

City of Glendale Council Meeting Agenda

October 9, 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



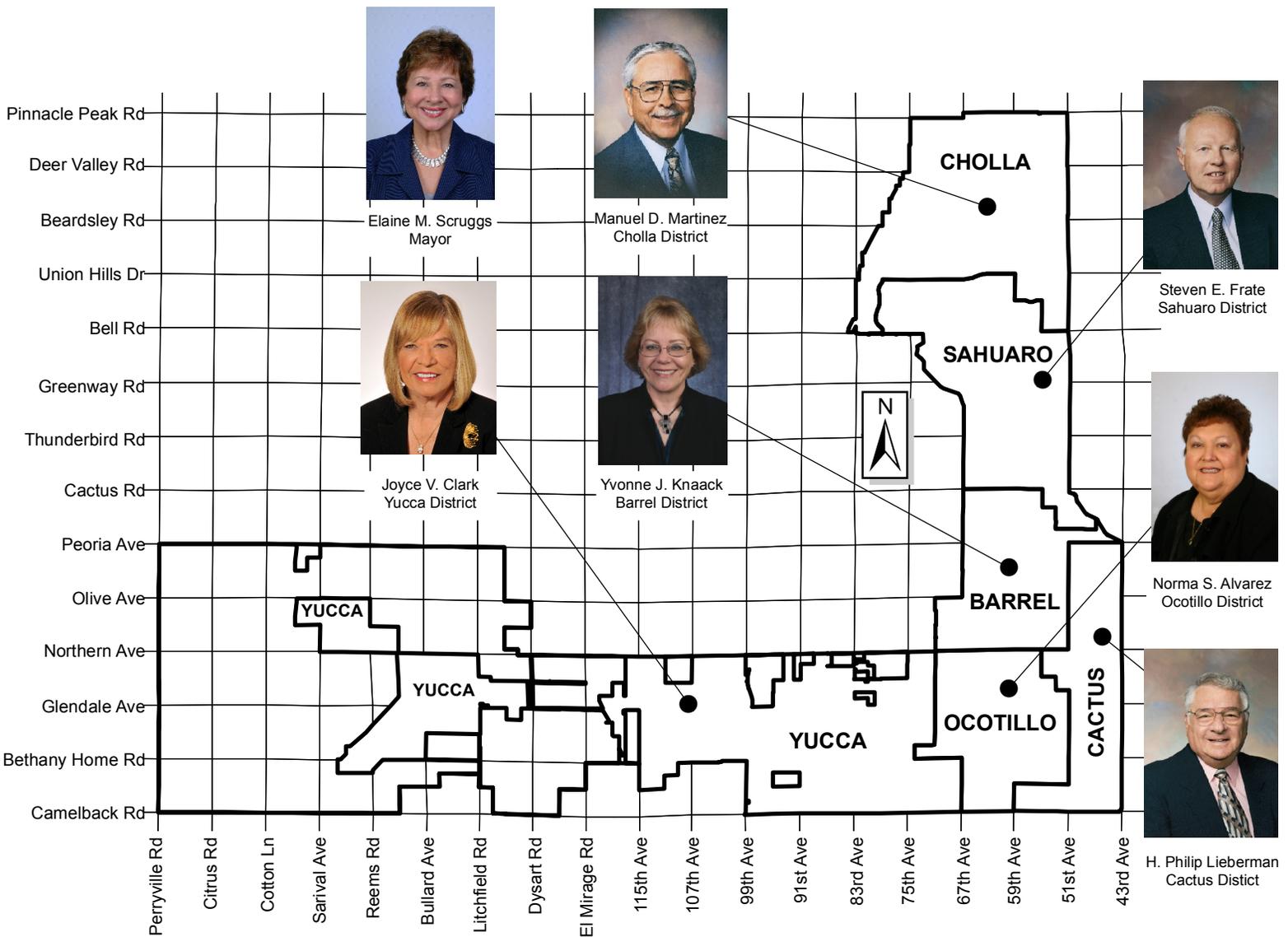
MAYOR ELAINE M. SCRUGGS
Vice Mayor Steven E. Frate - Sahuaro District

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
October 9, 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 September 25, 2012

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, SUN LAKES BREAKFAST LIONS CLUB
PRESENTED BY: Susan Matousek, Revenue Administrator

2. LIQUOR LICENSE NO. 5-7093, BABYLON GYROS & SHISH KABOBS
PRESENTED BY: Susan Matousek, Revenue Administrator

3. LIQUOR LICENSE NO. 5-7194, LA CABANA
PRESENTED BY: Susan Matousek, Revenue Administrator

4. LIQUOR LICENSE NO. 5-7255, CONNOLY'S BAR & GRILL
PRESENTED BY: Susan Matousek, Revenue Administrator

5. AUTHORIZATION TO PURCHASE AMMUNITION
PRESENTED BY: Debora Black, Interim Police Chief

6. PURCHASE AUTHORIZATION FOR CHEMICALS AND SERVICES
PRESENTED BY: Craig Johnson, P.E., Executive Director, Water Services

