTING TWO GRANT OFFERS TOTALING APPROXIMATELY \$84,840 FROM THE STATE OF ARIZONA, OFFICE OF THE ATTORNEY GENERAL, FOR THE VICTIM'S RIGHTS PROGRAM.

12. ARIZONA GOVERNOR'S OFFICE OF HIGHWAY SAFETY GRANTS

PRESENTED BY: Debora Black, Interim Police Chief

RESOLUTION: 4605

This is a request for City Council to authorize the City Manager to enter into four 2013 Governor's Office of Highway Safety (GOHS) grant agreements in the total amount of \$76,000.

The grant funding will be used towards DUI task forces, seat belt enforcement, equipment, and training. Staff is requesting Council waive reading beyond the title and adopt a Resolution authorizing the City Manager to enter into four 2013 Governor's Office of Highway Safety grant agreements.

Resolution No. 4605 New Series was read by number and title only, it being A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE ACCEPTANCE OF FOUR GOVERNOR'S OFFICE OF HIGHWAY SAFETY GRANTS ON BEHALF OF THE GLENDALE POLICE DEPARTMENT.

13. AMENDMENTS TO THE 2009-10 ARIZONA DEPARTMENT OF HOMELAND SECURITY SUB-GRANTEE AGREEMENTS

PRESENTED BY: Chris DeChant, Assistant Fire Chief

RESOLUTION: 4606

This is a request for City Council to accept four Amendments to the 2009-10 Arizona Department of Homeland Security (AZDOHS) Sub-grantee Agreement between the AZDOHS and the Glendale Fire Department.

Staff is requesting Council waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into Amendments 1-4 to the 2009-10 AZDOHS Sub-grantee Agreement.

Resolution No. 4606 New Series was read by number and title only, it being A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, RATIFYING THE ENTERING INTO BY THE GLENDALE FIRE DEPARTMENT OF AMENDMENT NOS. 1 AND 2 TO THE 2009 ARIZONA DEPARTMENT OF HOMELAND SECURITY GRANT FUNDING EXTENDING THE PERIOD OF PERFORMANCE; AND AUTHORIZING THE ENTERING INTO OF AMENDMENT NOS. 3 AND 4 TO THE 2009 ARIZONA DEPARTMENT OF HOMELAND SECURITY GRANT FUNDING FURTHER EXTENDING THE PERIOD OF PERFORMANCE ALL ON BEHALF OF THE GLENDALE FIRE DEPARTMENT.

14. 2012 ARIZONA DEPARTMENT OF HOMELAND SECURITY GRANT ACCEPTANCE

PRESENTED BY: Chris DeChant, Assistant Fire Chief

RESOLUTION: 4607

This is a request for City Council to accept 2012 grant funds from the Arizona Department of Homeland Security (AZDOHS).

Staff is requesting Council waive reading beyond the title and adopt a resolution authorizing the City Manager to accept the 2012 grant funds from the AZDOHS.

Resolution No. 4607 New Series was read by number and title only, it being A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE ACCEPTANCE OF 2012 ARIZONA DEPARTMENT OF HOMELAND SECURITY GRANT FUNDING IN THE APPROXIMATE AMOUNT OF \$367,047 ON BEHALF OF THE GLENDALE FIRE AND POLICE DEPARTMENTS.

15. AMENDMENT TO INTERGOVERNMENTAL AGREEMENT WITH ARIZONA DEPARTMENT OF ECONOMIC SECURITY

PRESENTED BY: Rebecca H. Daniel, Community Action Program Administrator

RESOLUTION: 4608

This is a request for City Council to authorize the City Manager to enter into Amendment No. 6 to the intergovernmental agreement (IGA) with the Arizona Department of Economic Security (DES) for Community Action Program (CAP) funding and operations.

DES has changed the terms and conditions, fingerprinting section 32.1.1, within the original contract. This contract change to the IGA between the City and DES requires City Council approval. Staff is requesting Council to waive reading beyond the title and adopt a resolution

authorizing the City Manager to enter into Amendment No. 6 to the IGA with DES for CAP operations.

Resolution No. 4608 New Series was read by number and title only, it being A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF AMENDMENT NO. 6 TO THE INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF ECONOMIC SECURITY FOR COMMUNITY ACTION PROGRAM FUNDING.

16. LICENSE AGREEMENTS FOR T-MOBILE WEST CORPORATION

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

RESOLUTION: 4609

This is a request for City Council to adopt a resolution authorizing the City Manager to execute three license agreements.

Staff is requesting Council waive reading beyond the title and adopt a resolution authorizing the City Manager to execute three license agreements between the city and T-Mobile West Corporation (T-Mobile) to operate wireless communication sites at three locations within public right-of-way.

Resolution No. 4609 New Series was read by number and title only, it being A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE CITY MANAGER TO EXECUTE THREE SEPARATE LICENSE AGREEMENTS FOR T-MOBILE WEST CORPORATION IN THE FOLLOWING CITY RIGHTS-OF-WAY: 5402 WEST UNION HILLS DRIVE, 6510 WEST CACTUS ROAD, AND 7978 NORTH 53RD AVENUE.

17. LICENSE AGREEMENT FOR CRICKET COMMUNICATIONS

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

RESOLUTION: 4610

This is a request for City Council to adopt a resolution authorizing the City Manager to execute a license agreement.

Staff is requesting Council waive reading beyond the title and adopt a resolution authorizing the City Manager to execute a license agreement between the city and Cricket Communications (Cricket) for the continued use of a wireless communication site within O'Neil Park located at 6448 West Missouri Avenue.

Resolution No. 4610 New Series was read by number and title only, it being A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE CITY MANAGER TO EXECUTE A LICENSE AGREEMENT FOR WIRELESS COMMUNICATIONS SITE IN O'NEIL PARK WITH CRICKET COMMUNICATIONS, INC.

18. CANVASS OF ELECTION FOR THE 2012 PRIMARY

PRESENTED BY: Pamela Hanna, City Clerk

RESOLUTION: 4611

This is a request for City Council to adopt a resolution declaring and adopting the results of the August 28, 2012 Primary Election.

Staff is requesting Council waive reading beyond the title and adopt the Canvass of Election for the 2012 Primary.

Resolution No. 4611 New Series was read by number and title only, it being A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, DECLARING AND ADOPTING THE RESULTS OF THE PRIMARY ELECTION HELD ON AUGUST 28, 2012; AND ORDERING THAT A CERTIFIED COPY OF THIS RESOLUTION BE RECORDED.

It was moved by Frate and seconded by Knaack, to approve the recommended actions on Consent Agenda Item Nos. 1 through 6 and Nos. 8 through 18, including the approval and adoption of Resolution No. 4602 New Series, Resolution No. 4603 New Series, Resolution No. 4604 New Series, Resolution No. 4605 New Series, Resolution No. 4606 New Series, Resolution No. 4607 New Series, Resolution No. 4608 New Series, Resolution No. 4609 New Series, Resolution No. 4610 New Series, and Resolution No. 4611 New Series; and to forward Special Event Liquor License Application for Assyrian Church of the East and Friends of Public Radio Arizona and Liquor License Application No. 5-1580 for Sprouts Farmers Market #9, No. 5-1581 for Sprouts Farmers Market #3 and 5-7020 for Angelina's Vietnamese Cuisine Pho' & Grill to the State of Arizona Department of Liquor Licenses and Control, with the recommendation for approval. The motion carried unanimously.

7. APPEAL OF DECISION IN SAVE GLENDALE NOW v. CITY OF GLENDALE et al.

PRESENTED BY: Nick DiPiazza, Deputy City Attorney

This is a request for City Council to ratify instructions previously given to the City Attorney to take necessary and timely legal action for the appeal to the Arizona Supreme Court of the Court of Appeal's decision in the matter of Save Glendale Now v. City of Glendale et al.

Councilmember Lieberman pointed out that this motion was being done after the fact since the Arizona Supreme Court has denied it. He was pleased to announce that the Arizona Supreme Court denied hearing the appeal, therefore, Save Glendale Now won and was awarded all their legal fees paid by the city of Glendale. He said Save Glendale Now won in a big way.

Diane Douglas, a Sahuaro resident, agreed with Councilmember Lieberman. She stated that the public should have been involved in this discussion and not held in Executive Session. She also made mention of the misleading wording which precedes the Consent Agenda. She noted not all Consent Agendas are studied in a workshop.

Ken Jones, an Ocotillo resident, stated the courts and the people of the community spoke on what they believed was right. He said it was time the Council started listening to the citizens of

Glendale. He disagrees with the city attorney fighting the people's desire to be heard and vote on this tax issue. He asked the Council to support the people's voice in this matter and do what is right. He mentioned the court's decision in favor of the Tohono O'odham Nation.

Councilmember Clark stated that in regard to the Appeals Court decision, it is her understanding the Appeals Court reviewed the procedural actions of the lower court. They found no issue with the procedural issues that were utilized in the lower court decision. She believes what the court did was take up the issue in regards to the content of the initiative itself. She said some issues being talked about by Save Glendale Now regarding the sales tax were misleading. Save Glendale Now was telling everyone that this initiative will roll back the sales tax increase and she believes that is not correct. She stated she had no problem with the sales tax being on the November ballot as long as people understand it will take effect for future Council action. She said that to say otherwise was false advertising. She noted many of the 4000 signatures collected by Save Glendale Now were erroneous and were invalidated.

Councilmember Lieberman disagreed with Councilmember Clark's comments. He reiterated that the Supreme Court voted in favor of Save Glendale Now on three counts by all three judges. He reiterated that Save Glendale Now won big in this case. He said he was still unclear if the sales tax will appear on the ballot in November. However, their intent is to have the sales tax rolled back to August 2012.

Rod Williams, an Ocotillo resident and chairman of Save Glendale Now, stated he was very surprised this discussion was taking place now since citizen comments were made at the end of the meeting. He stated there was nothing misleading about what they presented. He said the judge's decision reverses the Council's decision made on June 12 to raise the sales tax and puts it on the November ballot. In regards to signatures, there were 4,138 and the majority of those were good signatures. The city did not accept a lot of those signatures since the circulators were not certified. The city failed, however, to go to the Secretary of State's website to verify the petition circulator's information. He stated that you do not have to be a Arizona resident to circulate petitions but you do have to be certified by the state. The city threw out 410 signatures based on that and that is why he filed another lawsuit on Monday to challenge that determination. He said that everybody knows the tax cannot be increased without the vote of the people from this point on.

Councilmember Clark reiterated her comments. The Supreme Court, in denying review of this issue at this time, indicated that the issue was not "ripe" which means this was not a legislative issue to be looked at until it's voted on one way or the other.

It was moved by Frate, and seconded by Knaack, to pass and adopt Consent Item Number 7.

Mayor Scruggs said she was going to vote against this as you've read in the newspaper. She did not support this going to the Supreme Court in the first place so therefore she's not going to vote to ratify this action that should have been taken earlier on. The reason City Council did not have a meeting on August 28th was because it was Election Day. But that's not why she's not supporting this in the first place. She continued that her feeling, her personal feeling, is that the

time that is being wasted continuing to argue legal issues that Council doesn't really understand in the first place, could be better spent in such ways as what was going to begin the next day. Wednesday at 1:30 p.m. the Council will begin to look at hard facts that will be presented by the Acting City Manager, Mr. Horatio Skeete, in terms of what will need to be done if indeed the initiative passes and it's determined to be legal and it goes into effect and the tax rate returns to 2.2%.

Mayor Scruggs said so there are two ways to approach this matter, one is the way that the city attorney and the majority of the Councilmembers have chosen to do. And that is to continue to keep it from going on to the ballot. Which she really did not quite understand since what Council heard is that it will not have any effect on anything anyway so why fight it? She didn't quite understand that. So that is one way to approach it. The other way is to get busy, and be honest, open a dialogue with the employees and with the citizens. And say "you know, you have a choice, if you choose this way, these are the things that will happen, if you choose that way, these are the thing that will happen". But give people information, that's what an election is all about. It's voting based on information before you. And she really applauded the approach that is being taken by Mr. Skeete. She's looking forward to the meeting tomorrow as unpleasant as the information is going to be because she thought there is good information to be told to give our residents an opportunity to choose to not or go forward with the initiative. But to continue this with esoteric legal interpretations that can be argued back and forth, she thinks it's a phenomenal waste of time. So she will not support this motion.

Councilmember Lieberman said he would also vote against it.

Councilmember Martinez agreed this was a very complicated issue. However, he agrees with the city attorney that if this passes in November, it will not have an effect on the vote taken by the Council in June regarding the sales tax. He welcomed and was eager to have the public workshop tomorrow so the people can know what the city was facing.

Mayor Scruggs asked if Mr. Tindall, City Attorney will be at the workshop tomorrow.

Nick DiPiazza, Deputy City Attorney, replied yes.

Mayor Scruggs said there are a lot of words that are being used in such a way that are quite confusing. So here are some of the questions she would like to have answered by Mr. DiPiazza or Mr. Tindall or whatever city attorney is going to staff the meeting. Numerous references are being made if this vote is successful and that the action will not be retroactive. She did not think this group ever asked for this to be retroactive. They were asking for there to be an action taken to enact a Charter amendment going forward. Her reading of all of this has never indicated that they think something is going to go back to June or whatever the date was that the vote happened.

Mayor Scruggs said so let's hear an explanation of when he talks about retroactive and he puts that out in a statement that this will not be retroactive. She didn't think that was ever the intent, number one. Then she keeps hearing two things referenced as the City Attorney's opinion. One of those is that this will only apply going forward, if there is to be any change in the tax rate that

has to be voted on by the public going forward. But then on the other hand Mr. Tindall has advised us and has been quoted in the newspaper as saying that if this initiative is approved by the voters that it will require a Council action to change the City Charter to amend these rates and if the City Council chooses not do to that then nothing happens. So those are two very, very different interpretations and both of them have come from the City Attorney. And the one that says, well yes if the Council votes to amend the City Charter then these rates go into effect. Then the third thing is, there is an issue of constitutionality which she thought everybody who read the decision understands that there could be a question as to whether the whole action is constitutional or not and what would happen if the initiative passes successfully. But honestly, she thought he needs to clarify this because he is saying different things at different times and all its doing is further inflaming the public.

Councilmember Alvarez stated the comment she has heard was that if this was successful, there will be city layoffs and everything looked very grim for the city. However, she believes if this happens the money being used for sports should be used to keep the city running. She believes the Coyote deal was only a luxury since it has not made any money for the city. She explained this was what most of the constituents were upset about. She stated the mindset of this Council had to change. The city cannot say they are going to lay off employees because of lack of money. The city does have the money but they just put it in the wrong place.

Mayor Scruggs stated the Council will be discussing this issue and many others in the workshop tomorrow.

Vote on the item. Aye: Frate, Knaack, Martinez, Clark. Nay: Alvarez, Lieberman, Scruggs. The motion carried.

BIDS AND CONTRACTS

19. PROFESSIONAL SERVICES AGREEMENT FOR SWEETWATER LIFT STATION IMPROVEMENTS

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

This is a request for City Council to authorize the City Manager to enter into a professional services agreement with Brown and Caldwell, Inc. in amount not to exceed \$321,493, for design and construction administration services to improve the Sweetwater Lift Station and associated pipelines and manholes.

It was moved by Frate, and seconded by Martinez, to authorize the City Manager to enter into a professional services agreement with Brown and Caldwell, Inc. in amount not to exceed \$321,493, for design and construction administration services to improve the Sweetwater Lift Station and associated pipelines and manholes. The motion carried unanimously.

20. CONSTRUCTION AGREEMENT FOR FIRE HYDRANT AND VALVE REPLACEMENTS

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

This is a request for City Council to authorize the City Manager to enter into a construction agreement with Sand Dollar Construction, Inc. for the replacement of water line valves and fire hydrants in an amount not to exceed \$452,000.

It was moved by Lieberman, and seconded by Clark, to award construction agreement for fire hydrant and valve replacements with Sand Dollar Construction, Inc. in an amount not to exceed \$452,000. The motion carried unanimously.

21. AWARD OF BID 12-35, SOLAR LIGHT FIXTURES

PRESENTED BY: Stuart Kent, Executive Director, Public Works

This is a request for City Council to award Invitation for Bid (IFB) 12-35 and authorize the City Manager to enter into a contract for the purchase and installation of solar light fixtures with CS Construction, Inc., in an amount not to exceed \$225,650.

Vice Mayor Frate commented on solar lighting being put in back in 2009 in his district. He was glad to see this was being done on a larger scale. He said solar lighting has come a long way and was pleased to see it.

Councilmember Knaack asked if anything has been done to enhance security on solar lighting because of the vandalism problems in the parks. Stuart Kent, Executive Director, Public Works, explained the devices were being placed on top of the poles which seem to help matters.

Councilmember Martinez asked if this was the first time solar lighting was being used in parks. Mr. Kent replied they have done this in three other parks; however, this project was on a much larger scale. They hope to expand this if the economy gets better and more funding becomes available. Councilmember Martinez asked if this is being done primarily where vandalism was more prevalent. Mr. Kent replied yes.

It was moved by Lieberman, and seconded by Clark, to award Invitation for Bid (IFB) 12-35 and authorize the City Manager to enter into a contract for the purchase and installation of solar light fixtures with CS Construction, Inc., in an amount not to exceed \$225,650. The motion carried unanimously.

RESOLUTIONS

22. INTERGOVERNMENTAL AGREEMENT WITH ADOT FOR HIGH INTENSITY ACTIVATED CROSSWALK MAINTENANCE AT 63RD AVENUE AND BEARDSLEY ROAD

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

RESOLUTION: 4612

This intergovernmental agreement (IGA) clarifies maintenance responsibilities of the HAWK beacon. Staff is requesting City Council waive reading beyond the title and adopt a resolution

authorizing the City Manager to enter into an IGA with the Arizona Department of Transportation (ADOT) for maintenance of the High Intensity Activated Crosswalk (HAWK) Beacon on the westbound Loop 101 frontage road (Beardsley Road) at 63rd Avenue.

Councilmember Clark asked what the cost of installing one HAWK was. Jamsheed Mehta, AICP, Executive Director, Transportation Services, explained that would be hard to say since the cost was integrated into the project. Councilmember Clark asked if there was a possibility to acquire more grants to install more of these devices for areas that really need it. Mr. Mehta agreed this was a safety issue and staff will be looking for any grants available. Councilmember Clark hopes more of these devices are installed in the future.

Councilmember Knaack commented on the HAWK system and asked if when the pedestrian had cleared the street, the vehicles were okay to move forward. Mr. Mehta said that was correct; motorists may proceed with caution while the red lights are flashing if there are no more pedestrians in the crosswalk. Councilmember Knaack also requested that the area around Glendale Community College be looked at for a HAWK system.

Mayor Scruggs asked Mr. Mehta to explain the system and how it works. Mr. Mehta explained that the HAWK system is similar to a railroad crossing and would only be activated by a pedestrian which would make the lights flash and then go to solid red. When the lights are in a solid red, vehicles should not be going through the pedestrian area.

Mayor Scruggs asked if one was put in on Olive around Glendale Community College, that it was mainly for pedestrians that were crossing in the middle of the block. Mr. Mehta stated that was correct but one could only be located at half mile or greater intervals, and it would need to be practical. Mr. Mehta stated that one would not expect too many of these within close proximity as that would take away from the other objective that is to move vehicles smoothly along the arterial corridor. The location would be studied thoroughly to identify where the pedestrians are coming from and going to, and then the optimal location is chosen. Other considerations for setting a location include underground utilities and the availability of right-of-way to install the HAWK. Mr. Mehta further explained that the cost to install a HAWK would vary because of those considerations.

Resolution No. 4612 New Series was read by number and title only, it being A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA, DEPARTMENT OF TRANSPORTATION, FOR THE HAWK (HIGH INTENSITY ACTIVATED CROSSWALK), THE STRIPING MODIFICATIONS AND THE TRAFFIC CONTROL DEVICES ASSOCIATED WITH THE PEDESTRIAN CROSSING ON THE WESTBOUND LOOP 101 FRONTAGE ROAD IN THE VICINITY OF 63RD AVENUE.

It was moved by Martinez, and seconded by Knaack, to pass, adopt and approve Resolution No. 4612 New Series. The motion carried unanimously.

23. INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR MARYLAND AVENUE BIKE ROUTE SPOT IMPROVEMENTS

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

RESOLUTION: 4613

Staff is requesting City Council waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into an intergovernmental agreement (IGA) with the Arizona Department of Transportation (ADOT) for design and construction of spot improvements to an existing bicycle route along Maryland Avenue where gaps in the route currently exist.

Resolution No. 4613 New Series was read by number and title only, it being A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA, DEPARTMENT OF TRANSPORTATION, FOR THE DESIGN AND CONSTRUCTION OF SPOT IMPROVEMENTS TO AN EXISTING BICYCLE ROUTE ALONG MARYLAND AVENUE FROM 67TH AVENUE TO 69TH AVENUE AND FROM 79TH AVENUE TO 83RD AVENUE.

It was moved by Lieberman, and seconded by Clark, to pass, adopt and approve Resolution No. 4613 New Series. The motion carried unanimously.

REQUEST FOR FUTURE WORKSHOP AND EXECUTIVE SESSION

It was moved by Frate, and seconded by Clark, to hold a City Council Workshop at 1:30 p.m. in Room B-3 of the City Council Chambers on Tuesday, September 18, 2012, to be followed by an Executive Session pursuant to A.R.S. 38-431.03. The motion carried unanimously.

CITIZEN COMMENTS

Lisa Cleary, Phoenix resident, stated she was here on behalf of the National Multiple Sclerosis Society. She would like to extend an invitation to the Council and the citizens of Glendale to participate in a walk-a-thon on October 13, 2012 at the Westgate City Center. She encouraged everyone to attend this worthy event.

Ken Jones, Glendale resident, stated the importance of rolling back the sales tax increase since the citizens were already being taxed to death. He commented on all the money being spent on sports entertainment when they don't have any money and should be spending it on much more worthy causes such as in the community.

COUNCIL COMMENTS AND SUGGESTIONS

Councilmember Alvarez asked the Council to consider having the citizen comments at the beginning of the meeting instead of the end. She believes the taxpayers should be able to tell the

Council their comments early and not wait until the end. In regards to a city audit, she believes they should have an outside forensic audit since they really need to know where the money went and explain that to the community. She said her third request is for Council to have less Executive Sessions and more public sessions.

Councilmember Clark commented on the 9/11 ceremony they attended for those who died on 9/11 as well as for those in the military fighting to keep the country safe against those attacks. She was disturbed in hearing on the radio that some of those ceremonies were cancelled for lack of participation. She said this news was very shocking to hear that some don't care or remember what happened that day. Therefore, she was very proud of Glendale for continuing to have ceremonies to remember those who died and are still fighting for their freedom.

Councilmember Lieberman also commented on the ceremony and stated it was fantastic. He said the police and fire department presented beautiful speeches and his praise goes out to them. He commented on the favorable ruling by the courts for the Tohono O'odham Nation. He agreed with the ruling.

Vice Mayor Frate stated he recently attended the Casa De Oro Residence Hall and the ASU West Verde Dining Pavilion's grand opening. He said it was great to be there and talk to all the students. He noted that the Tulip Tree Florist shop in Glendale gave away a dozen roses to anyone who stopped by. The event was called pass it on. Each person was to keep one rose and pass on the other 11 to different people in the community. He said his first rose was given at the City of Glendale ceremony to remember 9/11. He asked people to continue to honor those who died and to never forget what happened and to continue to ensure this never happens again. He reminded everyone to watch children around water.

Councilmember Martinez remarked on the great 9/11 ceremony put on by public safety. He encourages the public to keep attending these ceremonies.

Councilmember Knaack also wanted to comment on the wonderful speakers at the ceremony. She said the services were very moving and touching. She wanted to thank the police and fire departments for all they do. She said it was an honor to be associated with all of them.

Mayor Scruggs said continuing on that subject for those that will be here next year. She read in the newspaper that a Patriots Day that specifically honors 9/11 had been enacted. She had not heard of this before but for those on staff and Councilmembers that will be here, you might want to think about requesting a proclamation next year in honor of 9/11. Since some have said it's getting easy to forget about it, you should look into this Patriots Day. The only other comment she would like to make which goes all the way back to almost about two hours ago at the beginning of the meeting when Ms. Douglas stood up and referenced the wording on the Consent Agenda. The Mayor addressed Ms. Douglas, stating that she was correct and that was not always accurate all the time and if you've noticed she does not say that either. And she'd talked about this in the past. This wording comes from she thinks from a city attorney back in the 1990's and has just continued on and on. And she believed that she'd made mention of the fact that some items are placed on the agenda that have not been studied in a Council workshop nor are they ever routine in nature. So she's going to suggest that to go along with all the other

improvements that are significant, that Council just leave that sentence off because it doesn't always apply. And just say, "items on the Consent Agenda are intended to be acted upon in one motion" and leave off the rest of it since it's very uncomfortable for her to say when she knows it is not accurate. Well that was her only request for the evening and other than that she has nothing further and the meeting is adjourned.

ADJOURNMENT

There being no further business, the meeting was adjourned at 8:38p.m.

Pamela Hanna - City Clerk



CITY COUNCIL REPORT

Meeting Date: **9/25/2012**
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

Carol Ladd	Cactus	Reappointment	09/25/2012	08/23/2014
Carol Ladd – Chair	Cactus	Appointment	09/25/2012	08/23/2013
JoAnn Lee – Vice Chair	Cholla	Appointment	09/25/2012	08/23/2013

Aviation Advisory Commission

Ron Cohoe	Yucca	Reappointment	11/24/2012	11/24/2013
Ron Cohoe – Chair	Yucca	Reappointment	11/24/2012	11/24/2013

Citizens Transportation Oversight Commission

Jack Bethel	Barrel	Appointment	09/25/2012	07/25/2014
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Commission On Persons With Disabilities

John Fallucca	Cholla	Reappointment	09/25/2012	07/27/2014
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Community Development Advisory Committee

Marcia Garland	Barrel	Appointment	09/25/2012	07/01/2014
Chuck Jared	Cactus	Appointment	09/25/2012	06/29/2014
Vickie Loya	Cholla	Appointment	09/25/2012	07/01/2014

Library Advisory Board

Chase MacKay (Teen)	Yucca	Appointment	09/25/2012	05/27/2013
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Parks and Recreation Advisory Commission

James Baribault	Barrel	Appointment	09/25/2012	04/09/2014
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Risk Management/Worker's Compensation Trust Fund Board

John Stern	Cholla	Reappointment	09/25/2012	07/24/2015
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CITY COUNCIL REPORT

Meeting Date: **9/25/2012**
Meeting Type: **Voting**
Title: **DOMESTIC VIOLENCE AWARENESS MONTH PROCLAMATION**
Staff Contact: **Debora Black, Interim Police Chief**

Purpose and Recommended Action

This is a request for City Council to proclaim October 2012 as Domestic Violence Awareness Month and present the Proclamation to Rob Walecki, Glendale City Prosecutor, and Paul Ferguson, Glendale Domestic Violence Assistant City Prosecutor.

Background Summary

Domestic Violence Awareness Month provides a special opportunity to recognize and thank the people and agencies that support victims of domestic violence and educate the public about its prevalence. The National Coalition Against Domestic Violence created Domestic Violence Awareness Day in October 1981. Their purpose was to bring advocates together who are working to end the cycle of domestic violence. Since that time, the month of October has been utilized to bring attention to domestic violence issues, and encourage victims of family violence to seek out their local resources.

Previous Related Council Action

On September 27, 2011, Council proclaimed October 2011 as Domestic Violence Awareness Month.



CITY COUNCIL REPORT

Meeting Date: **9/25/2012**
Meeting Type: **Voting**
Title: **FIRE PREVENTION MONTH PROCLAMATION**
Staff Contact: **Mark Burdick, Fire Chief**

Purpose and Recommended Action

This is a request for City Council to proclaim October 2012 as Fire Prevention Month in Glendale and present the proclamation to Mr. Bill Epps, Chief Executive Officer for the American Red Cross, Grand Canyon Chapter.

Background Summary

The National Fire Protection Association (NFPA) has designated October 7-13, 2012, as National Fire Prevention Week with the theme, "Have 2 Ways Out." 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 Fire Department priority. Some of the fire safety programs include: home escape planning, kitchen safety, smoke detector tips, and youth fire-setter intervention. 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.

The American Red Cross was selected to be this year's proclamation recipient because of their dedication to assisting victims of fire in Glendale.

Previous Related Council Action

Council has proclaimed Fire Prevention Month in Glendale since 1997.



CITY COUNCIL REPORT

Meeting Date: **9/25/2012**
Meeting Type: **Voting**
Title: **SPECIAL EVENT LIQUOR LICENSE, ST. RAPHAEL CATHOLIC CHURCH**
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. Raphael Catholic Church. The event will be held at St. Raphael Catholic Church inside Hibner Hall located at 5525 West Acoma Road on Saturday, February 9, 2013, from 6 p.m. to 10 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

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 Planning, Police, and Fire Departments have reviewed the application and determined that it meets all technical requirements.

Attachments

Staff Report

Liquor License Attachments

Police Calls for Service Report



STAFF REPORT

Meeting Date: **9/25/2012**
To: **Horatio Skeete, Acting City Manager**
From: **Susan Matousek, Revenue Administrator**
Title: **SPECIAL EVENT LIQUOR LICENSE, ST. RAPHAEL CATHOLIC CHURCH**

General Information

Request: Special Event Liquor License

Location: 5525 West Acoma Road

District: Sahuaro

Zoned: R-4 (Multi Family Residential)

Applicant: Frank G. Dominguez

Owner: St. Raphael Catholic Church

Background

1. The event will be held on Saturday, February 9, 2013, from 6 p.m. to 10 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 special event liquor license is for a fundraiser dinner to include live music held indoors.
4. Proceeds from this special event go to Our Lady of the Valley Catholic Church and St. Raphael Catholic Church.

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 Planning, Police, and Fire Departments have reviewed the application and determined that it meets all technical requirements.

PLANNING DEPARTMENT: Approved the application with no comments.

POLICE DEPARTMENT: Recommended no cause for denial.

FIRE DEPARTMENT: Approved the application with no comments.

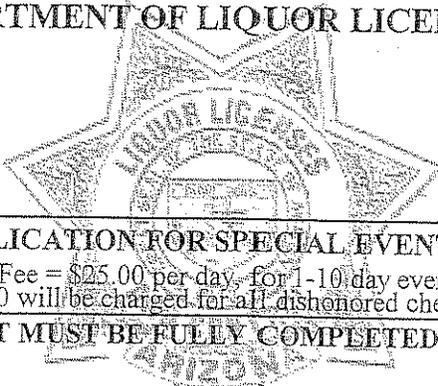
Staff Recommendation

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.

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

DEPT USE ONLY
LIC#

1. Name of Organization: St. Raphael Catholic Church
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? Fund-raising Dinner/Dance
5. Location of the event: 5525 W. Acorn Rd Glendale Maricopa 85306
- 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: Dominquez Frank G [REDACTED]
- Last First Middle Date of Birth

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

8. Phone Numbers: (602) 938-4227 (602) 938-4227 [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>Feb 9, 2013</u>	<u>Saturday</u>	<u>6:00 PM</u>	<u>10:00 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.

<u>Name</u>	<u>Address</u>	<u>Percentage</u>
<u>Our Lady of the Valley Catholic Church</u>	<u>3220 W. Greenway Plr 85053</u>	<u>50</u>
<u>St. Raphael Catholic Church</u>	<u>5525 W. Koma Rd Glendale</u>	<u>50</u>

(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)

 # Police Fencing
4 # Security personnel Barriers

Indoor event

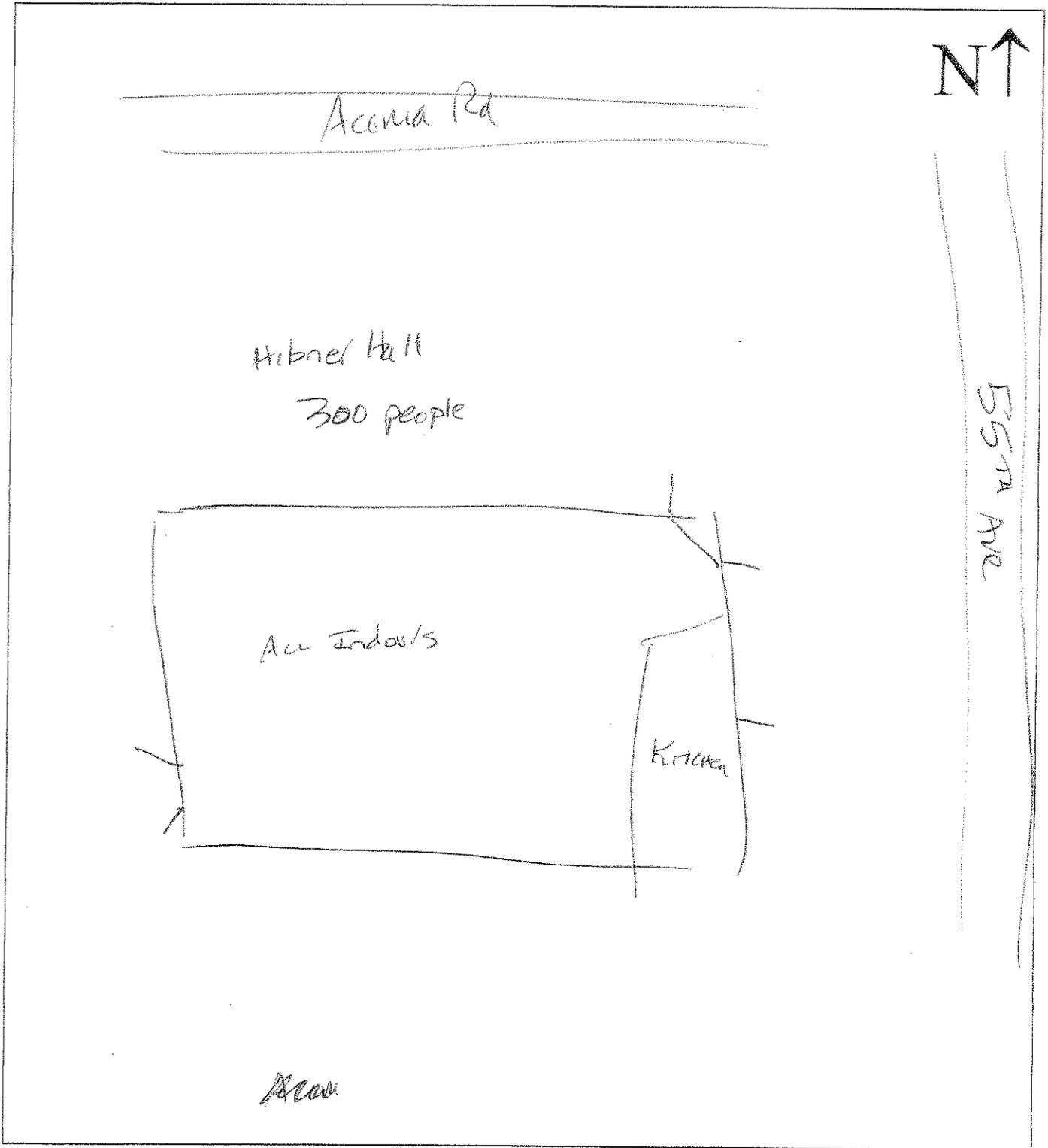
16. Is there an existing liquor license at the location where the special event is being held? YES NO
If yes, does the existing business agree to suspend their liquor license during the time period, and in the area in which the special event license will be in use? YES NO
(ATTACH COPY OF AGREEMENT)

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.

SPECIAL EVENT LICENSED PREMISES DIAGRAM
(This diagram must be completed with this application)

Special Event Diagram: (Show dimensions, serving areas, and label type of enclosure and security positions)
NOTE: Show nearest cross streets, highway, or road if location doesn't have an address.



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

18. Rev. Edward J. Kaminski, CSC 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 Edward J. Kaminski Pastor 6-15-12 (602) 938-4227
 (Signature) (Title/Position) (Date) (Phone #)



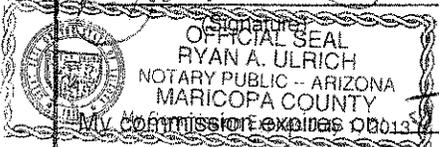
State of Arizona County of Maricopa
 The foregoing instrument was acknowledged before me this 15th June 2012
 Day Month Year
Ryan A. Ulrich
 (Signature of NOTARY PUBLIC)

My Commission expires on: July 1, 2013
 (Date)

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

19. Frank G. Dominguez 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.

Frank G. Dominguez
 State of Arizona County of Maricopa
 The foregoing instrument was acknowledged before me this



15th June 2012
 Day Month Year
Ryan A. Ulrich
 (Signature of NOTARY PUBLIC)

My Commission expires on: July 1, 2013
 (Date)

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)



City of Glendale
5850 W. Glendale Avenue
Glendale AZ 85301
623-930-3190

**SPECIAL EVENT LIQUOR
LICENSE APPLICATION**

Date: 8/17/2012

Business Name: St. Raphael Catholic Church

Event Location: 5525 W. Acoma Rd. Glendale 85306

Name of person filling out this form: Frank Dominguez

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

Phone Number: 602 938-4227 Address: 5525 W. Acoma Rd

Event Contact Name: Frank Dominguez

Phone Number: [REDACTED] Address: [REDACTED]

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

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

Organization Name: St. Raphael Catholic Church

Organization Address: 5525 W. Acoma Rd. Glendale 85306

Federal ID Number: [REDACTED]

Date(s) of the Event: 2/9/2013

Hours of the Event: 6:00 pm to 10:00 pm

Will there be a cover charge? Yes

Will the event include any of the following activities?

Patron dancing	Live entertainment (Type <u>Band & D.J.</u>)	Adult entertainment
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Outdoor dining	Outdoor alcohol consumption	Food Served
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

How many parking spaces do you have available? 200 Will any part of your event be in a Parking Lot? No

Is the parking area exclusively for this location? Yes Shared with other businesses? No

Will there be fencing? No What type of fencing? _____ Height of fencing? _____

How many exit gates? _____ Width of exit gates? _____

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 today at 623-930-2800 or visit them on the 2nd Floor of Glendale City Hall, 5859 W Glendaie Avenue.

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

The applicant or agent may be asked to answer questions regarding this liquor application at the City Council meeting. The City of Glendale 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.

Frank Dominguez (Signature of person filling out this form)

LIQUOR LICENSE APPLICATION—PLANNING DEPARTMENT

DATE ROUTED TO PLANNING: 8/20/12

DEADLINE FOR PLANNING: APPROVAL/DISAPPROVAL: 8/27/12

APPLICANT: St Raphael Catholic Church

ACCOUNT NO: 500007362

LOCATION: 5525 W Acoma Rd

APPLICATION: New License/New Location Location Transfer
 New License/Existing Location Temporary Extension of Premises
 Person Transfer/Existing Location Permanent Extension of Premises
 Person Transfer/New Location Special Event Liquor License

TYPE OF BUSINESS: Religious

DOCUMENTS ROUTED: Application for Liquor License Diagram of Premises
 Other _____

FOR PLANNING USE—APPROVAL OR DISAPPROVAL

ZONING ONLY: APPROVED DISAPPROVED

ZONING DISTRICT: R-4

REASON FOR DISAPPROVAL (#1-12) _____

INITIALS: RL

(See Attached List)

C.U.P. ONLY:

DATE: 8/20/2012

IS C.U.P. REQUIRED FOR ANY PROPOSED USE (If so, explain below): Yes No

IS PROPOSED USE GRANDFATHERED: Yes No DATE STARTED: _____

DOES PROPERTY HAVE A C.U.P.: Yes No DATE GRANTED: _____

IS C.U.P. APPLICATION PENDING: Yes No DATE APPLIED: _____

COMMENTS: _____

LIQUOR LICENSE APPLICATION
FIRE SAFETY NOTIFICATION

DATE ROUTED TO FIRE SAFETY: 8/20/12

DEADLINE FOR FIRE SAFETY APPROVAL/DISAPPROVAL: 8/27/12

APPLICANT: St Raphael Catholic Church

ACCOUNT NO: 500007362

LOCATION: 5525 W Acoma Rd

APPLICATION: New License/New Location Location Transfer
 New License/Existing Location Temporary Extension of Premises
 Person Transfer/Existing Location Permanent Extension of Premises
 Person Transfer/New Location Special Event Liquor License

TYPE OF BUSINESS: Religious

DOCUMENTS ROUTED: Application for Liquor License Diagram of Premises
 Other _____

APPROVED DISAPPROVED _____ INITIALS: KB Date: 8/21/12

REASON FOR DISAPPROVAL (#1-12) _____
(See Attached List)

COMMENTS: _____

PLEASE RETURN TO Tammy Hicks 623-930-2209

12-90

GLENDALE POLICE DEPARTMENT

Liquor Application Worksheet

Date: 08-28-12

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. Raphael Catholic Church**

Business Address: **5525 W. Acoma Rd.**

Applicant/s Information

Name: **Dominguez, Frank**

Name:

Name:

Name:

Background investigation of applicant/s completed.

Calls for Service History:	Call history for location beginning: 8/28/2011	Other Suites	New ownership call history beginning:
Liquor Related			
Vice Related			
Drug Related			
Fights / Assaults			
Robberies			
Burglary / Theft	2		
911 calls			
Trespassing	1		
Accidents			
Fraud / Forgery			
Threats			
Criminal damage	2		
Other non-criminal*	1		
Other criminal			
Total calls for service	6	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 St. Raphael Catholic Church (50%) and Our Lady of the Valley Catholic Church (50%). This Special Event License is for Church Fundraising Dinner/Dance.

Events are scheduled for 02-09-13 (Sat).

Current License Holder:

New License

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>8-28-12</u>
CID Lieutenant or Commander	_____	_____
Deputy City Attorney	_____	_____
Chief of Police or designee	<u>[Signature]</u>	<u>8/29/2012</u>



CITY COUNCIL REPORT

Meeting Date: **9/25/2012**
Meeting Type: **Voting**
Title: **LIQUOR LICENSE NO. 5-6572, MAMA LUPITAS RESTAURANT & BAR**
Staff Contact: **Susan Matousek, Revenue Administrator**

Purpose and Recommended Action

This is a request for City Council to approve a new, non-transferable series 12 (Restaurant) license for Mama Lupitas Restaurant & Bar located at 6550 West Glendale Avenue, Suite 14. The Arizona Department of Liquor Licenses and Control application (No. 12079214) was submitted by Mark Andrew Tafoya.

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

Background Summary

The location of the establishment is in the Ocotillo District. The property is zoned C-2 (General Commercial). The population density within a one-mile radius is 21,551. Mama Lupitas Restaurant & Bar is currently operating with an interim permit, therefore, the approval of this license will not increase the number of liquor licenses in the area. The current number of liquor licenses within a one-mile radius is as listed below.

Series	Type	Quantity
06	Bar - All Liquor	2
07	Bar - Beer and Wine	1
09	Liquor Store - All Liquor	3
10	Liquor Store - Beer and Wine	10
12	Restaurant	11
14	Private Club	3
	Total	30

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

Community Benefit/Public Involvement

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



CITY COUNCIL REPORT

Attachments

Staff Report

Map

Police Calls for Service Report



STAFF REPORT

Meeting Date: 9/25/2012
To: Horatio Skeete, Acting City Manager
From: Susan Matousek, Revenue Administrator
Title: LIQUOR LICENSE NO. 5-6572, MAMA LUPITAS RESTAURANT & BAR

General Information

Request: New, Non-Transferable
License: Series 12 (Restaurant)
Location: 6550 West Glendale Avenue, Suite 14
District: Ocotillo
Zoned: C-2 (General Commercial)
Applicant: Mark Andrew Tafoya
Owner: 43rd Indian School, LLC

Background

1. The population density is 21,551 persons within a one-mile radius.
2. The 300 feet from any church or school rule does not apply to this series license.
3. Mama Lupitas Restaurant & Bar is currently operating with an interim permit, therefore, the approval of this license will not increase the number of liquor licenses in the area.

Citizen Participation to Date

No protests were received during the 20-day posting period, August 7 through August 27, 2012.

Review/Analysis

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

The City of Glendale Planning, Police, and Fire Departments have reviewed the application and

determined that it meets all technical requirements.