7. APPROVAL FOR PURCHASE OF TIRES

PRESENTED BY: Stuart Kent, Executive Director, Public Works

CONSENT RESOLUTIONS

8. DOMESTIC VIOLENCE VICTIM SERVICES AND PROGRAM ENHANCEMENT GRANT

PRESENTED BY: Elizabeth Finn, Presiding Judge

RESOLUTION: 4617

BIDS AND CONTRACTS

9. PROFESSIONAL SERVICES AGREEMENT WITH GREATER PHOENIX ECONOMIC COUNCIL

PRESENTED BY: Dave McAlindin, Assistant Director, Economic Development

ORDINANCES

10. FISCAL YEAR 2012-13 BUDGET AMENDMENTS

PRESENTED BY: Sherry Schurhammer, Executive Director, Financial Services

ORDINANCE: 2818

11. FORMATION OF AN AUDIT COMMITTEE

PRESENTED BY: Diane Goke, Chief Financial Officer

ORDINANCE: 2819

12. GROUND LEASE WITH VIESTE

PRESENTED BY: Stuart Kent, Executive Director, Public Works

ORDINANCE: 2820

RESOLUTIONS

13. WASTE SUPPLY AGREEMENT WITH VIESTE

PRESENTED BY: Stuart Kent, Executive Director, Public Works

RESOLUTION: 4618

14. INTERGOVERNMENTAL AGREEMENT WITH THE MARICOPA COUNTY DEPARTMENT OF TRANSPORTATION FOR USE OF CITY INSPECTORS ON NORTHERN PARKWAY

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

RESOLUTION: 4619

15. MEMORANDUM OF UNDERSTANDING WITH THE ARIZONA DEPARTMENT OF PUBLIC SAFETY FOR COMMERCIAL VEHICLE ENFORCEMENT MATTERS

PRESENTED BY: Debora Black, Interim Police Chief

RESOLUTION: 4620

NEW BUSINESS

16. REAPPOINTMENT OF CITY JUDGE

PRESENTED BY: Jim Brown, Acting Human Resources Director

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



**MINUTES OF THE
GLENDALE CITY COUNCIL MEETING
Council Chambers
5850 West Glendale Avenue
September 25, 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; 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 title posted at City Hall more than 72 hours in advance of the meeting.

APPROVAL OF THE MINUTES OF THE AUGUST 14, 2012 AND SEPTEMBER 11, 2012 CITY COUNCIL MEETINGS

It was moved by Martinez, and seconded by Knaack, to dispense with the reading of the minutes of the August 14, 2012 and September 11, 2012 Regular City Council meetings, as each member of the Council had been provided copies in advance, and approve them as written. The motion carried unanimously.

BOARDS, COMMISSIONS AND OTHER BODIES

BOARDS, COMMISSIONS AND OTHER BODIES

PRESENTED BY: Councilmember Joyce Clark

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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It was moved by Clark, and seconded by Frate, to appoint Carol Ladd and JoAnn Lee to the Arts Commission; Ron Cohoe to the Aviation Advisory Commission; Jack Bethel to the Citizens Transportation Oversight Commission; John Fallucca to the Commission on Persons with Disabilities; Marcia Garland, Chuck Jared and Vickie Loya to the Community Development Advisory Committee; Chase McKay as a teen appointment to the Library Advisory Board; James Baribault to the Parks & Recreation Advisory Commission; and John Stern to the Risk Management/Worker’s Compensation Trust Fund Board, for the terms listed above. The motion carried unanimously.

Mayor Scruggs called those present forward and issued the oath of office.

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

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.

Mayor Scruggs called Rob Walecki and Paul Ferguson forward to accept the proclamation.

FIRE PREVENTION MONTH PROCLAMATION

PRESENTED BY: Office of the Mayor

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

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.

Mayor Scruggs called Bill Epps forward to accept the proclamation.

CONSENT AGENDA

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

Mr. Horatio Skeete, Acting City Manager, read agenda item numbers 1 through 4 and Ms. Pamela Hanna, City Clerk, read consent agenda resolution item numbers 5 through 8 by number and title.

Councilmember Lieberman requested item number 4 be heard separately.

1. SPECIAL EVENT LIQUOR LICENSE, ST. RAPHAEL CATHOLIC CHURCH

PRESENTED BY: Susan Matousek, Revenue Administrator

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.

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

PRESENTED BY: Susan Matousek, Revenue Administrator

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.

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

PRESENTED BY: Susan Matousek, Revenue Administrator

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.

4. APPEAL OF DECISION IN GILA RIVER INDIAN COMMUNITY, et al., v.

DEPARTMENT OF INTERIOR AND TOHONO O'ODHAM NATION, et al.

PRESENTER BY: Craig Tindall, City Attorney

This item was heard after the consent agenda items.

CONSENT RESOLUTIONS

5. ARIZONA CRIMINAL JUSTICE COMMISSION GRANT

PRESENTED BY: Debora Black, Interim Police Chief

RESOLUTION: 4614

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.

Resolution No. 4614 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 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.

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

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.

Resolution No. 4615 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 CONSTRUCTION OF A 10-FOOT WIDE CONCRETE PATHWAY FROM THE BETHANY HOME ROAD ALIGNMENT TO NORTHERN AVENUE.

It was moved by Frate and seconded by Knaack, to approve the recommended actions on Consent Agenda Item Nos. 1 through 3 and 5 and 6, including the approval and adoption of Resolution No. 4614 New Series and Resolution No. 4615 New Series; and to forward Special Event Liquor License Application for St. Raphael Catholic Church and Liquor License Application No. 5-6572 for Mama Lupitas Restaurant and Bar and No. 5-7002 for Kiku Revolving Sushi Bar to the State of Arizona Department of Liquor Licenses and Control, with the recommendation for approval. The motion carried unanimously.

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

PRESENTER BY: Craig Tindall, City Attorney

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.

Councilmember Lieberman commented that the court judgment proved the Tohono O'odham Nation had not done anything wrong in their quest to build a casino. He mentioned the millions the city has spent in legal costs fighting this issue when the city budget was in a deficit.

Craig Tindall, City Attorney, explained the decision was a split decision, therefore at this time the city has the option to appeal.

Councilmember Lieberman asked if the next appeal was to the Supreme Court. Mr. Tindall noted that was one of the options. Councilmember Lieberman questioned all the attorney bills the city would have to pay to still fight this issue. He asked if the city had to pay for everyone's

legal fees since they lost. Mr. Tindall replied he was unclear on that issue. Councilmember Lieberman made a statement regarding the casino development and asked if the Tohono O'odham Nation Gila River Indian Community was spending several million dollars building a new casino on the west side and that their participation in the lawsuit was solely protecting their economic interest. Mr. Tindall said that he would not verify the several facts of the statement that he had no knowledge of that fact the GRIC was building a Westside casino. Councilmember Lieberman noted that there was a newspaper article and that Mr. Tindall had to be aware of it and was not being truthful about it. Councilmember Lieberman reiterated the city's current bad budget crisis and does not support the idea to keep fighting this issue when both federal courts ruled in favor of the Nation. He pointed out the benefits of having a casino in Glendale.

Mayor Scruggs commented that she was going to ask all of you as she had asked every audience that has ever been in the City Council that if you hear something that you agree with and that you like – that you raise your hands to indicate your support. If you hear something you don't like – you can go like this, to indicate that you do not support it. But she was going to ask that you register your feelings silently. This is the way the city has conducted business here for years and it is hoped that you will continue that.

Councilmember Alvarez stated that because of the major cuts the city was proposing including libraries, adult center etc., she does not support the idea of the city continuing this legal fight.

Manuel Cruz, a Yucca resident, stated he had opposed the appeal to the 9th Circuit decision concerning the casino. He noted the millions the city has spent fighting the issue of the casino when the city was fiscally strapped for money. He mentioned the benefits of building the casino in Glendale which will bring three to six thousand jobs into the area. He indicated the building of the casino in Glendale will not cost the city one penny. He said his discussions with the Tohono O'odham Nation have been productive and he believes building the casino will bring much needed jobs into the area.

Robert Steiger, a Sahuaro resident, submitted a speakers' card in support of the recommended action, however he did not speak.

It was moved by Frate, and seconded by Knaack, 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. The motion carried. Ayes: Clark, Frate, Knaack, Martinez and Scruggs. Nays: Alvarez and Lieberman.

Councilmember Martinez stated he will not go into this matter in detail since it has been discussed many times over. He mentioned how the Tohono O'odham Nation purchased the land under a false pretense. He also does not believe the figures discussed regarding the amount of jobs the casino will bring the city. He believes the money that has been spent was money well spent because in the long run it will be beneficial to the city to not have a sovereign nation in the middle of the city. He believes they have a good chance if they continue the fight to win as they move forward. He supports moving forward with the appeal.

Councilmember Martinez said he was going to make a point of order earlier when Councilmember Lieberman was speaking. He believes there was something in the Code of Ethics and Conduct as to how the Council should treat staff. He noted that Councilmember Lieberman said the City Attorney was being untruthful and believes that was in violation of one of those codes. He indicated he will be looking into that matter.

Councilmember Alvarez noted she remembers a comment from Councilmember Martinez that the Tohono O'odham Indians were foreigners. She said they were a sovereign nation, not foreigners. Councilmember Martinez noted he did not remember saying that, however, if he did, it was not meant in a demeaning fashion.

Councilmember Knaack commented on the job figures being thrown around regarding the casino. She explained that Tanger Outlet had 500 construction jobs and will employ 900 people. She does not see how the casino will bring in 6000 construction jobs and 3000 jobs into the area. She said it does not make any sense. However, because of the current budget crises, she has thought long and hard on this issue. Nevertheless, she will stand by her conviction since this is wrong. She said this decision will affect gaming statewide and possibly nationwide. She believes this decision needs to go to the top and finally be decided.