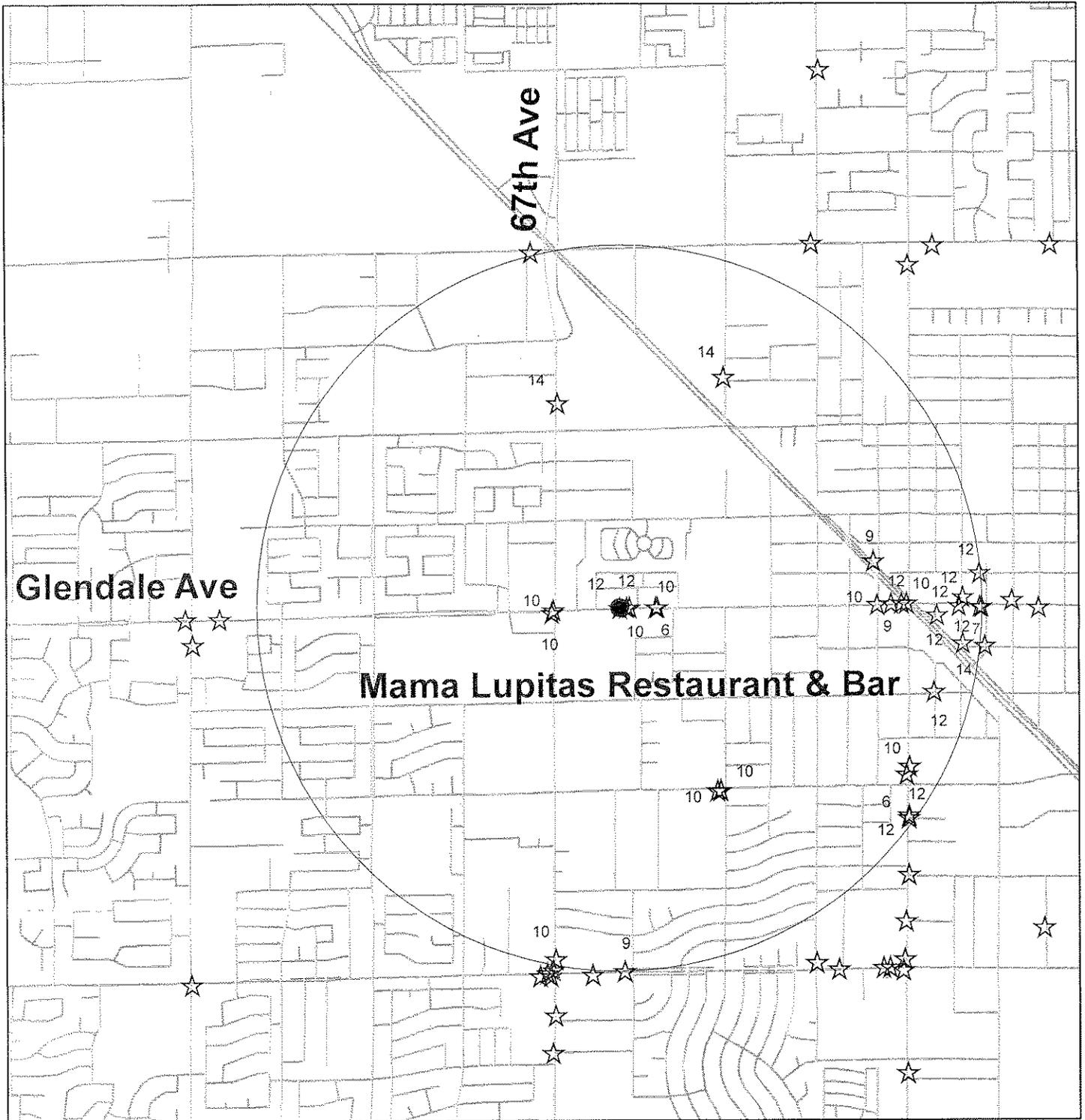
PLANNING DEPARTMENT: Approved the application with no comments.

POLICE DEPARTMENT: Recommended no cause for denial.

FIRE DEPARTMENT: Approved the application with no comments.

Staff Recommendation

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



BUSINESS NAME: Mama Lupitas Restaurant & Bar

LOCATION: 6550 W. Glendale Avenue

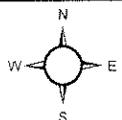
ZONING: C-2

APPLICANT: Mark Andrew Tafoya

APPLICATION NO: 5-6572



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



12-83

GLENDALE POLICE DEPARTMENT

Liquor Application Worksheet

Date: 08-23-12

License Type: **Series 12 Restaurant**

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

Application Type: **New License**

Definition: New license

Business Name: **Mama Lupitas Restaurant & Bar**

Business Address: **6550 W. Glendale Ave, Ste 14**

Applicant/s Information

Name: **Tafoya, Mark**

Name: **Tafoya, Natividad**

Name:

Name:

Background investigation of applicant/s completed.

Calls for Service History:	Call history for location beginning: 8/23/2007	Other Suites	New ownership call history beginning: 7/30/2012
Liquor Related			
Vice Related			
Drug Related		2	
Fights / Assaults	1	5	
Robberies		1	
Burglary / Theft	3	18	
911 calls		2	
Trespassing		1	
Accidents		1	
Fraud / Forgery		3	
Threats		2	
Criminal damage			
Other non-criminal*	4	24	
Other criminal		4	
Total calls for service	8	63	0

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

GLENDALE POLICE DEPARTMENT

Liquor Application Worksheet

Applicant Background Synopsis:

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

Current License Holder:

Oralia De Zarate Guizar (Agent)
Guizar Oralia JTWROS (Owner)

There are no known concerns with the current license holder.

Location History:

No significant Calls for Service history at this location.

Special Concerns:

None found

Background investigation complete:

Police Department recommendation has No Cause for Denial.

Date

Investigating Officer – M. Ervin

M. ERVIN

8-24-12

CID Lieutenant or Commander

Deputy City Attorney

Chief of Police or designee

 5013

8/27/2012



CITY COUNCIL REPORT

Meeting Date: **9/25/2012**
Meeting Type: **Voting**
Title: **LIQUOR LICENSE NO. 5-7002, KIKU REVOLVING SUSHI BAR**
Staff Contact: **Susan Matousek, Revenue Administrator**

Purpose and Recommended Action

This is a request for City Council to approve a new, non-transferable series 12 (Restaurant) license for Kiku Revolving Sushi Bar located at 8190 West Union Hills Drive, Suite 155. The Arizona Department of Liquor Licenses and Control application (No. 12079224) was submitted by Phillip Scott Picard.

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

Background Summary

The location of the establishment is in the Cholla District. The property is zoned C-2 (General Commercial). The population density within a one-mile radius is 12,265. This series 12 is a new license, therefore, the approval of this license will increase the number of liquor licenses in the area by one. The current number of liquor licenses within a one-mile radius is as listed below.

Series	Type	Quantity
03	Domestic Micro - Brewery	1
06	Bar - All Liquor	1
09	Liquor Store - All Liquor	4
10	Liquor Store - Beer and Wine	1
12	Restaurant	10
	Total	17

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

Community Benefit/Public Involvement

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



CITY COUNCIL REPORT

Attachments

Staff Report

Map

Police Calls for Service Report



STAFF REPORT

Meeting Date: **9/25/2012**
To: **Horatio Skeete, Acting City Manager**
From: **Susan Matousek, Revenue Administrator**
Title: **LIQUOR LICENSE NO. 5-7002, KIKU REVOLVING SUSHI BAR**

General Information

Request: New, Non-Transferable

License: Series 12 (Restaurant)

Location: 8190 West Union Hills Drive, Suite 155

District: Cholla

Zoned: C-2 (General Commercial)

Applicant: Phillip Scott Picard

Owner: Kiku Sushi, LLC

Background

1. The population density is 12,265 persons within a one-mile radius.
2. The 300 feet from any church or school rule does not apply to this series license.
3. This series 12 is a new license, therefore, the approval of this license will increase the number of liquor licenses in the area by one.

Citizen Participation to Date

No protests were received during the 20-day posting period, August 14 through September 3, 2012.

Review/Analysis

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

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

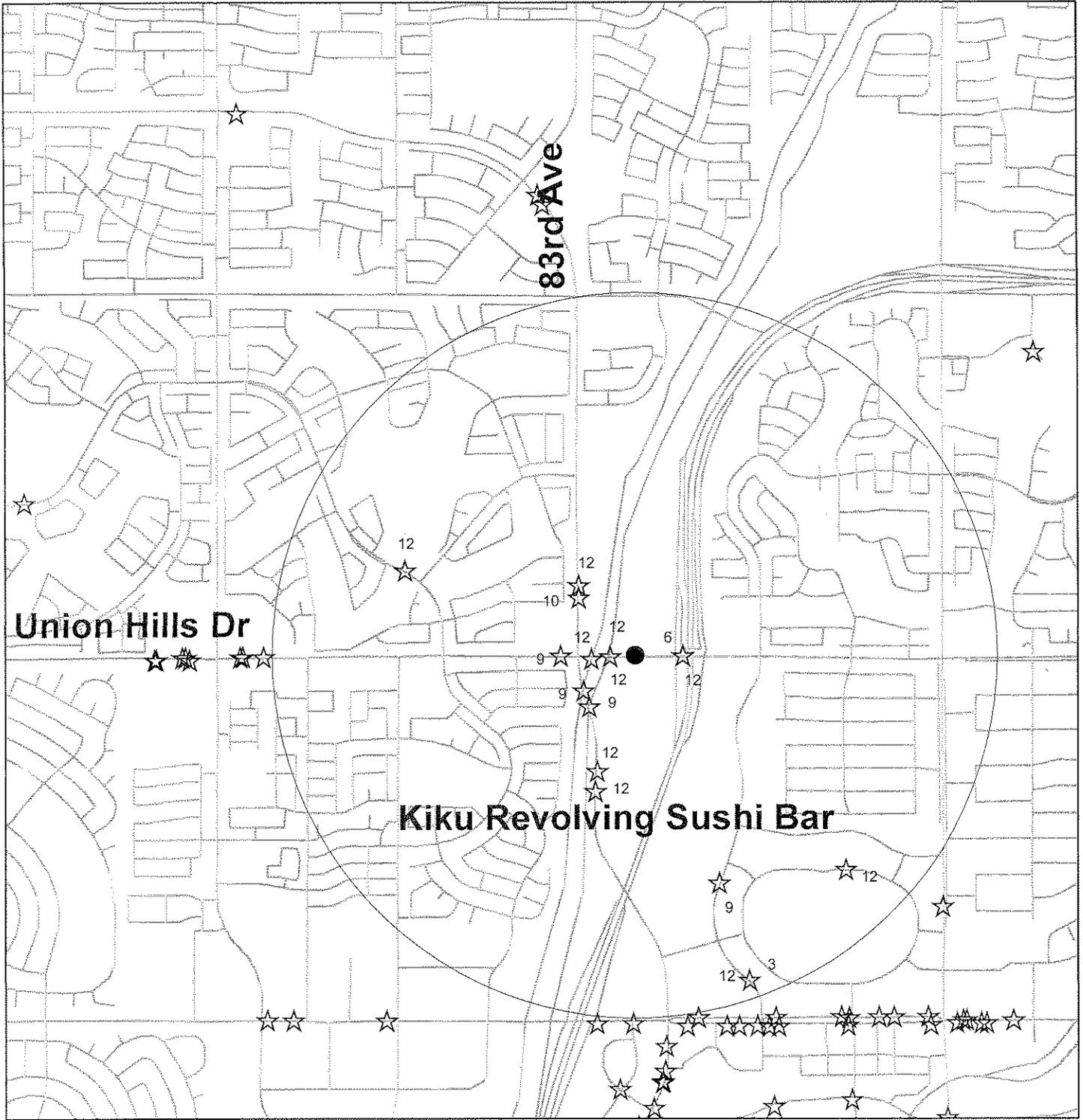
PLANNING DEPARTMENT: Approved the application with no comments.

POLICE DEPARTMENT: Recommended no cause for denial.

FIRE DEPARTMENT: Approved the application with no comments.

Staff Recommendation

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



BUSINESS NAME: Kiku Revolving Sushi Bar

LOCATION: 8190 W. Union Hills Dr. Ste 155

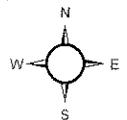
ZONING: C-2

APPLICANT: Phillip Scott Picard

APPLICATION NO: 5-7002



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



12-87

GLENDALE POLICE DEPARTMENT

Liquor Application Worksheet

Date: 08-24-12

License Type: **Series 12 Restaurant**

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

Application Type: **New License**

Definition: New license

Business Name: **Kiku Revolving Sushi Bar**

Business Address: **8190 W. Union Hills Rd., Ste-155**

Applicant/s Information

Name: **Picard, Phillip**

Name: **Picard, Kyong**

Name:

Name:

Background investigation of applicant/s completed.

Calls for Service History:	Call history for location beginning: 8/24/2007	Other Suites	New ownership call history beginning:
Liquor Related			
Vice Related			
Drug Related			
Fights / Assaults			
Robberies			
Burglary / Theft		12	
911 calls			
Trespassing			
Accidents		2	
Fraud / Forgery			
Threats			
Criminal damage			
Other non-criminal*	1	9	
Other criminal			
Total calls for service	1	23	N/A - No Interim Permit

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

GLENDALE POLICE DEPARTMENT

Liquor Application Worksheet

Applicant Background Synopsis:

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

Current License Holder:

New license

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>8-24-12</u>
CID Lieutenant or Commander	_____	_____
Deputy City Attorney	_____	_____
Chief of Police or designee	<u>[Signature]</u>	<u>8/27/2012</u>



CITY COUNCIL REPORT

Meeting Date: **9/25/2012**
Meeting Type: **Voting**
Title: **APPEAL OF DECISION IN GILA RIVER INDIAN COMMUNITY, et al., v. DEPARTMENT OF INTERIOR AND TOHONO O'ODHAM NATION, et al.**
Staff Contact: **Craig Tindall, City Attorney**

Purpose and Recommended Action

This is a request for City Council to authorize the City Attorney to take the necessary and timely legal action for the further appeal of the 9th Circuit Court of Appeal's decision in the matter of Gila River Indian Community, et al. v. Department of Interior and Tohono O'odham Nation, et al.

Background Summary

On April 7, 2009, the Glendale City Council passed and adopted Resolution 4246, New Series, authorizing the City Attorney to take all reasonable, necessary and prudent actions to oppose the Tohono O'odham's ("T.O.") plan to create a reservation within the exterior boundaries of the City of Glendale for the purposes of gaming. T.O.'s plan has been strongly opposed by United States Senators, Congressmen, Arizona's Governor, the Arizona Legislature, and the Arizona Attorney General. It has also been opposed by nine of Arizona's Indian tribes; most directly by the Gila River Indian Community, which is a co-litigant with the City and the State in this matter, and the Salt River Pima-Maricopa Indian Community, which is a litigant against the T.O. in a related lawsuit.

No Arizona tribe supports the T.O. government's plan, recognizing that this plan is directly contrary to the promises Arizona's gaming tribes made to the voters in 2002 and as a result is detrimental to Indian gaming in Arizona. Moreover, the T.O. government's proposal is also directly contrary to the promises that this tribe made to the other tribes, the State of Arizona, and the citizens of Arizona in 2002 when it negotiated its current Gaming Compact in bad faith with the clear but secreted intent to create a reservation for gaming purposes within the exterior boundaries of the City of Glendale.

This action by the State of Arizona, the Gila River Indian Community, and the City is based on the Department of Interior's violation of the federal law under which the T.O. government claims it has the right to create trust land on property located within the exterior boundaries of the City of Glendale. The City also asserts that the federal government's creation of a reservation exceeds the

power of the federal government and, therefore, violates the United States Constitution. The City and the Gila River Indian Community appealed the United States District Court's March 3, 2011 opinion in this matter. The 9th Circuit Court of Appeals issued a split opinion on September 11, 2012 affirming the District Court's decision with a strong, well-stated dissent.



CITY COUNCIL REPORT

Meeting Date: **9/25/2012**
Meeting Type: **Voting**
Title: **ARIZONA CRIMINAL JUSTICE COMMISSION GRANT**
Staff Contact: **Debora Black, Interim Police Chief**

Purpose and Recommended Action

This is a request for City Council to authorize the City Manager to enter into a FY 2012-13 Project Safe Neighborhoods grant from the Arizona Criminal Justice Commission.

This grant award will support the Police Department by providing overtime funding for personnel in the amount of \$15,255 during the grant period between July 1, 2012 and June 30, 2013. Staff is requesting Council waive reading beyond the title and adopt a Resolution authorizing the City Manager to enter into a FY 2012-13 Project Safe Neighborhoods grant from the Arizona Criminal Justice Commission.

Background Summary

This grant award will support the Police Department by providing overtime funding for personnel in the amount of \$15,255 during the grant period between July 1, 2012 and June 30, 2013. It will increase the time forensic technicians and detectives dedicate to forensic analysis of bullets. Results will be entered into the National Integrated Ballistic Information Network (NIBIN) database and compared to records in the database to find matches, assisting with criminal investigation and the prosecution of offenders.

Previous Related Council Action

On August 23, 2011, Council approved the acceptance of the FY 2011-12 Project Safe Neighborhood grant in the amount of \$11,269.

Community Benefit/Public Involvement

This grant will continue to benefit the Glendale community and citizens by allowing the Police Department to use more resources and extend hours on the forensic examination of seized weapons and casings. Entry of that information into the NIBIN database will enable comparison with other records related to violent crimes in the database to find matches that will lead to the solution of crimes and the arrest and prosecution of offenders.



CITY COUNCIL REPORT

Budget and Financial Impacts

There is no financial match required for this grant funding.

Attachments

Staff Report

Resolution

Agreement



STAFF REPORT

To: **Horatio Skeete, Acting City Manager**
From: **Debora Black, Interim Police Chief**
Item Title: **ARIZONA CRIMINAL JUSTICE COMMISSION GRANT**
Requested Council Meeting Date: **9/25/2012**
Meeting Type: **Voting**

PURPOSE

This report contains information on a FY 2012-13 Project Safe Neighborhoods grant from the Arizona Criminal Justice Commission. The purpose of this report is to request the City Manager forward this item to the City Council for their consideration and approval.

BACKGROUND

This grant award will support the Police Department by providing overtime funding for personnel in the amount of \$15,255 during the grant period between July 1, 2012 and June 30, 2013. It will increase the time forensic technicians and detectives dedicate to forensic analysis of bullets. Results will be entered into the National Integrated Ballistic Information Network (NIBIN) database and compared to existing records in the database to find matches, assisting with criminal investigation and the prosecution of offenders.

ANALYSIS

This grant will benefit the Glendale community and citizens by allowing the Police Department to use more resources and extend hours on the forensic examination of seized weapons and casings. Entry of that information into the NIBIN database will enable comparison with other records related to violent crimes in the database to find matches that will assist with criminal investigations and the arrest and prosecution of offenders. This is the second year the Police Department is receiving this grant. Last year the Police Department received the grant in the amount of \$11,269. Last year's grant was very successful. The funding paid for 250 hours of overtime, allowing personnel to test-fire over 700 weapons that were backlogged, which resulted in 12 matches to other cases.

I will be recommending that Council waive reading beyond the title and authorize the City Manger to enter into a FY 2012-13 Project Safe Neighborhoods grant from the Arizona Criminal Justice Commission in the amount of \$15,255.

FISCAL IMPACTS

There is no financial match required for this grant.

RESOLUTION NO. 4614 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE SUBMISSION AND ACCEPTING THE GRANT OFFER FROM THE ARIZONA CRIMINAL JUSTICE COMMISSION, PROJECT SAFE NEIGHBORHOODS TO SUPPORT OVERTIME ENFORCEMENT ACTIVITIES BY THE GLENDALE POLICE DEPARTMENT TO ADDRESS FIREARM VIOLENCE REDUCTION.

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

SECTION 1. That the City Council of the City of Glendale hereby accepts the grant offer from the Arizona Criminal Justice Commission in the approximate amount of \$15,255 to support overtime enforcement activities by forensic technicians and detectives to examine ballistic evidence.

SECTION 2. That the Acting City Manager, or his designee, is hereby authorized and directed to execute any and all documents necessary for the acceptance of said grant on behalf of the City of Glendale.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this ____ day of _____, 2012.

M A Y O R

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

REVIEWED BY:

City Manager



ARIZONA CRIMINAL JUSTICE COMMISSION
PROJECT SAFE NEIGHBORHOODS GRANT PROGRAM
GRANT AGREEMENT

ACJC Grant Number PSN-13-006

Catalog of Federal Domestic Assistance (CFDA) Number 16.609

This Grant Agreement is made this 1ST day of July, 2012, by and between the ARIZONA CRIMINAL JUSTICE COMMISSION hereinafter called "COMMISSION" and the City of Glendale, through GLENDALE POLICE DEPARTMENT hereinafter called "GRANTEE". The COMMISSION enters into this Agreement pursuant to its authority under the provisions of A.R.S. § 41-2405 (B)(6), and having satisfied itself as to the qualification of GRANTEE;

NOW, THEREFORE, it is agreed between the parties as follows:

1. This Agreement will commence on July 1, 2012 and terminate on June 30, 2013. This Agreement expires at the end of the award period unless prior written approval for an extension has been obtained from the COMMISSION. A request for an extension must be received by the COMMISSION sixty (60) days prior to the end of the award period. The COMMISSION in its sole discretion may approve an extension that further the goals and objectives of the program and shall determine the length of any extension.
2. GRANTEE agrees that grant funds will be used in accordance with applicable program rules, guidelines and special conditions.
3. The COMMISSION will monitor GRANTEE performance against program goals and performance standards and those outlined in the grant application. Substandard performance as determined by the COMMISSION will constitute noncompliance with this Agreement. If the COMMISSION finds noncompliance, the GRANTEE will receive a written notice which identifies the area of noncompliance, and the appropriate corrective action to be taken. If the GRANTEE does not respond within thirty (30) calendar days to this notice, and does not provide sufficient information concerning the steps which are being taken to correct the problem, the COMMISSION may suspend funding, permanently terminate this Agreement or revoke the grant.
4. Any deviation or failure to comply with the purpose and/or conditions of this Agreement without prior written COMMISSION approval may constitute sufficient reason for the COMMISSION to terminate this Agreement, revoke the grant, require the return of all unspent funds, perform an audit of expended funds, and require the return of any previously spent funds which are deemed to have been spent in violation of the purpose or conditions of this grant.
5. This Agreement may be modified only by a written amendment signed by the Executive Director or by persons authorized by the Executive Director on behalf of the COMMISSION and GRANTEE. Any notice given pursuant to this Agreement shall be in writing and shall be considered to have been given when actually received by the following addressee or their agents or employees:

A. If to the COMMISSION:

Arizona Criminal Justice Commission
1110 W. Washington Street, Suite 230
Phoenix, Arizona 85007
Attn: Program Manager

B. If to the GRANTEE:

Glendale Police Department
 6835 N. 57th Dr.
 Glendale, AZ 85301
 Attn: Interim Chief Debora Black

6. For grant awards above \$100,000, GRANTEE may make budget adjustments of up to ten (10) percent of the total grant within any approved budget category excluding equipment. Written approval from the COMMISSION in advance is required if GRANTEE wishes to make adjustments or reprogram in excess of ten (10) percent or if GRANTEE wishes to purchase equipment not previously approved.

For grant awards less than \$100,000, the GRANTEE may make budget adjustments within approved categories excluding equipment as long as there are no changes to the purpose or scope of the project. If GRANTEE wishes to purchase equipment not previously approved, written approval from the COMMISSION in advance is required.

APPROVED LINE ITEM PROGRAM BUDGET	
Personnel:	
Salaries	Not Approved
Fringe Benefits (for salaries/overtime)	\$2,861
Overtime	\$12,394
Professional & Outside/Consultant & Contractual Services	Not Approved
Travel In-State	Not Approved
Travel Out-of-State	Not Approved
Confidential Funds	Not Approved
Operating Expenses:	
Supplies	Not Approved
Registration/Training	Not Approved
Other	Not Approved
Equipment	
Capital	Not Approved
Noncapital	Not Approved
TOTAL	15,255

7. The total to be paid by the COMMISSION under this Agreement shall not exceed \$15,255 in federal funds awarded to the COMMISSION by the U.S. Department of Justice (USDOJ), Office of Justice Programs (OJP).
8. Every payment obligation of the COMMISSION 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 COMMISSION. No liability shall accrue to the COMMISSION in the event this provision is exercised, and the COMMISSION shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.
9. GRANTEE agrees to retain all books, account reports, files and other records, (paper and/or electronic) relating to this Agreement and the performance of this Agreement for no less than five (5) years from the last financial report submitted to the COMMISSION. All such documents shall be subject to inspection and audit at reasonable times, including such records of any subgrantee, contractor, or subcontractor. GRANTEE also understands and agrees that USDOJ and the United States General Accounting Office (USGAO) are authorized to interview any officer or employee of the GRANTEE (or of any subgrantee, contractor, or subcontractor) regarding transactions related to this award.

10. GRANTEE agrees to track, account for, and report on all funds (including specific outcomes and benefits) separately from all other funds for the same or similar purposes or programs.

Accordingly, the accounting systems of GRANTEE and all subgrantees must ensure that funds from this award are not commingled with funds from any other source.

11. GRANTEE agrees to abide by Federal and State laws and provide accounting, auditing and monitoring procedures to safeguard grant funds and keep such records to assure proper fiscal controls, management and the efficient disbursement of grant funds.

12. For the purpose of this grant, a capital expenditure is \$5,000 or above. If GRANTEE'S policy defines a capital expenditure as less than \$5,000, GRANTEE will use its own policy.

13. GRANTEE agrees to maintain property records for equipment purchased with grant funds and perform a physical inventory and reconciliation with property records at least every two years or more frequently based on GRANTEE policy. GRANTEE agrees that funds will not be used for the construction of new facilities.

14. The GRANTEE agrees to follow equipment disposition policies outlined in *OMB Circulars A-102 or 2 CFR, Part 215 Uniform Administrative Requirements for Grants and Cooperative Agreements* as codified in (1) 28 CFR, Part 66 or (2) 28 CFR, Part 70 when the equipment is no longer needed for the grant program.

Link: *OMB Circulars* http://www.whitehouse.gov/omb/grants_attach/

15. GRANTEE agrees that all salaried personnel (including subgrantee personnel) whose activities are to be charged to the award will maintain timesheets or certifications to document hours worked for activities related to this award and non-award related activities. GRANTEE agrees to keep time and attendance sheets for hourly employees signed by the employee and supervisory official having firsthand knowledge of the work performed by the grant-funded employees.

16. GRANTEE agrees that it will submit financial and activity reports to the COMMISSION in a format provided by the COMMISSION, documenting the activities supported by these grant funds and providing an assessment of the impact of these activities which may include documentation of project milestones. In the event reports are not received on or before the indicated date(s), funding may be suspended until such time as delinquent report(s) are received.

17. These reports are to be submitted according to the following schedule(s):

ACTIVITY and FINANCIAL REPORTS	
Report Period:	Due Date:
July 1 to September 30	October 15
October 1 to December 31	January 15
January 1 to March 31	April 15
April 1 to June 30	July 15

More frequent reports may be required for GRANTEES who are considered high risk.

18. GRANTEE understands that financial reports are required as an accounting of expenditures for either reimbursement or COMMISSION-approved advance payments.

19. The final request for reimbursement of grant funds must be received by the COMMISSION no later than sixty (60) days after the last day of the award period.

20. All goods and services must be received or have reasonable expectations thereof and placed in service by GRANTEE by the expiration of this award.
21. GRANTEE agrees that all encumbered funds must be expended and that goods and services must be paid by GRANTEE within sixty (60) days of the expiration of this award.
22. GRANTEE agrees to remit all unexpended grant funds to the COMMISSION within thirty (30) days of written request from the COMMISSION.
23. GRANTEE agrees to account for interest earned on federal grant funds and shall remit interest earned in excess of the allowable amount as indicated in the *Office of Justice Programs Financial Guide*.
Link: *OJP Financial Guide* <http://www.ojp.usdoj.gov/financialguide/>
24. GRANTEE agrees to obtain written COMMISSION approval for all sole source procurements in excess of \$100,000.
25. GRANTEE agrees to obtain written COMMISSION approval prior to the expenditure of grant funds for consultant fees in excess of \$450 per day.
26. GRANTEE agrees not to use grant funds for food and/or beverage unless explicitly approved in writing by the COMMISSION.
27. No funds shall be used to supplant federal, state, county or local funds that would otherwise be made available for such purposes. Supplanting means the deliberate reduction of state or local funds because of the existence of any grant funds.
28. GRANTEE assigns to the COMMISSION any claim for overcharges resulting from antitrust violations to the extent that such violations concern materials or services applied by third parties to GRANTEE in exchange for grant funds provided under this Agreement.
29. The parties agree to use arbitration in the event of disputes in accordance with the provisions of A.R.S. § 12-1501-12-1518. The laws of the State of Arizona apply to questions arising under this Agreement and any litigation regarding this Agreement must be maintained in Arizona courts, except as pertaining to disputes which are subject to arbitration.
30. GRANTEE understands that grant funds may not be released until all delinquent reports and reversion of funds from prior grants are submitted to the COMMISSION.
31. GRANTEE agrees that grant funds are not to be expended for any indirect costs that may be incurred by GRANTEE for administering these funds unless explicitly approved in writing by the COMMISSION. This may include, but is not limited to, costs for services such as accounting, payroll, data processing, purchasing, personnel, and building use which may have been incurred by the GRANTEE.
32. Each party (as "Indemnitor") agrees to indemnify, defend and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses, (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers. If the GRANTEE is a State agency this paragraph does not apply.

33. Unless GRANTEE is a State agency, GRANTEE shall cause its contractor(s), if any, to indemnify, defend, save and hold harmless the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees (hereinafter referred to as "Indemnatee") from and against any and all claims, actions, liabilities, damages, losses or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of GRANTEE'S contractor or any of its owners, officers, directors, agents, or employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Worker's Compensation Law or arising out of the failure of such contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligence or willful acts or omissions of the Indemnatee, be indemnified by contractor from and against any and all claims. It is agreed that contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this grant, the contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents and employees for losses arising from the work performed by the contractor for the State of Arizona. Insurance requirements for any contractor used by GRANTEE are incorporated herein by this reference and attached to this Agreement as Exhibit "A".
34. GRANTEE agrees to notify the COMMISSION within ten (10) days in the event that the project official is replaced during the award period.
35. No rights or interest in this Agreement shall be assigned by GRANTEE without prior written approval of the COMMISSION.
36. GRANTEE will comply with the audit requirements of *OMB Circular A-133 Audits of States, Local Governments and Non-Profit Organizations* and provide the COMMISSION with the audit report and any findings within 90 days of receipt of such finding. If the report contains no findings, the GRANTEE must provide notification that the audit was completed.
Link: *OMB Circulars:* http://www.whitehouse.gov/omb/grants_attach/
37. GRANTEE certifies that it will comply with *OMB Circulars A-102 and 2 CFR, Part 215 Uniform Administrative Requirements for Grants and Cooperative Agreements* as codified in (1) 28 CFR, Part 66.32 or (2) 28 CFR, Part 70.34 and *Cost Principles (1) 2 CFR, Part 225, (2) 2 CFR, Part 220 or (3) 2 CFR, Part 230*, the OJP Financial Guide and the most current version of the ACJC Grant Management Reference Manual.
Link: *OMB Circulars* http://www.whitehouse.gov/omb/grants_attach/
OJP Financial guide: <http://www.ojp.usdoj.gov/financialguide/>
ACJC Grant Management Reference Manual:
http://azcjc.gov/pubs/home/021104_Manual_GrantReferenceManual.pdf
38. GRANTEE agrees that it cannot use any federal funds, either directly or indirectly, in support of any contract or sub award to either the Association of Community Organizations for Reform Now (ACORN) or its subsidiaries, without the express written approval of the Office of Justice Programs through the COMMISSION.
39. GRANTEE understands and agrees that misuse of award funds may result in a range of penalties, including suspension of current and future funds, suspension or debarment from federal grants, recoupment of monies provided under an award, and civil and/or criminal penalties.

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40. Pursuant to A.R.S. § 35-391.06 and A.R.S. § 35-393.06, GRANTEE hereby warrants, and represents that it does not have, and its subcontractors do not have, and during the term hereof will not have a scrutinized business operation in either Sudan or Iran.
41. GRANTEE agrees to check the U.S. General Service Administration (GSA) Excluded Parties Listing Service as required by Executive Order 12549, as defined in 28 CFR Part 83.630 for individuals, agencies, companies and corporations debarred or suspended from doing business with recipients receiving federal funds. GRANTEE agrees not to do business with any individual, agency, company or corporation listed in the Excluded Parties Listing Service.
Link: *Excluded Parties Listing System* <http://epls.arnet.gov>
42. GRANTEE agrees that no funds provided, or personnel employed under this Agreement shall be in any way, or to any extent, engaged in conduct of political activities in violation of USC Title 5, Part II, Chapter 15, section 1502.
43. GRANTEE certifies that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement.
44. GRANTEE agrees to cooperate and participate with any and all assessments, evaluation efforts or information and data collection requests, and acknowledges that the federal or state grantor agency has the right to obtain, reproduce, publish or use data provided under this award and may authorize others to receive and use such information.
45. GRANTEE shall provide the COMMISSION with a copy of all interim and final reports and proposed publications (including those prepared for conferences and other presentations) resulting from this Agreement. Submission of such materials must be prior to or simultaneous with their public release.
46. GRANTEE agrees that any publications (written, visual, or sound) excluding press releases and newsletters, whether published at the GRANTEE'S or COMMISSION'S expense, shall contain the following statement:
- "This project was supported by Grant No. 2011-GP-BX-0058 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency, the Office for Victims of Crime, the Community Capacity Development Office and the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice."
- The current edition of the *Office of Justice Programs Financial Guide* provides guidance on allowable printing and publication activities.
Link: *OJP Financial Guide* <http://www.ojp.usdoj.gov/financialguide/>
47. GRANTEE agrees to comply with the non-discrimination requirements of the Omnibus Crime Control and Safe Streets Act of 1968, 42 USC §3789d(c)(1); Title VI of the Civil Rights Act of 1964, 42 USC §2000d; Section 504 of the Rehabilitation Act of 1973, 29 USC § 794; Subtitle A, Title II of the Americans with Disabilities Act of 1990, 42 USC § 12132; Title IX of the Education Amendments of 1972, 20 USC § 1681; the Age Discrimination Act of 1975, 42 USC § 6102; the Department of Justice implementing regulations, 28 CFR pt. 42, subpts. C, D, E, G, and I, 28 CFR pt. 35, and 28 CFR pt. 54; all applicable state laws of A.R.S. § 41-1463; and Executive Order 2009-9. The above-referenced federal laws prohibit discrimination on the basis of race, color, religion, sex, disability, and national origin (including limited English

proficiency) in the delivery of services and employment practices, and prohibit discrimination on the basis of age in the delivery of services. In the event that a Federal or State Court or Federal or State administrative agency makes a finding of discrimination after a due process hearing against GRANTEE, GRANTEE will forward a copy of the findings to the Office for Civil Rights, Office of Justice Programs and the COMMISSION.

"Applicants must certify that Limited English Proficiency persons have meaningful access to the services under this program(s). National origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with Title VI and the Safe Street Act, the applicant is required to take reasonable steps to ensure that LEP persons have meaningful access to programs. Meaningful access may entail providing language assistance services, including oral and written translation when necessary."

Link: *Limited English Proficiency A Federal Interagency Website* <http://www.LEP.gov>

48. GRANTEE agrees to comply with the applicable requirements of 28 CFR Part 38, the Department of Justice regulation governing "Equal Treatment for Faith Based Organizations" (the "Equal Treatment Regulation"). The Equal Treatment Regulation provides in part that Department of Justice financial assistance may not be used to fund any inherently religious activities, such as worship, religious instruction, or proselytization. Recipients of Department of Justice financial assistance may still engage in inherently religious activities, but such activities must be separate in time or place from the Department of Justice funded program, and participation in such activities by individuals receiving services from GRANTEE must be voluntary. The Equal Treatment Regulation also makes clear that organizations participating in programs receiving financial assistance from the Department of Justice are not permitted to discriminate in the provision of services on the basis of a beneficiary's religion. Notwithstanding any other special condition of this award, faith-based organizations may, in some circumstances, consider religion as a basis for employment.

Link: http://www.ojp.gov/about/ocr/equal_fbo.htm.

49. GRANTEE assures that it will comply with all state and federal laws regarding privacy during the course of the award. All information relating to clients is to be treated with confidentiality in accordance with 42 USC section 3789g or 42 USC 14132(b)(3) that are applicable to the collection, disclosure, use and revelation of data information. GRANTEE further agrees to submit a privacy Certificate that is in accordance with requirements of 28 CFR Part 22 if applicable to the program.
50. GRANTEE agrees to formulate and keep on file an Equal Employment Opportunity Plan (EEOP) (if grantee is required pursuant to 28 CFR 42.302). GRANTEE certifies that they have forwarded to the Office for Civil Rights, Office of Justice Programs the EEOP, or certifications that they have prepared and have on file an EEOP, or that they are exempt from EEOP requirements. Failure to comply may result in suspension of grant funds. Copies of all submissions such as certifications to or correspondence with the Office for Civil Rights, Office of Justice Programs regarding this requirement must be provided to the COMMISSION by GRANTEE. In the event a federal or state court or federal or state administrative agency makes an adverse finding of discrimination against GRANTEE after a due process hearing, on the ground of race, color, religion, national origin, or sex, GRANTEE will forward a copy of the findings to the Office for Civil Rights, Office of Justice Programs and the COMMISSION.
51. If GRANTEE is a governmental political subdivision, GRANTEE agrees to utilize the *Data Dictionary*, approved and distributed by the COMMISSION, as the data entry standard for information systems when improving or updating an existing information system. GRANTEE agrees to utilize the *Data Dictionary* as the data entry standard in any new system or when an existing information system is replaced. The *Data Dictionary* is available upon request to ACJC.

52. To support public safety and justice information sharing, GRANTEE, if a governmental subdivision, shall use the National Information Exchange Model (NIEM) specifications and guidelines for this grant. GRANTEE shall publish and make available without restrictions all schemas generated as a result of this grant to the component registry as specified in the guidelines.

Link: https://www.niem.gov/program-managers/Pages/implementation_guide.aspx

53. To avoid duplicating existing networks or IT systems in any initiatives for law enforcement information sharing systems which involve interstate connectivity between jurisdictions, such systems shall employ, to the extent possible, existing networks as the communication backbone to achieve interstate connectivity, unless GRANTEE can demonstrate to the satisfaction of the COMMISSION that this requirement would not be cost beneficial or would impair the functionality of an existing or proposed IT system.

54. If GRANTEE is a governmental political subdivision, the GRANTEE should, to the extent possible and practical; share criminal justice information with other authorized criminal justice agencies. The process control number (PCN) shall be used in accordance with A.R.S. § 41-1750 when sharing data with other criminal justice agencies as electronic data systems are developed or improved.

55. If GRANTEE is a state agency and the award is for the development of information technology projects for more than \$25,000, GRANTEE must complete a Project Investment Justification (PIJ) and submit the justification to the Arizona Department of Administration (ADOA), with a copy to the COMMISSION. GRANTEE agrees to submit required project status reports to ADOA by the due dates and submit copies to the COMMISSION.

If GRANTEE is not a state agency and the award is for the development of information technology projects, GRANTEE will follow local technology policies and guidelines.

56. GRANTEE must promptly refer to the COMMISSION any credible evidence that a principal, employee, agent, contractor, subgrantee, or other person has either 1) submitted a false claim for grant funds under the False Claims Act; or 2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving grant funds. The COMMISSION shall forward the referral to the Department of Justice, Office of the Inspector General.

57. The COMMISSION encourages GRANTEE to establish workplace safety policies and conduct education, awareness and other outreach to decrease crashes caused by distracted drivers, including adopting and enforcing policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this grant. Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Fed. Reg. 51225 (October 2009).

58. GRANTEE certifies to comply with the Drug-Free Workplace Act of 1988, and implemented in 28 CFR Part 83, Subpart F, for grantees, as defined in 28 CFR, Part 83 Sections 83.620 and 83.650.

59. GRANTEE agrees to complete and keep on file, as appropriate, Immigration and Naturalization Form (I-9). This form is to be used by recipients to verify that persons are eligible to work in the United States. Additionally GRANTEE ensures compliance with A.R.S. § 41-4401 federal immigration laws by state employers and contractors.

60. GRANTEE acknowledges that immigration laws require them to register and participate with the E-Verify program (employment verification program administered by the United States Department of Homeland Security and the Social Security Administration or any successor

program) as they both employ one or more employees in this state. GRANTEE warrants that they have registered with and participate with E-Verify. If the GRANTOR later determines that the GRANTEE has not complied with E-Verify, it will notify the non-compliant GRANTEE by certified mail of the determination and of the right to appeal the determination.

61. Grantee certifies that no federal funds will be paid, by or on behalf of, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and for the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement. If any funds other than Federal funds are paid or will be paid to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal award, grant loan, or cooperative agreement, the GRANTEE will complete and submit to the COMMISSION Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
62. GRANTEE agrees to comply with all federal, state and local environmental laws and regulations applicable to the development and implementation of activities to be funded under this award. Additional requirements may be found in Grant Agreement Continuation Sheet.
63. GRANTEE agrees to ensure that, no later than the due date of the GRANTEE's first quarterly report after the award is made, GRANTEE and any subgrantees have a valid DUNS profile and has an active registration with the Central Contractor Registration (CCR) database.

GRANTEE agrees expeditiously to obtain active registration with the CCR database, and to notify the program office in writing of its registration and expiration date.
64. GRANTEE agrees that all income generated as a direct result of this award shall be deemed program income. All program income must be accounted for and used for the purpose under the conditions applicable for the use of funds under this award, including the effective edition of the OJP Financial Guide and, as applicable, either (1) 28 CFR part 66 or (2) 28 CFR part 70 and OMB Circular A-102 & 2 CFR 215.
65. This Agreement is subject to cancellation pursuant to the provision of A.R.S. § 38-511. This Agreement may also be cancelled at the COMMISSION'S discretion if not returned with authorized signatures to the COMMISSION within 90 days of commencement of the award.
66. If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall be in full force and effect.
67. GRANTEE agrees to comply with all Special Condition(s) included with this Agreement on the Grant Agreement Continuation Sheet.

Arizona Criminal Justice Commission
PROJECT SAFE NEIGHBORHOODS
GRANT AGREEMENT CONTINUATION SHEET
SPECIAL CONDITION(S)

1. The GRANTEE agrees to submit to the U.S. Department of Justice through the COMMISSION for review and approval, any proposal or plan for Project Safe Neighborhoods media-related outreach. DOJ approval must be received prior to any obligation or expenditures of grant funds related to the development of media-related projects.
2. The GRANTEE agrees to submit to the Bureau of Justice Assistance through the COMMISSION for review and approval and curricula, training materials, proposed publications, reports, or other written materials that will be published, including web-based materials and web site content, through funds from this grant at least forty-five (45) working days prior to the targeted dissemination date.
3. The GRANTEE agrees to comply with any additional requirements that may be imposed during the grant performance period if the COMMISSION determines that the GRANTEE is high-risk. Cf. 28 CFR parts 66, 70.

Authorized Official Initials: _____

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

FOR GRANTEE:

Mayor or City Manager

Date

Printed Name and Title

Approved as to form and authority to enter into Agreement:

Legal counsel for GRANTEE

Date

Printed Name and Title

Statutory or other legal authority to enter into Agreement:

Appropriate A.R.S., ordinance, or charter reference

FOR CRIMINAL JUSTICE COMMISSION:

John A. Blackburn Jr., Executive Director
Arizona Criminal Justice Commission

Date



ARIZONA CRIMINAL JUSTICE COMMISSION
GRANT AGREEMENT

**Insurance Requirements
Exhibit "A"**

Insurance Requirements for Governmental Parties to a Grant Agreement:

None.

Insurance Requirements for Any Contractors Used by a Party to the Grant Agreement:

(Note: this applies only to Contractors used by a governmental entity, not to the governmental entity itself.) The insurance requirements herein are minimum requirements and in no way limit the indemnity covenants contained in the Intergovernmental Agreement. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the governmental entity or Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, his agents, representatives, employees or subcontractors, and Contractor and the governmental entity are free to purchase additional insurance.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Contractor shall provide coverage with limits of liability not less than those stated below.

1. **Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage, personal injury and broad form contractual liability.

• General Aggregate	\$2,000,000
• Products – Completed Operations Aggregate	\$1,000,000
• Personal and Advertising Injury	\$1,000,000
• Blanket Contractual Liability – Written and Oral	\$1,000,000
• Fire Legal Liability	\$50,000
• Each Occurrence	\$1,000,000

a. The policy shall be endorsed to include the following additional insured language: ***"The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor"***.

(Note that the other governmental entity(ies) is/are also required to be additional insured(s) and they should supply the Contractor with their own list of persons to be insured.)

b. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

Exhibit "A" Page 2

2. Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$1,000,000

a. The policy shall be endorsed to include the following additional insured language: ***"The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor".***

b. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

(Note that the other governmental entity(ies) is/are also required to be additional insured(s) and they should supply the Contractor with their own list of persons to be insured.)

3. Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$500,000
Disease – Each Employee	\$500,000
Disease – Policy Limit	\$1,000,000

a. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

b. This requirement shall not apply to: Separately, EACH contractor or subcontractor exempt under A.R.S. 23-901, AND when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

B. ADDITIONAL INSURANCE REQUIREMENTS: The policies are to contain, or be endorsed to contain, the following provisions:

1. The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees *and the other governmental entity* shall be additional insureds to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by the Contract.
2. The Contractor's insurance coverage shall be primary insurance with respect to all other available sources.
3. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insured's liability. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of its Contract with the other governmental entity(ies) party to the IGA.