Councilmember Clark remarked that the Council has discussed this issue to the point of nausea. She stated the city should continue its battle in conjunction with their partners, the State of Arizona and Gila River Indian Community, which is fighting for every other Indian tribe in support of this action. She explained that even with the budget crises, they could not afford not to fight this issue. She stated they were talking about a decision that will affect Glendale forever. This issue takes land out of production and any hope of the city collecting revenue of any sort forever. She asked those people wanting the casino to talk to the people living in the area about this major intrusion into their way of life. She remarked on the Tohono O'odham Nation being a sovereign nation which meant the city has no control over it. She said this means the police cannot enter the reservation or collect any revenue from it. However, the police department was responsible for any traffic accidents or crime that occurs on Northern or 91st coming from the casino. She agreed with Councilmember Knaack that they should bring this matter to a final conclusion even if it takes the Supreme Court to do it.

Councilmember Alvarez questioned Councilmember Clark's remarks that maybe the Tohono O'odham Nation was not American. Councilmember Clark noted she was sorry Councilmember Alvarez was unable to understand her comments and at no time did she refer to them as being un-American in any way, shape or form.

Mayor Scruggs commented that she almost hated to say anything because Council has done this for three and a half years and it keeps getting twisted and misrepeated. But a sovereign nation means simply that they do not follow any of our laws, rules, regulations or anything else. And that's what she meant when she used the comparison of another county that wouldn't have to follow city and state rules either. Some of you who have been in Arizona a long time may remember in the 1980's when the Salt River Pima Maricopa Indian Community with whom the city is good friends on this issue, they had a real problem with Scottsdale Road and they shut it down. Think back, those of you who have been here a long time, nobody could drive on

Scottsdale Road. They were a sovereign nation and so they just closed their half of the road. And that is what they did. Right now we have been, “we” meaning all the cities in Maricopa County have been trying since Proposition 300 was passed in 1985 to get the south mountain freeway built. And it has been blocked by the Gila River Indian Community, who we are friends with on this particular issue. And they had a vote and they voted that that freeway should never be built even though everybody else in Maricopa County voted for it in 1985 and has been paying taxes for it. So that’s what sovereignty really means. They have their own laws and rules and they see things differently and they really don’t need to abide by anything that the rest of us do. So for her this issue is about the creation of a sovereign nation within our incorporated boundaries and an entity over which the city would have no ability to cause them to cooperate and to follow the common theme of the citizens of Glendale who have voted on a general plan and so forth.

Mayor Scruggs continued regarding Senator McCain, he was pretty much put on the spot at a town hall in the last three weeks or so. And he was here ready to talk about the F-35 coming to Luke Air Force Base but he held a town hall and a Glendale resident approached him and asked why was he not supporting the Tohono O’odham Nation plan and was very, very strong and this has been captured on tape. And he said he was one of the authors of the Indian Gaming Regulatory Act. He was one of the authors of that law that set out how gaming would take place. And that law says that games will take place on Indian Reservations that were created prior to 1988. There was never any intention that that law would be used in the way the Tohono O’odham Nation is trying to use it. When we talk about Scottsdale, all the things going on in Scottsdale, that is their Indian Nation and what Senator McCain said was that there was never any intent on the part of the authors that were trying to create an environment for Indian Nations to be able to engage in gaming. There was never the intent that a Nation would leave their land, come a hundred miles or more away and go around and shop for reservations in areas that have been developed and are now very productive. So that was his answer, yes he was part of the Gila Bend Act, but he was also part of the Indian Gaming Regulatory Act and he has spoken very definitely on it. As somebody said, this discussion has been going on for quite awhile and maybe it’s just time that Council votes. But quite honestly for her the issue is about creating a sovereign nation, taking land away from the City of Glendale, Maricopa County, the State of Arizona and the Indian Gaming Regulatory Act says very definitely that the Governor must approve of this and the Governor has registered disapproval and they have not had anything to say in the development of that land forever.

BIDS AND CONTRACTS

7. AWARD OF BID 12-41, STREETLIGHT MAINTENANCE

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

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.

Councilmember Clark asked where these street lights were located. Jamsheed Mehta, AICP, Executive Director, Transportation Services stated the lights were located on the arterial street system throughout the city of Glendale.

It was moved by Clark, and seconded by Lieberman, 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. The motion carried unanimously.

8. AWARD OF PROPOSAL 12-36, COLLECTION SERVICES

PRESENTED BY: Diane Goke, Chief Financial Officer

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.

Councilmember Clark suggested that in the future staff look at the rate of collection as one of the primary factors to consider when selecting a firm. She noted it makes no sense for a firm to offer a good rate if their collection rate was poor.

Councilmember Alvarez asked how much they have to owe to go into collections. Diane Goke, Chief Financial Officer, stated the city pursues all collection efforts and anything over \$50. Councilmember Alvarez commented on a client that owed over \$90,000. She asked if they were also sent to collections. Ms. Goke replied yes, and added the city also does internal collection efforts. Ms. Goke explained the bid process and the way the city selects the best firm for the city.

Mayor Scruggs asked if getting a high score for costs means the provider was expensive or not expensive.

Ms. Goke explained the higher the score the lower the cost.

It was moved by Frate, and seconded by Clark, 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. The motion carried unanimously.

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

PRESENTED BY: Stuart Kent, Executive Director, Public Works

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.

It was moved by Clark, and seconded by Lieberman, 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 in an amount not to exceed \$120,000 annually. The motion carried unanimously.