Exhibit "A" Page 3

- C. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Agreement shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days prior written notice has been given the State of Arizona. Such notice shall be sent directly to the GRANTEE and the Arizona Criminal Justice Commission 1110 W. Washington, Suite 230, Phoenix, AZ 85007 and shall be sent by certified mail, return receipt requested.
- D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with duly licensed or approved non-admitted insurers in the State of Arizona with an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
- E. **VERIFICATION OF COVERAGE:** Contractor shall furnish the GRANTEE and the Arizona Criminal Justice Commission with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements are to be received and approved before work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Agreement, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Agreement shall be sent directly to the GRANTEE and the Arizona Criminal Justice Commission 1110 W. Washington, Suite 230, Phoenix, AZ 85007. The Commission project/contract number and project description are to be noted on the certificate of insurance. The State of Arizona and the Arizona Criminal Justice Commission reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATE OF ARIZONA'S RISK MANAGEMENT SECTION.**

- F. **SUBCONTRACTORS:** Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall furnish to the county or local government agency responsible separate certificates for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.
- G. **APPROVAL:** Any modification or variation from the *insurance requirements* must have prior approval from the State of Arizona Department of Administration, Risk Management Section, whose decision shall be final. Such action will not require a formal contract amendment, but may be made by administrative action.
- H. **EXCEPTIONS:** In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance. If the contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university then none of the above shall apply.



CITY COUNCIL REPORT

Meeting Date: **9/25/2012**
Meeting Type: **Voting**
Title: **INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR THE NEW RIVER PATHWAY**
Staff Contact: **Jamsheed Mehta, AICP, Executive Director, Transportation Services**

Purpose and Recommended Action

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

Background Summary

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

This pathway along New River provides an important connection within the regional multiuse pathway system and, in particular, will provide a continuous connection from the Grand Canal Pathway in Glendale to the segment of the New River Pathway currently under construction by the City of Peoria at Northern Avenue. This segment of the New River Pathway will provide bicycle and pedestrian access to Westgate City Center, Jobing.com Arena and University of Phoenix Stadium. Federal funds have been identified in the Maricopa Association of Governments' Transportation Improvement Plan, and construction is anticipated to begin in FY 2012-13.

Previous Related Council Action

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

Community Benefit/Public Involvement

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



CITY COUNCIL REPORT

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

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

Budget and Financial Impacts

Cost	Fund-Department-Account
\$1,574,113	2210-65063-551200 - New River Multiuse Pathway

The total project cost is estimated at \$3,124,113. Funding for construction will be provided by ADOT using federal funds in the amount of \$1,550,000 for construction. Local matching funds are available in the FY 2012-13 capital improvement plan in the estimated amount of \$1,574,113. If actual costs exceed the estimate, the city will be responsible for any additional project costs.

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

Capital Expense? Yes No

Budgeted? Yes No

Requesting Budget or Appropriation Transfer? Yes No

If yes, where will the transfer be taken from?



CITY COUNCIL REPORT

Attachments

Staff Report

Resolution

Agreement



STAFF REPORT

To: **Horatio Skeete, Acting City Manager**
From: **Jamsheed Mehta, AICP, Executive Director, Transportation Services**
Item Title: **INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA
DEPARTMENT OF TRANSPORTATION FOR THE NEW RIVER
PATHWAY**
Requested Council Meeting Date: **9/25/2012**
Meeting Type: **Voting**

PURPOSE

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

BACKGROUND

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

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

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

This pathway will connect to a planned New River Pathway segment to be built in 2012 by the City of Peoria, and will also connect to the Grand Canal Pathway in Glendale. The project will provide access to nearby major league football, baseball and hockey facilities.

ANALYSIS

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

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

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

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

In addition, a project webpage was developed and linked to the City of Glendale website so that those looking for upcoming projects would also be able to find information about the New River Multiuse Pathway Project.

FISCAL IMPACTS

Funding will be provided by ADOT using federal funds in the amount of \$1,550,000 for construction. Local matching funds in the amount of \$1,574,113 are available in the FY 2012-13 capital improvement plan.

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

RESOLUTION NO. 4615 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA, DEPARTMENT OF TRANSPORTATION, FOR THE CONSTRUCTION OF A 10-FOOT WIDE CONCRETE PATHWAY FROM THE BETHANY HOME ROAD ALIGNMENT TO NORTHERN AVENUE.

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

SECTION 1. That it is deemed in the best interest of the City of Glendale and the citizens thereof that the Intergovernmental Agreement with the State of Arizona, Department of Transportation, for the construction of a 10-foot wide concrete pathway from the Bethany Home Road Alignment to Northern Avenue (IGA/JPA 10-055-I) be entered into, which agreement is now on file in the office of the City Clerk of the City of Glendale.

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

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this _____ day of _____, 2012.

MAYOR

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

REVIEWED BY:

City Manager

ADOT File No.: IGA/JPA 10-055-I
AG Contract No.: P001 2012 000xxx
ADOT No.: SS846 01C
Project No.: GLNN13-902 & GLN11-702
Project: New River Multi-Use Pathway
Section: Bethany Home Road
alignment to Northern Avenue.

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF GLENDALE

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

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
 2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement on behalf of the City.
 3. The work proposed under this Agreement is to construct a 10-foot wide concrete pathway from the Bethany Home Road alignment to Northern Avenue. Under crossings at Glendale Avenue and Northern Avenue and a bridge spanning the ADOT drainage channel on quarter mile south of Northern Avenue, hereinafter referred to as the "Project." Amenities include landscaping and irrigation, and benches and bike racks for pathway user. Pedestrian level lighting will be installed below the bridges at Glendale and Northern Avenues as well as on ramps to arterial streets. New railings will be added where needed and existing rails increased in height to meet AASHTO guidelines. The City shall maintain the pathway and provide electrical power and water required for the irrigation.
 4. Such Project lies within the boundary of the City and has been selected by the City; the survey of the project has been completed; and the plans and estimates will be prepared and, as required, submitted to the State and Federal Highway Administration (FHWA) for its approval.
 5. The interest of the State in this Project is the acquisition of Federal funds for the use and benefit of the City and to authorize such Federal funds for the project pursuant to Federal law and regulations.
 6. The City, in order to obtain Federal funds for the *construction of the Project* is willing to provide City funds to match Federal funds in the ratio required or as finally fixed and determined by the City and FHWA.
 7. The Parties shall perform their responsibilities consistent with this Agreement and any change or modification to the Project will only occur with the mutual written consent of both Parties.
-

8. The Project cost breakdown is as follows:

ADOT Project No. SS846 01C

Construction Federal Aid @ 94.3% (capped)	\$ 1,550,000.00
City Match @ 5.7%	\$ 93,690.00
Local City Funding 100%	<u>\$ 1,470,423.00</u>
Estimated Construction Cost	\$ 3,114,113.00
 (ADOT Preliminary Engineering Cost)	 \$ 10,000.00
 Estimate Total Project Cost	 \$ 3,124,113.00

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

Federal funding is subject to de-obligation and can be released from the project if: a) a reimbursement request is not received within twelve (12) months after the date of initial authorization or, b) unless sufficient justification regarding the delay of the project are provided to the State and FHWA in writing.

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

II. SCOPE OF WORK

1. The State will:
 - a. Prior to performing or authorizing any work, invoice the City for ADOT's Preliminary Engineering Cost.
 - b. Upon receipt of the review fee and on behalf of the City, act as the City's designated agent.
 - c. Upon execution of this Agreement, invoice the City for the City's estimated share of the Project, currently estimated at \$1,564,113.00.
 - d. Submit a program to the Federal Highway Administration (FHWA) containing the above-mentioned Project with the recommendation that it be approved for construction and funding. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project Plans, Standard Specifications for Road and Bridge Construction of the Arizona Department of Transportation.
 - e. Upon receipt of the City's estimated share of the Project and approval and authorization by FHWA, the State shall proceed to advertise for, receive and open bids subject to the concurrence of the FHWA and the City, to whom the award is made for and enter into a contract(s) with a firm(s) for the construction of the project. Request the maximum Federal Funds available, including construction engineering and administration costs. Should costs exceed the maximum Federal funds available, it is understood and agreed that the City will be responsible for any overage and for any costs not eligible for federal funding.
 - f. Hereby be granted, without cost requirements, the right to enter City right-of-way as required to conduct any and all construction and pre-construction related activities for said Project, including without limitation, temporary construction easements or temporary rights-of-entry on to and over said rights-of-way of the City.

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

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

2. The City will:

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

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

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

d. Upon receipt of an invoice from the State and prior to bid advertisement and within thirty (30) days of receipt of invoice, remit to the State the City's share of the construction costs currently estimated at \$1,564,113.00. Once the Project costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs. Final adjustments to the City's funds for construction of the project may be required based on the final contract award amount

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

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

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

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

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

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

k. All ADOT policies and procedures will be applicable as coordinated with the Phoenix Construction District (District) and the ADOT Construction Group. The City, District, and the Construction Group must agree on the City personnel. The City Engineering Director must provide the ADOT Construction Group (for pre-approval) all required and current certifications and chargeable rates (labor

and equipment). The City personnel will report to the ADOT Resident Engineer and must comply with all ADOT hardware/software computer requirements; this includes keeping the computer and any information in a secure location. The City personnel must also utilize ADOT's automated system to complete the required weekly time sheet.

l. The City personnel assigned to the project will remain employees' of the City and will not be considered an employee of ADOT during the term of this Agreement.

m. The City will invoice monthly for reimbursement. All charges must be kept current for both payment and ADOT reporting purposes.

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

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

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

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

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of said project and related deposits or reimbursement. Further, this Agreement may be cancelled at any time prior to advertisement of the project construction contract, upon thirty days (30) written notice to the other party. It is understood and agreed that, in the event the City terminates the Agreement, the State shall in no way be obligated to maintain said Project and the City will reimburse the State for any costs incurred by the State as a result of the termination.

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

3. The cost of construction and construction engineering work under this Agreement is to be covered by Federal funds set aside for this Project, up to the maximum available. The City acknowledges that the eventual actual costs may exceed the maximum available amount of federal funds, or that certain costs may not be accepted by the federal government as eligible for federal funds. Therefore, the City agrees to furnish and provide the difference between actual costs and the federal funds received.

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

5. The Parties warrant compliance with the Federal Funding Accountability and Transparency Act of 2006 and associated 2008 Amendments (the "Act"). Additionally, in a timely manner the City will provide information that is requested by the State to enable the State to comply with the requirements of the Act, as may be applicable.

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

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

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

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

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

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

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

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

City of Glendale
Transportation Department
5850 West Glendale Avenue
Glendale, Arizona 8530-2599
(623) 920-2000
(623) 847-1399

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

City of Glendale
Transportation Services
Financial Director
Diane Goke
dgoke@glendaleaz.com

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

14. The following are necessary and required for compliance under Arizona Revised Statutes § 41-4401—immigration laws and E-Verify requirement:

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

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

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

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

16. The Parties hereto shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.

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

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

CITY OF GLENDALE

STATE OF ARIZONA

Department of Transportation

By _____
ED BEASLEY
Manager, for the City of Glendale

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

ATTEST:

By _____
PAMELA HANNA
Clerk, for the City of Glendale

July 12th, 2012-ly

IGA/JPA 10-055-I

ATTORNEY APPROVAL FORM FOR THE CITY OF GLENDALE

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

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

DATED this _____ day of _____, 2012.

City Attorney



CITY COUNCIL REPORT

Meeting Date: **9/25/2012**
Meeting Type: **Voting**
Title: **AWARD OF BID 12-41, STREETLIGHT MAINTENANCE**
Staff Contact: **Jamsheed Mehta, AICP, Executive Director, Transportation Services**

Purpose and Recommended Action

This is a request for City Council to award the bid and authorize the City Manager to enter into a contract with Fluoresco Lighting-Sign Maintenance Corp. (Fluoresco) in an amount not to exceed \$306,851 for the repair and maintenance of city streetlights.

Background Summary

The current contract for streetlight repair services for the city's 19,605 streetlights is ending and a new contract is needed. To ensure continuity of service, an Invitation for Bid (IFB) was released July 13, 2012. Six responses to the IFB were received and evaluated, with Fluoresco providing the lowest responsive and responsible bid, which was determined to be the most advantageous to the city. This contract provides for the repair or replacement of lamps, wiring, monitoring photocells, capacitors, ballasts, starters and poles. The contract is for one year with the option to renew annually for up to four additional years.

Previous Related Council Action

Council approved a contract with Fluoresco on June 12, 2007, for the maintenance of the city's street and area lighting in the amount of \$296,510.

Council approved a contract with Fluoresco on April 9, 2002, for the maintenance of the city's street and area lighting in the amount of \$208,040.

Community Benefit/Public Involvement

Residents take great interest in the performance of neighborhood streetlights. Street lighting is critical to traffic and pedestrian safety and neighborhood visibility. Continued maintenance and repair of city streetlights will meet residents' expectations and provide for a safe transportation environment for travelers and visibility for neighborhood residents. For more information on Glendale's streetlights, please visit www.glendaleaz.com/transportation/streetlights.



CITY COUNCIL REPORT

Budget and Financial Impacts

Cost	Fund-Department-Account
\$306,851	1660-16510-518200 - Transportation Program Management

Capital Expense? Yes No

Budgeted? Yes No

Requesting Budget or Appropriation Transfer? Yes No

If yes, where will the transfer be taken from?

Attachments

Staff Report

Agreement

Bid Tab



STAFF REPORT

To: **Horatio Skeete, Acting City Manager**
From: **Jamsheed Mehta, AICP, Executive Director, Transportation Services**
Item Title: **AWARD OF BID 12-41, STREETLIGHT MAINTENANCE**
Requested Council Meeting Date: **9/25/2012**
Meeting Type: **Voting**

PURPOSE

This report contains information on the proposed contract with Fluoresco Lighting-Sign Maintenance Corp. (Fluoresco) for streetlight maintenance and repair services. The purpose of this report is to request that the City Manager place this item on an agenda for City Council action.

BACKGROUND

Transportation Services has contracted with Fluoresco for the past five years for the repair and maintenance of the city's 19,605 streetlights. The current contract will soon expire. To ensure continuity of service, an Invitation for Bid (IFB) was released July 13, 2012. Six responses to the IFB were received and evaluated, with Fluoresco providing the lowest responsive and responsible bid, which was determined to be the most advantageous to the city.

The new contract includes a unit price per service with a total cost not to exceed \$306,851. The term of the contract is one year with the option to renew annually for up to four additional years. Price adjustments may be negotiated only during annual contract renewals.

Glendale has been utilizing the wireless ROAM (Remote Operations Asset Management) streetlight management system for nearly five years. The ROAM system allows for quick and effective response to malfunctioning streetlight equipment. Each streetlight on the ROAM system contains a wireless device that communicates with a computer mapping system, which indicates when a light is malfunctioning. The system is accessed by the city's Streetlight Management staff and the contractor, and is an extremely effective tool in maintaining a high rate of customer satisfaction. On average, the entire streetlight system operates at better than 99.5% efficiency.

ANALYSIS

Staff recommends awarding IFB No. 12-41 and authorizing the City Manager to enter into a contract with Fluoresco in an amount not to exceed \$306,851 per year for streetlight maintenance and repair services.

During the 12-month period preceding the IFB's release, the city created 3,760 work orders for streetlight repairs and various maintenance issues. This contract provides for 52 categories of repair and maintenance services, with some of the most common repairs being: lamp replacement, ROAM device installation and/or replacement, capacitor replacement, luminaire (fixture) installation, fuse or fuse holder replacement, repair of defective wiring, and ballast replacement. The contract also provides for the removal and replacement of streetlight poles knocked down by vehicles. Such incidents occur approximately 50 times per year.

The city has three options in terms of maintenance of the illumination of the public right-of-way:

- a. Choose to not repair or replace malfunctioning streetlights or those that are knocked down. This will result in the degradation of nighttime illumination and compromise the safety of pedestrians, bicyclists and drivers.
- b. Move this service in-house so city staff is entirely responsible for this work. This involves adding staff trained in electrical repairs and acquisition of equipment (including at least one bucket truck at considerable expense) during a time of limited funding resources.
- c. Continue the practice of privatizing this maintenance and repair work. This allows the city to acquire a skilled, cost-competitive and reliable contractor who provides needed flexibility to meet service demands.

Considering all options, it is significantly more cost-effective to continue contracting with an outside provider for streetlight maintenance and repair services.

FISCAL IMPACTS

Funding is available in the Transportation Program Management account (1660-16510-518200). The recommended contract amount will not exceed \$306,851 per year. This amount allows for increased work orders due to system aging and worst-case scenarios from uncontrollable events such as the hailstorm of October 5, 2010, which caused approximately \$113,000 in damage to the street lighting system. The previous contract with Fluoresco included a not-to-exceed amount of \$296,510.

In order to recover some of the costs involved in replacing poles knocked down by vehicles, Transportation Services staff has sought and received insurance reimbursements from the policyholders responsible for the knockdowns. These efforts resulted in a total of \$40,000 in revenue in Fiscal Year 2012.

PROFESSIONAL SERVICES AGREEMENT
(Not Construction Related)
 Street Lighting Repair Contract

This Professional Services Agreement ("Agreement") is entered into and effective between CITY OF GLENDALE, an Arizona municipal corporation ("City") and Fluoresco Lighting-Sign Maintenance Corp., an Arizona corporation, authorized to do business in the State of Arizona, ("Consultant") as of the ____ day of _____, 2012 ("Effective Date").

RECITALS

- A. City intends to undertake a project for the benefit of the public and with public funds that is more fully set forth in **Exhibit A**, Project (the "Project");
- B. City desires to retain the professional services of Consultant to perform certain specific duties and produce the specific work as set forth in the attached **Exhibit B**, Project Scope of Work ("Scope");
- C. Consultant desires to provide City with professional services ("Services") consistent with best consulting or engineering practices and the standards set forth in this Agreement, in order to complete the Project; and
- D. City and Consultant desire to memorialize their agreement with this document.

AGREEMENT

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 Consultant agree as follows:

1. Key Personnel; Other Consultants and Subcontractors.

- 1.1 Professional Services. Consultant will provide all Services necessary to assure the Project is completed timely and efficiently consistent within Project requirements, including, but not limited to, working in close interaction and interfacing with City and its designated employees, and working closely with others, including other consultants or contractors, retained by City.
- 1.2 Project Team.
 - a. Project Manager.
 - (1) Consultant will designate an employee as Project Manager with sufficient training, knowledge, and experience to, in the City's opinion, complete the project and handle all aspects of the Project such that the work produced by Consultant is consistent with applicable standards as detailed in this Agreement; and
 - (2) The City must approve the designated Project Manager.
 - b. Project Team.
 - (1) The Project Manager and all other employees assigned to the Project by Consultant will comprise the "Project Team."
 - (2) Project Manager will have responsibility for and will supervise all other employees assigned to the Project by Consultant.
 - c. Discharge, Reassign, Replacement.
 - (1) Consultant acknowledges the Project Team is comprised of the same persons and roles for each as may have been identified in **Exhibit A**.

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

d. Subcontractors. Consultant shall not engage any subcontractor for the work or services to be performed under this Agreement.

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

3. **Consultant's Work.**

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

3.2 Licensing. Consultant warrants that:

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

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

3.4 Coordination; Interaction.

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

3.5 Work Product.

- a. **Ownership.** Upon receipt of payment for Services furnished, Consultant grants to City exclusive ownership of and all copyrights, if any, to evaluations, reports, drawings,

specifications, project manuals, surveys, estimates, reviews, minutes, all "architectural work" as defined in the United States Copyright Act, 17 U.S.C § 101, *et seq.*, and other intellectual work product as may be applicable ("Work Product").

- (1) This grant is effective whether the Work Product is on paper (e.g., a "hard copy"), in electronic format, or in some other form.
 - (2) Consultant warrants, and agrees to indemnify, hold harmless and defend City for, from and against any claim that any Work Product infringes on third-party proprietary interests.
- b. Delivery. Consultant will deliver to City copies of the preliminary and completed Work Product promptly as they are prepared.
- c. City Use.
- (1) City may reuse the Work Product at its sole discretion.
 - (2) In the event the Work Product is used for another project without further consultations with Consultant, the City agrees to indemnify and hold Consultant harmless from any claim arising out of the Work Product.
 - (3) In such case, City will also remove any seal and title block from the Work Product.

4. Compensation for the Project.

- 4.1 Compensation. Consultant's compensation for the Project, including those furnished by its Subconsultants or Subcontractors will not exceed \$306,851 as specifically detailed in **Exhibit D** ("Compensation").
- 4.2 Change in Scope of Project. The Compensation may be equitably adjusted if the originally contemplated Scope as outlined in the Project is significantly modified.
- a. Adjustments to Compensation require a written amendment to this Agreement and may require City Council approval.
 - b. Additional services which are outside the Scope of the Project contained in this Agreement may not be performed by the Consultant without prior written authorization from the City.
- 4.3 Allowances. An "Allowance" may be identified in **Exhibit D** only for work that is required by the Scope and the value of which cannot reasonably be quantified at the time of this Agreement.
- a. As stated in Sec. 4.1 above, the Compensation must incorporate all Allowance amounts identified in **Exhibit D** and any unused allowance at the completion of the Project will remain with City.
 - b. Consultant may not add any mark-up for work identified as an Allowance and which is to be performed by a Subconsultant.
 - c. Consultant will not use any portion of an Allowance without prior written authorization from the City.
 - d. Examples of Allowance items include, but are not limited to, subsurface pothole investigations, survey, geotechnical investigations, public participation, radio path studies and material testing.
- 4.4 Expenses. City will reimburse Consultant for certain out-of-pocket expenses necessarily incurred by Consultant in connection with this Agreement, without mark-up (the "Reimbursable Expenses"), including, but not limited to, document reproduction, materials for book preparation, postage, courier and overnight delivery costs incurred with Federal Express or similar carriers, travel and car mileage, subject to the following:
- a. Mileage, airfare, lodging and other travel expenses will be reimbursable only to the extent these would, if incurred, be reimbursed to City of Glendale personnel under its policies

and procedures for business travel expense reimbursement made available to Consultant for review prior to the Agreement's execution, and which policies and procedures will be furnished to Consultant;

- b. The Reimbursable Expenses in this section are approved in advance by City in writing; and
- c. The total of all Reimbursable Expenses paid to Consultant in connection with this Agreement will not exceed the "not to exceed" amount identified for Reimbursable Services in the Compensation.

5. **Billings and Payment.**

5.1 Applications.

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

5.2 Payment.

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

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

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

6. **Termination.**

6.1 For Convenience. City may terminate this Agreement for convenience, without cause, by delivering a written termination notice stating the effective termination date, which may not be less than 15 days following the date of delivery.

- a. Consultant will be equitably compensated for Services furnished prior to receipt of the termination notice and for reasonable costs incurred.
- b. Consultant will also be similarly compensated for any approved effort expended, and approved costs incurred, that are directly associated with Project closeout and delivery of the required items to the City.

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

- a. Consultant will not be entitled to further payment until after City has determined its damages. If City's damages resulting from the breach, as determined by City, are less than the equitable amount due but not paid Consultant for Services furnished, City will pay the amount due to Consultant, less City's damages, in accordance with the provisions of Sec. 5.

- b. If City's direct damages exceed amounts otherwise due to Consultant, Consultant must pay the difference to City immediately upon demand; however, Consultant will not be subject to consequential damages more than \$1,000,000 or the amount of this Agreement, whichever is greater.

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

8. **Insurance.**

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

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

accordance with the provisions of this section, and copies of the endorsements of Consultant's Policies in accordance with the provisions of this section.

- (2) City is and will be under no obligation either to ascertain or confirm the existence or issuance of Consultant's Policies, or to examine Consultant's Policies, or to inform Consultant or Subconsultant, in the event that any coverage does not comply with the requirements of this section.
 - (3) Consultant's failure to secure and maintain Consultant's Policies and to assure Consultant's Policies as required will constitute a material default under the Agreement.
- h. Other Contractors or Vendors.
- (1) Other contractors or vendors that may be contracted with in connection with the Project must procure and maintain insurance coverage as is appropriate to their particular contract.
 - (2) This insurance coverage must comply with the requirements set forth above for Consultant's Policies (e.g., the requirements pertaining to endorsements to name the parties as additional insured parties and certificates of insurance).
- i. Policies. Except with respect to workers' compensation and professional liability coverages, City must be named and properly endorsed as additional insureds on all liability policies required by this section.
- (1) The coverage extended to additional insureds must be primary and must not contribute with any insurance or self insurance policies or programs maintained by the additional insureds.
 - (2) All insurance policies obtained pursuant to this section must be with companies legally authorized to do business in the State of Arizona and reasonably acceptable to all parties.

8.2 Subconsultants.

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

8.3 Indemnification.

- a. To the fullest extent permitted by law, Consultant must defend, indemnify, and hold harmless City and its elected officials, officers, employees and agents (each, an "Indemnified Party," collectively, the "Indemnified Parties") for, from, and against any and all claims, demands, actions, damages, judgments, settlements, personal injury (including sickness, disease, death, and bodily harm), property damage (including loss of use), infringement, governmental action and all other losses and expenses, including attorneys' fees and litigation expenses (each, a "Demand or Expense" collectively "Demands or Expenses") asserted by a third-party (i.e. a person or entity other than City or Consultant) and that arises out of or results from the breach of this Agreement by the Consultant or the Consultant's negligent actions, errors or omissions (including any Subconsultant or Subcontractor or other person or firm employed by Consultant), whether sustained before or after completion of the Project.

- b. This indemnity and hold harmless provision applies even if a Demand or Expense is in part due to the Indemnified Party's negligence or breach of a responsibility under this Agreement, but in that event, Consultant will be liable only to the extent the Demand or Expense results from the negligence or breach of a responsibility of Consultant or of any person or entity for whom Consultant is responsible.
- c. Consultant is not required to indemnify any Indemnified Parties for, from, or against any Demand or Expense resulting from the Indemnified Party's sole negligence or other fault solely attributable to the Indemnified Party.

9. Immigration Law Compliance.

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

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

11. Notices.

- 11.1 A notice, request or other communication that is required or permitted under this Agreement (each a "Notice") will be effective only if:
 - a. The Notice is in writing; and
 - b. Delivered in person or by overnight courier service (delivery charges prepaid), certified or registered mail (return receipt requested).
 - c. Notice will be deemed to have been delivered to the person to whom it is addressed as of the date of receipt, if:

- (1) Received on a business day before 5:00 p.m. at the address for Notices identified for the Party in this Agreement by U.S. Mail, hand delivery, or overnight courier service; or
- (2) As of the next business day after receipt, if received after 5:00 p.m.
- d. The burden of proof of the place and time of delivery is upon the Party giving the Notice.
- e. Digitalized signatures and copies of signatures will have the same effect as original signatures.

11.2 Representatives.

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

Gary Gryder
 Vice President, Business Development
 Fluoresco Lighting-Sign Maintenance Corp.
 3000 East Chambers Street
 Phoenix, Arizona 85040

- b. City. City's representative ("City's Representative") authorized to act on City's behalf, and his or her address for Notice delivery is:

City of Glendale
 c/o Michael Sills-Trausch
 Transportation Department
 Glendale, Arizona 85301

With required copy to:

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

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

- c. Concurrent Notices.
 - (1) All notices to City's representative must be given concurrently to City Manager and City Attorney.
 - (2) A notice will not be deemed to have been received by City's representative until the time that it has also been received by the City Manager and the City Attorney.
 - (3) City may appoint one or more designees for the purpose of receiving notice by delivery of a written notice to Consultant identifying the designee(s) and their respective addresses for notices.
- d. Changes. Consultant or City may change its representative or information on Notice, by giving Notice of the change in accordance with this section at least ten days prior to the change.

12. Financing Assignment. City may assign this Agreement to any City-affiliated entity, including a non-profit corporation or other entity whose primary purpose is to own or manage the Project.

13. Entire Agreement; Survival; Counterparts; Signatures.

13.1 Integration. This Agreement contains, except as stated below, the entire agreement between City and Consultant and supersedes all prior conversations and negotiations between the parties regarding the Project or this Agreement.

- a. Neither Party has made any representations, warranties or agreements as to any matters concerning the Agreement's subject matter.
- b. Representations, statements, conditions, or warranties not contained in this Agreement will not be binding on the parties.
- c. Inconsistencies between the solicitation, any addenda attached to the solicitation, the response or any excerpts attached as **Exhibit A**, and this Agreement, will be resolved by the terms and conditions stated in this Agreement.

13.2 Interpretation.

- a. The parties fairly negotiated the Agreement's provisions to the extent they believed necessary and with the legal representation they deemed appropriate.
- b. The parties are of equal bargaining position and this Agreement must be construed equally between the parties without consideration of which of the parties may have drafted this Agreement.
- c. The Agreement will be interpreted in accordance with the laws of the State of Arizona.

13.3 Survival. Except as specifically provided otherwise in this Agreement, each warranty, representation, indemnification and hold harmless provision, insurance requirement, and every other right, remedy and responsibility of a Party, will survive completion of the Project, or the earlier termination of this Agreement.

13.4 Amendment. No amendment to this Agreement will be binding unless in writing and executed by the parties. Electronic signature blocks do not constitute execution for purposes of this Agreement. Any amendment may be subject to City Council approval.

13.5 Remedies. All rights and remedies provided in this Agreement are cumulative and the exercise of any one or more right or remedy will not affect any other rights or remedies under this Agreement or applicable law.

13.6 Severability. If any provision of this Agreement is voided or found unenforceable, that determination will not affect the validity of the other provisions, and the voided or unenforceable provision will be reformed to conform with applicable law.

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

14. **Term.** The term of this Agreement commences upon the effective date and continues for a one year initial period. The City may, at its option and with the approval of the Consultant, extend the term of this Agreement an additional four one-year terms, renewable on an annual basis. Consultant will be notified in writing by the City of its intent to extend the Agreement period at least 30 calendar days prior to the expiration of the original or any renewal Agreement period. Price adjustments will only be reviewed during the Agreement renewal period. There are no automatic renewals of this Agreement.

15. **Dispute Resolution.** Each claim, controversy and dispute (each a "Dispute") between Consultant and City will be resolved in accordance with **Exhibit E**. The final determination will be made by the City.

16. **Exhibits.** The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference.

Exhibit A	Project
Exhibit B	Scope of Work
Exhibit C	Schedule
Exhibit D	Compensation
Exhibit E	Dispute Resolution

(Signatures appear on the following page.)

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

City of Glendale,
an Arizona municipal corporation

By: Horatio Skeete
Its: Acting City Manager

ATTEST:

Pam Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

Craig Tindall, City Attorney

Fluoresco Lighting-Sign Corp.,
an Arizona corporation



By: Gary Gryder
Its: Vice-President of Business Development

EXHIBIT A
Professional Services Agreement

PROJECT

(Cover Page)

Exhibit A
Professional Services Agreement

Project

This is an Agreement with Fluoresco Lighting-Sign Corp. for the repair and maintenance of City streetlights.

EXHIBIT B
Professional Services Agreement

SCOPE OF WORK

(Cover Page)

Exhibit B
Professional Services Agreement

Scope of Work

The City of Glendale owns 19,620 streetlights which require periodic maintenance and repair. This Agreement provides for the repair or replacement of lamps, wiring, monitoring photocells, capacitors, ballasts, starters, and poles of damaged or deteriorating streetlights throughout the City, all as set forth in the City of Glendale Invitation for Bid 12-41 and the Fluoresco response thereto.

EXHIBIT C
Professional Services Agreement

SCHEDULE

(Cover Page)

Professional Services Agreement

Schedule

Not Applicable.

EXHIBIT D
Professional Services Agreement

COMPENSATION

METHOD AND AMOUNT OF COMPENSATION

By bid, based on time and materials.

NOT-TO-EXCEED AMOUNT

The total amount of compensation paid to Consultant for full completion of all work required by the Project during the entire term of the Project must not exceed \$306,851 annually.

DETAILED PROJECT COMPENSATION

See the attached Unit Pricing for IFB 12-41.

	<p style="text-align: center;">Solicitation Number: IFB 12-41 STREETLIGHT MAINTENANCE</p>	<p style="text-align: center;">CITY OF GLENDALE Materials Management 5850 West Glendale Avenue, Suite 317 Glendale, Arizona 85301</p>
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5.0 PRICING PAGE

The quantities referenced in this solicitation are an annual estimate ONLY and are to be used for evaluation purposes only. No commitment of any quantity is made during this contract; purchases are on an as-needed, if needed basis.

The not-to-exceed amount shall include all fees and costs associated with the purchase and shipment of the equipment. Tax shall not be included.

5.1 PRICING STRUCTURE

ITEM NO.	ESTIMATED QUANTITY	ITEM DESCRIPTION	UNIT PRICE	EXTENDED PRICE
1.	3,760	Trip (show up) fee	\$ 23 ⁰⁰	\$ 86,480 ⁰⁰
2.	3,444	Lamp installation and disposal (conventional lamp with toxic material)	\$ 10 ⁰⁰	\$ 34,440 ⁰⁰
3.	900	ROAM photo-electric control replacement	\$ 7 ⁰⁰	\$ 6,300 ⁰⁰
4.	240	Replace capacitor	\$ 7 ⁰⁰	\$ 1,680 ⁰⁰
5.	240	ROAM photo-electric control installation (new location)	\$ 15 ⁰⁰	\$ 3,600 ⁰⁰
6.	240	Placing and/or replacing self-adhesive pole identification numbers (material supplied by contractor)	\$ 2 ⁰⁰	\$ 480 ⁰⁰
7.	228	No power to pole	\$ 5 ⁰⁰	\$ 1,140 ⁰⁰
8.	192	Luminaire installation	\$ 45 ⁰⁰	\$ 8,640 ⁰⁰
9.	180	Replace fuse	\$ 5 ⁰⁰	\$ 900 ⁰⁰
10.	168	Repair or replace defective wiring	\$ 23 ⁰⁰	\$ 3,864 ⁰⁰
11.	150	Vandalized fixture cleanup (remove loose glass, sweep ground)	\$ 5 ⁰⁰	\$ 750 ⁰⁰
12.	144	Install or replace refractor	\$ 8 ⁰⁰	\$ 1,152 ⁰⁰
13.	144	Replace fuseholder	\$ 12 ⁰⁰	\$ 1,728 ⁰⁰
14.	125	Install new hand hole cover (requires drilling out rusted screws or drilling new screw holes)	\$ 8 ⁰⁰	\$ 1,000 ⁰⁰

 <p>GLENDALÉ</p>	<p>Solicitation Number: IFB 12-41</p> <p>STREETLIGHT MAINTENANCE</p>	<p>CITY OF GLENDALE Materials Management 5850 West Glendale Avenue, Suite 317 Glendale, Arizona 85301</p>
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ITEM NO.	ESTIMATED QUANTITY	ITEM DESCRIPTION	UNIT PRICE	EXTENDED PRICE
15.	80	Ballast kit installation	\$ 39 ⁰⁰	\$ 3,120 ⁰⁰
16.	75	Trim tree (branches up to two inches thick)	\$ 52 ⁰⁰	\$ 3,900 ⁰⁰
17.	60	False call	\$ 5 ⁰⁰	\$ 300 ⁰⁰
18.	60	Replace Starter	\$ 7 ⁰⁰	\$ 420 ⁰⁰
19.	60	Reset or rescan ROAM photo-electric control or gateway	\$ 15 ⁰⁰	\$ 900 ⁰⁰
20.	50	Replace hand hole cover	\$ 8 ⁰⁰	\$ 400 ⁰⁰
21.	50	Install and connect ground rod	\$ 12 ⁰⁰	\$ 600 ⁰⁰
22.	48	Level luminaire	\$ 9 ⁰⁰	\$ 432 ⁰⁰
23.	40	Install bird spikes (on arm from pole to luminaire)	\$ 8 ⁰⁰	\$ 320 ⁰⁰
24.	25	Crane rate (for accessing fixtures on Grand Avenue overpasses)	\$ 185 ⁰⁰	\$ 4,625 ⁰⁰
25.	24	Install luminaire shield	\$ 10 ⁰⁰	\$ 240 ⁰⁰
26.	24	Lineman required	\$ 82 ⁰⁰	\$ 1,968 ⁰⁰
27.	5	Pole Painting (entire length)	\$ 39 ⁰⁰	\$ 195 ⁰⁰
28.	5	Install or replace ROAM gateway	\$ 10 ⁰⁰	\$ 50 ⁰⁰
29.	5	Fill sinkhole with dirt and compact soil	\$ 27 ⁰⁰	\$ 135 ⁰⁰
30.	3	Install bullet-resistant shield	\$ 15 ⁰⁰	\$ 45 ⁰⁰
31.	2	Cutting a new hand hole in pole for cover installation	\$ 17 ⁰⁰	\$ 34 ⁰⁰
32.	1	Junction box installation	\$ 126 ⁰⁰	\$ 126 ⁰⁰
33.	1	Replace junction box	\$ 29 ⁰⁰	\$ 29 ⁰⁰
34.	1	Lamp installation and disposal (redesigned lamp with no toxic material)	\$ 8 ⁰⁰	\$ 8 ⁰⁰
35.	100 hours	Hourly rate,(non-billable time)	\$ 59 ⁰⁰	\$ 5,900 ⁰⁰

 <p>GLENDALÉ</p>	<p>Solicitation Number: IFB 12-41</p> <p>STREETLIGHT MAINTENANCE</p>	<p>CITY OF GLENDALE Materials Management 5850 West Glendale Avenue, Suite 317 Glendale, Arizona 85301</p>
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ITEM NO.	ESTIMATED QUANTITY	ITEM DESCRIPTION	UNIT PRICE	EXTENDED PRICE
36.	60	Install embedded (direct bury) pole, mast arm, luminaire lamp and photocell	\$ 345 ⁰⁰	\$ 20,700 ⁰⁰
37.	60	Emergency removal of downed embedded (direct bury) pole	\$ 432 ⁰⁰	\$ 25,920 ⁰⁰
38.	60	Install pole on concrete foundation, mast arm, luminaire, lamp and photocell	\$ 245 ⁰⁰	\$ 14,700 ⁰⁰
39.	60	Emergency removal of downed pole on a concrete foundation	\$ 438 ⁰⁰	\$ 26,280 ⁰⁰
40.	50	Pole realignment (to within one (1) degree of plumb in any direction)	\$ 145 ⁰⁰	\$ 7,250 ⁰⁰
41.	15	Non-emergency embedded (direct bury) pole removal	\$ 210 ⁰⁰	\$ 3,150 ⁰⁰
42.	10	Jackhammer/remove concrete foundation	\$ 582 ⁰⁰	\$ 5,820 ⁰⁰
43.	10	Install 2' x 6' concrete foundation including auguring, four anchor bolts, and concrete pour	\$ 236 ⁰⁰	\$ 2,360 ⁰⁰
44.	2	Non-emergency removal of a pole on a concrete foundation	\$ 210 ⁰⁰	\$ 420 ⁰⁰
45.	500 feet	3' deep trench in grass	\$ 6 ⁰⁰	\$ 3,000 ⁰⁰
46.	500 feet	3' deep trench in landscaping	\$ 7 ⁰⁰	\$ 3,500 ⁰⁰
47.	500 feet	3' deep trench in bare earth	\$ 5 ⁰⁰	\$ 2,500 ⁰⁰
48.	300 feet	4' deep trench in grass	\$ 7 ⁰⁰	\$ 2,100 ⁰⁰
49.	300 feet	4' deep trench in landscaping	\$ 8 ⁰⁰	\$ 2,400 ⁰⁰
50.	300 feet	4' deep trench in bare earth	\$ 6 ⁰⁰	\$ 1,800 ⁰⁰
51.	500 feet	Boring in lieu of trench	\$ 18 ⁰⁰	\$ 9,000 ⁰⁰
52.	5	Securing Lens Cover	\$ 10 ⁰⁰	\$ 50 ⁰⁰
TOTAL OF ITEMS 1-52			\$	\$ 306,851 ⁰⁰

EXHIBIT E
Professional Services Agreement

DISPUTE RESOLUTION

1. Disputes.

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

2. Arbitration.

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

- 2.3 Hearing. The arbitration hearing will be held within 90 days of the appointment of the arbitrator. The arbitration hearing, all proceedings, and all discovery will be conducted in Glendale, Arizona unless otherwise agreed by the parties or required as a result of witness location. Telephonic hearings and other reasonable arrangements may be used to minimize costs.
- 2.4 Award. At the arbitration hearing, each Party will submit its position to the arbitrator, evidence to support that position, and the exact award sought in this matter with specificity. The arbitrator must select the award sought by one of the parties as the final judgment and may not independently alter or modify the awards sought by the parties, fashion any remedy, or make any equitable order. The arbitrator has no authority to consider or award punitive damages.
- 2.5 Final Decision. The Arbitrator's decision should be rendered within 15 days after the arbitration hearing is concluded. This decision will be final and binding on the Parties.
- 2.6 Costs. The prevailing party may enter the arbitration in any court having jurisdiction in order to convert it to a judgment. The non-prevailing party will pay all of the prevailing party's arbitration costs and expenses, including reasonable attorney's fees and costs.

3. **Services to Continue Pending Dispute.** Unless otherwise agreed to in writing, Consultant must continue to perform and maintain progress of required Services during any Dispute resolution or arbitration proceedings, and City will continue to make payment to Consultant in accordance with this Agreement.

4. **Exceptions.**

- 4.1 Third Party Claims. City and Consultant are not required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defense of a third party who is not obligated by contract to arbitrate disputes with City and Consultant.
- 4.2 Liens. City or Consultant may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice, but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Arizona Law, including, without limitation, an action under A.R.S. § 33-420, without the necessity of initiating or exhausting the procedures of this Exhibit.
- 4.3 Governmental Actions. This Exhibit does not apply to, and must not be construed to require arbitration of, any claims, actions or other process filed or issued by City of Glendale Building Safety Department or any other agency of City acting in its governmental permitting or other regulatory capacity.