10. AUTHORIZATION TO PURCHASE TASERS

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

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.

Councilmember Clark wondered what kind of Tasers the city was purchasing. Rick St. John, Interim Assistant Police Chief, replied the city was getting the X-2, a smaller version than the X-3 that proved to be too bulky.

It was moved by Frate, and seconded by Martinez, to approve the purchase of 435 Taser devices from Taser International in an amount not to exceed \$596,430. The motion carried unanimously.

ORDINANCES

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

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

ORDINANCE: 2815

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.

Ordinance No. 2815 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 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.

It was moved by Knaack, and seconded by Clark, to approve Ordinance No. 2815 New Series. Motion carried on a roll call vote, with the following Councilmembers voting "aye":

Alvarez, Clark, Lieberman, Knaack, Martinez, Frate, and Scruggs. Members voting “nay”: none.

12. LAND EXCHANGE: TOPEKA DRIVE, EAST OF 54TH LANE

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

ORDINANCE: 2816

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.

Ordinance No. 2816 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 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.

It was moved by Martinez, and seconded by Knaack, to approve Ordinance No. 2816 New Series. Motion carried on a roll call vote, with the following Councilmembers voting “aye”: Alvarez, Clark, Lieberman, Knaack, Martinez, Frate, and Scruggs. Members voting “nay”: none.

13. WATERLINE EASEMENT ABANDONMENT AT 59TH AVENUE AND UNION HILLS DRIVE

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

ORDINANCE: 2817

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 II Palazzo development. Staff is requesting Council waive reading beyond the title and adopt an ordinance authorizing the easement abandonment.

Ordinance No. 2817 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 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.

It was moved by Frate, and seconded by Martinez, to approve Ordinance No. 2817 New Series. Motion carried on a roll call vote, with the following Councilmembers voting “aye”:

Alvarez, Clark, Lieberman, Knaack, Martinez, Frate, and Scruggs. Members voting “nay”: none.

RESOLUTIONS

14. JOINT PROJECT AGREEMENT WITH ADOT FOR AIRPORT RUNWAY PAVEMENT PRESERVATION

PRESENTED BY: Jamsheed Mehta, AICP, Executive Director, Transportation Services
RESOLUTION: 4616

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.

Resolution No. 4616 New Series was read by number and title only, it being A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF A JOINT PROJECT AGREEMENT WITH THE STATE OF ARIZONA, DEPARTMENT OF TRANSPORTATION, FOR A PAVEMENT PRESERVATION PROJECT AT THE GLENDALE MUNICIPAL AIRPORT.

It was moved by Clark, and seconded by Frate, to pass, adopt and approve Resolution No. 4616 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, October 2, 2012, to be followed by an Executive Session pursuant to A.R.S. 38-431.03. The motion carried unanimously.

CITIZEN COMMENTS

Bud Zomok, an Ocotillo resident, commented on the budget workshop the Council had today. He said it would be a horrific error on the part of the city to cut programs that generate income and bring people to Glendale such as Glendale Glitters. He also does not support the elimination of the Visitors Center since it does a lot for incoming business and people and one that should not be cut.

Dave Campbell, an Ocotillo resident, commented on the possibility of cutting Glendale Glitters. He said as a business owner in the downtown area, cutting this event would be disastrous to his business as well as other businesses in the area.

Olivia Khiel, a Sahuaro resident, stated she was here today to speak in support of the libraries and the fire departments since the Council was proposing making significant cuts in both. She believes this was not right since the Council’s job was to provide basic services to the people.

She noted their job did not include fighting multimillion dollar battles with Indian Nations or the NHL. She talked about the benefits of the libraries. She remarked that in her opinion the Council has failed the citizens and many are not running for reelection and are leaving the city in shambles with their decision making.

Bonnie Steiger, a Sahuaro resident, stated she attended the previous workshop on the budget and what needs to be cut. She said she normally was not in favor of sales tax increases, however, believes this one was needed to keep the city running and not have to cut city services. She said they were not in favor of the repeal of the sales tax increase. She explained most of the problem was because of the recession and not the Coyote issue or the City Council.

Elizabeth Reissig, a Sahuaro resident, commented on all the wonderful things in Glendale and the challenges they were currently going through. She supports Channel 11, Glendale Special Events and other city services and hopes they do not get cut.

Scott Hanson, a Phoenix resident, said he does not support cutting Glendale Special Events. He hopes the Council reconsiders their position on this matter. He talked about how special these events were to everybody.

Tony Scalia, a Cholla resident, said he does not support cutting Glendale Special Events. He said these events were spectacular and hopes they do not go away. He asked the Council to find a way to keep them in the city.

Linda Moran-Whittle, owner of Papa Ed's Ice Cream in the Ocotillo district, stated the recommendations to cut made by the City Manager were very deep and devastating to many of them. She does not support cutting Glendale Special Events since this would be a blow to what she has been able to achieve in her first four years in Glendale. She said the events that have already occurred have brought 26% revenue of her total revenue for that same period. She believes she will not be able to absorb the cost without the special events and will possibly go out of business.

Carol Migray, an Ocotillo resident and business owner, stated she does not support cutting Glendale Special Events because of the negative effect it will have on businesses in the city. She talked about the wonderful stories everyone tells regarding the events in Glendale.

Diane Steele, an Ocotillo resident, submitted a speaker's card about Special Events, but left before speaking.

Dr. Dan Mayzanas, a business owner in Sahuaro, stated he was here in support of all the events in Glendale. He said he and his family have gone to each and every event held in Glendale. The events provide a great way for people to relax and enjoy themselves. He supports the merchants that have come forward to also support the events.

Nancy Forney, a Barrel resident and business owner, stated she was here in support of all the special events in Glendale. She discussed the benefits of having these events in Glendale. She said not having these events would devastate the community.

Gwyn MacArthur, a Sahuaro resident, stated she was here in support of all the special events in Glendale. She discussed the benefits to the community of having these events in Glendale.

Cristian Martinez, a Barrel resident, stated he was here today to speak in support of the libraries since they had become like a second home for him. He said he had been devastated when he heard the Council was considering closing some libraries. He noted that in his mind, this was equal to receiving an eviction notice or seeing your home foreclosed upon. He questioned the benefits of closing the libraries or turning over operation to a second party. He explained that with the proposed cuts he wonders why anybody would want to live in Glendale.

Sarah Manzanares, a Peoria resident, said she was here in support of all the special events in Glendale. She discussed the benefits to the community of having these events in Glendale. She suggested charging a small fee to offset the cost instead of cutting the events all together.

Sandra Burr, a Barrel resident, submitted a speakers' card to speak on saving money, but left before speaking.

Cary Pfeffer, a Phoenix resident, stated he was here in support of the communication process that the City of Glendale established. He commends the city for keeping the citizens involved in this time when they have to make these difficult decisions. He hopes the city continues this practice.

Cherish Michael, a Barrel resident; spoke on behalf of Theresa Michael. Ms. Michael stated she was here to speak in regards to the police force in Glendale. She believes they have one of the best in the county. Therefore, it made no sense to cut funds from that department when crime was up in the city. She supports the sales tax increase and will be happy to pay it to keep services intact.

Jay Levine, a Phoenix resident, said he was here in support of the special events in Glendale. He discussed the benefits to the community of having these events in Glendale. He said that as a business owner, these events account for 20% of his gross yearly revenue. He explained these festivals have been hugely successful and they should not cut off the hand that helps feed them.

Barrie MacArthur, a Peoria resident, said he was here in support of the special events in Glendale. He discussed the benefits to the community of having these events in Glendale. He hopes the Council reconsiders cutting these events since happiness was something for which you cannot pay. He commended the professionalism and work the Glendale City staff generates in producing these events.

Ken Brown, an Ocotillo resident, was here in support of the special events in Glendale. He discussed the benefits to the community of having these events in Glendale. He hopes the Council reconsiders cutting these events.

COUNCIL COMMENTS AND SUGGESTIONS

Councilmember Clark stated she shared a lot of the same sentiments that the speakers said about the festivals and libraries. She said this was a very difficult time for Glendale, however they should remember these were only proposed cuts and do not have to happen if the sales tax stays in place. She stated they will have to decide in November the direction Glendale will have to take. She thanked the public for attending the meetings and expressing their thoughts.

Councilmember Lieberman said this had been a very long, interesting and very difficult day. He thanked the public for staying and expressing their views. He understands the comments spoken by the downtown merchants since he had once been one of them.

Vice Mayor Frate commented on the people who were fighting the sales tax increase. He said this sales tax has been in effect since August 1st and so far has not heard of any business going bankrupt over the increase. He explained the Council asked the City Manager to come up with a budget that would show what taking away the increase would do to the city. He said they all had the ability to vote on the outcome they liked best. He asked if 70 cents on a \$100 purchase was worth closing a library or cutting back on police or fire. He resents people coming from outside of Glendale telling the citizens what they believe was best for them. He reminded everyone this tax will not be around forever and will sunset in five years.

Councilmember Martinez thanked everyone who attended the meeting tonight and spoke on what services they'd like to keep. He believes the people running the Save Glendale Now were misguided because the impact of repealing the tax would devastate the city of Glendale. He said the worst case scenario was presented by the City Manager but only if the sales tax is repealed. He said just thinking about what would happen to the city makes him sick. He believes the citizens of Glendale have all the information they need to make an informed decision in November.

Councilmember Knaack commented on the layoffs that will happen if the sales tax does not go through. She cannot imagine the devastation this will create in families that need that income to survive. She said the possibility of laying off this many people just breaks her heart. She hopes and prays that people will see the light and vote no on this initiative and support the sales tax. She thanked everyone for attending tonight.