CITY OF GLENDALE
IFB 12-41
STREETLIGHT MAINTENANCE - BID TABULATION

ITEM NO.	DESCRIPTION EST. QTY	FLUORESCO LIGHTING & SIGN		ENVIROLIGHT		DRS COMPLETE POWER		BROOKS BROTHERS UTILITY CONTRACTORS		REPUBLIC ITS		CONTRACTORS WEST	
		UNIT PRICE	EXT. PRICE	UNIT PRICE	EXT. PRICE	UNIT PRICE	EXT. PRICE	UNIT PRICE	EXT. PRICE	UNIT PRICE	EXT. PRICE	UNIT PRICE	EXT. PRICE
1	Trip (show up) fee	3,760	\$ 23.00 \$ 86,480.00	\$ 55.00 \$ 206,800.00	\$ 125.00 \$ 470,000.00	\$ 25.00 \$ 94,000.00	\$ 31.00 \$ 116,560.00	\$ 64.00 \$ 240,640.00					
2	Lamp installation and disposal (conventional lamp with toxic material)	3,444	\$ 10.00 \$ 34,440.00	\$ 28.00 \$ 96,432.00	\$ 9.00 \$ 30,996.00	\$ 10.00 \$ 34,440.00	\$ 4.75 \$ 16,359.00	\$ 7.50 \$ 25,830.00					
3	ROAM photo-electric control replacement	900	\$ 7.00 \$ 6,300.00	\$ 28.00 \$ 25,200.00	\$ 11.00 \$ 9,900.00	\$ 10.00 \$ 9,000.00	\$ 3.00 \$ 2,700.00	\$ 6.50 \$ 5,850.00					
4	Replace capacitor	240	\$ 7.00 \$ 1,680.00	\$ 30.00 \$ 7,200.00	\$ 11.00 \$ 2,640.00	\$ 2.00 \$ 480.00	\$ 1.25 \$ 300.00	\$ 10.50 \$ 2,520.00					
5	ROAM photo-electric control installation (new location)	240	\$ 15.00 \$ 3,600.00	\$ 55.00 \$ 13,200.00	\$ 11.00 \$ 2,640.00	\$ 10.00 \$ 2,400.00	\$ 3.00 \$ 720.00	\$ 10.50 \$ 2,520.00					
6	Placing and/or replacing self-adhesive pole identification numbers (material supplied by contractor)	240	\$ 2.00 \$ 480.00	\$ 25.00 \$ 6,000.00	\$ 7.00 \$ 1,680.00	\$ 35.00 \$ 8,400.00	\$ 5.00 \$ 1,200.00	\$ 16.00 \$ 3,840.00					
7	No power to pole	228	\$ 5.00 \$ 1,140.00	\$ 35.00 \$ 7,980.00	\$ 42.00 \$ 9,576.00	\$ 2.00 \$ 456.00	\$ 30.00 \$ 6,840.00	\$ 11.00 \$ 2,508.00					
8	Luminaire installation	192	\$ 45.00 \$ 8,640.00	\$ 88.00 \$ 16,896.00	\$ 15.00 \$ 2,880.00	\$ 20.00 \$ 3,840.00	\$ 15.00 \$ 2,880.00	\$ 63.00 \$ 12,096.00					
9	Replace fuse	180	\$ 5.00 \$ 900.00	\$ 15.00 \$ 2,700.00	\$ 17.00 \$ 3,060.00	\$ 20.00 \$ 3,600.00	\$ 6.00 \$ 1,080.00	\$ 11.00 \$ 1,980.00					
10	Repair or replace defective wiring	168	\$ 23.00 \$ 3,864.00	\$ 70.00 \$ 11,760.00	\$ 85.00 \$ 14,280.00	\$ 40.00 \$ 6,720.00	\$ 30.00 \$ 5,040.00	\$ 42.00 \$ 7,056.00					
11	Vandalized fixture cleanup (remove loose glass, sweep ground)	150	\$ 5.00 \$ 750.00	\$ 20.00 \$ 3,000.00	\$ 27.00 \$ 4,050.00	\$ 15.00 \$ 2,250.00	\$ 6.00 \$ 900.00	\$ 21.00 \$ 3,150.00					
12	Install or replace refractor	144	\$ 8.00 \$ 1,152.00	\$ 55.00 \$ 7,920.00	\$ 19.00 \$ 2,736.00	\$ 5.00 \$ 720.00	\$ 6.00 \$ 864.00	\$ 21.00 \$ 3,024.00					
13	Replace fuseholder	144	\$ 12.00 \$ 1,728.00	\$ 15.50 \$ 2,232.00	\$ 61.00 \$ 8,784.00	\$ 5.00 \$ 720.00	\$ 6.00 \$ 864.00	\$ 11.00 \$ 1,584.00					
14	Install new hand hole cover (requires drilling out rusted screws or drilling new screw holes)	125	\$ 8.00 \$ 1,000.00	\$ 50.00 \$ 6,250.00	\$ 75.00 \$ 9,375.00	\$ 25.00 \$ 3,125.00	\$ 15.00 \$ 1,875.00	\$ 61.00 \$ 7,625.00					
15	Ballast kit installation	80	\$ 39.00 \$ 3,120.00	\$ 45.00 \$ 3,600.00	\$ 112.00 \$ 8,960.00	\$ 30.00 \$ 2,400.00	\$ 15.00 \$ 1,200.00	\$ 69.00 \$ 5,520.00					
16	Trim tree (branches up to two inches thick)	75	\$ 52.00 \$ 3,900.00	\$ 16.50 \$ 1,237.50	\$ 108.00 \$ 8,100.00	\$ 50.00 \$ 3,750.00	\$ 15.00 \$ 1,125.00	\$ 69.00 \$ 5,175.00					
17	False call	60	\$ 5.00 \$ 300.00	\$ 40.00 \$ 2,400.00	\$ 15.00 \$ 900.00	\$ 5.00 \$ 300.00	\$ 6.00 \$ 360.00	\$ 64.00 \$ 3,840.00					
18	Replace Starter	60	\$ 7.00 \$ 420.00	\$ 17.50 \$ 1,050.00	\$ 27.00 \$ 1,620.00	\$ 20.00 \$ 1,200.00	\$ 3.00 \$ 180.00	\$ 11.00 \$ 660.00					
19	Reset or rescan ROAM photo-electric control or gateway	60	\$ 15.00 \$ 900.00	\$ 30.00 \$ 1,800.00	\$ 45.00 \$ 2,700.00	\$ 20.00 \$ 1,200.00	\$ 12.00 \$ 720.00	\$ 21.00 \$ 1,260.00					
20	Replace hand hole cover	50	\$ 8.00 \$ 400.00	\$ 15.00 \$ 750.00	\$ 11.00 \$ 550.00	\$ 10.00 \$ 500.00	\$ 6.00 \$ 300.00	\$ 11.00 \$ 550.00					
21	Install and connect ground rod	50	\$ 12.00 \$ 600.00	\$ 70.00 \$ 3,500.00	\$ 27.00 \$ 1,350.00	\$ 25.00 \$ 1,250.00	\$ 30.00 \$ 1,500.00	\$ 21.00 \$ 1,050.00					
22	Level luminaire	48	\$ 9.00 \$ 432.00	\$ 37.00 \$ 1,776.00	\$ 35.00 \$ 1,680.00	\$ 50.00 \$ 2,400.00	\$ 9.00 \$ 432.00	\$ 21.00 \$ 1,008.00					
23	Install bird spikes (on arm from pole to luminaire)	40	\$ 8.00 \$ 320.00	\$ 18.50 \$ 740.00	\$ 85.00 \$ 3,400.00	\$ 20.00 \$ 800.00	\$ 12.00 \$ 480.00	\$ 21.00 \$ 840.00					

CITY OF GLENDALE
IFB 12-41
STREETLIGHT MAINTENANCE - BID TABULATION

ITEM NO.	DESCRIPTION EST. QTY	FLUORESCO LIGHTING & SIGN		ENVIROLIGHT		DRS COMPLETE POWER		BROOKS BROTHERS UTILITY CONTRACTORS		REPUBLIC ITS		CONTRACTORS WEST	
		UNIT PRICE	EXT. PRICE	UNIT PRICE	EXT. PRICE	UNIT PRICE	EXT. PRICE	UNIT PRICE	EXT. PRICE	UNIT PRICE	EXT. PRICE	UNIT PRICE	EXT. PRICE
24	Crane rate (for accessing fixtures on Grand Avenue overpasses)	25	\$ 185.00 \$ 4,625.00	\$ 300.00 \$ 7,500.00	\$ 1,350.00 \$ 33,750.00	\$ 175.00 \$ 4,375.00	\$ 60.00 \$ 1,500.00	\$ 150.00 \$ 3,750.00					
25	Install luminaire shield	24	\$ 10.00 \$ 240.00	\$ 50.00 \$ 1,200.00	\$ 17.00 \$ 408.00	\$ 10.00 \$ 240.00	\$ 12.00 \$ 288.00	\$ 21.00 \$ 504.00					
26	Lineman required	24	\$ 82.00 \$ 1,968.00	\$ 85.00 \$ 2,040.00	\$ 33.00 \$ 792.00	\$ 150.00 \$ 3,600.00	\$ 75.00 \$ 1,800.00	\$ 878.00 \$ 21,072.00					
27	Pole Painting (entire length)	5	\$ 39.00 \$ 195.00	\$ 150.00 \$ 750.00	\$ 375.00 \$ 1,875.00	\$ 200.00 \$ 1,000.00	\$ 275.00 \$ 1,375.00	\$ 168.00 \$ 840.00					
28	Install or replace ROAM gateway	5	\$ 10.00 \$ 50.00	\$ 75.00 \$ 375.00	\$ 210.00 \$ 1,050.00	\$ 50.00 \$ 250.00	\$ 25.00 \$ 125.00	\$ 84.00 \$ 420.00					
29	Fill sinkhole with dirt and compact soil	5	\$ 27.00 \$ 135.00	\$ 180.00 \$ 900.00	\$ 175.00 \$ 875.00	\$ 150.00 \$ 750.00	\$ 30.00 \$ 150.00	\$ 96.00 \$ 480.00					
30	Install bullet-resistant shield	3	\$ 15.00 \$ 45.00	\$ 55.00 \$ 165.00	\$ 85.00 \$ 255.00	\$ 10.00 \$ 30.00	\$ 12.00 \$ 36.00	\$ 42.00 \$ 126.00					
31	Cutting a new hand hole in pole for cover installation	2	\$ 17.00 \$ 34.00	\$ 70.00 \$ 140.00	\$ 110.00 \$ 220.00	\$ 50.00 \$ 100.00	\$ 60.00 \$ 120.00	\$ 126.00 \$ 252.00					
32	Junction box installation	1	\$ 126.00 \$ 126.00	\$ 36.00 \$ 36.00	\$ 70.00 \$ 70.00	\$ 175.00 \$ 175.00	\$ 120.00 \$ 120.00	\$ 222.00 \$ 222.00					
33	Replace junction box	1	\$ 29.00 \$ 29.00	\$ 36.00 \$ 36.00	\$ 125.00 \$ 125.00	\$ 200.00 \$ 200.00	\$ 120.00 \$ 120.00	\$ 222.00 \$ 222.00					
34	Lamp installation and disposal (redesigned lamp with no toxic material)	1	\$ 8.00 \$ 8.00	\$ 35.00 \$ 35.00	\$ 97.00 \$ 97.00	\$ 10.00 \$ 10.00	\$ 3.00 \$ 3.00	\$ 7.00 \$ 7.00					
35	Hourly rate,(non-billable time) (hours)	100	\$ 59.00 \$ 5,900.00	\$ 50.00 \$ 5,000.00	\$ 85.00 \$ 8,500.00	\$ 70.00 \$ 7,000.00	\$ 60.00 \$ 6,000.00	\$ 42.00 \$ 4,200.00					
36	Install embedded (direct bury) pole, mast arm, luminaire lamp and photocell	60	\$ 345.00 \$ 20,700.00	\$ 460.00 \$ 27,600.00	\$ 1,050.00 \$ 63,000.00	\$ 450.00 \$ 27,000.00	\$ 480.00 \$ 28,800.00	\$ 395.00 \$ 23,700.00					
37	Emergency removal of downed embedded (direct bury) pole	60	\$ 432.00 \$ 25,920.00	\$ 200.00 \$ 12,000.00	\$ 2,060.00 \$ 123,600.00	\$ 300.00 \$ 18,000.00	\$ 150.00 \$ 9,000.00	\$ 311.00 \$ 18,660.00					
38	Install pole on concrete foundation, mast arm, luminaire, lamp and photocell	60	\$ 245.00 \$ 14,700.00	\$ 300.00 \$ 18,000.00	\$ 750.00 \$ 45,000.00	\$ 450.00 \$ 27,000.00	\$ 480.00 \$ 28,800.00	\$ 395.00 \$ 23,700.00					
39	Emergency removal of downed pole on a concrete foundation	60	\$ 438.00 \$ 26,280.00	\$ 180.00 \$ 10,800.00	\$ 1,550.00 \$ 93,000.00	\$ 300.00 \$ 18,000.00	\$ 150.00 \$ 9,000.00	\$ 311.00 \$ 18,660.00					
40	Pole realignment (to within one (1) degree of plumb in any direction)	50	\$ 145.00 \$ 7,250.00	\$ 36.00 \$ 1,800.00	\$ 645.00 \$ 32,250.00	\$ 200.00 \$ 10,000.00	\$ 60.00 \$ 3,000.00	\$ 156.00 \$ 7,800.00					
41	Non-emergency embedded (direct bury) pole removal	15	\$ 210.00 \$ 3,150.00	\$ 300.00 \$ 4,500.00	\$ 1,050.00 \$ 15,750.00	\$ 450.00 \$ 6,750.00	\$ 150.00 \$ 2,250.00	\$ 198.00 \$ 2,970.00					
42	Jackhammer/remove concrete foundation	10	\$ 582.00 \$ 5,820.00	\$ 180.00 \$ 1,800.00	\$ 1,950.00 \$ 19,500.00	\$ 800.00 \$ 8,000.00	\$ 720.00 \$ 7,200.00	\$ 366.00 \$ 3,660.00					
43	Install 2' x 6' concrete foundation including auguring, four anchor bolts, and concrete pour	10	\$ 236.00 \$ 2,360.00	\$ 475.00 \$ 4,750.00	\$ 450.00 \$ 4,500.00	\$ 800.00 \$ 8,000.00	\$ 1,000.00 \$ 10,000.00	\$ 550.00 \$ 5,500.00					

CITY OF GLENDALE
IFB 12-41
STREETLIGHT MAINTENANCE - BID TABULATION

ITEM NO.	DESCRIPTION	EST. QTY	FLUORESCO LIGHTING & SIGN		ENVIROLIGHT		DRS COMPLETE POWER		BROOKS BROTHERS UTILITY CONTRACTORS		REPUBLIC ITS		CONTRACTORS WEST	
			UNIT PRICE	EXT. PRICE	UNIT PRICE	EXT. PRICE	UNIT PRICE	EXT. PRICE	UNIT PRICE	EXT. PRICE	UNIT PRICE	EXT. PRICE	UNIT PRICE	EXT. PRICE
44	Non-emergency removal of a pole on a concrete foundation	2	\$ 210.00	\$ 420.00	\$ 200.00	\$ 400.00	\$ 775.00	\$ 1,550.00	\$ 450.00	\$ 900.00	\$ 120.00	\$ 240.00	\$ 198.00	\$ 396.00
45	3' deep trench in grass (feet)	500	\$ 6.00	\$ 3,000.00	\$ 6.50	\$ 3,250.00	\$ 13.50	\$ 6,750.00	\$ 5.00	\$ 2,500.00	\$ 18.00	\$ 9,000.00	\$ 6.60	\$ 3,300.00
46	3' deep trench in landscaping (feet)	500	\$ 7.00	\$ 3,500.00	\$ 7.80	\$ 3,900.00	\$ 14.50	\$ 7,250.00	\$ 5.00	\$ 2,500.00	\$ 18.00	\$ 9,000.00	\$ 6.60	\$ 3,300.00
47	3' deep trench in bare earth (feet)	500	\$ 5.00	\$ 2,500.00	\$ 6.00	\$ 3,000.00	\$ 12.50	\$ 6,250.00	\$ 3.00	\$ 1,500.00	\$ 18.00	\$ 9,000.00	\$ 4.50	\$ 2,250.00
48	4' deep trench in grass (feet)	300	\$ 7.00	\$ 2,100.00	\$ 7.80	\$ 2,340.00	\$ 13.50	\$ 4,050.00	\$ 6.00	\$ 1,800.00	\$ 18.00	\$ 5,400.00	\$ 7.90	\$ 2,370.00
49	4' deep trench in landscaping (feet)	300	\$ 8.00	\$ 2,400.00	\$ 9.00	\$ 2,700.00	\$ 14.50	\$ 4,350.00	\$ 6.00	\$ 1,800.00	\$ 18.00	\$ 5,400.00	\$ 7.90	\$ 2,370.00
50	4' deep trench in bare earth (feet)	300	\$ 6.00	\$ 1,800.00	\$ 7.80	\$ 2,340.00	\$ 12.50	\$ 3,750.00	\$ 4.00	\$ 1,200.00	\$ 18.00	\$ 5,400.00	\$ 6.20	\$ 1,860.00
51	Boring in lieu of trench (feet)	500	\$ 18.00	\$ 9,000.00	\$ 7.80	\$ 3,900.00	\$ 11.00	\$ 5,500.00	\$ 30.00	\$ 15,000.00	\$ 20.00	\$ 10,000.00	\$ 20.00	\$ 10,000.00
52	Securing Lens Cover	5	\$ 10.00	\$ 50.00	\$ 30.00	\$ 150.00	\$ 11.00	\$ 55.00	\$ 25.00	\$ 125.00	\$ 3.00	\$ 15.00	\$ 11.00	\$ 55.00
GRAND TOTAL			\$ 306,851.00		\$ 551,830.50		\$ 1,085,979.00		\$ 351,756.00		\$ 327,621.00		\$ 502,772.00	



CITY COUNCIL REPORT

Meeting Date: **9/25/2012**
Meeting Type: **Voting**
Title: **AWARD OF PROPOSAL 12-36, COLLECTION SERVICES**
Staff Contact: **Diane Goke, Chief Financial Officer**

Purpose and Recommended Action

This is a request for City Council to award proposal 12-36 and authorize the City Manager to enter into an agreement for Collection Services with Progressive Financial Services, Incorporated for three years, with the option to extend the agreement for an additional two years, in one-year increments.

Background Summary

The City currently pursues collection of past due accounts receivable balances. The award of this agreement will serve to supplement the city's in-house collection efforts to recover monies owed for delinquent utility (water, sewer and sanitation) accounts, miscellaneous accounts receivables and transaction privilege and use tax accounts.

Eight bids were received in response to proposal 12-36. An evaluation committee consisting of representatives from the Financial Services, Technology and Innovation and Water Services Departments reviewed the offers based on the following criteria: firm's experience providing collection services, work capacity and staff experience, method of approach, and cost. Progressive Financial Services, Incorporated submitted the lowest responsive, responsible offer.

Community Benefit/Public Involvement

Utilizing a third party collection agency will enhance the collection efforts currently performed by in-house staff. Collection of unpaid sales tax will provide revenue that supports city services.

Budget and Financial Impacts

Progressive Financial Services, Incorporated will retain 15% of the debt they collect as their fee.

Annually, the city experiences approximately \$1,149,000 in bad debt; \$563,000 in water accounts and \$586,000 in sales tax accounts. Progressive Financial Services, Incorporated has an 18% collection success rate, therefore staff is projecting approximately \$101,300 of additional water and sewer revenue and \$105,500 in sales tax revenue each year.



CITY COUNCIL REPORT

Capital Expense? Yes No

Budgeted? Yes No

Requesting Budget or Appropriation Transfer? Yes No

If yes, where will the transfer be taken from?

Attachments

Staff Report

Agreement

Bid Tab



STAFF REPORT

To: **Horatio Skeete, Acting City Manager**
From: **Diane Goke, Chief Financial Officer**
Item Title: **AWARD OF PROPOSAL 12-36, COLLECTION SERVICES**
Requested Council Meeting Date: **9/25/2012**
Meeting Type: **Voting**

PURPOSE

This is a request for City Council to award proposal 12-36 and authorize the City Manager to enter into an agreement with Progressive Financial Services, Incorporated for collection services.

It is recommended to award proposal 12-36 and authorize the City Manager to enter into an agreement with Progressive Financial Services, Incorporated for three years, with the option to extend the agreement for an additional two years, in one-year increments.

BACKGROUND

The City currently has three Collection Representatives that pursues collection of past due accounts receivable balances. The award of this agreement will serve to supplement our in-house collection efforts to recover monies owed for delinquent utility (water, sewer and sanitation) accounts, miscellaneous accounts receivables and transaction privilege and use tax accounts. The Collections Representatives will make the initial attempt to collect on delinquent accounts however, if these efforts are unsuccessful, the account will be sent to the collection agency.

Eight bids were received in response to proposal 12-36. An evaluation committee consisting of representatives from the Financial Services, Technology and Innovation and Water Services Departments reviewed the offers based on the following criteria: firm's experience providing collection services, work capacity and staff experience, method of approach, and cost. Progressive Financial Services, Incorporated submitted the lowest responsive, responsible offer. The agreement shall begin on September 12, 2012 and continue for three years. The agreement contains an option that will permit the City Manager, at his discretion, to extend this contract for two additional years, in one-year increments.

ANALYSIS

As with any accounts receivable billing process, accounts periodically become delinquent requiring collection activity. The Financial Services Department has a Revenue Recovery Division that pursues collection of past due accounts. In order to achieve maximum possible recovery once our internal efforts are complete staff is recommending leveraging the contractor's resources and capacity. This will include a reasonable number of telephone calls, direct mailing efforts and various skip tracing procedures, credit bureau reporting as well as other procedures outlined by the contractor.

Upon agreement approval, three years of unpaid utility accounts that total \$1.6 million and three years of unpaid sale tax accounts that total \$1.8 million will be sent to Progressive Financial Services, Incorporated for collection. This debt represents less than 1% of the total annual revenue. Subsequently, the month to month volume to be referred will vary depending on the delinquent account holders' responsiveness to our final demand letter.

Progressive Financial Services, Incorporated will retain 15% of all monies recovered. City Code allows for the a collection agency referral fee of \$16.44 to be added to delinquent, closed utility accounts which assists with offsetting some of the cost associated with the collection agency's services. Although there is no administrative fee for miscellaneous accounts receivable and sales tax accounts, it is anticipated that an improvement in revenue recovery for these accounts will occur based on their staffing resources and ability to affect a delinquent account holder's credit.

The award of this agreement will have no impact on staff or service levels. Progressive Financial Services, Incorporated supplies its internal staff, equipment, and resources to ensure the collection services are completed timely and professionally.

There is no current contract in place for this service.

FISCAL IMPACTS

Annually, we experience approximately \$1,149,000 in bad debt: \$563,000 in water accounts and \$586,000 in sales tax accounts. Progressive Financial Services, Incorporated has an 18% collection success rate, therefore we are projecting approximately \$101,300 of additional water and sewer revenue and \$105,500 in sales tax revenue each year.

AGREEMENT FOR COLLECTION SERVICES

City of Glendale Solicitation No. RFP 12-36

This Agreement for Collection Services ("Agreement") is effective and entered into between City of Glendale, an Arizona municipal corporation ("City"), and Progressive Financial Services, Inc. dba PFS/Progressive Financial Services, Inc. (FN), a Pennsylvania corporation, authorized to do business in Arizona, (the "Contractor"), as of the ____ day of _____, 2012.

RECITALS

- A. City intends to undertake a project for collection agency services for the benefit of the public and with public funds as more fully set forth in **Exhibit A** (the "Project");
- B. City desires to retain the services of Contractor to perform those specific duties and produce the specific work as set forth in the Project attached hereto; and
- C. City and Contractor desire to memorialize their agreement with this document.

AGREEMENT

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

1. **Key Personnel; Subcontractors.**

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

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

D. Subcontractors.

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

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

3. **Contractor's Work.**

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

3.2 Licensing. Contractor warrants that:

- A. Contractor and Subcontractors 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 Subcontractor has been debarred or otherwise legally excluded from contracting with any federal, state, or local governmental entity ("Debarment").
 - (1) City is under no obligation to ascertain or confirm the existence or issuance of any Approvals or Debarments or to examine Contractor's contracting ability.
 - (2) Contractor must notify City immediately if any Approvals or Debarment changes during the Agreement's duration and the failure of the Contractor to notify City as required will constitute a material default under the Agreement.

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

3.4 Coordination; Interaction.

- A. For projects that the City believes requires the coordination of various professional services, Contractor will work in close consultation with City to proactively interact with any other professionals retained by City on the Project ("Coordinating Project Professionals").
- B. Subject to any limitations expressly stated in the Project Budget, Contractor will meet to review the Project, Schedule, Project Budget, and in-progress work with Coordinating

Project Professionals and City as often and for durations as City reasonably considers necessary in order to ensure the timely work delivery and Project completion.

- C. For projects not involving Coordinating Project Professionals, Contractor will proactively interact with any other contractors when directed by City to obtain or disseminate timely information for the proper execution of the Project.

3.5 Work Product.

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

4. **Compensation for the Project.**

- 4.1 Compensation. Contractor's compensation for the Project, including those furnished by its Subcontractors will be at the rate of 15% of collected funds, as more specifically detailed in **Exhibit B** (the "Compensation").
- 4.2 Change in Scope of Project. The Compensation may be equitably adjusted if the originally contemplated scope of services as outlined in the Project is significantly modified.
 - A. Adjustments to the Compensation require a written amendment to this Agreement and may require City Council approval.
 - B. Additional services which are outside the scope of the Project contained in this Agreement may not be performed by the Contractor without prior written authorization from the City.

5. **Billings and Payment.**

5.1 Applications.

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

5.2 Payment.

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

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

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

6. **Termination.**

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

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

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

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

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

8. **Insurance.**

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

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

B. General Liability. Commercial General Liability insurance shall cover liability arising from bodily injury, property damage, products-completed operations, personal and advertising injury, independent Contractors, and broad form contractual coverage.

- (1) Contractor must at all times relevant hereto carry a commercial general liability policy with a combined single limit of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate for each property damage and contractual property damage claim. Coverage must include products-completed operations and personal and advertising injury coverages with these same limits.
- (2) Subcontractors must at all times relevant hereto carry a general commercial liability policy with a combined single limit of at least \$1,000,000 per occurrence.
- (3) This commercial general liability insurance must include independent contractors' liability, contractual liability, broad form property coverage, XCU hazards if requested by the City, and a separation of insurance provision.
- (4) These limits may be met through a combination of primary and excess liability coverage.

C. Auto. A business auto policy including bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of the services providing combined single limit coverage of at least \$1,000,000 per accident for Contractor and \$1,000,000 per accident for Subcontractors.

D. Workers' Compensation and Employer's Liability. A workers' compensation and employer's liability policy that complies with statutory minimum and provides at least the following minimum benefits:

Workers' Compensation: Statutory Employer's Liability
Each Accident: \$100,000
Disease-Each Employee: \$100,000
Disease-Policy Limit: \$500,000

E. Professional Liability (Errors and Omissions). Contractor must maintain a professional errors and omissions liability policy providing for acts or omission arising out of the collection agency services provided under this Agreement providing a minimum limit of \$1,000,000 for each claim and a \$2,000,000 annual aggregate limit.

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 Subcontractor's Policies;
- (2) Reduction of the coverage limits of any of Contractor or and Subcontractor's Policies; and
- (3) Any other material modification of Contractor or Subcontractor's Policies related to this Agreement.

G. Certificates of Insurance.

- (1) Within ten business days after the execution of the Agreement, Contractor must deliver to City Representative certificates of insurance for each of Contractor and Subcontractor's Policies, which will confirm the existence or issuance of Contractor and Subcontractor's Policies in accordance with the provisions of this section, and copies of the endorsements of Contractor and Subcontractor'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 Subcontractor's Policies, or to examine Contractor and Subcontractor's Policies, or to inform Contractor or Subcontractor 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 Subcontractor policies as required will constitute a material default under the Agreement.

H. Other Contractors or Vendors.

- (1) Other contractors or vendors that may be contracted with in connection with the Project must procure and maintain insurance coverage as is appropriate to their particular contract.
- (2) This insurance coverage must comply with the requirements set forth above for 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, City must be named and properly endorsed as additional insureds on all liability policies required by this section.

- (1) The coverage extended to additional insureds must be primary and must not contribute with any insurance or self insurance policies or programs maintained by the additional insureds.
- (2) All insurance policies obtained pursuant to this section must be with companies legally authorized to do business in the State of Arizona and reasonably acceptable to all parties.

8.2 Subcontractors.

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

8.3 Indemnification.

- A. To the fullest extent permitted by law, 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 Subcontractor or other person or firm employed by Contractor), whether sustained before or after completion of the Project.
- B. This indemnity and hold harmless provision applies even if a Demand or Expense is in part due to the Indemnified Party's negligence or breach of a responsibility under this

Agreement, but in that event, Contractor shall be liable only to the extent the Demand or Expense results from the negligence or breach of a responsibility of Contractor or of any person or entity for whom Contractor is responsible.

- C. Contractor is not required to indemnify any Indemnified Parties for, from, or against any Demand or Expense resulting from the Indemnified Party's sole negligence or other fault solely attributable to the Indemnified Party.

9. Immigration Law Compliance.

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

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

11. Notices.

- 11.1 A notice, request or other communication that is required or permitted under this Agreement (each a "Notice") will be effective only if:
 - A. The Notice is in writing; and
 - B. Delivered in person or by overnight courier service (delivery charges prepaid), certified or registered mail (return receipt requested); and
 - C. Notice will be deemed to have been delivered to the person to whom it is addressed as of the date of receipt, if:

(1) Received on a business day, or before 5:00 p.m., at the address for Notices identified for the Party in this Agreement by U.S. Mail, hand delivery, or overnight courier service on or before 5:00 p.m.; or

(2) As of the next business day after receipt, if received after 5:00 p.m.

D. The burden of proof of the place and time of delivery is upon the Party giving the Notice; and

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

11.2 Representatives.

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

Progressive Financial Services, Inc.
c/o Greg Lang, Vice President
1919 West Fairmont Drive, Building 8
Tempe, Arizona 85282

B. City. City's representative ("City's Representative") authorized to act on City's behalf, and his or her address for Notice delivery is:

City of Glendale
c/o Susan Matousek, Revenue Administrator
5850 West Glendale Avenue
Glendale, Arizona 85301
623-930-2592

With required copy to:

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

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

C. Concurrent Notices.

(1) All notices to City's representative must be given concurrently to City Manager and City Attorney.

(2) A notice will not be deemed to have been received by City's representative until the time that it has also been received by City Manager and City Attorney.

(3) City may appoint one or more designees for the purpose of receiving notice by delivery of a written notice to Contractor identifying the designee(s) and their respective addresses for notices.

D. Changes. Contractor or City may change its representative or information on Notice, by giving Notice of the change in accordance with this section at least ten days prior to the change.

12. **Financing Assignment.** City may assign this Agreement to any City-affiliated entity, including a non-profit corporation or other entity whose primary purpose is to own or manage the Project.

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

13.1 Integration. This Agreement contains, except as stated below, the entire agreement between City and Contractor and supersedes all prior conversations and negotiations between the parties regarding the Project or this Agreement.

- A. Neither Party has made any representations, warranties or agreements as to any matters concerning the Agreement's subject matter.
- B. Representations, statements, conditions, or warranties not contained in this Agreement will not be binding on the parties.
- C. The solicitation, any addendums and the response submitted by the Contractor are incorporated into this Agreement as if attached hereto. Any Contractor response modifies the original solicitation as stated. Inconsistencies between the solicitation, any addendums and the response or any excerpts attached as Exhibit A and this Agreement will be resolved by the terms and conditions stated in this Agreement.

13.2 Interpretation.

- A. The parties fairly negotiated the Agreement's provisions to the extent they believed necessary and with the legal representation they deemed appropriate.
- B. The parties are of equal bargaining position and this Agreement must be construed equally between the parties without consideration of which of the parties may have drafted this Agreement.
- C. The Agreement will be interpreted in accordance with the laws of the State of Arizona.

13.3 Survival. Except as specifically provided otherwise in this Agreement, each warranty, representation, indemnification and hold harmless provision, insurance requirement, and every other right, remedy and responsibility of a Party, will survive completion of the Project, or the earlier termination of this Agreement.

13.4 Amendment. No amendment to this Agreement will be binding unless in writing and executed by the parties. Any amendment may be subject to City Council approval. Electronic signature blocks do not constitute execution.

13.5 Remedies. All rights and remedies provided in this Agreement are cumulative and the exercise of any one or more right or remedy will not affect any other rights or remedies under this Agreement or applicable law.

13.6 Severability. If any provision of this Agreement is voided or found unenforceable, that determination will not affect the validity of the other provisions, and the voided or unenforceable provision will be deemed reformed to conform to applicable law.

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

14. **Term.** The term of this Agreement commences upon the effective date and continues for a three (3) year initial period. The City may, at its option and with the approval of the Contractor, extend the term of this Agreement two (2) additional years, renewable on an annual basis based upon satisfactory Contractor performance. Contractor will be notified in writing by the City of its intent to extend the Agreement period at least 30 calendar days prior to the expiration of the original or any renewal Agreement period. Price adjustments will only be reviewed during the Agreement renewal period. There are no automatic renewals of this Agreement.

15. **Dispute Resolution.** Each claim, controversy and dispute (each a "Dispute") between Contractor and City will be resolved in accordance with Exhibit C. The final determination will be made by the City.

16. **Exhibits.** The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference.

- Exhibit A Project
- Exhibit B Compensation
- Exhibit C Dispute Resolution

17. **Incorporation of Other Documents and Order of Precedence.** The documents listed below are incorporated into and made a part of this Agreement. In interpreting this Agreement and resolving any ambiguities, the main body of this Agreement and Exhibits A, B, and C take precedence over these documents and any inconsistency between the following documents will be resolved in their listed order:

1. Final Negotiations dated July 27, 2012
2. Best and Final Offer dated July 25, 2012
3. Contractor's Response/Offer to Solicitation No. RFP 12-36
4. Solicitation No. RFP 12-36, including Addenda No. 1 and No. 2

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

City of Glendale,
an Arizona municipal corporation

Horatio Skeete, Acting City Manager

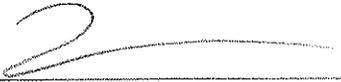
ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

Progressive Financial Services, Inc. dba PFS/Progressive
Financial Services, Inc. (PFI),
a Pennsylvania corporation



By: Wesley Hall

Its: C.F. 2

EXHIBIT A

Progressive Financial Services, Inc. dba PFS/Progressive Financial Services, Inc. (FN)

PROJECT

[see attached]

2.3.4 SPECIFICATIONS

1.3.1 Collection Agency Services

The Contractor shall provide collection services with respect to accounts referred by the City. The services should be designed to achieve the maximum recovery of debts and shall include without limitation telephone calls, mail efforts and skip tracing procedures. The Contractor shall furnish any and all material, labor and services required to perform and provide collection services as required by and to the satisfaction of the City.

Progressive will provide collection services with respect to accounts referred by the City of Glendale. Progressive has designed these services to achieve the maximum recovery of debts and includes without limitation telephone calls, mail efforts and skip tracing procedures. Progressive will furnish any and all material, labor and services required to perform and provide collection services as required by and to the satisfaction of the City. Progressive has provided information regarding our collection capabilities in sections **2.3.7 WORK CAPACITY** and **2.3.8 METHOD OF APPROACH**.

1.3.2 Compliance with Laws and Business Standards

All collection services and related activities shall comply with federal, state and local laws or regulations. All collection services and related activities shall be courteous and businesslike and shall comply with the Fair Debt Practices Act. Communication with delinquent account holders shall be made under the name of the Contractor. The Contractor shall not represent itself to be an employee or agent of the City. The City shall have the right to approve all standard form letters which are sent to delinquent account holders.

Compliance with Collection Regulations

All employees must be educated in and follow the requirements of all collection agency regulations, including:

- ✓ The Fair Debt Collection Practices Act (FDCPA)
- ✓ The Fair Credit Reporting Act (FCRA)
- ✓ The Gramm-Leach-Bliley Act (GLBA)
- ✓ Health Insurance Portability and Accountability Act (HIPAA)
- ✓ Identity Theft Red Flags Rules
- ✓ Payment Card Industry Data Security Standard Security Requirements (PCI DSS)
- ✓ Individual state laws, regulations, and policies
- ✓ The Privacy Act of 1974 (5 U.S.C. 552a) as amended
- ✓ Title 34 of the Code of Federal Regulations
 - Higher Education Act of 1965 (HEA) 34 CFR Parts 674 * 668
 - Title IV Federal Financial Aid Administration
- ✓ Family Educational Rights and Privacy Act (FERPA)
- ✓ Federal Higher Education Act (FHEA)
- ✓ All other applicable state and federal laws

Progressive employs software and hardware safeguards to keep employees in compliance with the requirements governing our industry. The two main software products that assist with compliance are the BFrame collection software and the Noble Phone System.

BFrame has been configured with several state and federal regulation protections, and collectors are provided with documentation on the main screen of the collection account detailing state specific regulations. In addition, the BFrame system has been modified to block all out of time zone numbers until the state where the account resides becomes available for dialing based on FDCPA restrictions. Progressive is frequently working with our software programmers to implement safeguards that prevent the collectors from inadvertently calling accounts in violation of regulations.

The Noble Phone System software has a number of features used for compliance with the FDCPA and state regulations. The Noble Phone System has an additional safeguard that allows the Information Technology Department to program in all area codes and time zones. For all calls made through our dialing software, Progressive is effectively able to block any calls that would be made to an inappropriate time zone or area. Noble also provides the ability to build campaigns using advanced SQL statements, enabling our collection managers to build their campaigns based on specific dialing strategies that will effectively dial the accounts for maximum recovery and conform to all regulations.

All telephone calls that are made from our Noble Phone System are recorded and monitored for quality assurance. The recording and monitoring features in the system allow us to review our collectors' actions on accounts in an effort to improve future communications, work on collection efforts, review compliance with regulations, and review disputes in a timely and efficient manner. As managers may review any call from their desk, collectors that work for Progressive are more mindful of the regulations and proper account handling procedures.

Progressive does not rely solely on software and hardware for compliance: Progressive also maintains an Audit and Compliance team of five individuals, as well as onsite corporate counsel. These individuals are responsible for monitoring changes within the collection industry and informing all staff of any changes that have occurred or may occur in the future. Louis P Valerio, Progressive's Chief Executive Officer, is a former President of the ACA's Arizona Chapter and becomes aware of upcoming and probable changes ahead of our competition. This enables Progressive to be one of the first national collection agencies to comply with new regulations and to make changes long in advance of the rulings being applied by the state or federal government.

The Audit and Compliance Department takes the following steps when any changes occur to state or federal regulations:

- ✓ Notify all employees of any changes in the regulatory requirements and update all reference materials used by Progressive Financial Services, Inc. staff
- ✓ Review and approve all notices in use as compliant with regulatory requirements by an ACA certified MAP attorney
- ✓ Inspect automated processes to ensure compliance with all regulatory requirements
- ✓ Hold regular training classes to review laws

1.3.3 Data Exchange

The Contractor shall provide a secure method of data file exchange. The Contractor shall meet with authorized City representatives to mutually agree upon a method and format to provide data exchange with the City.

Progressive will meet with authorized City of Glendale representatives to mutually agree upon a method and format to provide data exchange with the City. In section **2.3.8 METHOD OF APPROACH** is a summary of how Progressive currently handles data exchange for the City of Glendale Housing authority. Progressive can modify this procedure to match the exact needs of the City of Glendale.

1.3.4 Computer Enhancements

The Contractor shall pay all costs associated with any system enhancements, upgrades, or other changes that reasonably need to be performed on the Contractor’s computer system for the Contractor to meet the service requirements.

Progressive will pay for all costs associated with any system enhancements, upgrades, or other changes that reasonably need to be performed on Progressive’s computer system in order to meet the service requirements. Progressive has provided an overview of our technological capabilities below.

Technology

Progressive uses technology to our benefit as we continue to be on the cutting edge with secure technology and network systems. By leveraging technology and placing an emphasis on security metrics, Progressive can develop and maintain new technological processes geared specifically for the City of Glendale’s needs. Progressive is constantly updating our security policies and procedures to ensure that we are operating effectively and efficiently.

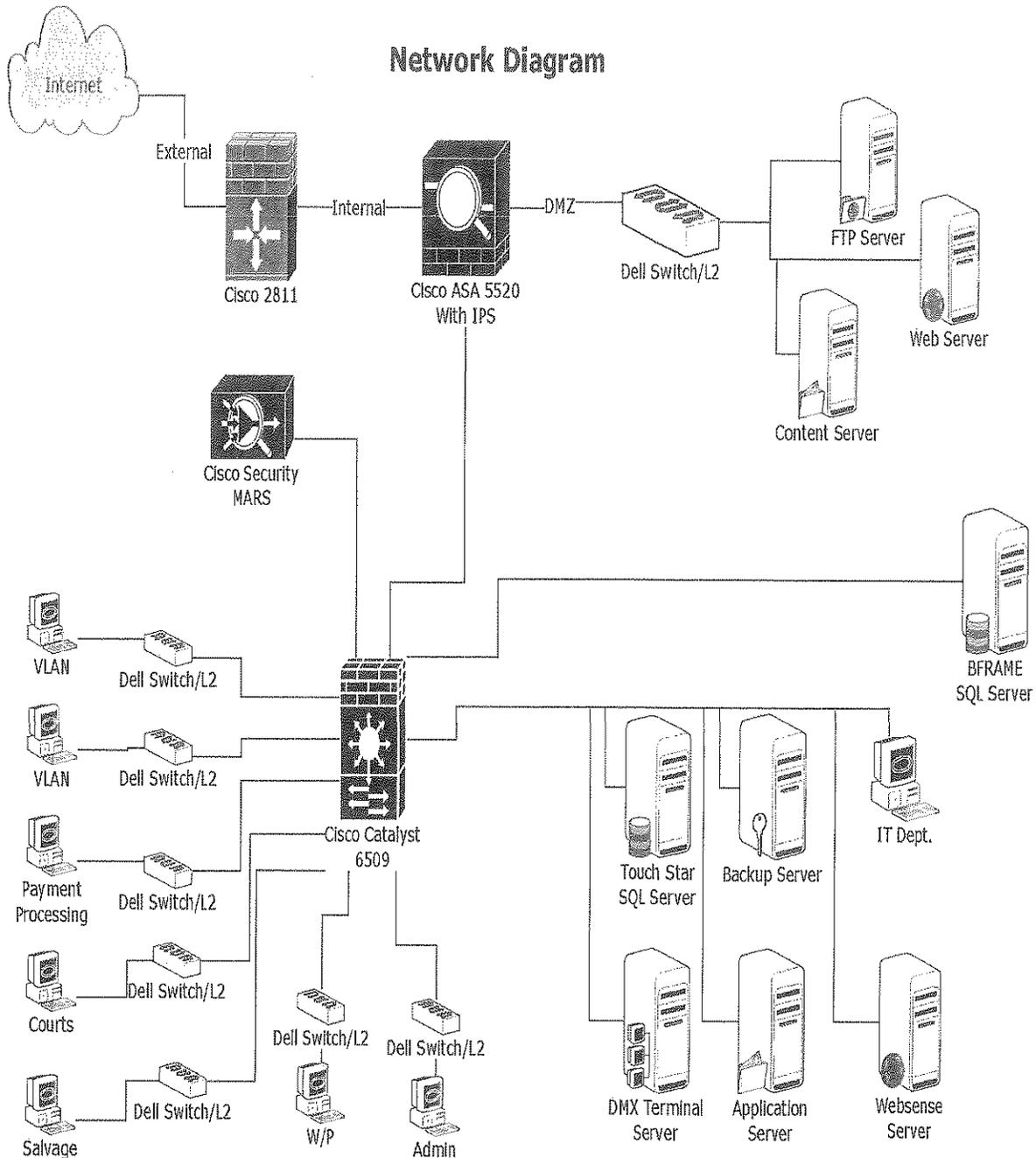
Our Information Technology Department is highly experienced and trained to maintain network and system security while providing our clients with improved operating systems. Progressive’s Information Technology staff provides our clients with vast amounts of experience, maintaining the knowledge to help increase system and network availability for our collection operations. An advanced technological system increases the efficiency of our collection system, preserving strong data security and providing online data access to the City staff as necessary.

Collection Systems		
▪ Debtmaster Version 4.2 by Comtronic Systems	▪ BFrame 2000 by BFrame Recovery Management	
Operating System		
▪ Windows XP Professional	▪ Windows 2008 Server	
Database		
Microsoft SQL 2008		
Network Type		
▪ PC Based Network	▪ 100 MB Ethernet	▪ 1 GB CISCO Switched Ethernet Backbone
Phone System		
Noble Phone System for Computer Assisted Dialing		

Computer Hardware

Progressive performs all collection activity using a client-server based PC network utilizing primarily Microsoft Windows 2008 Server operating systems and Microsoft Windows XP Professional desktop operating systems. Using entirely switched Ethernet with a switched gigabit Ethernet backbone for high-speed communications, our network is secured with state-of-the-art firewall and intrusion prevention systems monitoring all subnets.

Network Interface Diagram



System Security

All systems use multiple layers of closely controlled access, using strong passwords that are changed regularly. All access is recorded and monitored in accordance with industry best practices, and all of these functions are secured and protected by the latest firewall and access security available. The Progressive core network is comprised of CISCO firewalls, Adaptive Security Appliances (ASA), MARS (Monitoring, Analysis, and Response Systems), and CISCO Security Agents. These systems combine to create a state-of-the-art security network. Some of the features of this network configuration include:

- ❖ Content Filtering Service
- ❖ Intrusion Prevention Systems
- ❖ Real Time Monitoring and Alerts
- ❖ Threat Mitigation (including visualizing the possible attack threat and source of threats)
- ❖ Complete Day 0 Antivirus

Progressive contracts third party auditors biennially to review all of our security practices and policies. Endeavor Systems assessed Progressive's compliance with the Federal Information Security Management Act (FISMA)—including our adherence to the strict requirements of the NIST Special Publications—over an eight-month period from April to November 2009. During this process, Endeavor conducted detailed assessments of Progressive's network architecture, security documentation, security management practices, and business processes. Samples of the areas reviewed by Endeavor include:

- ❖ Access Control
- ❖ Security Training
- ❖ Incident Response
- ❖ Contingency Planning
- ❖ Maintenance
- ❖ Media Protection
- ❖ Physical and Environmental Protection

Endeavor assessed Progressive's compliance with nearly 1,000 individual information security controls in accordance with National Institute of Standards and Technology (NIST) 800-53a revision 3. Endeavor determined that Progressive has developed and documented a strong Enterprise-wide information security program designed to protect data from unauthorized access, use, disclosure, disruption, modification, and destruction. In Endeavor's assessment, Progressive's Enterprise-wide program goes above and beyond the FISMA requirements and provides an effective, comprehensive framework for ensuring the effectiveness of information security controls. Additionally, Endeavor determined that Progressive provides mechanisms for driving continuous security program improvement and continuously monitors the effectiveness of security controls.

"Endeavor debriefed both Progressive and the Department on our findings, and Progressive's compliance with FISMA was ultimately certified by the Department. Progressive is bound by the GLBA, HIPAA, and PCI DSS Version 1.2 regulatory requirements and meets the goals and objectives of those regulations. These objectives are further defined as being:

1. *Ensure the security and confidentiality of customer information*
2. *Protect against any anticipated threats or hazards to the security or integrity of such information and protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any customer."*

The Endeavor Systems Security Assessment has been included as **Appendix A** of this proposal. In addition, Progressive's 2007 ISO 17799 audit conducted by Symantec is available to our clients upon request. The recent Endeavor audit confirmed the 2007 Symantec audit's results, which identified Progressive as a highly secure facility compliant with PCI DSS, GLBA, and HIPAA standards.