Mayor Scruggs commented that first off she would like to give a special thanks to Carol and Linda and to Dave, etc. and all who have businesses in Glendale. Thank you for being here tonight and thank you for – well Council needs to come see your businesses. But thank you for taking the time and being here tonight. But thank you mostly for the confidence and the trust you put in Glendale for all these years by establishing your businesses and keeping your businesses open. So she wanted to say that first and foremost. You've heard what the Councilmembers have said; you really are in a much better position to reach people about this Proposition 457 than Council was quite honestly. She didn't know if her colleagues agreed with her but what she was hearing is people are just kind of tuning the Council out. They are saying 'well that is what we expect you to say'. But listen how the speakers captivated Council; she wasn't sure if everyone had a clue how tired Council was. Council started this at 1:30 p.m. today and it's grueling. She means that it was tiring because it's just mind numbing. But what the city was looking at – it just takes everything out of you. But yet the speakers came here and spoke

with their hearts and with courtesy and with passion and they made sense. And they just woke Council all up, they paid attention and you can do that with others. And the speakers can do more than the seven members of Council can ever do to sway people at this time. So as her colleagues have said – help out now for those who don't know – the county will start mailing out ballots on October 11th and a huge percentage of voters are signed up for early ballots. But the speakers do have opportunities to spread the word and tell people who live in Glendale with whom they come in contact, how they feel about Proposition 457. And the speakers words will carry much more weight than anything that comes from Council. So she just seconded what her colleagues have said. And again thank you very much for being here and for speaking the way you did. And protests don't work, protests turn people off. She has already received a lot of complaints today about some phone calls that have started up. People don't like that. They like to hear a reason. Now she wanted to say one other thing that she didn't think she had ever said at a Council meeting. But Vice Mayor Frate is so upset about all of this that he forgot to say for the first time ever – watch children around water. So that tells you how upset the man really is. Thank you, meeting is adjourned.

ADJOURNMENT

There being no further business, the meeting was adjourned at 9:35 p.m.

Pamela Hanna - City Clerk



CITY COUNCIL REPORT

Meeting Date: **10/9/2012**
Meeting Type: **Voting**
Title: **SPECIAL EVENT LIQUOR LICENSE, SUN LAKES BREAKFAST LIONS CLUB**
Staff Contact: **Susan Matousek, Revenue Administrator**

Purpose and Recommended Action

This is a request for City Council to approve a special event liquor license for the Sun Lakes Breakfast Lions Club. The event will be held at Sahuaro Ranch Park located at 9802 North 59th Avenue on Friday, October 19, from 10 a.m. to 10 p.m. and Saturday and Sunday, October 20 and 21, 2012, from 10 a.m. to 5 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 three 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: **10/9/2012**
To: **Horatio Skeete, Acting City Manager**
From: **Susan Matousek, Revenue Administrator**
Title: **SPECIAL EVENT LIQUOR LICENSE, SUN LAKES BREAKFAST LIONS CLUB**

General Information

Request: Special Event Liquor License

Location: 9802 North 59th Avenue

District: Barrel

Zoned: A-1 (Agricultural District Historical Preservation)

Applicant: Robert J. Scully

Owner: Sun Lakes Breakfast Lions Club

Background

1. The event will be held at Sahuaro Ranch Park on Friday, October 19, from 10 a.m. to 10 p.m. and Saturday and Sunday, October 20 and 21, 2012, from 10 a.m. to 5 p.m.
2. The total number of days expended by this applicant will be three out of the allowed 10 days per calendar year.
3. The purpose of this event is for a fundraiser at the Wild Western Festival.

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

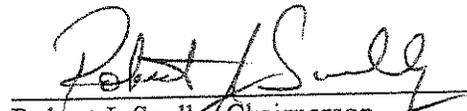
It is staff's recommendation to forward this application to the Arizona Department of Liquor Licenses and Control with a recommendation of approval.

AGREEMENT

DATED: August 18, 2012

This agreement is made between DR Buck Productions and Sun Lakes Breakfast Lions Club. Sun Lakes Breakfast Lions Club will sell beer at the Wild Western Festival which will be held on October 19, 20, and 21st, 2012 at Sahuaro Ranch Park, located at 9802 N. 59th Avenue, Glendale, AZ. It is agreed that the parties above will split 50% of net profits. This is subject to that all permits and licenses are approved by the City of Glendale and Arizona Department of Liquor Licenses & Control.

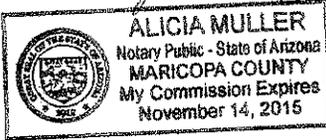

DR Buck Montgomery, Owner/Producer
DR Buck Productions


Robert J. Scully, Chairperson
Sun Lakes Breakfast Lions Club

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

18. I, Robert J. Scully 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 Robert J. Scully Chairperson 8/29/12 (480) 895-2737
 (Signature) (Title/Position) (Date) (Phone #)



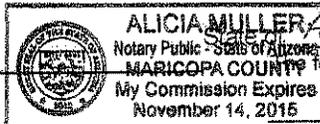
State of Arizona ARIZONA County of MARICOPA
 The foregoing instrument was acknowledged before me this 29th August 2012
 Day Month Year

My Commission expires on: Nov. 14, 2015 Alicia Muller
 (Date) (Signature of NOTARY PUBLIC)

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

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

X Robert J. Scully ARIZONA County of MARICOPA
 (Signature) (Title/Position) (Date) (Phone #)
 The foregoing instrument was acknowledged before me this 29th August 2012
 Day Month Year