Physical Security

Progressive utilizes the Identocard 9000 Key Card Access Control System badge readers to control physical access to the building and restricted areas. Proximity locks secure all doors leading from the reception area, and access is granted via magnetic key cards. In addition, all doors leading from the reception area and interior doors leading to sensitive areas (such as the Information Technology and Payment Processing Departments) are secured with dual authentication, requiring a personal identification number paired with the magnetic key card to access secure areas of the facility.

The key and card reader system is tested at minimum semi-monthly to ensure readers are in working condition. The activity history log for card activity is monitored and audited monthly against a list of terminated employees to ensure removal of such individuals has occurred. The Identocard 9000 system provides detailed reports and records for each employee's card activity, showing the employee's badge number and access times for the dates selected.

Samsung Techwin model 2302 security cameras are deployed in volatile areas of the company. Each camera is routed to an Ademco Video Multiplexer, splitting the video feed for recording purposes. The video feed is then sent to a Sanyo TLS-9072 TimeLapse Video Cassette Recorder to record the feed onto a VHS cassette, and the duplex multiplexer allows Progressive to view multiple cameras while simultaneously recording the data on a VCR. The VHS cassette tapes are stored for no less than six months in a secure area of the Information Technology Department.

In addition to the features mentioned above, Progressive's facility contains the following features:

- ◆ Noise detectors in all computer rooms
- ◆ Temperature control and monitoring systems
- ◆ Humidity and water detectors in all computer rooms
- ◆ Redundant hardware for all critical switches, routers, firewalls, and servers
- ◆ Shred bins with a locking mechanism. A third party vendor destroys documents on a weekly basis using a crosscut method. Certificates of destruction are provided to Progressive and are available for review by our clients upon request.
- ◆ FM-200 Fire Suppressant Gas System for computer rooms
- ◆ Fire resistant walls for the computer rooms (rated with a four hour burn time)
- ◆ Redundant UPS Systems capable of powering the entire facility in excess of two hours
- ◆ Onan/Cummings Diesel Generator capable of powering the entire facility indefinitely with refueling
- ◆ Network segmentation providing additional protection of sensitive data from users located in different segments of the network

- ◆ Notification system that is configured to notify all Information Technology staff via email, text message, and telephone call upon alarm of one or multiple systems

Backup Capabilities

Progressive maintains state-of-the-art backup equipment and processes. Sensitive data is recorded to a Dell PowerVault 320L Backup Carousel, and all backup tapes are tested prior to being rotated offsite to Iron Mountain. Iron Mountain offers comprehensive records management, data protection, and information destruction solutions along with the expertise and experience to protect data with the most contemporary security standards. Backup tapes are stored for a period no less than two weeks, and redundant backup equipment is utilized at our satellite offices for site-specific information.

Progressive utilizes several mitigants to minimize impacts of possible disasters, including redundancy, automatic failovers and replication, generators, and uninterruptable power supplies. The redundant hardware maintained in each of our office locations includes backup firewalls, hard drives, power supplies, fans, switches, routers, and cabling for each location. By maintaining network and system stability, our company is able to decrease collection downtime and ultimately increase collection returns for the City of Glendale.

Antivirus Protection System

Progressive utilizes the *CISCO Security Agent Software* for antivirus and information protection. This system is deployed on all desktops and servers and incorporates the following features:

Centralized Management	All desktops and servers can be controlled and monitored from a single console, including program configuration, file system scan scheduling, and virus definition updates.
Automatic Updates	All program and virus definition updates can be controlled and scheduled from a single console and distributed to all systems automatically.
Alerting	Alerts regarding virus activity, system scans, program updates, etc. can be automatically routed to systems administrators via pager, email, or console messages.

Progressive's *CISCO Security Agent Software (CSA)* is configured on the network as defined below:

- *CISCO Security Agents* provide real-time continuous monitoring.
- Predictive monitoring provides day 0 protection, identifying both virus definitions and potential virus behavior for maximum protection.
- The antivirus server managing all workstations checks for virus updates daily.
- All systems are configured to run real-time file scans of all file types accessed.
- All systems are configured to disallow alteration or disabling of the antivirus system configuration by the local user.

Online Credit Card/Check Payments

Progressive offers citizens the ability to make payments directly online. Progressive's online payment system is PCI DSS Compliant, and the Certificate and Online Payment instructions have been included on the following pages.

PCI DSS Certification

Site Certificate

Site: www.progressivefinancial.com

Certification Date: April 3, 2012

Scan Frequency: Quarterly

On April 3, 2012 www.progressivefinancial.com met the PCI data security requirements by passing a SecurityMetrics® Site Certification vulnerability scan.

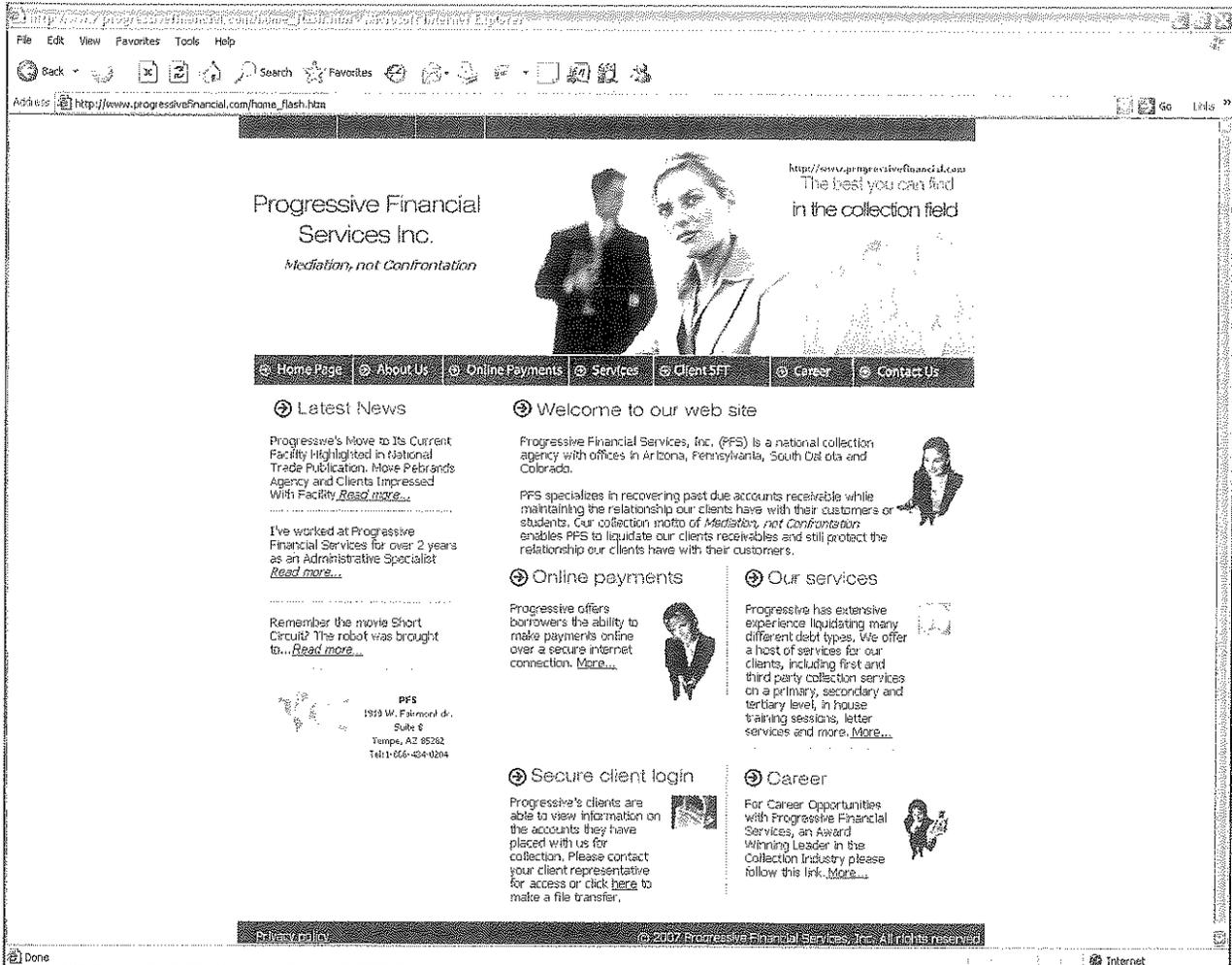
www.progressivefinancial.com is tested **quarterly** to ensure that high security standards are maintained, which significantly reduces the risk that this site will be compromised and credit card or other sensitive data will be stolen or misused.

DISCLAIMER: THIS CERTIFICATE CONFIRMS THE SITE SHOWN ABOVE HAS BEEN TESTED FOR COMMON SECURITY WEAKNESSES AND NO SIGNIFICANT SECURITY VULNERABILITIES WERE FOUND AT THE DATE SHOWN ABOVE. THIS CERTIFICATE DOES NOT IMPLY THE WEBSITE SHOWN ABOVE IS COMPLETELY INVULNERABLE TO UNAUTHORIZED ATTACKS.

securityMETRICS®

Online Payment Details

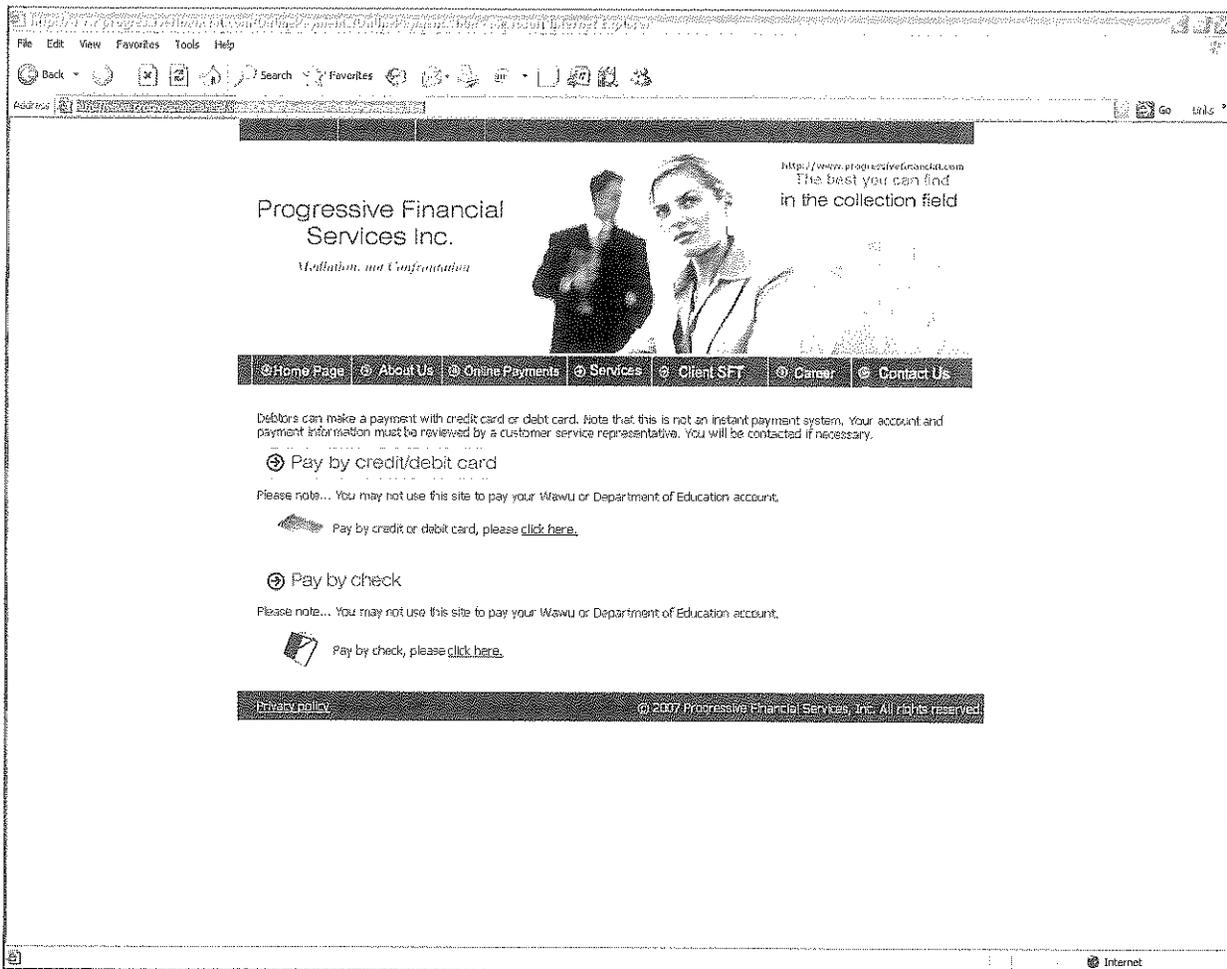
1. The Progressive website can be accessed at <http://www.progressivefinancial.com>. To access online payments, double click the **Online Payments** button. *(The user may also access the Services tab for common inquiries.)*



2. After clicking the **Online Payments** option, the following page will be brought up:

<http://www.progressivefinancial.com/OnlinePayments/OnlinePayments.htm>.

From here, the user may choose to pay either by credit/debit card or by check. Once payment has been made, a confirmation page will display with payment information. The payment website is protected by Secure Socket Layer Protection, and a security certificate is available upon request.



Debtmaster Collection System

Progressive's computerized collection system provides the ability to process thousands of accounts for hundreds of clients, delivering excellent efficiency and helping to enhance quality and performance. Not only does the system automate the collection process, it helps control the collectors' workflow, allowing for better production. The system allows our collectors to easily access account information, document account notations, send approved letters, and change/update citizen information. System security settings guarantee that collection staff members are only able to modify select fields based on business needs. Debtmaster provides various administrative functions, including calculating interest, fees, payment balances, updating account information automatically with overnight file transfers, reporting, performance reviews, payment details, collection return ratios, and placement ratios. Utilizing an effective, easy-to-use collection system will increase collection staff productivity and consequently increase collection returns for the City of Glendale.

Debtmaster is a proprietary database that provides multi-tasking capabilities, using a 32-bit system for Windows, to import and export accounts quickly and efficiently. Debtmaster is an automated system that processes payments automatically, indicating whether the payment received equals the amount due. This automatic process will then distribute the payment to the citizen's account. If a situation occurs where multiple accounts are placed for the same citizen, Debtmaster has the capability to connect the accounts. One unique account is created for each citizen while each debt with its underlying debt information remains as a sub-account.

The collection system also provides the ability to report on credit bureaus using both Metro1 and Metro2 reporting formats. With Debtmaster, payments are easily tracked using a promise payment schedule that allows new payment arrangements to be made (or additions to any existing payment arrangements). Furthermore, Debtmaster furnishes the capability to efficiently perform nightly backups for account data automatically. The report manager feature of this collection system allows individuals to schedule reports to run at any time.

The following are basic Debtmaster collection system abilities:

- ✦ Multi-million account capacity
- ✦ Supports multiple site operations
- ✦ Database encryption to ensure maximum security
- ✦ Remote client access
- ✦ Integrated credit card and ACH processing
- ✦ Interest calculator
- ✦ Metro1/Metro2 credit bureau reporting
- ✦ Integrated skip tracing (prioritizing accounts by score)
- ✦ Handles gross and net remittances
- ✦ User defined fields and shortcuts

Noble Phone System

Progressive utilizes the Noble Phone System, allowing our agency to communicate more effectively with citizens via blended inbound and outbound channels. Noble provides an integrated system to build productivity, improve efficiency and call volumes, and increase collection netback. The Noble Phone System has been customized to fit the needs of our clients while complying with all applicable regulations and Progressive's collection standards. This system offers local and remote monitoring, and reporting provides supervision and management controls that help improve and manage collection operations.

Progressive's three offices are linked together with an MPLS circuit, allowing Progressive to integrate a centralized platform for multiple agents regardless of geographic location. This configuration enables Progressive to route calls to different business locations without requiring the citizen to use a different inbound telephone number. Inbound and outbound telephone calls are managed by dynamic IVR routes, making it easier for the citizen to reach a live agent. Inbound telephone calls are transferred to the correct party using the Skills Based Routing feature, which directs the citizen to the department and/or agent best suited to handle their account.

Redundancy has been built into Progressive's unique configuration, providing live backup telephony, host, and text-to-speech servers. All backup servers are working in real-time and will automatically switch over to the main server in the event of a failure. In addition to the built-in redundancy, Noble Systems Corporation offers the Guardian Watch Program, which monitors the status of the Noble System servers 24/7 to spot potential failure points before they become problematic. The combination of redundant servers and the Guardian Watch Program ensure that the City receives top tier service with minimal down time.

Dialing Advantages

Progressive employs different automatic dialing strategies to generate dialing campaigns used by our collection staff. The outbound calling system offered by Noble provides automated messaging, IVR, and skills-based routing, all of which improve quality assurance and client satisfaction. Noble's inbound and outbound dialing system offers effective features, including:

- ◆ **Configurable Pacing Algorithm** – ability to choose up to eight pacing methods assigned by campaign (algorithms may be monitored throughout the duration of the campaign)
- ◆ **Multiple Dialing Modes** – provides predictive, preview, dial now, and messaging options
- ◆ **Area Code Management** – ensures compliance of time zone and calling restrictions
- ◆ **Filtered Calling** – automatically filters incomplete calls and removes them from the campaign queue to ensure that agents are spending more time talking to live citizens
- ◆ **Reporting** – provides standard and custom reporting filtered by agent, date, time, number, campaign, etc.
- ◆ **Call-Back Scheduling and Appointment Setting** – agents maintain the ability to schedule specific and general call-backs or appointments
- ◆ **Campaign Management** – ability to begin dialing automatically without supervision by loading, filtering, and assigning lists and campaigns in advance to ensure collector productivity

- ◆ **CTI Screen Pops** – citizen information is pushed directly to the agent with database look-ups, reducing call handling times to increase productivity
- ◆ **Queue Management** – supervisors and managers can easily view the inbound and outbound queues, see real-time agent status and updates, and receive automated audio and visual alerts for monitoring purposes
- ◆ **Call Handling Features** – internal and external transfers, call overflow, conferencing, unlimited number of inbound/outbound or blended projects, PBX and dialer integration, remote agents and managers, and call monitoring and recording
- ◆ **Text-to-Speech** – automated voice recordings have been programmed to allow speech configurations and basic message implementation for inbound and outbound calls

Compliance Features

Noble's speech analytics allow Progressive to record all telephone conversations to ensure citizen satisfaction and proper call handling, which in turn helps increase collector productivity. Real-time recordings provide collection managers the ability to monitor and review telephone calls as they occur, and all collection calls are recorded for quality assurance and compliance purposes. Call monitoring is conducted by designated personnel on a daily basis, and the system's monitoring feature allows Progressive collection managers to assist and direct the collection staff as the call is taking place. The monitoring feature permits the manager to listen to both sides of the conversation and "whisper" to the collection representative. These whispers are inaudible to the citizen and allow the agent to learn from the communication while providing the proper talk-off.

Noble has also incorporated a Do Not Call list with the ability to add and maintain telephone numbers that should not be called by collection representatives. All outbound telephone calls are routed through the Do Not Call exception tables to ensure that wrong or unauthorized numbers are not being dialed by the collection staff. Furthermore, individual state dialing rules have been programmed into the Noble dialing system to restrict telephone calls to these specific states. Federal and state regulations programmed into the exception tables restrict access to conduct outbound telephone calls based on applicable requirements. If a citizen living in one of the programmed states is attempted, Noble automatically routes the call through several exception tables to ensure that the telephone call can be made to the citizen. Progressive has also customized the Noble dialing system so that zip codes and area codes are cross-referenced to determine the citizen's time zone, and calls are restricted to a calling window that falls within both the area code and time zone's safe contact range. These safeguards ensure that Progressive's collection staff is calling citizens in compliance with all applicable state and federal regulations.

Screen Prompts

Custom screen prompts have been programmed into the Noble Phone System, displaying scripts for right party and third party contacts on all inbound and outbound telephone calls. The collection scripts ensure collection representatives maintain compliance with all state and federal collection laws. The screen prompts contain interactive fields that show current account information from the system of record, including financial statement details, compromise and payment agreement calculations, rehabilitation figures, and basic citizen information that automatically adjusts for each collection call.

1.3.5 Account Representation

The Contractor shall assign an Account Representative (AR), who shall be the primary contact person for monitoring and coordination of all aspects of the contract. In the absence of assigning an AR, the authorized signer of this Proposal will become the appointed AR.

If staff is located outside of the Phoenix metropolitan area, Contractor shall provide toll-free telephone contact for Contract Administrator and Contractor staff during City business hours, Monday through Friday, 8:00 AM to 5:00 PM (Local Time). The AR shall provide updated contact lists of contract staff to City.

The Contractor shall meet with representatives of the City within ten (10) days of the contract award to develop specific procedures, report designs and notices to debtors. Advise the City when appropriate of any need to update procedures, report formats or form letters.

The Contractor shall identify key personnel and provide a statement confirming their understanding of the services required. Notify the City of any changes in key staff and provide an updated resume of any replacement. Upon request, provide an organizational chart identifying all staffing levels assigned to the City's accounts, including name and contact information.

The City shall perform periodic audits to ensure that all amounts collected and adjusted are accurately reported and remitted, and compliance with all contract requirements. The Contractor shall release or make available all necessary records for the City to conduct these audits.

Progressive proposes that Lynne Healy, Client Services Representative, serve as the Account Representative for the City of Glendale contract. Lynne Healy is currently the account representative for Progressive's contract with the City of Glendale Housing authority. All collection work for the City of Glendale contract will be conducted out of our Tempe, AZ office and a toll-free telephone number will be provided to all of the City of Glendale staff and its citizens. Progressive's entire collection staff, including collection representatives, supervisors, and collection managers, are available Monday through Thursday from 8 AM to 9 PM, Friday from 8 AM to 6 PM, and Saturday from 6 AM to 11 AM Pacific Standard Time.

Progressive will meet with the City of Glendale representatives within ten (10) days of the contract award to develop specific procedures, report designs and notices to citizens. Progressive will also advise the City, when appropriate, of any need to update procedures, report formats or form letters. Progressive will release or make available all necessary records for the City in the event the City of Glendale performs periodic audits to ensure that all amounts collected and adjusted are accurately reported, and remitted and compliant with all contract requirements.

Progressive's key personnel confirm their understanding of the services required. All key personnel information has been provided in Section **2.3.6 FIRMS EXPERIENCE**. Progressive will notify the City of Glendale of any changes in key staff and provide an updated resume of any replacement.

Progressive agrees and understands that the City shall perform periodic audits to ensure that all amounts collected and adjusted are accurately reported and remitted, and compliance with all contract requirements. Progressive will make available all necessary records for the City to conduct these audits.

1.3.7 Reports

The Contractor shall remit the following required reports by the tenth (10th) of the following month and any other reports considered necessary by the City:

1.3.7.1 Monthly Cash Receipt Report

This report shall consist of a listing of all payments by debtor name, account number, date of payment, gross payment amount.

1.3.7.2 Monthly Status Reports

A summary of collection activity performed. At a minimum, the report shall consist of skip-tracing efforts, resources used and the effectiveness, the total number and type of outgoing notices sent by the agency with a rate for return/undeliverables, mail and rate or contact resulting from the mailing, the volume and verbal contact initiated by the agency staff and the volume of incoming activity from the debtor and aging status by type and date of last contact with debtor.

1.3.7.3 Monthly Credit Balance Report

The report shall include the debtor's name, City account reference number and the balance as listed in the Contractor's database. This report will be used to assist in identifying balance discrepancies.

1.3.7.4 Quarterly Statistical Performance Analysis

A report which shows recovery percentages by month listed and the month in which successful collection occurred.

Collection Reports

Progressive will provide any reports required by the City of Glendale, and the following is a list of reports that Progressive currently provides the City of Glendale Housing Authority:

- Invoice Report
- Acknowledgement of Referred Accounts Report
- Cancel and Return Report
- Exception Report
- Litigation Report
- Alpha-Combined Inventory Report
- Account Summary Reports
- Cash Receipt Report
- Analysis and Recovery Report
- Address Change or Demographic Report

Progressive has included some Sample Collection Reports as **Appendix C** of this proposal.



SOLICITATION NUMBER: 12-36
DESCRIPTION: COLLECTION SERVICES
BEST AND FINAL OFFER
DUE DATE AND TIME: July 25, 2012 @ 2:00 PM (Local Time)

Best and Final Offers must be submitted in a sealed envelope with the Solicitation Number, Description and the Due Date clearly labeled, as cited above. Also included shall be the Offeror's name and address clearly indicated on the envelope.

Best and Final Offers must be in the actual possession of Materials Management on or prior to the time and date, and at the location indicated. Materials Management is located on the third (3rd) floor of the Glendale Municipal Office Complex (City Hall), 5850 West Glendale Avenue, Suite 317, Glendale, Arizona, 85301.

Best and Final Offers are accepted at the Engineering Department's front counter between the hours of 8:00 AM and 5:00 PM, Monday through Friday unless otherwise indicated for a Holiday. The Best and Final Offer submittals will be time stamped at the Engineering Department's front counter.

BEST AND FINAL OFFEROR INFORMATION:

Authorized Signature	Progressive Financial Services, Inc.
Greg Lang	Company's Legal Name
Printed Name	1919 W. Fairmont Drive Building 8
Senior VP, Operations	Address
Title	Tempe, AZ 85282
602-453-8645	City, State & Zip Code
Telephone Number	602-453-8794
7/23/2012	FAX Number
Date	bids@progressivefinancial.com
	E-mail Address

1. Please provide your method of approach regarding your firm's ability to report activity to a credit bureau. How frequently do you provide updates to the credit bureau? Identify the credit bureau(s) your firm will utilize under this agreement?

Progressive maintains the ability to report accounts to the major credit bureaus, including Equifax, Experian, and TransUnion. We report all eligible debts as requested by the City and in accordance with all state and federal laws. Progressive sends an initial demand letter on all accounts upon placement, which clearly states the citizens' right to dispute the debt within thirty days. To avoid overshadowing, after the thirty day dispute period, Progressive sends a credit report notice on all applicable accounts. The credit report notice, per state and federal guidelines, alerts citizens that their accounts will be reported to the major credit bureaus in thirty days.

Credit bureau reporting may be provided on accounts placed with Progressive that meet the credit bureaus' requirements. Accounts reported must have a current balance of \$50.00 or higher, and the information submitted must include the citizen name and social security number. Information is updated as required by the Fair Credit Reporting Act, but no less than once every thirty days. Progressive has the capability to file reports with all three national credit bureaus, but will only do so upon request from the City.

Reporting to the credit bureaus is an effective tool to assist in the recovery of delinquent debt. Progressive has found through our reporting experience that citizens marked as unable to locate by other collection agencies may surface and contact Progressive due to the submitted credit bureau report. In addition, citizens who are credit conscious are more likely to review their credit reports and make payment to improve their overall credit rating. Progressive has performed this service for a number of clients, resulting in recovery rate increases in nearly 100% of the sampled clients.

Progressive also maintains an existing account with E-Oscar which enables our company to remove errors on credit bureau reports within 72 hours of the error occurrence. Information is typically removed when an account is placed in error or if the delinquency is being applied to the wrong individual. To remain compliant with the Fair Credit Reporting Act, Progressive will update the statuses of previously reported accounts in accordance with payments received by the citizen. No additional cost is required for providing credit bureau reporting on accounts placed with Progressive.

2. What is your firm's turnaround time to remove an error from a credit bureau reports?

Immediately upon notification, Progressive notifies all applicable credit bureaus of the error; however, Progressive does not control how long the applicable bureaus take in this process. Our staff takes these requests very seriously and works within our abilities to ensure expedience.

3. What process will your firm utilize in handling payment sent directly to the City rather than to your firm, when no attempt by your firm has been made?

Immediately upon placement, Progressive sends an initial demand letter, begins skip-tracing attempts, and starts calling numbers, if available. In the rare instance that payment is received prior to Progressive initiating contact, Progressive would not charge fees for the payments received.



City of Glendale
RFP #12-36 Collection Services
Best and Final Offer

4. Is your system portal web based or user driven? If your system is user driven, how many licenses will be issued to the City?

Progressive utilizes a multifaceted system, where it is both user driven and web based. We are able to provide as many licenses as necessary for access to the web portal.

5. Will the City be assigned an Account Manager? How many hours will your firm dedicate to the City?

Progressive will assign Juana Rodriguez, as the City's account manager. Based on the volume and value of accounts listed in the RFP, Progressive estimates between 40-60 hours to be dedicated to the city, weekly. The time dedicated will fluctuate, as necessary, per the number of accounts assigned by the city.

6. Your proposal included the completed Section 5.1 of the Proposal Fee. Complete the Additional Fee section below with your BAFO amounts.

<i>Fee Requested</i>
<u>17</u> % Percentage of collected funds to be paid to the Contractor.



SOLICITATION NUMBER: 12-36

DESCRIPTION: COLLECTION SERVICES
FINAL NEGOTIATIONS

DUE DATE AND TIME: July 27, 2012 @ 2:00 PM (Local Time)

Your firm has been selected as a finalist for collection services as stipulated in Request for Proposal #12-36. As a result, the City of Glendale ("City") is asking that you provide (no later than the time and date indicated) a response to the following request. This response will amend your initial proposal and will become part of your Best and Final Offer ("BAFO").

The City is in receipt of your response to our formal Best and Final Offer; the City appreciates your willingness to discuss final clarification points with the City.

The City is in favor and in agreement to the following:

- Your firm's method in communicating activity to a credit bureau;
- Turnaround time in removing errors from a credit bureau report;
- No charge for payments received by the City prior to your firm's first attempt;
- Availability of licenses as necessary to the web portal.

In addition, the City and Contractor agree to the following:

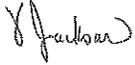
- Account Manager assigned to the City with an estimated 30-40 hours per month dedicated to our account;
- An estimated 40-60 hours of dedicated time to collection services, agreed and adjusted based on total account activity, hours to be determined collectively throughout the term of the agreement;
- Two client representatives available to the City; one dedicated to the City with a back up representative available as necessary;
- Percentage of collected funds to be paid to the Contractor has been negotiated to 15%.

If additional submittal pages are required, please submit your response on company letterhead; otherwise acknowledge receipt of the Final Negotiations by signing the attached form. Please notify me should you have any questions. Discussions with other City staff regarding this solicitation are prohibited.

FINAL NEGOTIATIONS

Acceptance of the Final Negotiations must be in the actual possession of Materials Management on or prior to the time and date, and at the location indicated. Materials Management is located on the third (3rd) floor of the Glendale Municipal Office Complex (City Hall), 5850 West Glendale Avenue, Suite 317, Glendale, Arizona, 85301. Final Negotiations may be sent via email in PDF format to the Contract Analyst as listed herein.

Sincerely,



Victoria Jackson, CPPB
Contract Analyst
Materials Management
City of Glendale
Phone: 623-930-2867
vjackson@glendaleaz.com

FINAL NEGOTIATIONS:

 _____ Authorized Signature	<u>Progressive Financial Services, Inc.</u> _____ Company's Legal Name
<u>Barbara Hoerner</u> _____ Printed Name	<u>1919 W. Fairmont Dr., Bldg 8</u> _____ Address
<u>Corporate Counsel</u> _____ Title	<u>Tempe, AZ 85282</u> _____ City, State & Zip Code
<u>602-453-8610</u> _____ Telephone Number	<u>602-453-8794</u> _____ FAX Number
<u>27 July 2012</u> _____ Date	<u>bids@progressivefinancial.com</u> _____ E-mail Address

EXHIBIT B

Progressive Financial Services, Inc. dba PFS/Progressive Financial Services, Inc. (FN)

COMPENSATION

METHOD AND AMOUNT OF COMPENSATION

Contractor shall be paid an amount equal to 15% of funds collected.

DETAILED PROJECT COMPENSATION

Remittance of collected funds to the City shall be in accordance with provisions set forth in Section 1.3.6 of Contractor's Response/Offer (attached). Contractor will issue payments to City in gross dollars or in net dollars (net of 15% fee), at City's sole discretion. In the event payment to City is made in gross dollars, City will remit 15% payment to Contractor within five business days after receiving payment.



SOLICITATION NUMBER: 12-36

DESCRIPTION: COLLECTION SERVICES
FINAL NEGOTIATIONS

DUE DATE AND TIME: July 27, 2012 @ 2:00 PM (Local Time)

Your firm has been selected as a finalist for collection services as stipulated in Request for Proposal #12-36. As a result, the City of Glendale ("City") is asking that you provide (no later than the time and date indicated) a response to the following request. This response will amend your initial proposal and will become part of your Best and Final Offer ("BAFO").

The City is in receipt of your response to our formal Best and Final Offer; the City appreciates your willingness to discuss final clarification points with the City.

The City is in favor and in agreement to the following:

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- Turnaround time in removing errors from a credit bureau report;
- No charge for payments received by the City prior to your firm's first attempt;
- Availability of licenses as necessary to the web portal.

In addition, the City and Contractor agree to the following:

- Account Manager assigned to the City with an estimated 30-40 hours per month dedicated to our account;
- An estimated 40-60 hours of dedicated time to collection services, agreed and adjusted based on total account activity, hours to be determined collectively throughout the term of the agreement;
- Two client representatives available to the City; one dedicated to the City with a back up representative available as necessary;
- Percentage of collected funds to be paid to the Contractor has been negotiated to 15%.

If additional submittal pages are required, please submit your response on company letterhead; otherwise acknowledge receipt of the Final Negotiations by signing the attached form. Please notify me should you have any questions. Discussions with other City staff regarding this solicitation are prohibited.

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Sincerely,



Victoria Jackson, CPPB
Contract Analyst
Materials Management
City of Glendale
Phone: 623-930-2867
vjackson@glendaleaz.com

FINAL NEGOTIATIONS:

 Authorized Signature	<u>Progressive Financial Services, Inc.</u> Company's Legal Name
<u>Barbara Hoerner</u> Printed Name	<u>1919 W. Fairmont Dr., Bldg 8</u> Address
<u>Corporate Counsel</u> Title	<u>Tempe, AZ 85282</u> City, State & Zip Code
<u>602-453-8610</u> Telephone Number	<u>602-453-8794</u> FAX Number
<u>27 July 2012</u> Date	<u>bids@progressivefinancial.com</u> E-mail Address

1.3.6 Remittance of Payments Received

All payments made to Contractor on the City's referred accounts shall be remitted within five (5) business days after payments are received. Appropriate mechanisms for verifying and tracking all payments shall be maintained.

Remittance

Progressive remits to most clients no later than the tenth day of the month following the month in which collection occurred; however, Progressive will transfer funds collected on accounts within five (5) business days after payments are received. The remittance for most clients is via check; however, Progressive is able to remit to clients by use of electronic funds, transfers, or wires as well. All remittances using checks as payment are sent with a corresponding Trust Statement, detailing the payments made for that particular remittance. Progressive will issue payments in gross dollars or in net dollars as defined by the City of Glendale. All electronic remittances have corresponding reports sent as files on the same day that the remittance is processed, and any citizen checks returned for insufficient funds, closed accounts, or any other reason will also be recorded.

Reports and client statements are generated daily to determine the amount of collections recovered. The results from the reports and client statements are verified against the client Trust Statement to ensure the numbers are consistent. The Accounting Department is responsible for ensuring the correct bank deposit amount for the City of Glendale, and audit systems are in place to ensure accurate results. Accounting shall complete the bank transfer and notify the Client Services Department of the amount deposited, as well as send the appropriate representative the trust reports/statements. The Client Services Department is responsible for notifying the City of the bank deposit and transmitting the appropriate reports and statements to City of Glendale in the requested frequency and format.

EXHIBIT C

Progressive Financial Services, Inc. dba PFS/Progressive Financial Services, Inc. (FN)

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 ten business days to discuss and attempt to resolve the Dispute promptly, equitably, and in a good faith manner, and
 - C. The Senior Managers will agree to subsequent meetings if both parties agree that further meetings are necessary to reach a resolution of the Dispute.

2. Arbitration.

- 2.1 Rules. If the parties are unable to resolve the Dispute by negotiation within 30 days from the Dispute notice, and unless otherwise informal discussions are extended by the mutual agreement, the parties may agree, in writing, that the Dispute will be decided by binding arbitration in accordance with Commercial Rules of the AAA, as amended herein. Although the arbitration will be conducted in accordance with AAA Rules, it will not be administered by the AAA, but will be heard independently.
 - A. The parties will exercise best efforts to select an arbitrator within five business days after agreement for arbitration. If the parties have not agreed upon an arbitrator within this period, the parties will submit the selection of the arbitrator to one of the principals of the mediation firm of Scott & Skelly, LLC, who will then select the arbitrator. The parties will equally share the fees and costs incurred in the selection of the arbitrator.
 - B. The arbitrator selected must be an attorney with at least ten years experience, be independent, impartial, and not have engaged in any business for or adverse to either Party for at least ten 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 days of selection of an arbitrator deliver to the other Party copies of all documents in the delivering party's possession that are relevant to the dispute.
- 2.3 Hearing. The arbitration hearing will be held within 90 days of the appointment of the arbitrator. The arbitration hearing, all proceedings, and all discovery will be conducted in Glendale, Arizona unless otherwise agreed by the parties or required as a result of witness location. Telephonic hearings and other reasonable arrangements may be used to minimize costs.

- 2.4 Award. At the arbitration hearing, each Party will submit its position to the arbitrator, evidence to support that position, and the exact award sought in this matter with specificity. The arbitrator must select the award sought by one of the parties as the final judgment and may not independently alter or modify the awards sought by the parties, fashion any remedy, or make any equitable order. The arbitrator has no authority to consider or award punitive damages.
- 2.5 Final Decision. The Arbitrator's decision should be rendered within 15 days after the arbitration hearing is concluded. This decision will be final and binding on the Parties.
- 2.6 Costs. The prevailing party may enter the arbitration in any court having jurisdiction in order to convert it to a judgment. The non-prevailing party shall pay all of the prevailing party's arbitration costs and expenses, including reasonable attorney's fees and costs.

3. **Services to Continue Pending Dispute.** Unless otherwise agreed to in writing, Contractor must continue to perform and maintain progress of required services during any Dispute resolution or arbitration proceedings, and City will continue to make payment to Contractor in accordance with this Agreement.

4. **Exceptions.**

- 4.1 Third Party Claims. City and Contractor are not required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defense of a third party who is not obligated by contract to arbitrate disputes with City and Contractor.
- 4.2 Liens. City or Contractor may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice, but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Arizona Law, including, without limitation, an action under A.R.S. § 33-420, without the necessity of initiating or exhausting the procedures of this Exhibit.
- 4.3 Governmental Actions. This Exhibit does not apply to, and must not be construed to require arbitration of, any claims, actions or other process filed or issued by City of Glendale Building Safety Department or any other agency of City acting in its governmental permitting or other regulatory capacity.

PROPOSAL ANALYSIS

RFP 12-36

COLLECTION SERVICES

		MAXIMUM POINTS	Affiliated Creditors Inc.	Chapman Financial Services	Valley Collection Services	RSI Enterprises	National Recovery Agency	Windham Professionals	Progressive Financial Services	Primary Financial Services
Firms Experience		350								
CONSENSUS SCORE			55	189	273	278	268	234	340	143
Work Capacity		250								
CONSENSUS SCORE			65	121	191	227	202	201	247	141
Method of Approach		200								
CONSENSUS SCORE			89	144	160	194	175	154	199	129
Cost		200								
CONSENSUS SCORE			150	150	200	188	182	190	167	167
TOTAL SCORES		1000	359	604	824	887	827	779	953	580

BEST AND FINAL OFFER	150					RSI Enterprises			Progressive Financial Services	
CONSENSUS SCORE		0	0	0	0	145	0	0	139	0
TOTAL SCORES	1150	359	604	824	824	1,032	827	779	1,092	580



CITY COUNCIL REPORT

Meeting Date: **9/25/2012**
 Meeting Type: **Voting**
 Title: **PROFESSIONAL SERVICES AGREEMENT WITH TETRA TECH BAS, INC. FOR LANDFILL GENERAL ENGINEERING SERVICES**
 Staff Contact: **Stuart Kent, Executive Director, Public Works**

Purpose and Recommended Action

This is a request for City Council to authorize the City Manager to enter into a professional services agreement with Tetra Tech BAS, Inc. for general engineering services on projects specifically related to the City of Glendale Landfill. Staff recommends approval of this agreement in an amount not to exceed \$120,000 annually.

Background Summary

The landfill uses professional engineering services to provide routine and special project support on an on-call basis for landfill development and operations. These services include general engineering support, design services, mapping and survey services, environmental compliance support, construction administration services, landfill development planning and permit preparation, and regulatory agency interaction. This professional services agreement provides access to external engineering expertise to help maintain efficient operations and regulatory compliance at the landfill.

Previous Related Council Action

On June 9, 2009, City Council approved a professional services agreement with Bryan A. Stirrat & Associates (presently known as Tetra Tech BAS, Inc.) for landfill general engineering services.

Budget and Financial Impacts

Cost	Fund-Department-Account
\$120,000	2440-17710-515000

Capital Expense? Yes No

Budgeted? Yes No



CITY COUNCIL REPORT

Requesting Budget or Appropriation Transfer? Yes No

If yes, where will the transfer be taken from?

Attachments

Staff Report

Agreement



STAFF REPORT

To: **Horatio Skeete, Acting City Manager**
From: **Stuart Kent, Executive Director, Public Works**
Item Title: **PROFESSIONAL SERVICES AGREEMENT WITH TETRA TECH BAS, INC.
FOR LANDFILL GENERAL ENGINEERING SERVICES**
Requested Council Meeting Date: **9/25/2012**
Meeting Type: **Voting**

PURPOSE

Public Works Department staff is seeking authorization to enter into a new professional services agreement with Tetra Tech BAS, Inc. for general engineering services on projects specifically related to the City of Glendale Landfill. The new agreement allows for a contract expiration date of June 30, 2013, with an option to extend for one additional year. The purpose of this report is to request the City Manager to forward this contract with Tetra Tech BAS, Inc. to the City Council for consideration and approval.

BACKGROUND

The landfill uses professional engineering services to provide routine and special project support on an on-call basis for landfill development and operations. These services include general engineering support, design services, mapping and survey services, environmental compliance support, construction administration services, landfill development planning and permit preparation, and regulatory agency interaction.

In June 2009, Council authorized the City Manager to enter into a professional services agreement with Tetra Tech BAS, Inc. (formerly known as Bryan A. Stirrat & Associates) with a contract expiration date of June 30, 2012. This agreement provided options to extend the term of the agreement an additional two years, renewable on an annual basis; however, the provisions for renewing the agreement were not clearly or specifically defined in the 2009 agreement. Tetra Tech BAS and the City had discussed on several occasions prior to June 30, 2012 the need to exercise the options, but did not complete the formal extension process prior to the expiration date. Both parties are mutually interested in renewing the agreement under the same terms and conditions of the original agreement. This item is an effort to renew the agreement in writing. The continuation of the professional engineering services with Tetra Tech BAS through a new agreement requires City Council approval.

The contract provisions have been updated to clearly specify the renewal requirements. The term of the new agreement will be for an initial period of one year, with an option to extend for one additional year. The annual on-call engineering services outlined in this agreement will be limited to a maximum fee of \$120,000 per fiscal year.

ANALYSIS

At this time, staff recommends continuing the established professional relationship with Tetra Tech BAS for general engineering services at the Glendale Landfill. This professional services agreement provides access to external engineering expertise to help maintain efficient operations and regulatory compliance at the landfill. Tetra Tech BAS has agreed to maintain the same rate schedule provided in the 2009 agreement until the new contract expiration date of June 30, 2013. Beginning in early 2013, staff will determine if it is more desirable to extend the contract for one additional year or solicit new proposals for consultant services.

FISCAL IMPACTS

The professional services agreement with Tetra Tech BAS, Inc. for landfill general engineering services has a cost not to exceed \$120,000 annually. The Landfill Enterprise Fund operating budget includes the funds, available on an annual basis, to cover the costs of the landfill general engineering services.

PROFESSIONAL SERVICES AGREEMENT
GENERAL ENGINEERING LANDFILL CONSULTING SERVICES

This Professional Services Agreement ("Agreement") is entered into and effective between City of Glendale, an Arizona municipal corporation ("City") and Tetra Tech Bas, Inc., a California corporation, authorized to do business in the State of Arizona ("Consultant") as of the ____ day of _____, 2012 ("Effective Date").

RECITALS

- A. City intends to undertake a project for the benefit of the public and with public funds that is more fully set forth in **Exhibit A**, Project (the "Project");
- B. City desires to retain the professional services of Consultant to perform certain specific duties and produce the specific work as set forth in the attached **Exhibit B**, Project Scope of Work ("Scope");
- C. Consultant desires to provide City with professional services ("Services") consistent with best consulting or architectural practices and the standards set forth in this Agreement, in order to complete the Project; and
- D. City and Consultant desire to memorialize their agreement with this document.

AGREEMENT

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 Consultant agree as follows:

1. Key Personnel; Other Consultants and Subcontractors.

- 1.1 Professional Services. Consultant will provide all Services necessary to assure the Project is completed timely and efficiently consistent within Project requirements, including, but not limited to, working in close interaction and interfacing with City and its designated employees, and working closely with others, including other consultants or contractors, retained by City.
- 1.2 Project Team.
 - a. Project Manager.
 - (1) Consultant will designate an employee as Project Manager with sufficient training, knowledge, and experience to, in the City's opinion, complete the project and handle all aspects of the Project such that the work produced by Consultant is consistent with applicable standards as detailed in this Agreement; and
 - (2) The City must approve the designated Project Manager.
 - b. Project Team.
 - (1) The Project Manager and all other employees assigned to the Project by Consultant will comprise the "Project Team."
 - (2) Project Manager will have responsibility for and will supervise all other employees assigned to the Project by Consultant.
 - c. Discharge, Reassign, Replacement.
 - (1) Consultant acknowledges the Project Team is comprised of the same persons and roles for each as may have been identified in **Exhibit A**.
 - (2) Consultant will not discharge, reassign, replace or diminish the responsibilities of any of the employees assigned to the Project who have been approved by City

without City's prior written consent unless that person leaves the employment of Consultant, in which event the substitute must first be approved in writing by City.

- (3) Consultant will change any of the members of the Project Team at the City's request if an employee's performance does not equal or exceed the level of competence that the City may reasonably expect of a person performing those duties, or if the acts or omissions of that person are detrimental to the development of the Project.

d. Subcontractors.

- (1) Consultant may engage specific technical contractors (each a "Subcontractor") to furnish certain service functions.
- (2) Consultant will remain fully responsible for Subcontractor's services.
- (3) Subcontractors must be approved by the City.
- (4) Consultant will certify by letter that all contracts with Subcontractors have been executed incorporating requirements and standards as set forth in this Agreement.

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

3. **Consultant's Work.**

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

3.2 Licensing. Consultant warrants that:

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

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

3.4 Coordination; Interaction.

- a. For projects that the City believes requires the coordination of various professional services, Consultant will work in close consultation with City to proactively interact with any other professionals retained by City on the Project ("Coordinating Project Professionals").
- b. Subject to any limitations expressly stated in the Project Budget, Consultant will meet to review the Project, Schedule, Project Budget, and in-progress work with Coordinating Project Professionals and City as often and for durations as City reasonably considers necessary in order to ensure the timely work delivery and Project completion.

- c. For projects not involving Coordinating Project Professionals, Consultant will proactively interact with any other contractors when directed by City to obtain or disseminate timely information for the proper execution of the Project.

3.5 Work Product.

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

4. **Compensation for the Project.**

- 4.1 Compensation. Consultant's compensation for the Project, including those furnished by its Subconsultants or Subcontractors will not exceed \$120,000 as specifically detailed in **Exhibit D** ("Compensation").
- 4.2 Change in Scope of Project. The Compensation may be equitably adjusted if the originally contemplated Scope as outlined in the Project is significantly modified.
 - a. Adjustments to Compensation require a written amendment to this Agreement and may require City Council approval.
 - b. Additional services which are outside the Scope of the Project contained in this Agreement may not be performed by the Consultant without prior written authorization from the City.
- 4.3 Allowances. An "Allowance" may be identified in **Exhibit D** only for work that is required by the Scope and the value of which cannot reasonably be quantified at the time of this Agreement.
 - a. As stated in Sec. 4.1 above, the Compensation must incorporate all Allowance amounts identified in **Exhibit D** and any unused allowance at the completion of the Project will remain with City.
 - b. Consultant may not add any mark-up for work identified as an Allowance and which is to be performed by a Subconsultant.
 - c. Consultant will not use any portion of an Allowance without prior written authorization from the City.
 - d. Examples of Allowance items include, but are not limited to, subsurface pothole investigations, survey, geotechnical investigations, public participation, radio path studies and material testing.

- 4.4 Expenses. City will reimburse Consultant for certain out-of-pocket expenses necessarily incurred by Consultant in connection with this Agreement, without mark-up (the "Reimbursable Expenses"), including, but not limited to, document reproduction, materials for book preparation, postage, courier and overnight delivery costs incurred with Federal Express or similar carriers, travel and car mileage, subject to the following:
- a. Mileage, airfare, lodging and other travel expenses will be reimbursable only to the extent these would, if incurred, be reimbursed to City of Glendale personnel under its policies and procedures for business travel expense reimbursement made available to Consultant for review prior to the Agreement's execution, and which policies and procedures will be furnished to Consultant;
 - b. The Reimbursable Expenses in this Section are approved in advance by City in writing; and
 - c. The total of all Reimbursable Expenses paid to Consultant in connection with this Agreement will not exceed the "not to exceed" amount identified for Reimbursable Services in the Compensation.

5. **Billings and Payment.**

5.1 Applications.

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

5.2 Payment.

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

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

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

6. **Termination.**

6.1 For Convenience. City may terminate this Agreement for convenience, without cause, by delivering a written termination notice stating the effective termination date, which may not be less than 15 days following the date of delivery.

- a. Consultant will be equitably compensated for Services furnished prior to receipt of the termination notice and for reasonable costs incurred.
- b. Consultant will also be similarly compensated for any approved effort expended, and approved costs incurred, that are directly associated with Project closeout and delivery of the required items to the City.

- 6.2 For Cause. City may terminate this Agreement for cause if Consultant fails to cure any breach of this Agreement within seven days after receipt of written notice specifying the breach.
- a. Consultant will not be entitled to further payment until after City has determined its damages. If City's damages resulting from the breach, as determined by City, are less than the equitable amount due but not paid Consultant for Services furnished, City will pay the amount due to Consultant, less City's damages, in accordance with the provision of Section 5 above.
 - b. If City's direct damages exceed amounts otherwise due to Consultant, Consultant must pay the difference to City immediately upon demand; however, Consultant will not be subject to consequential damages more than \$1,000,000 or the amount of this Agreement, whichever is greater.

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

8. **Insurance.**

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

- a. Consultant and Subconsultants and Subcontractors. Consultant, and each Subconsultant or Subcontractor performing work or providing materials related to this Agreement must procure and maintain the insurance coverages described below (collectively referred to herein as the "Consultant's Policies"), until each Party's obligations under this Agreement are completed.
- b. General Liability.
 - (1) Consultant must at all times relevant hereto carry a commercial general liability policy with a combined single limit of at least \$5,000,000 per occurrence and \$5,000,000 annual aggregate limit.
 - (2) Subconsultants and Subcontractors must at all times relevant hereto carry a general commercial liability policy with a combined single limit of at least \$1,000,000 per occurrence.
 - (3) This commercial general liability insurance must include independent contractors' liability, contractual liability, broad form property coverage, XCU hazards if requested by the City, and a separation of insurance provision.
 - (4) These limits may be met through a combination of primary and excess liability coverage.
- c. Professional Liability. Consultant must maintain a professional errors and omissions liability policy providing a minimum limit of \$5,000,000 for each claim and a \$5,000,000 annual aggregate limit.
- d. Auto. A business auto policy providing a liability limit of at least \$1,000,000 per accident for Consultant and \$1,000,000 per accident for Subconsultants and Subcontractors and covering owned, non-owned and hired automobiles.
- e. Workers' Compensation and Employer's Liability. Consultant must also maintain a workers' compensation and employer's liability policy providing at least the minimum benefits required by Arizona law.
- f. Notice of Changes. Consultant's Policies must provide for not less than 30 days' advance written notice to City Representative of:

- (1) Cancellation or termination of Consultant's Policies;
- (2) Reduction of the coverage limits of any of Consultant's Policies; and
- (3) Any other material modification of Consultant's Policies related to this Agreement.

g. Certificates of Insurance.

- (1) Within 10 business days after the execution of the Agreement, Consultant must deliver to City Representative certificates of insurance for each of Consultant's Policies, which will confirm the existence or issuance of Consultant's Policies in accordance with the provisions of this Section, and copies of the endorsements of Consultant's Policies in accordance with the provisions of this Section.
- (2) City is and will be under no obligation either to ascertain or confirm the existence or issuance of Consultant's Policies, or to examine Consultant's Policies, or to inform Consultant, Subconsultant, or Subcontractor in the event that any coverage does not comply with the requirements of this Section.
- (3) Consultant's failure to secure and maintain Consultant's Policies and to assure Consultant's Policies as required will constitute a material default under the Agreement.

h. Other Contractors or Vendors.

- (1) Other contractors or vendors that may be contracted with in connection with the Project must procure and maintain insurance coverage as is appropriate to their particular contract.
- (2) This insurance coverage must comply with the requirements set forth above for Consultant's Policies (e.g., the requirements pertaining to endorsements to name the parties as additional insured parties and certificates of insurance).

i. Policies. Except with respect to workers' compensation and Consultant's professional liability coverages, City must be named and properly endorsed as additional insureds on all liability policies required by this Section.

- (1) The coverage extended to additional insureds must be primary and must not contribute with any insurance or self insurance policies or programs maintained by the additional insureds.
- (2) All insurance policies obtained pursuant to this Section must be with companies legally authorized to do business in the State of Arizona and reasonably acceptable to all parties.

8.2 Subconsultants and Subcontractors.

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

8.3 Indemnification.

- a. To the fullest extent permitted by law, Consultant must defend, indemnify, and hold harmless City and its elected officials, officers, employees and agents (each, an

"Indemnified Party," collectively, the "Indemnified Parties") for, from, and against any and all claims, demands, actions, damages, judgments, settlements, personal injury (including sickness, disease, death, and bodily harm), property damage (including loss of use), infringement, governmental action and all other losses and expenses, including attorneys' fees and litigation expenses (each, a "Demand or Expense" collectively "Demands or Expenses") asserted by a third-party (i.e. a person or entity other than City or Consultant) and that arises out of or results from the breach of this Agreement by the Consultant or the Consultant's negligent actions, errors or omissions (including any Subconsultant or Subcontractor or other person or firm employed by Consultant), whether sustained before or after completion of the Project.

- b. This indemnity and hold harmless provision applies even if a Demand or Expense is in part due to the Indemnified Party's negligence or breach of a responsibility under this Agreement, but in that event, Consultant will be liable only to the extent the Demand or Expense results from the negligence or breach of a responsibility of Consultant or of any person or entity for whom Consultant is responsible.
- c. Consultant is not required to indemnify any Indemnified Parties for, from, or against any Demand or Expense resulting from the Indemnified Party's sole negligence or other fault solely attributable to the Indemnified Party.

9. Immigration Law Compliance.

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

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

11. Notices.

11.1 A notice, request or other communication that is required or permitted under this Agreement (each a "Notice") will be effective only if:

- a. The Notice is in writing; and
- b. Delivered in person or by overnight courier service (delivery charges prepaid), certified or registered mail (return receipt requested).
- c. Notice will be deemed to have been delivered to the person to whom it is addressed as of the date of receipt, if:
 - (1) Received on a business day before 5:00 p.m. at the address for Notices identified for the Party in this Agreement by U.S. Mail, hand delivery, or overnight courier service; or
 - (2) As of the next business day after receipt, if received after 5:00 p.m.
- d. The burden of proof of the place and time of delivery is upon the Party giving the Notice.
- e. Digitalized signatures and copies of signatures will have the same effect as original signatures.

11.2 Representatives.

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

Keith A. Johnson, P.E.
Tetra Tech BAS, Inc.
3822 East University Drive, Suite 2
Phoenix, Arizona 85034

- b. City. City's representative ("City's Representative") authorized to act on City's behalf, and his or her address for Notice delivery is:

City of Glendale
c/o Stuart Kent, Public Works Director
6210 West Myrtle Avenue, Suite 111
Glendale, Arizona 85301

With required copy to:

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

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

- c. Concurrent Notices.
 - (1) All notices to City's representative must be given concurrently to City Manager and City Attorney.
 - (2) A notice will not be deemed to have been received by City's representative until the time that it has also been received by the City Manager and the City Attorney.
 - (3) City may appoint one or more designees for the purpose of receiving notice by delivery of a written notice to Consultant identifying the designee(s) and their respective addresses for notices.

- d. Changes. Consultant or City may change its representative or information on Notice, by giving Notice of the change in accordance with this Section at least ten days prior to the change.
12. **Financing Assignment.** City may assign this Agreement to any City-affiliated entity, including a non-profit corporation or other entity whose primary purpose is to own or manage the Project.
13. **Entire Agreement; Survival; Counterparts; Signatures.**
- 13.1 **Integration.** This Agreement contains, except as stated below, the entire agreement between City and Consultant and supersedes all prior conversations and negotiations between the parties regarding the Project or this Agreement.
 - a. Neither Party has made any representations, warranties or agreements as to any matters concerning the Agreement's subject matter.
 - b. Representations, statements, conditions, or warranties not contained in this Agreement will not be binding on the parties.
 - c. Inconsistencies between the solicitation, any addenda attached to the solicitation, the response or any excerpts attached as **Exhibit A**, and this Agreement, will be resolved by the terms and conditions stated in this Agreement.
 - 13.2 **Interpretation.**
 - a. The parties fairly negotiated the Agreement's provisions to the extent they believed necessary and with the legal representation they deemed appropriate.
 - b. The parties are of equal bargaining position and this Agreement must be construed equally between the parties without consideration of which of the parties may have drafted this Agreement.
 - c. The Agreement will be interpreted in accordance with the laws of the State of Arizona.
 - 13.3 **Survival.** Except as specifically provided otherwise in this Agreement, each warranty, representation, indemnification and hold harmless provision, insurance requirement, and every other right, remedy and responsibility of a Party, will survive completion of the Project, or the earlier termination of this Agreement.
 - 13.4 **Amendment.** No amendment to this Agreement will be binding unless in writing and executed by the parties. Electronic signature blocks do not constitute execution for purposes of this Agreement. Any amendment may be subject to City Council approval.
 - 13.5 **Remedies.** All rights and remedies provided in this Agreement are cumulative and the exercise of any one or more right or remedy will not affect any other rights or remedies under this Agreement or applicable law.
 - 13.6 **Severability.** If any provision of this Agreement is voided or found unenforceable, that determination will not affect the validity of the other provisions, and the voided or unenforceable provision will be reformed to conform with applicable law.
 - 13.7 **Counterparts.** This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.
14. **Term.** The term of this Agreement commences upon the Effective Date and continues for a one-year initial period. The City may, at its option, extend the term of this Agreement an additional one year. Consultant will be notified in writing by the City of its intent to extend the Agreement period at least 30 calendar days prior to the expiration of the original or any renewal Agreement period. There are no automatic renewals of this Agreement.
15. **Dispute Resolution.** Each claim, controversy and dispute (each a "Dispute") between Consultant and City will be resolved in accordance with **Exhibit E**. The final determination will be made by the City.

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	Scope of Work
Exhibit C	Schedule
Exhibit D	Compensation
Exhibit E	Dispute Resolution

(Signatures appear on the following page.)

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

City of Glendale,
an Arizona municipal corporation

By: Horatio Skeete
Its: Acting City Manager

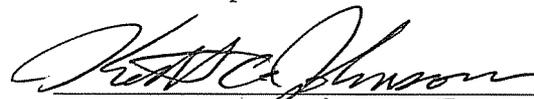
ATTEST:

Pam Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

Craig Tindall, City Attorney

Tetra Tech BAS, Inc.,
a California corporation



By: ~~Jorge Casado~~ KEITHA JOHNSON, P.E.
Its: ~~Controller~~ BRANCH MANAGER

EXHIBIT A
Professional Services Agreement

PROJECT

The Consultant shall provide general engineering services including design services, engineering support, environmental compliance support and construction administration services. Activities under this contract are specific to the City of Glendale Landfill, and will be identified within separate task orders of varying size and complexity. Task orders will be individually managed, with independent schedules, budgets, objectives, and deliverables.

EXHIBIT B
Professional Services Agreement

SCOPE OF WORK

Consulting Services Description

The following is a list of landfill engineering task categories that may be requested by the City. The list is not comprehensive and the City reserves the right to add related engineering services as necessary.

1. Planning and evaluation related to master plan development, cost analysis, waste modeling and statistical optimization and utilization techniques, and environmental regulatory compliance.
2. Standard calculations for landfill operation and optimization such as waste quantity estimates (e.g. tonnage, volume, air space), soil to waste ratios, waste densities, and environmental/air quality emissions.
3. Routine design activities including geotechnical and hydrological studies, construction cost projections and management oversight on designed projects such as waste cell sequencing, leachate collection and pumping, stormwater management and landfill gas.
4. Document preparation including permit applications and modifications, construction plans, design reports, cost estimates, feasibility studies, facility plans and environmental plans, demonstrations and bid documents and specifications.
5. Meetings and presentations including attendance and/or representation of the City at various public and governmental agency meetings.
6. Regulatory agency interaction and liaison requiring robust knowledge of federal, state and local agency policies, guidelines and regulations.

Scope of Work

The following information is a general description of the scope of work that the Consultant will be required to perform. The services listed in this scope of work may include, but are not limited to, the following:

A. Planning, Study, Design, GIS/Mapping/Survey Services:

1. Attend Project meetings as necessary to maintain the Project Budget and schedule. Meetings may include:
 - a. Meetings with Field Operations and/or City Engineering Department's Project Team to determine scope of work and deliverables.
 - b. Meetings required for obtaining permits.
 - c. Meetings with utility companies.
 - d. Meetings with general public, property and business owners, etc.
2. Assist with the coordination of private, public and City utilities (i.e., APS, SRP, QWEST, Southwest Gas, Cox Communications, City Information Technology Department, Water Services Department, etc.) regarding standard utility issues;
3. Prepare and maintain a design plan and schedule;
4. Assist in the permitting processes;
5. Preparation of Design Concept Reports or Project Studies;
6. Field work as necessary to support reports, studies, designs or regulated environmental compliance programs;
7. Prepare bid documents for construction;
8. Advise the City regarding use of construction materials;

9. Coordinate the review of plans or studies with appropriate local, State, and Federal authorities, including adjoining municipalities and other authorities having jurisdiction.

B. Post-Design and Pre-Construction Services:

1. Perform as lead to acquire necessary construction permits from authorities having jurisdiction;
2. Provide support for pre-bid and bidding phases including attendance at pre-bid and preconstruction conferences (s) with the City and other interested parties;
3. Review, research and comment on bidder's responses including recommendation of award;
4. Attend Project meetings as necessary to maintain the Project Budget and schedule. Meetings may include;
 - a. Meetings with Field Operations and/or City Engineering Department's Project Team to review schedule and deliverables.
 - b. Meetings required for obtaining permits.

C. Construction Administrative Services:

1. Provide Resident Engineer, Project management and appropriate Project controls for construction oversight;
2. Provide on-site personnel using customary methods for observation and reporting of daily contractor activities;
3. Submit all questions regarding the plans and specifications to the City of Glendale Engineering Department. If appropriate, make recommendations regarding requests for substitutions;
4. Coordinate with various City departments and other agencies, including Arizona Department of Environmental Quality, Maricopa County Departments of Air Quality or Environmental Services and utility companies;
5. Coordinate the installation of any materials/items provided or not provided under the construction contract;
6. Schedule and manage contractor operations (special permits will be required for work during non-standard work hours);
7. Provide all quality assurance controls and testing for both on-site and off-site work;
8. Ensure that all federal, state and local permits required for construction (i.e., AZPDES, etc.) are obtained;
9. Address all construction deficiencies in the work or materials as directed by the City Engineering Department;
10. Attend all periodic (e.g. weekly) construction Project meetings;
11. Provide value engineering proposals that may accelerate the construction schedule or reduce construction costs;
12. Maintain a running deficiency list during the course of the Project. Address all deficiencies before requesting a final inspection;
13. Maintain the record as-built drawings. The record as-built drawings may be reviewed each month by the City Engineering Department. The monthly progress payment will not be approved until the City Engineering Department approves or waives review in writing of the current record as-built drawings;
14. Submit the required number of Project closeout documents for the City Engineering Department's review. The Project will not be closed out until the City receives the required record as-built drawings, warranty and guarantee documents, lien waivers, product manuals, maintenance and operation manuals, and any spare parts and training required. The City Engineering Department will review the final project closeout documents.

EXHIBIT C
Professional Services Agreement

SCHEDULE

(Cover Page)
Not Applicable

EXHIBIT D
Professional Services Agreement

COMPENSATION

METHOD AND AMOUNT OF COMPENSATION

Compensation shall be an hourly rate plus allowable reimbursable expenses.

NOT-TO-EXCEED AMOUNT

The total amount of compensation paid to Consultant for full completion of all work required by the Project during the entire term of the Project must not exceed \$120,000.

DETAILED PROJECT COMPENSATION

The hourly Rate Sheet is attached.

GLENDALE

BRYAN A. STIRRAT & ASSOCIATES
3822 East University Dr., Suite 2
Phoenix, Arizona 85040
(602) 267-0336

SCHEDULE OF CHARGES

<u>PERSONNEL</u>	<u>HOURLY RATE</u>
Principal (P)	\$180
Principal Engineer (PRE)	\$170
Division Engineer (DE)	\$166
Chief Engineer (CE)	\$157
Senior Project Manager (SM)	\$157
Project Manager (PM)	\$138
Senior Regulatory Compliance Specialist (SRS)	\$128
Senior Project Engineer (SPE)	\$138
Project Engineer (PE)	\$114
Engineer I (E-I)	\$93
Project Geologist (PG)	\$73
Sr. Electrical Engineer (SEE)	\$138
Electrical Engineer (EE)	\$111
Senior Landfill Gas Designer (147)	\$147
LFG Designer (LD)	\$104
Construction Manager (CM)	\$119
Environmental Specialist Supervisor (ESS)	\$116
Environmental Specialist II (ES-II)	\$98
Environmental Specialist I (ES-I)	\$93
Engineering Technician V (ET-V)	\$73
Engineering Technician II (ET-II)	\$54
Engineering Technician I (ET-I)	\$52
Project Coordinator (PC)	\$86
Administrative Assistance (ADA)	\$61
Office Services Clerk (OS)	\$55
Chief of Survey Parties (CSP)	\$123
2-Man Survey Party (SP-2M)	\$224
1-Man Survey Party with GPS (1M-GPS)	\$172
Court Appearance (Expert Witness, Deposition, etc.)	1.5 x Hourly Rate

Overtime Premium is 50% of Personnel Hourly Rate

EXHIBIT E
Professional Services Agreement

DISPUTE RESOLUTION

1. Disputes.

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

2. Arbitration.

- 2.1 Rules. If the parties are unable to resolve the Dispute by negotiation within 30 days from the Dispute notice, and unless otherwise informal discussions are extended by the mutual agreement, the Dispute will be decided by binding arbitration in accordance with Construction Industry Rules of the AAA, as amended herein. Although the arbitration will be conducted in accordance with AAA Rules, it will not be administered by the AAA, but will be heard independently.
 - a. The parties will exercise best efforts to select an arbitrator within 5 business days after agreement for arbitration. If the parties have not agreed upon an arbitrator within this period, the parties will submit the selection of the arbitrator to one of the principals of the mediation firm of Scott & Skelly, LLC, who will then select the arbitrator. The parties will equally share the fees and costs incurred in the selection of the arbitrator.
 - b. The arbitrator selected must be an attorney with at least 15 years experience with commercial construction legal matters in Maricopa County, Arizona, be independent, impartial, and not have engaged in any business for or adverse to either Party for at least 10 years.
- 2.2 Discovery. The extent and the time set for discovery will be as determined by the arbitrator. Each Party must, however, within ten (10) days of selection of an arbitrator deliver to the other Party copies of all documents in the delivering party's possession that are relevant to the dispute.

- 2.3 Hearing. The arbitration hearing will be held within 90 days of the appointment of the arbitrator. The arbitration hearing, all proceedings, and all discovery will be conducted in Glendale, Arizona unless otherwise agreed by the parties or required as a result of witness location. Telephonic hearings and other reasonable arrangements may be used to minimize costs.
- 2.4 Award. At the arbitration hearing, each Party will submit its position to the arbitrator, evidence to support that position, and the exact award sought in this matter with specificity. The arbitrator must select the award sought by one of the parties as the final judgment and may not independently alter or modify the awards sought by the parties, fashion any remedy, or make any equitable order. The arbitrator has no authority to consider or award punitive damages.
- 2.5 Final Decision. The Arbitrator's decision should be rendered within 15 days after the arbitration hearing is concluded. This decision will be final and binding on the Parties.
- 2.6 Costs. The prevailing party may enter the arbitration in any court having jurisdiction in order to convert it to a judgment. The non-prevailing party will pay all of the prevailing party's arbitration costs and expenses, including reasonable attorney's fees and costs.

3. **Services to Continue Pending Dispute.** Unless otherwise agreed to in writing, Consultant must continue to perform and maintain progress of required Services during any Dispute resolution or arbitration proceedings, and City will continue to make payment to Consultant in accordance with this Agreement.

4. **Exceptions.**

- 4.1 Third Party Claims. City and Consultant are not required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defense of a third-party who is not obligated by contract to arbitrate disputes with City and Consultant.
- 4.2 Liens. City or Consultant may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice, but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Arizona Law, including, without limitation, an action under A.R.S. § 33-420, without the necessity of initiating or exhausting the procedures of this Exhibit.
- 4.3 Governmental Actions. This Exhibit does not apply to, and must not be construed to require arbitration of, any claims, actions or other process filed or issued by City of Glendale Building Safety Department or any other agency of City acting in its governmental permitting or other regulatory capacity.



CITY COUNCIL REPORT

Meeting Date: **9/25/2012**
Meeting Type: **Voting**
Title: **AUTHORIZATION TO PURCHASE TASERS**
Staff Contact: **Rick St. John, Interim Assistant Police Chief**

Purpose and Recommended Action

This is a request for City Council to approve the purchase of 435 Taser devices to replace the Police Department's current Taser devices. These units will be purchased from Taser International in an amount not to exceed \$596,430.

It is staff's recommendation for Council to approve the purchase of 435 Taser devices from Taser International in an amount not to exceed \$596,430.

Background Summary

The Taser is essential to Glendale Police Department operations as a safer alternative to other uses of force to incapacitate dangerous, combative, or high-risk subjects who post a threat to law enforcement officers, innocent citizens, or themselves. The Police Department has issued a Taser to every Police Officer and Detention Officer since 2003.

Previous Related Council Action

The City Council approved a budget supplemental request in FY 2007-08 for total one-time expenses in the amount of \$92,499 with on-going funding in the amount of \$114,597 to be utilized for the purchase of related equipment (batteries, cartridges, holsters) and for the replacement and repair of units as necessary. Due to budget reductions, the on-going amount has been reduced to \$50,000 annually.

Budget and Financial Impacts

Cost	Fund-Department-Account
\$596,430	1860-32030-521000



CITY COUNCIL REPORT

Capital Expense? Yes No

Budgeted? Yes No

Requesting Budget or Appropriation Transfer? Yes No

If yes, where will the transfer be taken from?

Attachments

Staff Report

Agreement



STAFF REPORT

To: **Horatio Skeete, Acting City Manager**
From: **Rick St. John, Interim Assistant Police Chief**
Item Title: **AUTHORIZATION TO PURCHASE TASERS**
Requested Council Meeting Date: **9/25/2012**
Meeting Type: **Voting**

PURPOSE

This report contains information on the proposed purchase from Taser International of a complete inventory (435) of the handheld Taser device in an amount not to exceed \$596,430. The purpose of this report is to request the City Manager forward this item to the City Council for their consideration and approval.

BACKGROUND

This is a request to purchase equipment to replace the Police Department's current Taser devices. The Taser is essential to Police operations as a safer alternative to other uses of force to incapacitate dangerous, combative, or high-risk subjects who pose a threat to law enforcement officers, innocent citizens, or themselves. The Police Department has issued a Taser to every Police Officer and Detention Officer since 2003.

ANALYSIS

Taser International has recently publicized their stance that the useful life of a Taser is 5 years, and that they will no longer provide liability support for Tasers that are older than their recommended 5 year useful life. Understanding the impact of this statement, Taser International has offered to buy back any Taser, regardless of age, at a greatly reduced price so that police departments are better able to replace their existing Taser inventories with Tasers that are within their recommended useful life.

Our Police Department has a Taser inventory of just under 500 units, of which, just under 400 are more than 5 years old and outside the recommended useful life. If we don't make this purchase and continue to use Tasers that are past the recommended useful life we will lose warranty protection from Taser International. Our other option would be to stop using Tasers; which may expose the city to liability for not having this less-lethal force option available. For this reason I

will be recommending that City Council approve the purchase from Taser International for a complete inventory of the Taser handheld device in an amount not to exceed \$596,430.

FISCAL IMPACTS

The funding is available in the Police Department's RICO account.



To: City of Glendale, Arizona

Prepared By: Brian Black

Expiration Date: October 19, 2012

Final Quote:

Product Name	Model #	Qty	Unit Price	Total Price
CARTRIDGE, PERFORMANCE, SMART, 25'	22151	870	\$28.95	\$25,186.50
CARTRIDGE, PERFORMANCE, SMART, TRAINING, 25'	22157	870	\$27.95	\$24,316.50
HANDLE, BLACK, CLASS III, X2	22002	435	\$950.00	\$413,250.00
HOLSTER, BLACKHAWK, RIGHT, X2,	22501	360	\$59.95	\$21,582.00
HOLSTER, BLACKHAWK, LEFT, X2,	22504	75	\$59.95	\$4,496.25
TPFM, BATTERY PACK, TACTICAL, PINKY EXTENDER, X2	22012	435	\$49.95	\$21,728.25
WARRANTY, 5 YEAR, X2	22014	435	\$299.99	\$130,495.65
X26 Trade-in Program	Misc	435	(\$210.00)	(\$91,350.00)
Subtotal:				\$549,705.15
Tax:				\$46,724.94
Shipping and Handling				-
Grand Total:				\$596,430.09

This Quote is subject to *TASER International, Inc.'s Sales Terms and Conditions for Direct Sales to End User Purchasers for Sales with Financing* (attached) and the following terms:

The first payment of \$119,286.02 is due 10 calendar days after the receipt of the above product.

The remaining \$477,144.07 financed amount is to be paid in 4 annual installments as follows:

October 19, 2013	\$119,286.02
October 19, 2014	\$119,286.02
October 19, 2015	\$119,286.02
October 19, 2016	\$119,286.02

X26 ECD CREDIT. TASER is providing to the City a credit for the destruction of its current inventory of TASER® X26™ ECDs as outlined above in the Quote. City agrees that its execution of this purchase constitutes its written notice to TASER of its intent and agreement to destroy its current inventory of TASER X26 ECDs. Within 15 business days after the City's execution of a purchase order, the City must provide to TASER a list of all of the serial numbers of the X26 ECDs that will be returned to TASER and at that time the remaining warranties, if any, on the City's TASER X26 ECDs will be voided by TASER. No later than December 31, 2012, the City will ship, at its sole expense, all X26 ECDs in its possession back to TASER for destruction. Because the City is receiving a credit for the trade-in of its current X26 ECDs as consideration for the reduced payments, the City will pay TASER \$210.00 for

every X26 ECD handle that the City fails to return to TASER December 31, 2012.

PRICE LOCK PURCHASE OPTION AND ECD INVENTORY REPLACEMENT.

a. Within 6 months of the final payment due date or upon full payment, whichever comes first, if the City provides written notice to TASER at sales@taser.com, the City has the option to enter into a Price Lock Purchase Option and ECD Inventory Replacement Program (the "Price Lock & Replacement Program"). If City enters into the Price Lock & Replacement Program then it will receive 435 new TASER X2 ECDs and other new equipment as detailed in the Quote above, or comparable ECDs and equipment, at TASER's sole discretion (collectively the "Replacement Equipment"), after the City returns all of the X2 ECDs provided under this Quote. Only one Price Lock & Replacement Program is allowed under this Quote.

b. If City chooses the Price Lock & Replacement Program then, the City agrees to pay to TASER \$687,780.10 in five yearly advance installments of \$137,556.02 each. The first yearly installment payment is due on the 30th day after the initial receipt of the Replacement Equipment. The remaining yearly installment payments are due on the first day of the calendar month beginning on the first day of the first full year anniversary (for example, if the first payment is due on June 30, 2017, then the next yearly installment will be due on June 30, 2018).

c. All other terms of this Quote and *TASER International, Inc.'s Sales Terms and Conditions for Direct Sales to End User Purchasers for Sales with Financing* will remain the same for the Price Lock & Replacement Program.

d. The Price Lock & Replacement Program is subject to acceptance by TASER and completion of financing by the City for the Price Lock & Replacement Program.

This sale is subject to acceptance by TASER and completion of financing by the City.

Quote Acceptance:

Printed Name	_____	Date	_____
Signature	_____	PO#:	_____

**TASER International, Inc.'s Sales Terms and Conditions
for Direct Sales to End User Purchasers for Sales with Financing
(Effective July 9, 2012)**

These Sales Terms and Conditions apply to your purchase of all TASER International, Inc. ("TASER") products purchased directly from TASER. Goods sold by TASER are expressly subject to and conditioned upon the terms and conditions set forth below. By accepting delivery of the product, you accept and are bound to these Sales Terms and Conditions. Any different or additional terms set forth by you, whether in your purchase order or another communication, are expressly objected to and will not be binding on TASER unless agreed to in writing by an authorized officer of TASER.

Acceptance of Order. Acceptance of any order is subject to financing and credit approval and acceptance of order by TASER.

Product Trade-In Credits. To receive any applicable product trade-in credit toward your purchase, you must comply with the product trade-in program and any terms specifically stated in the quote.

Final Sales. All sales are final and no refunds are allowed for TASER law enforcement, military, and corrections products, cartridges and accessories.

Payment Terms. Payment for the products will be made by credit card, wire transfer, or some other prearranged payment method unless credit terms have been agreed to by TASER. Invoices are due and payable in accordance with your completed and approved financing option. TASER may invoice parts of an order separately. Your order is subject to cancellation by TASER, in TASER's sole discretion. TASER is not responsible for pricing, typographical, or other errors in any offer by TASER and reserves the right to cancel any orders resulting from such errors.

Taxes. Unless you provide TASER with a valid and correct tax exemption certificate applicable to your purchase of product and the product ship-to location, you are responsible for sales and other taxes associated with the order.

Shipping; Title; Risk of Loss. Shipping and handling are additional unless otherwise expressly indicated at the time of sale. TASER reserves the right to make partial shipments unless specifically stated otherwise on your purchase order. Products may ship from multiple locations. Title and risk of loss passes from TASER to you on upon delivery to the common carrier by TASER. Any loss or damage that occurs during shipment is your responsibility. You must promptly file claims for damaged items with the freight carrier. Shipping dates are estimates only. Delivery is typically 2-6 weeks after receipt of order or payment.

Excusable delays. TASER will use commercially reasonable efforts to deliver all products ordered by you as soon as reasonably practicable. In the event of interruption of any delivery due to causes beyond the reasonable control of TASER, including but not limited to force majeure, fire, labor disturbances, riots, accidents, or inability to obtain necessary materials or components, TASER has the right, in its sole discretion and upon oral or written notice to you, to delay or terminate the delivery.

Not For Resale or Export. You agree and represent that you are buying only for your own use only, and not for resale or export. Shipping TASER products out of the United States is

restricted by U.S. federal law and neither the TASER product nor its technology can be exported out of the U.S. without a validated export license issued by the U.S. Department of Commerce and a signed BIS-711 on file with TASER.

AFID Registration. For the TASER ECDs and TASER cartridges, you must complete the product registration on www.taser.com.

SPARE ECD PROGRAM. If your purchase includes a spare ECD program (Spare Program), then you must return to TASER, through TASER's RMA process, any broken or non-functioning ECD for which a spare ECD is utilized during the term of your Spare Program. TASER will refresh the spare ECDs to ensure no down time for non-functioning units during the term of your Spare Program. Within 30 days of the end of the term of your Spare Program you must return to TASER all unused spare ECDs. You will be invoiced for and are obligated to pay to TASER the MSRP for all spare ECDs not returned to TASER in accordance with your Spare Program.

Regulations and Restrictions. You agree to comply with all applicable laws, codes and license requirements, and controls of the United States and other applicable jurisdictions in connection with the use of TASER products including your acceptance of responsibility for the payment of any relevant taxes or duties. Please go to the TASER website (www.TASER.com) or contact TASER's Customer Service Department for a list of known regulations and restrictions regarding the sale, possession, and use of TASER products. You are responsible for understanding and verifying all local laws, regulations, and restrictions.

Warranty; Exclusions and Limitations; Release. See TASER's website (www.TASER.com) for warranty provisions, warranty exclusions, release and any limitations of liability. **To the extent permitted by law, TASER's warranty and the remedies set forth in that warranty are exclusive and in lieu of all other warranties, remedies, and conditions, whether oral or written, statutory, express or implied, as permitted by applicable law, TASER specifically disclaims any and all statutory or implied warranties, including without limitation, warranties of merchantability, design, fitness for a particular purpose, arising from a course of dealing, usage or trade practice, warranties against hidden or latent defects, and warranties against patent infringement. If TASER cannot lawfully disclaim statutory or implied warranties than to the extent permitted by law, all such warranties are limited to the duration of the express warranty described above and limited to the other provisions contained in the warranty document.**

The remedies provided for in the warranty are expressly in lieu of any other liability TASER may have. TASER's cumulative liability to any party for any loss or damage resulting from any claims, demands, or actions arising out of or relating to any TASER product will not exceed the purchase price paid to TASER by Buyer for the product, notwithstanding third party purchases. In no event will TASER be liable for any direct, special, indirect, incidental, exemplary, punitive or consequential damages, however caused, whether for breach of warranty, breach of contract, negligence, strict liability, tort or under any other legal theory, even if TASER has been advised of the possibility of those damages or if those damages could have been reasonably foreseen, and notwithstanding any failure of essential purpose of any exclusive remedy provided in the warranty. Some local laws do not allow for the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you. TASER disclaims any representation that it will be able to repair any product under this warranty or make a product exchange without risk to or loss of programs or data.

Buyer agrees to release and save TASER harmless from any and all liability arising out of the deployment, use or misuse of the TASER product, including any claims for damages and personal injuries. Buyer agrees to assume all risks of loss and all liability for any damages and personal injury which may result from the deployment, use or misuse of the TASER product. TASER is not liable for the failure of the TASER product to perform and TASER is not liable for any claims made by a third party or by Buyer for or on behalf of a third party.

Product Warnings. See TASER's website at www.TASER.com for the most current product warnings.

Proprietary information. You agree that TASER has and claims various proprietary rights in the hardware, firmware, software, and the integration of ancillary materials, knowledge, and designs that constitute TASER products, and that you will not directly or indirectly cause any proprietary rights to be violated.

Design changes. TASER reserves the right to make changes in design of any of its products without incurring any obligation to notify you or to make the same change to products previously purchased.

Severable Provisions. If any provision of these Sales Terms and Conditions is found by a court of competent jurisdiction to be invalid or unenforceable, then the remainder will have their full force and effect and the invalid provision will be modified or partially enforced by the court to the maximum extent permitted by law to effectuate the purpose of this agreement.

Entire Agreement. These Sales Terms and Conditions constitute the entire agreement between the parties. These Sales Terms and Conditions supersede and replace any prior agreement or understanding between the parties, including any oral representations concerning the subject matter of this agreement. Any prior or extrinsic representations or agreements are intended to be discharged or nullified.

'Protect Life' is a trademark of TASER International, Inc., and TASER® and © are registered trademarks of TASER International, Inc., registered in the U.S. © 2012 TASER International, Inc. All rights reserved.

ADDENDUM

The following addendum supplements the Final Price Quote and Agreement (incorporating the *Taser International, Inc.'s Sales Terms and Conditions for Direct Sales to End User Purchasers for Sales with Financing*, attached thereto) expiring on October 19, 2012, which Taser International, Inc. ("Vendor") provided to City of Glendale ("City"), and which the City accepted, as follows:

1. **Immigration Law Compliance.** Vendor, and on behalf of any allowable 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.
 - 1.1 Any breach of warranty of this section is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
 - 1.2 City retains the legal right to inspect the papers of any Vendor or subcontractor employee who performs work under this Agreement to ensure that the Vendor or any subcontractor is compliant with the warranty under this section.
 - 1.3 City may conduct random inspections, and upon request of City, Vendor must provide copies of papers and records of Vendor demonstrating continued compliance with the warranty under this section.
 - a. Vendor agrees to keep papers and records available for inspection by City during normal business hours.
 - b. Vendor must 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.
 - 1.4 Vendor must incorporate into any subcontract agreements that are allowable under its Agreement, if any, the same obligations imposed upon Vendor and expressly accrue those obligations directly to the benefit of City.
 - 1.5 Vendor must require any allowable 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 City.
 - 1.6 Vendor warranty and obligations under this section to City will continue throughout the term of this Agreement or until such time as City determines, in its sole discretion, that Arizona law has been modified and that compliance with this section is no longer required.
 - 1.7 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.
2. **Prohibition on Business with Iran and Sudan.** Vendor certifies under A.R.S. §§ 35-391 *et seq.* and 35-393 *et seq.* that it does not have, and during the term of this Agreement will not have, "scrutinized" business operations, as defined in the preceding statutory sections, in the countries of Sudan or Iran.

ACKNOWLEDGEMENT:

City of Glendale

Taser International, Inc.

By: _____
Its: _____

By: 
Its: Assistant General Counsel



CITY COUNCIL REPORT

Meeting Date: **9/25/2012**
Meeting Type: **Voting**
Title: **ABANDONMENT OF AN INGRESS/EGRESS AND UTILITY EASEMENT FOR CARMEL ESTATES**
Staff Contact: **Gregory Rodzenko, P.E., Acting City Engineer**

Purpose and Recommended Action

This is a request for City Council to adopt an ordinance authorizing the City Manager to abandon an ingress/egress and utility easement at 54th Lane and Topeka Drive for the Carmel Estates development. Staff is requesting Council waive reading beyond the title and adopt an ordinance authorizing the easement abandonment.

Background Summary

Mandalay Communities, Inc. has requested the abandonment of an approximately 4,770 square foot ingress/egress and public utility easement located along the south side of Topeka Drive at 54th Lane to accommodate the development of the Carmel Estates subdivision site. There are no public facilities within the easement and therefore, it provides no value to the city.

Attachments

Staff Report

Ordinance

Map



STAFF REPORT

To: **Horatio Skeete, Acting City Manager**
From: **Gregory Rodzenko, P.E., Acting City Engineer**
Item Title: **ABANDONMENT OF AN INGRESS/EGRESS AND UTILITY EASEMENT FOR CARMEL ESTATES**
Requested Council Meeting Date: **9/25/2012**
Meeting Type: **Voting**

PURPOSE

The purpose of this report is to request the City Manager forward this item for City Council action/consideration. Staff plans to request the City Council to adopt an ordinance authorizing the abandonment of an ingress/egress and utility easement at 54th Lane and Topeka Drive for the Carmel Estates development.

BACKGROUND

Mandalay Communities, Inc. has requested the abandonment of an approximately 4,770 square foot ingress/egress and public utility easement located along the south side of Topeka Drive at 54th Lane to accommodate the development of the Carmel Estates subdivision site. There are no public facilities within the easement and therefore it provides no value to the city.

ANALYSIS

- Staff recommends abandonment of an ingress/egress and utilities easement at 54th Lane and Topeka Drive for the Carmel Estates development.
- There will be no impact on any city departments, staff, or service levels as a result of this action.
- All City departments and utility companies have reviewed and approved the abandonment request

FISCAL IMPACTS

There are no costs incurred as a result of this action.

ORDINANCE NO. 2815 NEW SERIES

AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE ABANDONMENT OF AN INGRESS/EGRESS AND UTILITY EASEMENT AT 54TH LANE AND TOPEKA DRIVE FOR THE CARMEL ESTATES DEVELOPMENT TO THE OWNERS OF RECORD OF THE ABUTTING PROPERTY; AND DIRECTING THE CITY CLERK TO RECORD A CERTIFIED COPY OF THIS ORDINANCE.

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

SECTION 1. That the ingress/egress and utility easement at 54th Lane and Topeka Drive for the Carmel Estates Development is hereby abandoned to the underlying property owners as their interest may appear in the records of the Maricopa County Recorder's Office on the date upon which this ordinance is recorded and that title to the released property shall vest as provided by law. The legal description of said easement is as follows:

(See Exhibit "A" attached hereto
and incorporated herein by this reference.)

SECTION 2. That the City Clerk be instructed and authorized to forward a certified copy of this ordinance for recording to the Maricopa County Recorder's Office.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this ____ day of _____, 2012.

M A Y O R

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

REVIEWED BY:

City Manager



EXHIBIT "A"
LEGAL DESCRIPTION
15 FOOT INGRESS/EGRESS & UTILITY
EASEMENT ABANDONMENT

A TRACT OF LAND BEING SITUATED IN THE SOUTHEAST QUARTER OF SECTION 29, TOWNSHIP 4 NORTH, RANGE 2 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE SOUTH RIGHT OF WAY OF TOPEKA DRIVE, SAID POINT ALSO BEING IDENTICAL TO THE NORTHWEST CORNER OF LOT 68 OF SAID CARMEL COVE UNIT II, FROM WHICH A CITY OF GLENDALE BRASS CAP FLUSH FOUND AT THE INTERSECTION OF TOPEKA DRIVE AND 54TH LANE BEARS THE FOLLOWING TWO COURSES AND DISTANCES; NORTH 00°23'53" WEST, 25.00 FEET TO A CITY OF GLENDALE BRASS CAP FOUND FLUSH IN THE CENTERLINE OF TOPEKA DRIVE, THENCE SOUTH 89°36'07" WEST, 183.53 FEET;

THENCE LEAVING THE SOUTH RIGHT OF WAY OF TOPEKA DRIVE AND ALONG THE WEST LINE OF SAID LOT 68 OF CARMEL COVE UNIT II, SOUTH 01°33'19" EAST, 9.47 FEET TO THE POINT OF BEGINNING OF THIS TRACT, SAID POINT BEING THE NORTHEAST CORNER OF THIS TRACT;

THENCE CONTINUING ALONG THE WEST LINE OF SAID LOT 66, SOUTH 01°33'19" EAST, 15.00 FEET TO THE SOUTHEAST CORNER OF THIS TRACT

THENCE LEAVING THE WEST LINE OF SAID LOT 66 OF CARMEL COVE UNIT II, SOUTH 89°24'21" WEST, 318.19 FEET TO A POINT ON THE WEST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 29, SAID POINT BEING THE SOUTHWEST CORNER OF THIS TRACT;

THENCE ALONG THE WEST LINE OF SAID SOUTHEAST QUARTER OF SECTION 29, NORTH 01°32'45" WEST, 15.00 FEET TO A POINT THE NORTHWEST CORNER OF THIS TRACT;

THENCE LEAVING THE WEST LINE OF SAID SOUTHEAST QUARTER OF SECTION 29, NORTH 89°24'21" EAST, 318.19 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS 4,769 SQUARE FEET OR 0.109 ACRES OF LAND, MORE OR LESS.

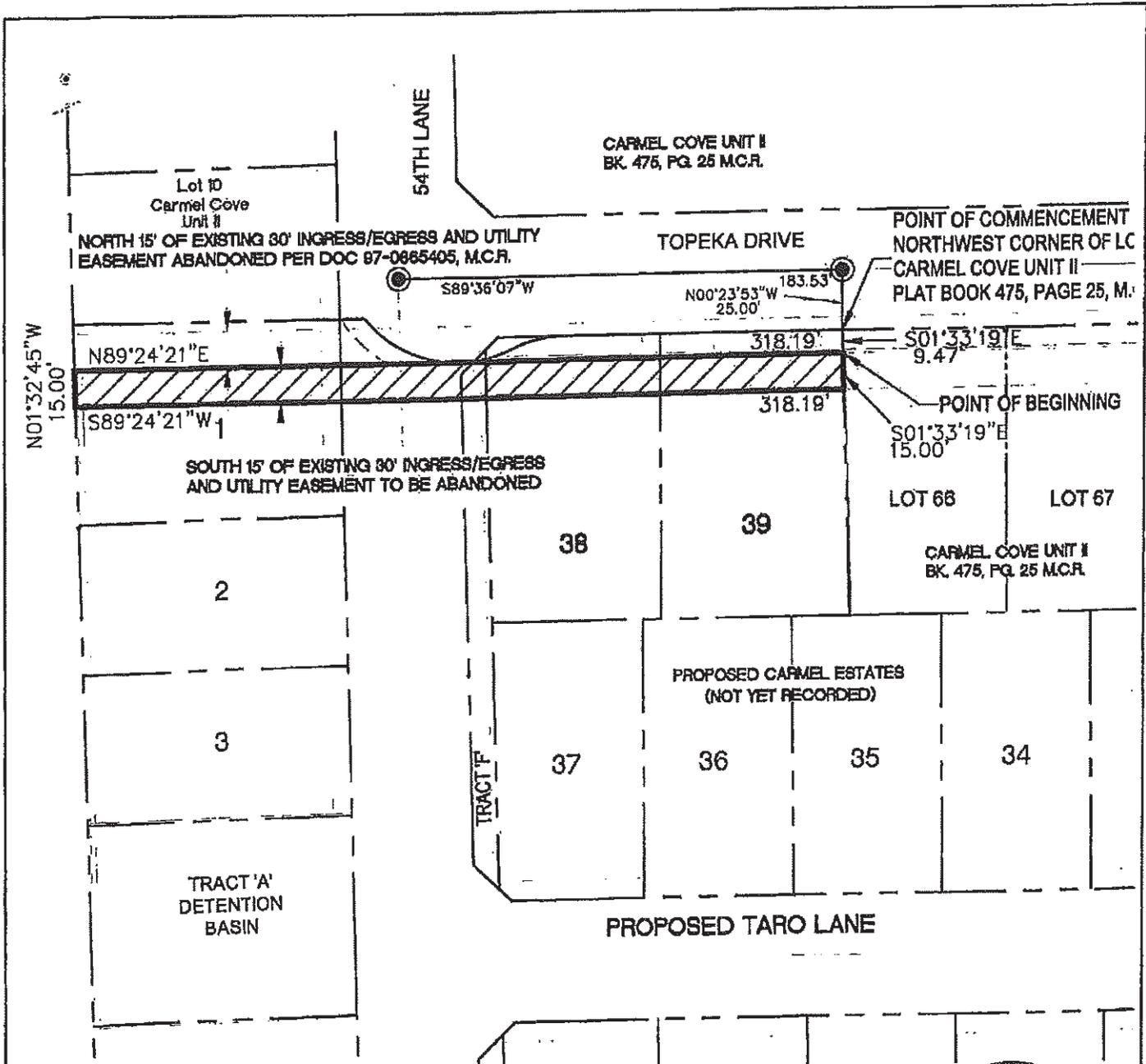
BASIS OF BEARINGS: NORTH 01°32'45" WEST, BEING THE WEST LINE OF THE SOUTHEAST QUARTER OF SECTION 29, TOWNSHIP 4 NORTH, RANGE 2 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA.

RANDALL R. HAGER
ARIZONA REGISTERED PROFESSIONAL LAND SURVEYOR
CERTIFICATE NO. 36561

CARDNO WRG
9977 N 90TH STREET SUITE 350
SCOTTSDALE, ARIZONA 85258
PHONE: (602) 977-8000

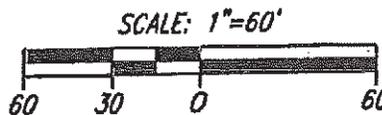
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LEGEND

- M.C.R. - MARICOPA COUNTY RECORDER
- - FOUND BRASS CAP FLUSH
- EASEMENT TO BE ABANDONED



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15' INGRESS/EGRESS & UTILITY EASEMENT ABANDONMENT CARMEL ESTATES

MANDALAY HOMES
GLENDALE, ARIZONA

PROJECT NO. 4129988600
DATE: 8-14-12
BY: RRR
SCALE: 1"=100'
SHEET NO. 1



**INGRESS/EGRESS AND PUBLIC UTILITIES
EASEMENT ABANDONMENT
FOR CARMEL ESTATES**





CITY COUNCIL REPORT

Meeting Date: **9/25/2012**
Meeting Type: **Voting**
Title: **LAND EXCHANGE: TOPEKA DRIVE, EAST OF 54TH LANE**
Staff Contact: **Gregory Rodzenko, P.E., Acting City Engineer**

Purpose and Recommended Action

This is a request for City Council to adopt an ordinance authorizing the City Manager to complete a land exchange of a city-owned parcel with Mandalay Communities, Inc. The parcel is located on Topeka Drive, east of 54th Lane. Staff is requesting Council waive reading beyond the title and adopt an ordinance authorizing the City Manager to execute the documents necessary to complete the land exchange.

Background Summary

Mandalay Communities, Inc. is requesting a land exchange with the city to allow access to Topeka Drive for two parcels at their future Carmel Estates development. The city owns a 0.03 acre parcel along Topeka Drive, east of 54th Lane which, if approved, will be exchanged for a 0.06 acre parcel owned by Mandalay Communities, Inc. located along 54th Avenue, south of Topeka Drive. The city-owned parcel is no longer needed for right-of-way purposes and therefore, provides no value to the city. The parcel that the city will receive includes a city sidewalk that was inadvertently built on private property without an easement resulting in sidewalk encroachment; therefore, this exchange of property will allow for the resolution of the encroachment. There are no costs associated with this action.

Community Benefit/Public Involvement

A public notice regarding the land exchange was published in the Glendale Star on September 14 and 20, 2012. Staff received no comments from the public regarding this notice.

Attachments

Staff Report
Ordinance
Agreement

Map



STAFF REPORT

To: **Horatio Skeete, Acting City Manager**
From: **Gregory Rodzenko, P.E., Acting City Engineer**
Item Title: **LAND EXCHANGE: TOPEKA DRIVE, EAST OF 54TH LANE**
Requested Council Meeting Date: **9/25/2012**
Meeting Type: **Voting**

PURPOSE

The purpose of this report is to request the City Manager forward this item for City Council consideration and action. This report provides the details related to a proposed land exchange of a city-owned parcel located on Topeka Drive, East of 54th Lane with Mandalay Communities, Inc. Staff plans to request the City Council to adopt an ordinance authorizing the City Manager to execute the documents necessary to complete the land exchange.

BACKGROUND

Mandalay Communities, Inc. is requesting a land exchange with the city to allow access to Topeka Drive for two parcels at their future Carmel Estates development. The city owns a 0.03 acre parcel along Topeka Drive, east of 54th Lane which will be exchanged for a 0.06 acre parcel owned by Mandalay Communities, Inc. located along 54th Avenue, south of Topeka Drive. The city-owned parcel is no longer needed for right-of-way purposes and therefore, provides no value to the city. The parcel that the city will receive includes a city sidewalk that was inadvertently built on private property without an easement. The exchange of property will eliminate this sidewalk encroachment.

ANALYSIS

- Staff recommends exchanging the city's 0.03 acre parcel for Mandalay Communities' 0.06 acre parcel.
- A public notice regarding the land exchange was published in the Glendale Star on September 14 and 20, 2012. Staff received no comments from the public regarding this notice.
- There will be no impact on any city departments, staff, or service levels as a result of this action.
- There have been no objections to the land exchange from any city departments.

FISCAL IMPACTS

There are no costs incurred as a result of this action.

ORDINANCE NO. 2816 NEW SERIES

AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE ENTERING INTO OF A REAL PROPERTY PURCHASE AND EXCHANGE AGREEMENT WITH MANDALAY COMMUNITIES, INC. FOR THE PROPOSED CARMEL ESTATES LOCATED NEAR 54TH AVENUE AND TOPEKA DRIVE; AND DIRECTING THE CITY CLERK TO RECORD A CERTIFIED COPY OF THIS ORDINANCE.

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

SECTION 1. That the City Manager is hereby authorized to enter into a Real Property Purchase and Exchange Agreement with Mandalay Communities, Inc. for the proposed Carmel Estates located near 54th Avenue and Topeka Drive, a copy of which is now on file with the Glendale City Clerk.

SECTION 2. That the City Manager and the City Clerk be, and they hereby are, authorized and directed to execute any and all documents necessary to affect the exchange of said properties.

SECTION 4. That the City Clerk be instructed and authorized to forward a certified copy of this ordinance for recording to the Maricopa County Recorder's Office.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this ____ day of _____, 2012.

MAYOR

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

REVIEWED BY:

City Manager

REAL PROPERTY PURCHASE AND EXCHANGE AGREEMENT

DATE: August 15, 2012

PARTIES: **Mandalay Communities, Inc., an Arizona corporation**
2320 E. Baseline Road, Ste. 148-605
Phoenix, Arizona 85042
("Mandalay")

City of Glendale, an Arizona municipal corporation
5850 West Glendale Avenue
Glendale, Arizona 85301
Attention: City Attorney
("City")

ESCROW AGENT: **Fidelity National Title Agency, Inc.**
Attention: Christine Hughes, AVP, Manager
60 E. Rio Salado Parkway, Ste. 1102
Tempe, Arizona 85281
("Escrow Agent")

RECITALS

I. Mandalay is the owner of certain real property identified as a part of Maricopa County Assessor Parcel Number 200-25-162A, legally described and as shown on Exhibit A attached hereto (the "Mandalay Property"). A City sidewalk currently encroaches upon the Mandalay Property.

II. The City owns real property identified as Maricopa County Assessor Parcel Number 200-25-365, legally described and as shown on Exhibit B attached hereto (the "City Property"). The City Property is located in the right-of-way of Topeka Drive.

III. Mandalay desires to develop property adjacent to the City Property as residential lots with direct legal access to Topeka Drive and therefore desires to acquire fee title to the City Property for its development purposes.

IV. The City no longer requires the City Property for right-of-way purposes and desires to exchange the City Property for the Mandalay Property to eliminate the sidewalk encroachment. The City Property consists of approximately .03 acres and the Mandalay Property consists of approximately .06 acres, and, given their present and best use, are considered to be of substantially equal value.

V. The transactions contemplated by this Agreement are authorized and governed by the GLENDALE CITY CODE, Chapter 2, Article V, Division 3, and A.R.S. §9-407.

AGREEMENT

In consideration of the mutual promises and covenants set forth in this Real Property Purchase and Exchange Agreement (“Agreement”), the Parties above agree to an exchange of the properties identified in Exhibits A and B under the terms and conditions set forth in this Agreement.

1. SALES PRICE; ANALYSIS.

The Parties agree that the values of the properties to be exchanged are substantially equivalent in size, location and value so additional compensation need not be paid by either Party.

2. ACCEPTANCE.

This Agreement is subject to and contingent upon the approval of the City Council for the City.

3. TITLE POLICY COVERAGE AMOUNTS.

Escrow Agent shall issue a standard coverage policy of title insurance on the Mandalay Property in favor of the City in the amount of \$5,000.00 and Mandalay shall pay the cost thereof with the City to pay any excess if additional insurance is requested pursuant to Section 7 below. Escrow Agent shall issue an extended coverage policy of title insurance on the City Property in favor of Mandalay in such amount as Mandalay shall instruct Escrow Agent at Mandalay’s sole cost and expense.

4. PRELIMINARY TITLE REPORT.

Promptly following the opening of Escrow, the Escrow Agent shall deliver to the parties current commitments for title insurance (the “Reports”) issued by the Escrow Agent on both the City Property and the Mandalay Property (collectively, the “Properties”). The Reports shall show the status of title to the Properties as of the date of the Reports and shall be accompanied by legible copies of all documents referred to in the Reports.

5. REVIEW PERIOD.

A. Each Party shall have twenty (20) days (the “Review Period”) following receipt of each respective Report to approve or disapprove matters related to title as shown by the respective Report on the property being acquired by such party. If the Escrow Agent issues a supplemental or amended title report showing additional exceptions to title (an “Amended Report”), the parties shall have a period of time equal to ten (10) days (a “Supplemental Review Period”) from the date of receipt of the Amended Report and a copy of each document referred to in the Amended Report in which to give notice of dissatisfaction as to any additional exceptions. If any Party is dissatisfied with any exception to title as shown in such Report or such Amended Report, then, at its sole option, the Party may either (i) cancel this Agreement by giving written notice of cancellation to the other Party or (ii) provisionally accept, by written

notice to the other Party, the title subject to the other Party's removal of any disapproved matters, exceptions or objections, in which case the other Party shall use commercially reasonable efforts to remove the matters, exceptions, or objection or obtain title insurance endorsements, if available, satisfactory to the other Party insuring over or against such matters, provided, further however, that no Party shall be obligated to expend in excess of \$250 total in curing any title defect or defects complained of by the other Party unless expressly agreed in writing hereafter. The failure to timely object or elect to terminate under this Section shall be deemed to waive such party's right to object or to terminate this Agreement for such reason, and in such event, such exceptions shall be deemed acceptable, and the Agreement shall continue in full force and effect. If the other Party cannot remove such matters, exceptions and objections before the close of escrow, then such other Party shall give prompt written notice of same to the other Party, and thereafter the other Party may either terminate this Agreement without further obligation or waive such objections and the transaction shall close as scheduled.

B. Notwithstanding anything herein contained to the contrary, it is understood and agreed that title to the Properties shall be delivered at the close of escrow, free and clear of all monetary liens and encumbrances and that such liens and encumbrances shall be released from the Properties by the respective Party at that Party's sole expense on or before the close of escrow. This obligation survives the close of escrow.

6. DEEDS.

At the close of escrow, the City and Mandalay shall convey title to the Properties to be exchanged by Special Warranty Deed, subject to no defects, exceptions, easements, encumbrances, covenants, conditions, restrictions, mining claims or liens, except the matters set forth in the Report (other than the standard printed exceptions) which have been accepted in writing or deemed accepted by the Party accepting the deed, and any additional matters accepted in writing by that Party. The form of Deeds between the City and Mandalay, as Grantor and Grantee, respectively, are attached as Exhibit C-1 and Exhibit C-2.

7. TITLE POLICIES.

At the close of escrow, Escrow Agent shall issue any Party requesting insurance a separate standard owner's policy of title insurance issued by the Escrow Agent on the Property requested together with any endorsements required, and, if extended coverage is requested by either Party, specifically insuring against mechanics' and materialmen's liens notwithstanding that work may have been performed on the Properties, in the full amount of the sales price specified by the Party, as applicable, effective as of the close of escrow, insuring that fee simple title to the Property is vested, subject only to the usual printed exceptions and exclusions contained in such title insurance policies, and to any other matters approved in writing or deemed approved by the requesting Party. The obligation to provide the title policies called for in this Section shall be satisfied if, at the close of escrow, Escrow Agent has issued a binding commitment to issue each policy in the form required by this Section, and, if each policy is delivered within a reasonable time following the close of escrow.

8. ESCROW.

An escrow for this transaction will be established with Escrow Agent, and Escrow Agent is hereby employed to handle the escrow. This Agreement constitutes escrow instructions to the Escrow Agent and a copy shall be deposited with Escrow Agent for this purpose. If the Escrow Agent requires the execution of its standard form printed escrow instructions, the City and Mandalay agree to execute same. However, any instructions shall be construed as applying only to the Escrow Agent's employment and, if there are any conflicts between the terms of this Agreement and the terms of the printed escrow instructions, the terms of this Agreement shall control.

9. OPENING AND CLOSING DATES.

Escrow will be opened subject to the terms of this Agreement. The closing of this transaction and escrow (referred to in this Agreement as the "closing" or the "close of escrow") shall occur within ninety (90) days after the City Council for the City has approved this transaction (but in no event prior to two weeks after the expiration of any Review and Supplemental Review Period).

10. ESCROW CANCELLATION CHARGES.

If the escrow fails to close because of Mandalay's default, Mandalay shall be liable for all customary escrow charges. If the escrow fails to close because of the City's default, the City shall be liable for all customary escrow charges. If the escrow fails to close for any other reason, Mandalay and the City will each be liable for one-half of all customary escrow cancellation charges. If the escrow fails to close, all other obligations under this Agreement (except those which specifically survive termination) shall terminate.

11. CLOSING COSTS.

A. Upon the close of escrow, Mandalay agrees to pay the entire cost of a standard coverage owner's policy of title insurance in a policy amount of \$5,000.00 issued in favor of the City, and the costs of any endorsements issued in connection with the title policy for the Mandalay Property to cure any defects up to an additional \$250.00 in costs as provided above. Mandalay shall bear the entire cost of any title policy (standard or extended) and/or available endorsements requested by Mandalay for the City Property.

B. Upon the close of escrow, Mandalay shall pay the entire escrow fee charged by Escrow Agent.

C. Real estate taxes shall be prorated in the escrow at the close of escrow, based on the latest available information. Improvement liens and other special assessments shall be paid in full by Mandalay for the Mandalay Property on or before the close of escrow. Unless the Mandalay Property has been separately assessed as of the close of escrow, Escrow Agent shall determine the applicable proration of taxes for the Mandalay Property by multiplying the amount

shown in such tax bill by a fraction, the numerator of which shall be the square footage contained in the Mandalay Property and the denominator of which shall be the square footage contained in such assessor's parcel. The Parties shall cooperate to cause the County Assessor to separately assess the Mandalay Property from the remainder of the tax parcel of which it is a part promptly after the close of escrow. Any other closing costs shall be paid by Mandalay and the City according to the usual and customary practice of the Escrow Agent in Maricopa County.

D. Mandalay and the City agree that each, on or before close of escrow, will deposit with Escrow Agent an amount sufficient to pay its respective closing costs. It is anticipated that the City will pay either no closing costs or minimal closing costs.

E. The Parties agree that there has not been and shall be no broker or representative acting for either Party in this transaction that is entitled to a fee or commission.

F. The obligations of this paragraph survive close of escrow.

12. POSSESSION.

Possession of the Properties shall be delivered to the Parties upon the close of escrow. Prior to close of escrow, the Parties may enter upon the other Party's Property with representatives and agents for the purpose of examining the Property, conducting soils tests and engineering feasibility studies and planning the proposed development of the Property. **Any actual development activities begun before possession and close of escrow are done so at risk.**

13. RISK OF LOSS.

Except as otherwise provided, the risk of loss or damage to the Properties to be exchanged and all liability to third persons shall be borne by the owner of the Property to be conveyed until close of escrow. This obligation survives close of escrow.

14. REPRESENTATIONS AND WARRANTIES.

Mandalay and the City make the following representations and warranties which are agreed to constitute a material part of the consideration hereunder, which are true and accurate as of the date of this Agreement, and will be true and accurate as of the close of escrow, and which shall survive the close of escrow.

A. Authority and Enforceable Nature of this Agreement. Each Party has full power and authority to enter into and to perform its obligations under this Agreement. The person executing this Agreement on behalf of a Party has full power and authority to do so and to perform every act and to execute and deliver every document and instrument necessary or appropriate to consummate the transactions contemplated hereby. This Agreement and each of the documents and agreements to be delivered at the closing constitute a legal, valid and binding obligation, enforceable against the other Party in accordance with its terms;

B. Violations; Consents; Defaults. Neither the execution of this Agreement nor the performance hereof will result in any breach or violation of the terms of any law, rule, ordinance, or regulation or of any decree, judgment or order now in effect from any court or governmental body. There are no consents, waivers, authorizations or approvals from any third party necessary to be obtained in order to carry out the transactions contemplated by this Agreement, except as specifically stated herein. The execution and delivery of this Agreement and performance hereof will not conflict with, or result in any breach of, any of the terms, conditions or provisions of, or constitute a default under or result in the creation of any new, or the acceleration of any existing lien, charge or encumbrance, or any indenture, mortgage, lease, agreement or other instrument to which the Party or any of its assets may be bound;

C. Litigation. Neither Mandalay nor the City is a party to any pending or, to their knowledge, any threatened action, suit, proceeding or investigation, at law or in equity or otherwise, in, for or by any court or governmental board, commission, agency, department or officer, arising from or relating to the Mandalay Property or the City Property or to the past or present operations and activities upon or relating to either of the Properties;

D. Governmental Restrictions. Neither Party has received notice of, nor is aware of, any notifications, restrictions, or stipulations from the United States of America, the State of Arizona, Maricopa County, or any other governmental authority requiring any work to be done on the Properties or threatening the use of the Mandalay Property or the City Property. There are no pending, or to the knowledge of the Parties, threatened, condemnation proceedings affecting any portion of either of the Properties;

E. Title. Fee simple title to the Mandalay Property is vested in Mandalay, subject to a first lien deed of trust in favor of Mortgage Equities XII, LLC, an Arizona limited liability company Corporation ("ME XII") as further provided in Paragraph 17 below. Fee simple title to the City Property is vested in the City;

F. Leases and Agreements. There are no unrecorded leases, arrangements, agreements, understandings, options, contracts, or rights of first refusal, or liens affecting or relating to the Mandalay Property or the City Property that will exist at close of escrow;

G. Compliance. To the best of Mandalay's and the City's knowledge, each has complied, in all respects, with all laws, ordinances, rules, regulations, requirements and orders of federal, state, or local governments and/or their agencies with respect to the Properties;

H. Environmental Matters. Neither Mandalay nor the City have been advised that the Properties are in material violation of applicable environmental law, regulation, ordinance or order of any government entity, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended; the Resource Conservation and Recovery Act, as amended; the Federal Clean Water Act,

as amended; the Federal Clean Air Act, as amended, the Federal Toxic Substances Control Act, as amended; and any regulations promulgated thereunder, or any other federal, state, or local laws relating to contamination of or adverse effects on the environment. In addition, neither Party has been advised that the Properties, or any underlying groundwater, contains any material concentrations of regulated substances, hazardous substances, hazardous materials, toxic substances or similar substances, residues, and waste;

I. Taxes. Mandalay does not have any liability for any taxes, or any interest or penalty in respect thereof, of any nature that may be assessed against the City or that are or may become a lien against the Mandalay Property.

J. Mechanics' Lien. No work has been performed on or about the Mandalay Property or to any improvements located thereon within six (6) months prior to the Opening Date that could give rise to any mechanics' or materialmen's liens whatsoever;

K. Existing Improvements. Neither Party warrants the condition of any existing improvements on either of the Properties. All improvements are accepted in "as is" condition.

15. INDEMNITY.

Each Party to this Agreement agrees to indemnify each other Party and hold it harmless for, from and against all claims, damages, costs and expenses (including attorneys' fees) attributable, directly or indirectly, to the breach by the indemnifying Party of any obligation hereunder, or the inaccuracy of any representation or warranty made by such indemnifying Party herein, or in any instrument delivered pursuant thereto, or in connection with the transactions contemplated hereby, except as arise out of the intentional acts or negligence of the other Party. These obligations survive close of escrow.

16. MANDALAY'S REMEDIES.

If the City fails to deposit deeds and closing costs as specified in the time and manner set forth in this Agreement, or to perform when due any other act required by this Agreement, then Mandalay's sole and exclusive remedy shall be to cancel this Agreement and the escrow, without further liability hereunder. Cancellation will be effective immediately upon Mandalay giving written notice of cancellation to City and Escrow Agent.

17. CITY'S REMEDIES.

If Mandalay fails to deposit deeds and closing costs as specified in the time and manner set forth in this Agreement, or to perform when due any other act required by this Agreement, then the City's sole and exclusive remedy shall be to cancel this Agreement and the escrow, without further liability hereunder. Cancellation will be effective immediately upon the City giving written notice of cancellation to Mandalay and Escrow Agent. Mandalay has disclosed that the Mandalay Property is subject to a first lien in favor of ME XII. It shall be Mandalay's

responsibility, at Mandalay's sole cost and expense, to cause a partial release of the ME XII first lien deed of trust as to the Mandalay Property (the "Release"). If Mandalay is unable to do so by the Closing, Mandalay shall not be deemed to be in default, but the City's remedy shall be to cancel this Agreement and the escrow.

18. COOPERATION.

The Parties to this Agreement shall cooperate fully in obtaining any necessary governmental approvals to the transfer of any item of property being exchanged pursuant to this Agreement.

19. BINDING EFFECT.

The provisions of this Agreement are binding upon, and shall inure to the benefit of, the Parties and their respective heirs, personal representatives, executors, administrators, successors and assigns. These obligations shall survive close of escrow.

20. ATTORNEYS' FEES.

If either Party brings any action in respect to its rights under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and court costs as determined by the court. This obligation survives close of escrow.

21. WAIVERS.

No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver be a continuing waiver. Except as expressly provided in this Agreement, no waiver shall be binding unless executed in writing by the Party making the waiver. Either Party may waive any provision of this Agreement intended for its benefit; provided, however, the waiver shall in no way excuse the other Party from the performance of any of its other obligations under this Agreement. The terms of this paragraph survive close of escrow.

22. CONSTRUCTION.

This Agreement shall be subject to, and construed according to, the laws of the State of Arizona without the application of any principles of conflicts of law that would require or permit the application of the laws of any other jurisdiction. The terms of this paragraph survive close of escrow.

23. TIME.

Time is of the essence of this Agreement.

24. NOTICES.

Notices shall be in writing and shall be given by personal delivery, by deposit in the United States mail, certified mail, return receipt requested, postage prepaid, or by express delivery service, freight prepaid, in each case by delivery to Mandalay and the City at the addresses set forth on the first page of this Agreement or at such other address as a Party may designate in writing. The date notice is given shall be the date on which the notice is delivered, if notice is given by personal delivery (including by an overnight commercial express delivery service), or five (5) calendar days after the date of deposit in the mail, if the notice is sent through the United States mail. A copy of any notice given to a Party shall also be given to the Escrow Agent by regular mail. These obligations survive the close of escrow.

25. FURTHER DOCUMENTATION.

Each Party agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement. This obligation survives close of escrow.

26. TIME PERIODS.

Except as expressly provided for herein, the time for performance of any obligation or taking any action under this Agreement shall be deemed to expire at 5:00 p.m. (Phoenix time) on the last day of the applicable time period provided herein. If the time for performance of any obligation or taking any action under this Agreement expires on a Saturday, Sunday or legal holiday, the time for performance or taking such action shall be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday.

27. CONFLICTS.

This Agreement is subject to cancellation by the City, without penalty or further obligation, pursuant to ARIZONA REVISED STATUTES §38-511, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City is, at any time during the Agreement, an employee or agent of any other Party to the Agreement in any capacity or a consultant to another Party.

28. PROHIBITIONS.

Mandalay certifies, to the extent applicable under A.R.S. §§35-391 et seq. and 35-393 et seq., and to the extent these statutes remain in effect, that it does not have "scrutinized" business operations, as defined in the preceding statutory provisions, in the countries of Sudan or Iran.

29. AMENDMENTS.

Any amendments or modifications to this Agreement must be in writing, executed by both Parties, and are subject to City Council approval. This Agreement constitutes the entire agreement of the Parties and supersedes any negotiations, discussions, undertakings, correspondence or informal agreements of the Parties. The terms of this paragraph shall survive close of escrow.

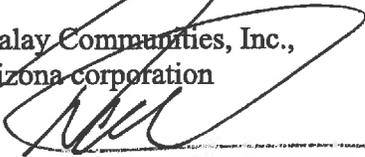
30. INTERPRETATION.

Both Parties have been or have had the opportunity to be represented by legal counsel in negotiating and approving this Agreement. This Agreement shall be interpreted, applied and enforced according to the fair meaning of its terms and shall not be construed in favor of, or against, either Party, regardless of which Party may have drafted or proposed any of its provisions or terms. The terms of this paragraph shall survive close of escrow.

31. ORIGINALS.

This Agreement is executed in triplicate and each executed copy shall be considered an original. The terms of this paragraph survives close of escrow.

Mandalay Communities, Inc.,
an Arizona corporation

By 
David D. Everson, President

City of Glendale, an Arizona municipal corporation

Horatio Skeete, Acting City Manager

ATTEST:

Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

Craig D. Tindall, City Attorney

Escrow Agent hereby accepts employment to handle the escrow established by this Agreement in accordance with the terms set forth in this Agreement.

Fidelity National Title Agency, Inc.

Christine Hughes, AVP, Manager
Date: August __, 2012



EXHIBIT "A"
LEGAL DESCRIPTION
SIDEWALK PARCEL
CARMEL ESTATES

A TRACT OF LAND BEING SITUATED IN SECTION 29, TOWNSHIP 4 NORTH, RANGE 2 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, SAID TRACT BEING A PORTION OF MARICOPA COUNTY ASSESSOR'S PARCEL NUMBER 200-25-162A, AS DESCRIBED IN TRUSTEE'S DEED RECORDED JUNE 25, 2010 IN RECORDING NUMBER 20100541509 OF RECORDS OF MARICOPA COUNTY, ARIZONA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST RIGHT OF WAY OF 54TH AVENUE FOR THE SOUTHEAST CORNER THIS TRACT, FROM WHICH A CITY OF GLENDALE BRASS CAP FLUSH FOUND AT THE INTERSECTION OF TOPEKA DRIVE AND 54TH AVENUE BEARS THE FOLLOWING TWO COURSES AND DISTANCES; NORTH 88°27'39" EAST, 25.00 FEET TO THE CENTERLINE OF 54TH AVENUE, THENCE NORTH 01°32'21" WEST, 475.02 FEET;

THENCE LEAVING THE WEST RIGHT OF WAY OF 54TH AVENUE, AND ALONG THE NORTH LINE OF SAID CITY OF GLENDALE PARCEL, SOUTH 88°25'30" WEST, 55.93 FEET TO THE SOUTHWEST CORNER OF THIS TRACT, SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE, SAID CURVE HAVING A RADIUS OF 56.40 FEET;

THENCE LEAVING THE NORTH LINE OF SAID CITY OF GLENDALE PARCEL, NORTHEASTERLY, 67.00 FEET, ALONG THE ARC OF A CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 68°04'17", AND WHOSE LONG CHORD BEARS NORTH 25°02'23" EAST, 63.13 FEET TO A POINT OF CURVATURE OF A NON-TANGENT CURVE, SAID CURVE HAVING A RADIUS OF 49.30 FEET;

THENCE CONTINUING NORTHEASTERLY, 33.07 FEET, ALONG THE ARC OF A CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 38°25'53", AND WHOSE LONG CHORD BEARS NORTH 13°19'41" EAST, 32.45 FEET TO A POINT OF CURVATURE OF A NON-TANGENT CURVE, SAID CURVE HAVING A RADIUS OF 59.60 FEET;

THENCE CONTINUING NORTHEASTERLY, 22.41 FEET, ALONG THE ARC OF A CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 21°32'51", AND WHOSE LONG CHORD BEARS NORTH 58°45'31" EAST, 22.28 FEET TO A POINT ON THE WEST RIGHT OF WAY OF SAID 54TH AVENUE FOR THE NORTHEAST CORNER OF THIS TRACT;



THENCE CONTINUING ALONG THE WEST RIGHT OF WAY OF 54TH AVENUE, SOUTH 01°32'21" EAST, 98.83 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS 2,721 SQUARE FEET OR 0.06 ACRES OF LAND, MORE OR LESS.

BASIS OF BEARINGS: NORTH 01°32'45" WEST, BEING THE WEST LINE OF THE SOUTHEAST QUARTER OF SECTION 29, TOWNSHIP 4 NORTH, RANGE 2 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA.

RANDALL R. HAGER
ARIZONA REGISTERED PROFESSIONAL LAND SURVEYOR
CERTIFICATE NO. 36561

CARDNO WRG
9977 N 90TH STREET SUITE 350
SCOTTSDALE, ARIZONA 85258
PHONE: (602) 977-8000



CITY OF GLENDALE
BRASS CAP FLUSH
54TH AVENUE & TOPEKA DRIVE

PROPOSED TARO LANE

PROPOSED CARMEL ESTATES
(NOT YET RECORDED)

28

29

30

EXISTING
SIDEWALK

AREA= 2,721 SF
0.06 AC
OPEN SPACE
TRACT
'D'

19

C3

C2

C1

98.83'

S01°32'21"E

54TH AVENUE

532.48'

N01°32'21"W

S88°25'30"W
55.93'

N88°27'39"E
25.00'

A.P.N. 200-25-162-B

POINT OF
BEGINNING

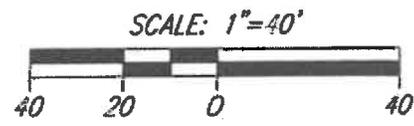
CITY OF GLENDALE
ZONED A-1

CURVE TABLE

CURVE	RADIUS	LENGTH	DELTA	CHORD BEARING	CHORD DISTANCE
C1	56.40	67.00'	68°04'17"	N 25°02'23" E	53.13'
C2	49.30	33.07'	38°25'53"	N 13°19'41" E	32.45'
C3	59.60'	22.41'	21°32'51"	N 58°45'31" E	22.28'

LEGEND

- M.C.R. - MARICOPA COUNTY RECORDER
- - FOUND BRASS CAP FLUSH



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Shaping the Future
PHOENIX
11977 N 63TH ST, STE 350, SCOTTSDALE, AZ 85258
TEL: (602) 977-3100 FAX: (602) 977-8000
WWW.CARDNO.COM
PLANNERS • ENGINEERS • LANDSCAPE ARCHITECTS • SURVEYORS

SIDEWALK PARCEL
CARMEL ESTATES

MANDALAY HOMES
GLENDALE, ARIZONA

PROJECT NO. 4129988000
DATE: 7-12-12
BY: JBE
SCALE: 1"=40'
SHEET NO. 1



**EXHIBIT "B"
LEGAL DESCRIPTION
TRACT "G"
A REPLAT OF CARMEL COVE – UNIT II**

A TRACT OF LAND BEING SITUATED IN SECTION 29, TOWNSHIP 4 NORTH, RANGE 2 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, SAID TRACT BEING IDENTICAL TO TRACT "G" AS SHOWN ON "A REPLAT OF CARMEL COVE UNIT II – A PLANNED RESIDENTIAL DEVELOPMENT AS RECORDED IN PLAT BOOK 475, PAGE 25, OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH RIGHT OF WAY OF TOPEKA DRIVE FOR THE NORTHEAST CORNER THIS TRACT, SAID POINT ALSO BEING IDENTICAL TO THE NORTHWEST CORNER OF LOT 66 OF SAID CARMEL COVE UNIT II, FROM WHICH A CITY OF GLENDALE BRASS CAP FLUSH FOUND AT THE INTERSECTION OF TOPEKA DRIVE AND 54TH LANE BEARS THE FOLLOWING TWO COURSES AND DISTANCES; NORTH 00°23'53" WEST, 25.00 FEET TO A CITY OF GLENDALE BRASS CAP FOUND FLUSH IN THE CENTERLINE OF TOPEKA DRIVE, THENCE SOUTH 89°36'07" WEST, 183.53 FEET;

THENCE LEAVING THE SOUTH RIGHT OF WAY OF TOPEKA DRIVE AND ALONG THE WEST LINE OF SAID LOT 66 OF CARMEL COVE UNIT II, SOUTH 01°33'00" EAST, 9.47 FEET TO THE SOUTHEAST CORNER OF THIS TRACT;

THENCE LEAVING THE WEST LINE OF SAID LOT 66 OF CARMEL COVE UNIT II, SOUTH 89°24'29" WEST, 159.01 FEET TO A POINT ON THE SOUTH RIGHT OF WAY OF TOPEKA DRIVE FOR THE SOUTHWEST CORNER OF THIS TRACT, SAID POINT ALSO BEING THE BEGINNING OF A NON-TANGENT CURVE, SAID CURVE HAVING A RADIUS OF 50.00 FEET;

THENCE NORTHEASTERLY ALONG THE SOUTH RIGHT OF WAY OF TOPEKA DRIVE, 22.38 FEET, ALONG THE ARC OF A CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 25°38'52", AND WHOSE LONG CHORD BEARS NORTH 76°34'54" EAST, 22.19 FEET TO A POINT OF REVERSE CURVATURE, SAID CURVE HAVING A RADIUS OF 50.00 FEET;

THENCE CONTINUING NORTHEASTERLY, ALONG THE SOUTH RIGHT OF WAY OF TOPEKA DRIVE, 22.55 FEET, ALONG THE ARC OF A CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 25°50'09", AND WHOSE LONG CHORD BEARS NORTH 76°40'44" EAST, 22.36 FEET TO A POINT OF TANGENCY;



THENCE CONTINUING ALONG THE SOUTH RIGHT OF WAY OF TOPEKA DRIVE, NORTH 89°35'57" EAST, 115.40 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS 1,325 SQUARE FEET OR 0.03 ACRES OF LAND, MORE OR LESS.

BASIS OF BEARINGS: NORTH 01°32'45" WEST, BEING THE WEST LINE OF THE SOUTHEAST QUARTER OF SECTION 29, TOWNSHIP 4 NORTH, RANGE 2 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA.

RANDALL R. HAGER
ARIZONA REGISTERED PROFESSIONAL LAND SURVEYOR
CERTIFICATE NO. 36561

CARDNO WRG
9977 N 90TH STREET SUITE 350
SCOTTSDALE, ARIZONA 85258
PHONE: (602) 977-8000



54TH LANE

CARMEL COVE UNIT II
BK. 475, PG. 25 M.C.R.

EXISTING 20' INGRESS/
EGRESS EASEMENT
TOPEKA DRIVE

EXISTING 12'
WATER EASEMENT

S89°36'07"W

183.53'

N00°23'53"W
25.00'

C1
C2

N89°35'57"E

115.40'

POINT OF
BEGINNING

S89°24'29"W

159.01'

S01°33'00"E
9.47'

EXISTING 8'
PUE

TRACT G - 1,325 SF
(0.03 Ac.)
BK. 475, PG. 25

CARMEL COVE UNIT II
BK. 475, PG. 25 M.C.R.

38

39

LOT 66

PROPOSED CARMEL ESTATES
(NOT YET RECORDED)

CURVE TABLE

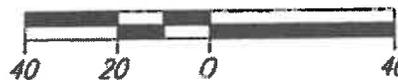
CURVE	RADIUS	LENGTH	DELTA	CHORD BEARING	CHORD DISTANCE
C1	50.00	22.38'	25°38'52"	N 76°34'54" E	22.19'
C2	50.00	22.55'	25°50'09"	N 76°40'44" E	22.36'

LEGEND

M.C.R. - MARICOPA COUNTY RECORDER

⊙ - FOUND BRASS CAP FLUSH

SCALE: 1"=40'



PHOENIX
0977 N 10TH ST, STE 350, SCOTTSDALE, AZ 85258
TEL: (602) 977-8000 FAX: (602) 977-8009
www.cardno.com
PLANNERS • ENGINEERS • LANDSCAPE ARCHITECTS • SURVEYORS

EXISTING TRACT "G" A REPLAT OF CARMEL COVE - UNIT II

MANDALAY HOMES
GLENDALE, ARIZONA

PROJECT NO. 4129988000
DATE: 7-12-12
BY: JBE
SCALE: 1"=40'
SHEET NO. 2

Exhibit C-1
Form of Special Warranty Deed (City As Grantor)

When recorded, mail to:
City Clerk, City of Glendale
5850 W. Glendale Avenue
Glendale, Arizona 85301

Exempt Pursuant to A.R.S. 11-1134(A)(3)

SPECIAL WARRANTY DEED

For the consideration of Ten Dollars and other valuable consideration, the City of Glendale, an Arizona municipal corporation, does hereby convey to Mandalay Communities, Inc., an Arizona corporation, the Grantee, that certain parcel of real property situated in Maricopa County, Arizona, and described in **Exhibit "A"** attached hereto (the "**Property**"), together with any improvements, buildings, structures and fixtures located thereon; all easements, if any, benefiting the Property; all rights, benefits, privileges, and appurtenances pertaining to the Property, to the extent Grantor has any interest in the same, if any, including the right, title and interest of Grantor in and to any property lying in or under the bed of any street, alley, road or right of way, open or proposed, abutting or adjacent to the Property and the strips, gaps or gores, if any, between the Property and abutting property.

Grantor hereby binds itself and its successors to warrant and defend the title to the Property against all acts of the Grantor herein and no other, SUBJECT, however to current taxes, assessments, reservations in patents, and all easements, rights-of-way, encumbrances, liens, covenants, conditions and restrictions as may appear of record.

Dated this ___ day of _____, 2012.

City of Glendale,
an Arizona municipal corporation

By _____
Horatio Skeete, Acting City Manager

STATE OF ARIZONA)
)ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me this ___ day of _____, 2012, by HORATIO SKEETE, Acting City Manager of the City of Glendale, Arizona.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

NOTARY PUBLIC

My commission expires:

Exhibit A to Special Warranty Deed

Legal Description



EXHIBIT "A"
LEGAL DESCRIPTION
TRACT "G"
A REPLAT OF CARMEL COVE – UNIT II

A TRACT OF LAND BEING SITUATED IN SECTION 29, TOWNSHIP 4 NORTH, RANGE 2 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, SAID TRACT BEING IDENTICAL TO TRACT "G" AS SHOWN ON "A REPLAT OF CARMEL COVE UNIT II – A PLANNED RESIDENTIAL DEVELOPMENT AS RECORDED IN PLAT BOOK 475, PAGE 25, OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH RIGHT OF WAY OF TOPEKA DRIVE FOR THE NORTHEAST CORNER THIS TRACT, SAID POINT ALSO BEING IDENTICAL TO THE NORTHWEST CORNER OF LOT 66 OF SAID CARMEL COVE UNIT II, FROM WHICH A CITY OF GLENDALE BRASS CAP FLUSH FOUND AT THE INTERSECTION OF TOPEKA DRIVE AND 54TH LANE BEARS THE FOLLOWING TWO COURSES AND DISTANCES; NORTH 00°23'53" WEST, 25.00 FEET TO A CITY OF GLENDALE BRASS CAP FOUND FLUSH IN THE CENTERLINE OF TOPEKA DRIVE, THENCE SOUTH 89°36'07" WEST, 183.53 FEET;

THENCE LEAVING THE SOUTH RIGHT OF WAY OF TOPEKA DRIVE AND ALONG THE WEST LINE OF SAID LOT 66 OF CARMEL COVE UNIT II, SOUTH 01°33'00" EAST, 9.47 FEET TO THE SOUTHEAST CORNER OF THIS TRACT;

THENCE LEAVING THE WEST LINE OF SAID LOT 66 OF CARMEL COVE UNIT II, SOUTH 89°24'29" WEST, 159.01 FEET TO A POINT ON THE SOUTH RIGHT OF WAY OF TOPEKA DRIVE FOR THE SOUTHWEST CORNER OF THIS TRACT, SAID POINT ALSO BEING THE BEGINNING OF A NON-TANGENT CURVE, SAID CURVE HAVING A RADIUS OF 50.00 FEET;

THENCE NORTHEASTERLY ALONG THE SOUTH RIGHT OF WAY OF TOPEKA DRIVE, 22.38 FEET, ALONG THE ARC OF A CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 25°38'52", AND WHOSE LONG CHORD BEARS NORTH 76°34'54" EAST, 22.19 FEET TO A POINT OF REVERSE CURVATURE, SAID CURVE HAVING A RADIUS OF 50.00 FEET;

THENCE CONTINUING NORTHEASTERLY, ALONG THE SOUTH RIGHT OF WAY OF TOPEKA DRIVE, 22.55 FEET, ALONG THE ARC OF A CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 25°50'09", AND WHOSE LONG CHORD BEARS NORTH 76°40'44" EAST, 22.36 FEET TO A POINT OF TANGENCY;



THENCE CONTINUING ALONG THE SOUTH RIGHT OF WAY OF TOPEKA DRIVE, NORTH 89°35'57" EAST, 115.40 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS 1,325 SQUARE FEET OR 0.03 ACRES OF LAND, MORE OR LESS.

BASIS OF BEARINGS: NORTH 01°32'45" WEST, BEING THE WEST LINE OF THE SOUTHEAST QUARTER OF SECTION 29, TOWNSHIP 4 NORTH, RANGE 2 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA.

**RANDALL R. HAGER
ARIZONA REGISTERED PROFESSIONAL LAND SURVEYOR
CERTIFICATE NO. 36561**

**CARDNO WRG
9977 N 90TH STREET SUITE 350
SCOTTSDALE, ARIZONA 85258
PHONE: (602) 977-8000**



Exhibit C-2
Form of Special Warranty Deed (Mandalay As Grantor)

When recorded, mail to:
City Clerk, City of Glendale
5850 W. Glendale Avenue
Glendale, Arizona 85301

Exempt Pursuant to A.R.S. 11-1134(A)(3)

SPECIAL WARRANTY DEED

For the consideration of Ten Dollars and other valuable consideration, Mandalay Communities, Inc., an Arizona corporation, does hereby convey to the City of Glendale, an Arizona municipal corporation, the Grantee, that certain parcel of real property situated in Maricopa County, Arizona, and described in **Exhibit "A"** attached hereto (the "**Property**"), together with any improvements, buildings, structures and fixtures located thereon; all easements, if any, benefiting the Property; all rights, benefits, privileges, and appurtenances pertaining to the Property, to the extent Grantor has any interest in the same, if any, including the right, title and interest of Grantor in and to any property lying in or under the bed of any street, alley, road or right of way, open or proposed, abutting or adjacent to the Property and the strips, gaps or gores, if any, between the Property and abutting property.

Grantor hereby binds itself and its successors to warrant and defend the title to the Property against all acts of the Grantor herein and no other, SUBJECT, however to current taxes, assessments, reservations in patents, and all easements, rights-of-way, encumbrances, liens, covenants, conditions and restrictions as may appear of record.

Dated this ___ day of _____, 2012.

Mandalay Communities, Inc.,
an Arizona corporation

By _____
David D. Everson, President

STATE OF ARIZONA)
)ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me this ___ day of _____, 2012, by DAVID D. EVERSON, the President of Mandalay Communities, Inc., an Arizona corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

NOTARY PUBLIC

My commission expires:

Exhibit A to Special Warranty Deed

Legal Description



**EXHIBIT "A"
LEGAL DESCRIPTION
SIDEWALK PARCEL
CARMEL ESTATES**

A TRACT OF LAND BEING SITUATED IN SECTION 29, TOWNSHIP 4 NORTH, RANGE 2 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, SAID TRACT BEING A PORTION OF MARICOPA COUNTY ASSESSOR'S PARCEL NUMBER 200-25-162A, AS DESCRIBED IN TRUSTEE'S DEED RECORDED JUNE 25, 2010 IN RECORDING NUMBER 20100541509 OF RECORDS OF MARICOPA COUNTY, ARIZONA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST RIGHT OF WAY OF 54TH AVENUE FOR THE SOUTHEAST CORNER THIS TRACT, FROM WHICH A CITY OF GLENDALE BRASS CAP FLUSH FOUND AT THE INTERSECTION OF TOPEKA DRIVE AND 54TH AVENUE BEARS THE FOLLOWING TWO COURSES AND DISTANCES; NORTH 88°27'39" EAST, 25.00 FEET TO THE CENTERLINE OF 54TH AVENUE, THENCE NORTH 01°32'21" WEST, 475.02 FEET;

THENCE LEAVING THE WEST RIGHT OF WAY OF 54TH AVENUE, AND ALONG THE NORTH LINE OF SAID CITY OF GLENDALE PARCEL, SOUTH 88°25'30" WEST, 55.93 FEET TO THE SOUTHWEST CORNER OF THIS TRACT, SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE, SAID CURVE HAVING A RADIUS OF 56.40 FEET;

THENCE LEAVING THE NORTH LINE OF SAID CITY OF GLENDALE PARCEL, NORTHEASTERLY, 67.00 FEET, ALONG THE ARC OF A CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 68°04'17", AND WHOSE LONG CHORD BEARS NORTH 25°02'23" EAST, 63.13 FEET TO A POINT OF CURVATURE OF A NON-TANGENT CURVE, SAID CURVE HAVING A RADIUS OF 49.30 FEET;

THENCE CONTINUING NORTHEASTERLY, 33.07 FEET, ALONG THE ARC OF A CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 38°25'53", AND WHOSE LONG CHORD BEARS NORTH 13°19'41" EAST, 32.45 FEET TO A POINT OF CURVATURE OF A NON-TANGENT CURVE, SAID CURVE HAVING A RADIUS OF 59.60 FEET;

THENCE CONTINUING NORTHEASTERLY, 22.41 FEET, ALONG THE ARC OF A CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 21°32'51", AND WHOSE LONG CHORD BEARS NORTH 58°45'31" EAST, 22.28 FEET TO A POINT ON THE WEST RIGHT OF WAY OF SAID 54TH AVENUE FOR THE NORTHEAST CORNER OF THIS TRACT;



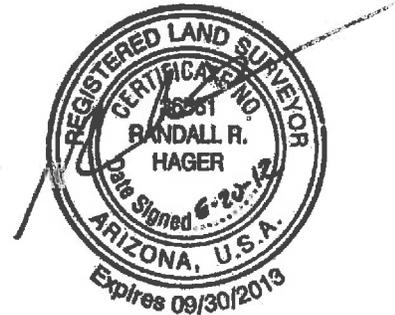
THENCE CONTINUING ALONG THE WEST RIGHT OF WAY OF 54TH AVENUE, SOUTH 01°32'21" EAST, 98.83 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS 2,721 SQUARE FEET OR 0.06 ACRES OF LAND, MORE OR LESS.

BASIS OF BEARINGS: NORTH 01°32'45" WEST, BEING THE WEST LINE OF THE SOUTHEAST QUARTER OF SECTION 29, TOWNSHIP 4 NORTH, RANGE 2 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA.

RANDALL R. HAGER
ARIZONA REGISTERED PROFESSIONAL LAND SURVEYOR
CERTIFICATE NO. 36561

CARDNO WRG
9977 N 90TH STREET SUITE 350
SCOTTSDALE, ARIZONA 85258
PHONE: (602) 977-8000





**MANDALAY COMMUNITIES, INC. AND
CITY OF GLENDALE LAND EXCHANGE**





CITY COUNCIL REPORT

Meeting Date: **9/25/2012**
Meeting Type: **Voting**
Title: **WATERLINE EASEMENT ABANDONMENT AT 59TH AVENUE AND UNION HILLS DRIVE**
Staff Contact: **Gregory Rodzenko, P.E., Acting City Engineer**

Purpose and Recommended Action

This is a request for City Council to adopt an ordinance authorizing the City Manager to abandon a waterline easement at the northwest corner of 59th Avenue and Union Hills Drive for the Il Palazzo development. Staff is requesting Council waive reading beyond the title and adopt an ordinance authorizing the easement abandonment.

Background Summary

The new owners of the Il Palazzo development have requested the abandonment of an existing 20,830 square foot city waterline easement on their property. The previous owners redesigned the site plan after the waterline easement was recorded. The existing structures were constructed within this easement. There are no city facilities within this easement.

Attachments

Staff Report

Ordinance

Map



STAFF REPORT

To: **Horatio Skeete, Acting City Manager**
From: **Gregory Rodzenko, P.E., Acting City Engineer**
Item Title: **WATERLINE EASEMENT ABANDONMENT AT 59TH AVENUE AND UNION HILLS DRIVE**
Requested Council Meeting Date: **9/25/2012**
Meeting Type: **Voting**

PURPOSE

The purpose of this report is to request the City Manager forward this item for City Council consideration and action. Staff plans to request the City Council to adopt an ordinance authorizing the abandonment of an existing city waterline easement at the northwest corner of 59th Avenue and Union Hills Drive for the Il Palazzo development.

BACKGROUND

The new owners of the Il Palazzo development have requested the abandonment of an existing 20,830 square foot city waterline easement on their property. The previous owners redesigned the site plan after the waterline easement was recorded. The existing structures were constructed within this easement. There are no city facilities within this easement.

ANALYSIS

- Staff recommends abandonment of a city waterline easement at 59th Avenue and Union Hills Drive within the Il Palazzo development.
- There will be no impact on any city departments, staff, or service levels as a result of this action.
- All City departments and utility companies have reviewed and approved the abandonment request

FISCAL IMPACTS

There are no costs incurred as a result of this action.

ORDINANCE NO. 2817 NEW SERIES

AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE ABANDONMENT OF AN EXISTING WATERLINE EASEMENT AT THE NORTHWEST CORNER OF 59TH AVENUE AND UNION HILLS DRIVE TO THE OWNERS OF RECORD OF THE ABUTTING PROPERTY; AND DIRECTING THE CITY CLERK TO RECORD A CERTIFIED COPY OF THIS ORDINANCE.

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

SECTION 1. That the existing waterline easement at the northwest corner of 59th Avenue and Union Hills drive is hereby abandoned to the underlying property owners as their interest may appear in the records of the Maricopa County Recorder's Office on the date upon which this ordinance is recorded and that title to the released property shall vest as provided by law. The legal description of said waterline easement is as follows:

(See Exhibit "A" attached hereto
and incorporated herein by this reference.)

SECTION 2. That the City Clerk be instructed and authorized to forward a certified copy of this ordinance for recording to the Maricopa County Recorder's Office.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this ____ day of _____, 2012.

MAYOR

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

REVIEWED BY:

City Manager

DESCRIPTION

OF PORTION OF WATERLINE EASEMENT TO BE
ABANDONED AT IL PALAZZO, 59th AVENUE
& UNION HILLS DRIVE, GLENDALE, ARIZONA

A portion of that waterline easement recorded in 2006-0770732, Official Records of Maricopa County, Arizona lying within the Southeast quarter of Section 30, Township 4 North, Range 2 East, Gila and Salt River Meridian, Maricopa County, Arizona, being more particularly described as follows:

COMMENCING at a brass cap in handhole marking the Southeast corner of said Section 30;

THENCE North 01 degree 08 minutes 59 seconds West along the East line of said Southeast quarter, 157.67 feet to a point from which a brass cap in handhole marking the East quarter corner of Section 30 bears North 01 degrees 08 minutes 59 seconds West, 2493.68 feet;

THENCE South 88 degrees 51 minutes 01 seconds West, 55.00 feet to a point on the westerly right-of-way line of 59th Avenue;

THENCE North 90 degrees 00 minutes 00 seconds West 53.44 feet;

THENCE South 00 degrees 00 minutes 00 seconds East 59.57 feet;

THENCE North 90 degrees 00 minutes 00 seconds West 227.50 feet;

THENCE North 00 degrees 00 minutes 00 seconds East 22.33 feet;

THENCE South 90 degrees 00 minutes 00 seconds West 11.91 feet;

THENCE North 00 degrees 00 minutes 00 seconds East 12.00 feet;

THENCE North 90 degrees 00 minutes 00 seconds East 11.91 feet to the POINT OF BEGINNING;

THENCE North 00 degrees 00 minutes 00 seconds West 25.67 feet;

THENCE North 90 degrees 00 minutes 00 seconds West 308.95 feet;

THENCE North 45 degrees 00 minutes 00 seconds West 109.98 feet to the beginning of a curve, the center of which bears South 12 degrees 30 minutes 50 seconds East 2870.49 feet;

THENCE Westerly, along the arc of said curve, through a central angle of 02 degrees 49 minutes 06 seconds for an arc distance of 141.19 feet to the beginning of a non-tangent line;

THENCE South 45 degrees 00 minutes 00 seconds West 16.32 feet;

THENCE South 45 degrees 00 minutes 00 seconds East 16.50 feet;

THENCE South 45 degrees 00 minutes 00 seconds West 16.50 feet;

THENCE South 45 degrees 00 minutes 00 seconds East 69.19 feet;

THENCE South 90 degrees 00 minutes 00 seconds East 136.31 feet;

THENCE North 00 degrees 00 minutes 00 seconds East 12.50 feet;

CONTINUED ON PAGE 2....



EXPIRES 3/31/14

PAGE 1 OF 2


DATE: 12/14/11

21415 N. 23rd Avenue Phoenix, AZ 85027 623-869-0223 (office) 623-869-0726 (fax) www.superiorsurveying.com info@superiorsurveying.com

JOB NO.: 11125

EXHIBIT "A"

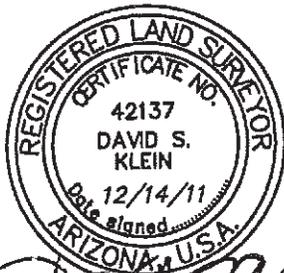
DESCRIPTION

OF PORTION OF WATERLINE EASEMENT TO BE
ABANDONED AT IL PALAZZO, 59th AVENUE
& UNION HILLS DRIVE, GLENDALE, ARIZONA

....CONTINUED FROM PAGE 1

THENCE North 90 degrees 00 minutes 00 seconds East 21.00 feet;
THENCE South 00 degrees 00 minutes 00 seconds East 12.50 feet;
THENCE North 90 degrees 00 minutes 00 seconds East 35.32 feet;
THENCE South 01 degree 03 minutes 24 seconds West 62.01 feet to a point on
the Northerly right-of way line of Union Hills Drive;
THENCE South 89 degrees 59 minutes 49 seconds West, along said right-of-way
line 20.00 feet;
THENCE North 01 degree 03 minutes 24 seconds East 42.01 feet;
THENCE North 90 degrees 00 minutes 00 seconds West 180.54 feet;
THENCE North 45 degrees 00 minutes 00 seconds West 97.04 feet;
THENCE South 45 degrees 00 minutes 00 seconds West 16.25 feet;
THENCE North 45 degrees 00 minutes 00 seconds West 12.00 feet;
THENCE North 45 degrees 00 minutes 00 seconds East 16.25 feet;
THENCE North 45 degrees 00 minutes 00 seconds West 4.93 feet;
THENCE North 45 degrees 00 minutes 00 seconds East 58.10 feet to the
beginning of a curve, the center of which bears South 15 degrees 26 minutes 14
seconds East 2890.49 feet;
THENCE Easterly along the arc of said curve, through a central angle of 03
degrees 08 minutes 28 seconds for an arc distance of 158.47 feet to the
beginning of a non-tangent line;
THENCE South 45 degrees 00 minutes 00 seconds East 112.64 feet;
THENCE North 90 degrees 00 minutes 00 seconds East 286.59 feet;
THENCE North 00 degrees 00 minutes 00 seconds East 16.25 feet;
THENCE North 90 degrees 00 minutes 00 seconds East 12.00 feet;
THENCE South 00 degrees 00 minutes 00 seconds East 16.25 feet;
THENCE North 90 degrees 00 minutes 00 seconds East 22.08 feet;
THENCE South 00 degrees 00 minutes 00 seconds East 45.67 feet;
THENCE North 90 degrees 00 minutes 00 seconds West 20.00 feet to the POINT
OF BEGINNING.

Comprising 20,830 square feet, more or less, and subject to all easements of
record.



EXPIRES 3/31/14

PAGE 2 OF 2

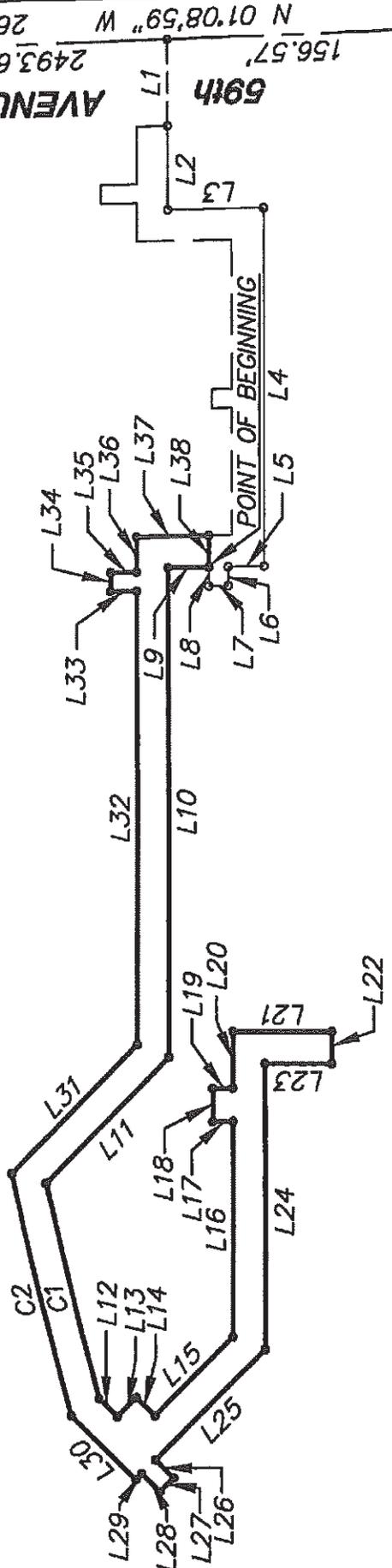
	21415 N. 23rd Avenue Phoenix, AZ 85027 623-869-0223 (office) 623-869-0726 (fax) www.superiorsurveying.com Info@superiorsurveying.com
DATE: 12/14/11	JOB NO.: 11125

EXHIBIT

OF PORTION OF WATERLINE EASEMENT TO BE
ABANDONED AT IL PALAZZO, 59th AVENUE
& UNION HILLS DRIVE, GLENDALE, ARIZONA



NOT TO SCALE

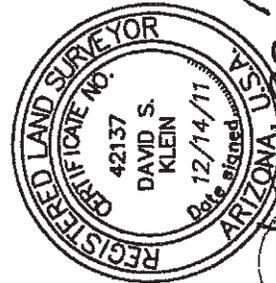


UNION HILLS DRIVE

SE. CORNER SECTION 30, T-4N, R-2E
FOUND CITY OF GLENDALE
BRASS CAP IN HANDHOLE

* SEE PAGE 2 FOR LINE AND CURVE DATA

PAGE 1 OF 2



David S. Klein
12/14/11

EXPIRES 3/31/14



SUPERIOR
SURVEYING SERVICES, INC.

DATE: 12/14/11

21415 N. 23rd Avenue
Phoenix, AZ 85027
623-869-0223 (office)
623-869-0726 (fax)
www.superiorsurveying.com
info@superiorsurveying.com

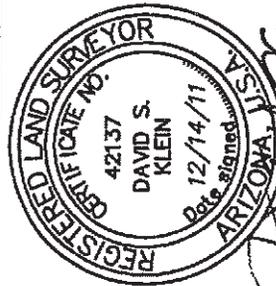
JOB NO.: 111125

EXHIBIT

OF PORTION OF WATERLINE EASEMENT TO BE
 ABANDONED AT IL PALAZZO, 59th AVENUE
 & UNION HILLS DRIVE, GLENDALE, ARIZONA

LINE TABLE					
LINE	BEARINGS	LENGTH	LINE	BEARINGS	LENGTH
L1	S 88°51'01" W	55.00'	L20	N 90°00'00" E	35.32'
L2	N 90°00'00" W	53.44'	L21	S 01°03'24" W	62.01'
L3	S 00°00'00" E	59.57'	L22	S 89°59'49" W	20.00'
L4	N 90°00'00" W	227.50'	L23	N 01°03'24" E	42.01'
L5	N 00°00'00" E	22.33'	L24	N 90°00'00" W	180.54'
L6	S 90°00'00" W	11.91'	L25	N 45°00'00" W	97.04'
L7	N 00°00'00" E	12.00'	L26	S 45°00'00" W	16.25'
L8	N 90°00'00" E	11.91'	L27	N 45°00'00" W	12.00'
L9	N 00°00'00" W	25.67'	L28	N 45°00'00" E	16.25'
L10	N 90°00'00" W	308.95'	L29	N 45°00'00" W	4.93'
L11	N 45°00'00" W	109.98'	L30	N 45°00'00" E	58.10'
L12	S 45°00'00" W	16.32'	L31	S 45°00'00" E	112.64'
L13	S 45°00'00" E	16.50'	L32	N 90°00'00" E	286.59'
L14	S 45°00'00" W	16.50'	L33	N 00°00'00" E	16.25'
L15	S 45°00'00" E	69.19'	L34	N 90°00'00" E	12.00'
L16	S 90°00'00" E	136.31'	L35	S 00°00'00" E	16.25'
L17	N 00°00'00" E	12.50'	L36	N 90°00'00" E	22.08'
L18	N 90°00'00" E	21.00'	L37	S 00°00'00" E	45.67'
L19	S 00°00'00" E	12.50'	L38	N 90°00'00" W	20.00'

CURVE TABLE					
CURVE	RADIUS	DELTA	LENGTH	CHORD BEARING	CHORD DISTANCE
C1	2870.49'	2°49'06"	141.19'	S76°04'37"W	141.18'
C2	2890.49'	3°08'28"	158.47'	S76°08'00"W	158.44'

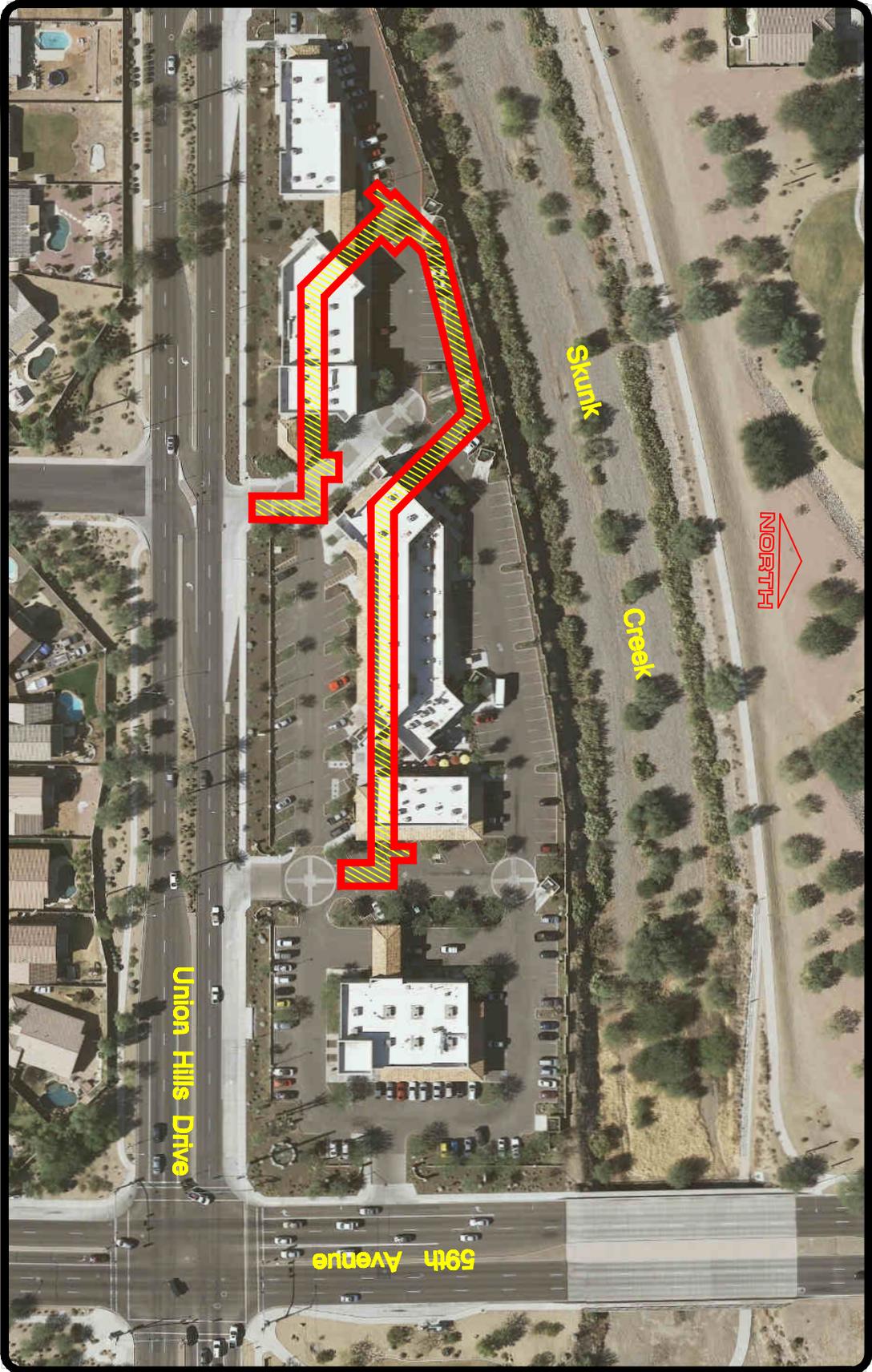


21415 N. 23rd Avenue
 Phoenix, AZ 85027
 623-869-0223 (office)
 623-869-0726 (fax)
 www.superiorsurveying.com
 info@superiorsurveying.com

EXPIRES 3/31/14

DATE: 12/14/11

JOB NO.: 111125



**IL PALAZZO
WATER EASEMENT
ABANDONMENT**





CITY COUNCIL REPORT

Meeting Date: **9/25/2012**
Meeting Type: **Voting**
Title: **JOINT PROJECT AGREEMENT WITH ADOT FOR AIRPORT RUNWAY
PAVEMENT PRESERVATION**
Staff Contact: **Jamsheed Mehta, AICP, Executive Director, Transportation Services**

Purpose and Recommended Action

Staff is requesting City Council waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into a joint project agreement (JPA) with the Arizona Department of Transportation (ADOT) for an airport runway pavement preservation project.

Background Summary

In Arizona, ADOT's Aeronautics Group administers the state's Airport Pavement Management System Program. ADOT has completed the planning and development phase of this program for FY 2012-13.

Under this program, ADOT's program manager designs the project, manages the bidding and administers the construction of the pavement maintenance projects. The total cost of this project is \$240,063 for pavement preservation at the Glendale Municipal Airport. ADOT will pay the contractors and the city will pay ADOT the required 10 percent match, estimated at \$24,006. The match will come from the Transportation GO Fund Account.

ADOT will collect the matching funds based on construction estimates at the time the proposed JPA is approved and issued. After completion of the project, ADOT will produce a final accounting reconciliation of the project costs.

Community Benefit/Public Involvement

Glendale Municipal Airport serves as a general aviation reliever airport to Phoenix Sky Harbor International Airport, and is an essential component to the flying public and air travelers in the West Valley. The preservation of the runway pavement enhances safety and provides pilots with an environment to which they want to return.



CITY COUNCIL REPORT

Budget and Financial Impacts

Cost	Fund-Department-Account
\$24,006	Upon Council approval, a new account within Fund 2210 will be created for Runway Pavement Preservation.

The total cost of this runway pavement preservation project is estimated at \$240,063. The city is required to pay a 10 percent local match of \$24,006. In the event that actual project costs exceed the estimate, the state will invoice the city for the remaining contribution required to equal 10 percent of the actual project costs. In the event that the actual project costs are less than the estimate, the state will reimburse the city for any overpayment.

Capital Expense? Yes No

Budgeted? Yes No

Requesting Budget or Appropriation Transfer? Yes No

If yes, where will the transfer be taken from? 2210-65078-550800 - Airport Matching Funds (GO Funds)

Attachments

Staff Report

Resolution

Agreement



STAFF REPORT

To: **Horatio Skeete, Acting City Manager**
From: **Jamsheed Mehta, AICP, Executive Director, Transportation Services**
Item Title: **JOINT PROJECT AGREEMENT WITH ADOT FOR AIRPORT RUNWAY
PAVEMENT PRESERVATION**
Requested Council Meeting Date: **9/25/2012**
Meeting Type: **Voting**

PURPOSE

This report explains the proposed Joint Project Agreement (JPA) between the Arizona Department of Transportation (ADOT) and the City of Glendale as part of the ADOT Airport Pavement Management System Program. The purpose of this report is to request that the City Manager place this item on an agenda for City Council action.

BACKGROUND

This fiscal year ADOT is offering a runway pavement preservation project to the Glendale Municipal Airport. ADOT provides Arizona airports with the opportunity to implement pavement maintenance and preservation projects, in accordance with the Federal Aviation Act of 1994, which requires airports to provide assurances of having an effective pavement maintenance management system. Glendale Municipal Airport is in full compliance with the federal law, and maintains a pavement maintenance management system consisting of pavement inventory, pavement inspections, recordkeeping, information retrieval and program funding. The total cost of the project is \$240,063 for pavement preservation at the Glendale Municipal Airport. A local match of 10 percent (\$24,006) is required, and is available in the GO Transportation Program budget.

ANALYSIS

In 2008, a pavement condition inspection was performed at the airport by an engineering firm contracted by ADOT. The inspection resulted in pavement maintenance recommendations for the airport pavement areas. From the pavement analysis, the airport has qualified for a pavement maintenance project under ADOT's current Five-Year Airport Pavement Management System Program, administered by the State Aeronautics Group. The program has Glendale Municipal Airport scheduled for crack seal, seal coat and pavement markings on Runway 1-19 during the current fiscal year—FY 2012-13.

FISCAL IMPACTS

ADOT manages the bidding and administers the construction of the pavement maintenance projects. For the airport's runway project, the city will pay ADOT the 10 percent local match and ADOT will directly pay the construction contractors. The local match of approximately \$24,006 will come from the Transportation GO Fund Account.

ADOT will collect the 10 percent matching funds based on construction estimates at the time the proposed JPA is approved and issued. After completion of the project, ADOT will produce a final accounting reconciliation of the project costs. In the event that actual project costs exceed the estimate, the state will invoice the city for the remaining contribution required to equal 10 percent of the actual project costs. In the event that the actual project costs are less than the estimate, the state will reimburse the city for any overpayment.

RESOLUTION NO. 4616 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF A JOINT PROJECT AGREEMENT WITH THE STATE OF ARIZONA, DEPARTMENT OF TRANSPORTATION, FOR A PAVEMENT PRESERVATION PROJECT AT THE GLENDALE MUNICIPAL AIRPORT.

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

SECTION 1. That it is deemed in the best interest of the City of Glendale and the citizens thereof that a Joint Project Agreement with the State of Arizona, Department of Transportation, for a pavement preservation project at the Glendale Municipal Airport (JPA 12-123) be entered into, which agreement is now on file in the office of the City Clerk of the City of Glendale.

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

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this ____ day of _____, 2012.

MAYOR

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

REVIEWED BY:

City Manager

MPD Agreement No	JPA 12-123
AG Contract No	P0012012001584
Project No	E3S1F
Project Description	ADOT Airport Pavement Management System Program
Airport	Glendale Municipal

**JOINT PROJECT AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
CITY OF GLENDALE**

THIS AGREEMENT JPA 12-123 is entered into this _____ day of _____, 2012, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, by and between the STATE OF ARIZONA acting by and through the ARIZONA DEPARTMENT OF TRANSPORTATION, herein referred to as the "STATE" and the CITY OF GLENDALE, a political subdivision of the State of Arizona, herein referred to as the "SPONSOR". The State of Arizona, Arizona Department of Transportation and City of Glendale are collectively referred to as the "Parties", and individually as STATE, SPONSOR, and "Party".

I. RECITALS

1. The STATE is empowered by Arizona Revised Statutes Section 28-8202.D and 28-401.A to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the STATE.
2. The SPONSOR is empowered by Arizona Revised Statutes Section 28-8413 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the SPONSOR.
3. The STATE and SPONSOR desire to share in costs incident to pavement preservation at the Glendale Municipal, hereinafter referred to as the Project. It is contemplated that this Project will be constructed by the STATE during STATE fiscal year 2013. The Project will include Crack Seal and Rubberized Asphalt Emulsion Seal Coat (RW119GL Sec 10). The STATE will pay all engineering, construction administration, and construction costs during the Project.
4. The estimated cost of the Project is \$240,063. The SPONSOR shall contribute 10% of the Project cost. Payment of 10% of the estimated Project Cost (\$24,006.30) is due and payable upon signing this Agreement and must be received by the STATE at its Arizona Department of Transportation, Multimodal Planning Division before Notice to Proceed for construction will be issued.

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

II. RESPONSIBILITIES

1. The STATE shall:

- a. Conduct investigations and prepare to FAA, State, or Local standards design plans, specifications and such other documents and services required for design, project coordination, construction bidding and construction.
- b. Advertise for Project bids and award one or more construction contracts for the Project, administer same, and make all payments to the contractor(s).
- c. Provide final inspection and acceptance of the Project.
- d. Subsequent to Project completion, determination of final quantities, and approval and acceptance of the Project, produce and submit to the SPONSOR a final accounting reconciliation of the Project costs. In the event that actual Project costs exceed the estimate, the STATE will invoice the SPONSOR for the remaining contribution required to equal 10% of the actual Project costs. In the event that the actual Project costs were less than the estimate, the STATE will reimburse the SPONSOR for any overpayment.
- e. Reimburse the SPONSOR for any contribution that exceeded 10% of the final Project costs within 30 days of submitting the final accounting reconciliation of the Project costs to the SPONSOR.

2. The SPONSOR shall:

- a. Remit payment of 10% of the estimated Project cost of as documented in the Recitals of this Agreement to: Arizona Department of Transportation, Multimodal Planning Division Finance and Administration, Mail Drop 310B, 206 S. 17th Avenue, Phoenix, AZ 85007. Payment is due and payable upon signature of this Agreement and must be received by the STATE at its Arizona Department of Transportation, Multimodal Planning Division before notice to proceed for construction will be issued.
- b. Provide access to the Airport to the STATE, the STATE's representative, and the contractor for the purpose of preparing design plans and specifications for the Project, constructing the Project, and administering the construction of the Project.
- c. Coordinate with the STATE and approve safety plans, security plans, phasing plans, and construction schedules prepared by the STATE.
- d. Coordinate with airport users, issue NOTAM's as required, and provide operations support during construction, as needed.
- e. Remit to the STATE at its Arizona Department of Transportation, Multimodal Planning Division, the SPONSOR's contribution to the Project, based on the estimate provided, when submitting the signed copy of this Agreement for final execution.
- f. Upon completion and acceptance of the Project by the STATE, provide maintenance of the airport pavements improved with the Project.
- g. Shall abide by and enforce the SPONSOR Assurances incorporated herein as Exhibit A.

- h. Remit to the STATE at its Arizona Department of Transportation, Multimodal Planning Division within 30 days of receiving an invoice for any additional contribution required subsequent to the post-completion Project accounting cost reconciliation.

III. MISCELLANEOUS PROVISIONS

1. This Agreement is governed according to the laws of the State of Arizona. All cited statutes, public law, executive orders, and policies cited in this Agreement are incorporated by reference as a part of this Agreement.
2. This Agreement shall become effective upon signature by the Parties hereto and shall remain in force and effect for a period not to exceed 90 days beyond Project completion; provided however, that this Agreement may be cancelled at any time prior to the commencement of performance under this Agreement, upon thirty (30) days written notice to the other Party.
3. This Agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.
4. If the SPONSOR fails to comply with any of this Agreement, the STATE, by written notice to the SPONSOR, may suspend participation until appropriate corrective action has been taken by the SPONSOR.
5. The STATE reserves the right to terminate this Agreement in whole or in part due to failure of SPONSOR to carry out any term, promise, or condition of the Agreement. The STATE will issue a written notice to SPONSOR for failure to adequately perform, or if there is reason for the STATE to believe that the SPONSOR cannot or will not adequately perform the requirements of the Agreement. If SPONSOR does not submit a Corrective Action Plan to the satisfaction of the STATE within a ten (10) day period, then the STATE, by written notice to the SPONSOR, may terminate the Agreement in whole or in part. The notice of termination will contain the reasons for termination, the effective date, and costs incurred prior to termination. The SPONSOR shall reimburse the State any costs incurred prior to the date of termination.
6. When the continuation of the Project will not produce beneficial results commensurate with the further expenditure of funds, or when funds are not appropriated or are withdrawn for use hereunder, the STATE may terminate this Agreement. In the case where continuation of the Project will not produce beneficial results, the STATE and the SPONSOR shall mutually agree upon the termination either in whole or in part.
7. No waiver of any condition, requirement or right expressed in this Agreement shall be implied by any forbearance of the STATE to declare a default, to declare a failure to perform, or to take any other action on account of the violation, nor shall such violation be continued or repeated.
8. All parties shall comply with all applicable Federal, State and Local requirements including all applicable provisions of Title 14 (Aeronautics and Space Chapter I – Federal Aviation Administration, Department of Transportation) and Title 49 (United States Department of Transportation) and other applicable Codes of Federal Regulations where and when relevant.
9. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this Agreement.

10. In the event of any controversy which may arise out of this Agreement, the Parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.
11. This Agreement may be amended upon mutual Agreement of the Parties at any time when in the best interest of the STATE or SPONSOR.
12. Every payment obligation of the STATE 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 STATE at any time. No liability shall accrue to the STATE in the event this provision is exercised, and the STATE shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.
13. All Parties shall retain all data, books, and other records relating to this Agreement for a period of five years after completion of the Agreement. All records shall be subject to inspection and audit by the STATE at reasonable times as set forth in A.R.S. 35-214, 49 CFR 18.26 and the requirements of OMB Circular A-133.
14. Each Party (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other Party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

In addition, the STATE shall cause its contractor(s) and subcontractors, if any, to indemnify, defend, save and hold harmless City of Glendale, any jurisdiction or agency issuing any permits for any work arising out of this Agreement, and their respective directors, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the STATE's contractor or any of the directors, officers, agents, or employees or subcontractors of such contractor. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by such contractor from and against any and all claims. It is agreed that such contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable.

15. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 USC. 12101-12213) and all applicable Federal regulations under the ACT, including 28 CFR Parts 34 and 36. SPONSOR shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, Arizona State Executive Order 2009-09, or A.R.S. 41-1461 through 1465, which mandates that all persons, regardless of race, color, religion, sex age, national origin or political affiliation shall have equal access to employment opportunities, and all other applicable state and federal employment laws, rules and

regulations, including the Americans With Disabilities Act. SPONSOR shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, age, national origin or political affiliation or disability.

16. To the extent applicable under Arizona Revised Statutes Section 41-4401, each Party and its subcontractors warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under Arizona Revised Statutes Section 23-214(A). A breach of the above-mentioned warranty by any Party or its subcontractors shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the non-breaching Parties. Each Party retains the legal right to randomly inspect the papers and records of the other Parties or its subcontractor employees who work on the Agreement to ensure that the Parties or its subcontractors are complying with the above-mentioned warranty.
17. Pursuant to Arizona Revised Statutes Sections 35-391 and 35-393, each Party certifies that it does not have a scrutinized business operation in Sudan or Iran. For the purpose of this Section the term "scrutinized business operations" shall have the meanings set forth in Arizona Revised Statutes Section 35-391 or 35-393, as applicable. If any Party determines that another Party submitted a false certification, that Party may impose remedies as provided by law including terminating this Agreement.
18. Either Party has the right to terminate the Agreement, in whole or in part at any time, when in the best interests of the STATE and/or SPONSOR, without penalty or recourse.
19. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

For Agreement Issues:

	Arizona Department of Transportation	City of Glendale
Contract Administrator	Sally J. Palmer Contracts Administrator	Walt Fix Airport Administrator
Mailing Address	Multimodal Planning Division Mail Drop 310B 206 S. 17 th Avenue Phoenix, AZ 85007	6801 Glen Harbor Blvd, Suite 201 Glendale, AZ 85307
Phone	602-712-6732	6239302188
Fax	602-712-3046	
Email	spalmer@azdot.gov	wfix@glendaleaz.com

For Technical / Program Issues:

	Arizona Department of Transportation	City of Glendale
Project Manager	Holly L. Hawkins, P.E. State Airport Engineer	Walt Fix Airport Administrator
Mailing Address	MPD – Aeronautics Group Attn: APMS Mail Drop 426M 206 S. 17 th Avenue Phoenix, AZ 85007	6801 Glen Harbor Blvd, Suite 201 Glendale, AZ 85307
Phone	602-712-8333	6239302188
Fax	602-712-3838	
Email	hhawkins@azdot.gov	wfix@glendaleaz.com

20. Attached hereto and incorporated herein is the written determination of each Party's legal counsel that the Parties are authorized under the laws of this STATE to enter into this Agreement and that the Agreement is in proper form.

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

City of Glendale

**STATE OF ARIZONA
Arizona Department of
Transportation**

By

By

Joseph S. Omer, Director
Multimodal Planning Division

(Date)

(Date)

APPROVAL OF CITY OF GLENDALE

I have reviewed the above referenced proposed joint partnering Agreement, between the STATE OF ARIZONA, ARIZONA DEPARTMENT OF TRANSPORTATION (STATE), and CITY OF GLENDALE and declare this Agreement to be in proper form and within the powers and authority granted to CITY OF GLENDALE under all applicable laws. No opinion is expressed as to the authority of the STATE to enter into this Agreement.

DATED this _____ day of _____, 2012

Attorney for City of Glendale

EXHIBIT A
SPONSOR ASSURANCES

These assurances will become a part of this Agreement. The SPONSOR hereby covenants and agrees with the STATE as follows:

- 1) That the Project is consistent with plans (existing at the time of approval of the Project) of public entities authorized by the STATE to plan for the development of the area surrounding the Airport.
- 2) That it will furnish to the STATE each quarter a current listing of all aircraft based on the Airport.
- 3) That these covenants shall become effective upon execution of this Agreement for the Project or any portion thereof, made by the STATE and shall constitute a part of the Agreement thus formed and shall remain in full force and effect throughout the useful life of the facilities developed under the Project, but not to exceed twenty (20) years.
- 4) That it is the owner or lessee of the property or properties on which the airport is located and that the lease guarantees that the SPONSOR has full control of the use of the property for a period of not less than twenty (20) years from the date of this Agreement. All changes in airport ownership or to an airport lease shall be approved by the STATE.
- 5) To restrict the use of land, adjacent to or in the immediate vicinity of the Airport, to activities and purposes compatible with normal Airport operations and to take appropriate action including the adoption of appropriate zoning laws.
- 6) To promote safe airport operations by clearing and protecting the approaches to the airport by removing, lowering, relocating, marking and/or lighting existing airport hazards and to prevent, to the extent possible, establishment or creation of future airport hazards.
- 7) To operate the Airport for the use and benefit of the public and to keep the Airport open to all types, kinds and classes of aeronautical use without discrimination between such types, kinds and classes; provided that the SPONSOR shall establish such fair, equal and nondiscriminatory conditions to be met by all users of the Airport as may be necessary for the safe and efficient operation of the Airport; and provided further, that the SPONSOR may prohibit any given type, kind or class of aeronautical use of the Airport if such use would create unsafe conditions, interfere with normal operation of aircraft, or cause damage or lead to the deterioration of the runway or other Airport facilities.
- 8) To suitably operate and maintain the Airport and all facilities thereon or connected therewith which are necessary for Airport purposes and to prohibit any activity thereon which would interfere with its use for aeronautical purposes and to operate essential facilities, including night lighting systems, when installed, in such manner as to assure their availability to all users of the Airport; provided that nothing contained herein shall be construed to require that the Airport be operated and maintained for aeronautical uses during temporary periods when snow, flood or other climatic conditions interfere substantially with such operation and maintenance.
- 9) To refrain from entering into any transaction which would deprive the SPONSOR of any of the rights and powers necessary to perform any or all of the covenants made herein, unless by such transaction the obligation to perform all such covenants is assumed by another public agency eligible to assume such obligations and having the power, authority and financial resources to carry out such obligations; and, if an arrangement is made for management or operation of the Airport by an agency or person other than the SPONSOR, the SPONSOR will reserve sufficient powers and authority to insure that the Airport will be operated and maintained in accordance with these covenants.
- 10) To maintain a current Airport Layout Plan (ALP) of the airport, which shows building areas and landing areas, indicating present and planned development and to furnish the STATE an updated ALP of the Airport as changes are made.