My commission expires on: Nov. 14, 2015 Alicia Muller
 (Date) (Signature of NOTARY PUBLIC)

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

LOCAL GOVERNING BODY APPROVAL SECTION

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

FOR DLLC DEPARTMENT USE ONLY

Department Comment Section:

 (Employee) (Date)

APPROVED DISAPPROVED BY: _____
 (Title) (Date)



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

SPECIAL EVENT LIQUOR APPLICATION

FOR CITY USE ONLY

L15 L16

Amount Due: _____

Account #

Event Information

Event Business Location Name: SAHUARO RANCH PARK - HISTORIC AREA

Event Address: 9802 N. 57TH AVE, GLENDALE, AZ 85302

Name of person filling out this form: ROBERT J. SCULLY

Phone Number: _____ Address: _____

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

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

Event Contact Name: BUCK MONTGOMERY

Phone Number: 623-521-3856 Address: P.O. BOX 7123, GOODYEAR, AZ 85338

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

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

Event Sponsor Information

Organization Name: _____

Organization Address: _____

Federal ID Number: _____

Dates & Hours of Event

Date	Hours	Date	Hours
Day 1: <u>10/19/2012</u>	<u>10:00 AM To 10:00 PM</u>	Day 6: _____	_____
Day 2: <u>10/20/2012</u>	<u>10:00 AM To 5:00 PM</u>	Day 7: _____	_____
Day 3: <u>10/21/2012</u>	<u>10:00 AM To 5:00 PM</u>	Day 8: _____	_____
Day 4: _____	_____	Day 9: _____	_____
Day 5: _____	_____	Day 10: _____	_____

Event Activities

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

Live Entertainment Yes No If yes, Type _____

Adult Entertainment Yes No Outdoor dining Yes No

Food Served Yes No Outdoor Alcohol Consumption Yes No

FOR CITY USE ONLY



GASE1011
Print version 04/2010-1

[Empty box for Account#]

Event Fencing

Will there be fencing? Yes No

If yes: Type of Material IRON

Height of Fence 10 FT

Number of Exit Gates 1

Width of Exit Gate(s) 12 FT

Event Parking

Is Parking Area Exclusively for this Location? Yes No If yes: How many parking spaces? 2000 EST.

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

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

Permit Requirements *

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

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

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

Interpreter Language

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

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

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

[Signature]
(Signature of person filling out this form)

8/18/2012
(Date)

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



12-97

GLENDALE POLICE DEPARTMENT

Liquor Application Worksheet

Date: 09-13-12

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: **Sun Lakes Breakfast Lions Club**

Business Address: **P.O.Box 13352, Chandler, AZ**

Applicant/s Information

Name: **Scully, Robert J.**

Name:

Name:

Name:

Background investigation of applicant/s completed.

Calls for Service History:	Call history for location beginning: 9/13/2012	Other Suites	New ownership call history beginning:
Liquor Related	1		
Vice Related			
Drug Related	1		
Fights / Assaults	13		
Robberies			
Burglary / Theft	100		
911 calls	89		
Trespassing	4		
Accidents	2		
Fraud / Forgery			
Threats	2		
Criminal damage	12		
Other non-criminal*	49		
Other criminal	5		
Total calls for service	278	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 Sun Lakes Breakfast Lions Club (50%) and DR Buck Productions (50%). This Special Event License is for a Family Festival/Rund Raiser (Wild Western Festival).

Events are scheduled for 10-19-12 (Fri), 10-20-12 (Sat), 10-21-12 (Sun).

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>9-13-12</u>
CID Lieutenant or Commander	_____	_____
Deputy City Attorney	_____	_____
Chief of Police or designee	<u>[Signature]</u>	<u>9-13-12</u>



CITY COUNCIL REPORT

Meeting Date: **10/9/2012**
Meeting Type: **Voting**
Title: **LIQUOR LICENSE NO. 5-7093, BABYLON GYROS & SHISH KABOBS**
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 Babylon Gyros & Shish Kabobs located at 5826 West Olive Avenue, Suite B101. The Arizona Department of Liquor Licenses and Control application (No. 12079237) was submitted by Fikri Francis Rahana.

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 Barrel District. The property is zoned C-1 (Neighborhood Commercial). The population density within a one-mile radius is 19,868. 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
06	Bar - All Liquor	2
07	Bar - Beer and Wine	1
09	Liquor Store - All Liquor	6
10	Liquor Store - Beer and Wine	5
12	Restaurant	1
14	Private Club	1
	Total	16

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: **10/9/2012**
To: **Horatio Skeete, Acting City Manager**
From: **Susan Matousek, Revenue Administrator**
Title: **LIQUOR LICENSE NO. 5-7093, BABYLON GYROS & SHISH KABOBS**

General Information

Request: New, Non-Transferable

License: Series 12 (Restaurant)

Location: 5826 West Olive Avenue, Suite B101

District: Barrel

Zoned: C-1 (Neighborhood Commercial)

Applicant: Fikri Francis Rahana

Owner: Shako Mako Grill, LLC

Background

1. The population density is 19,868 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 28 through September 17, 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.

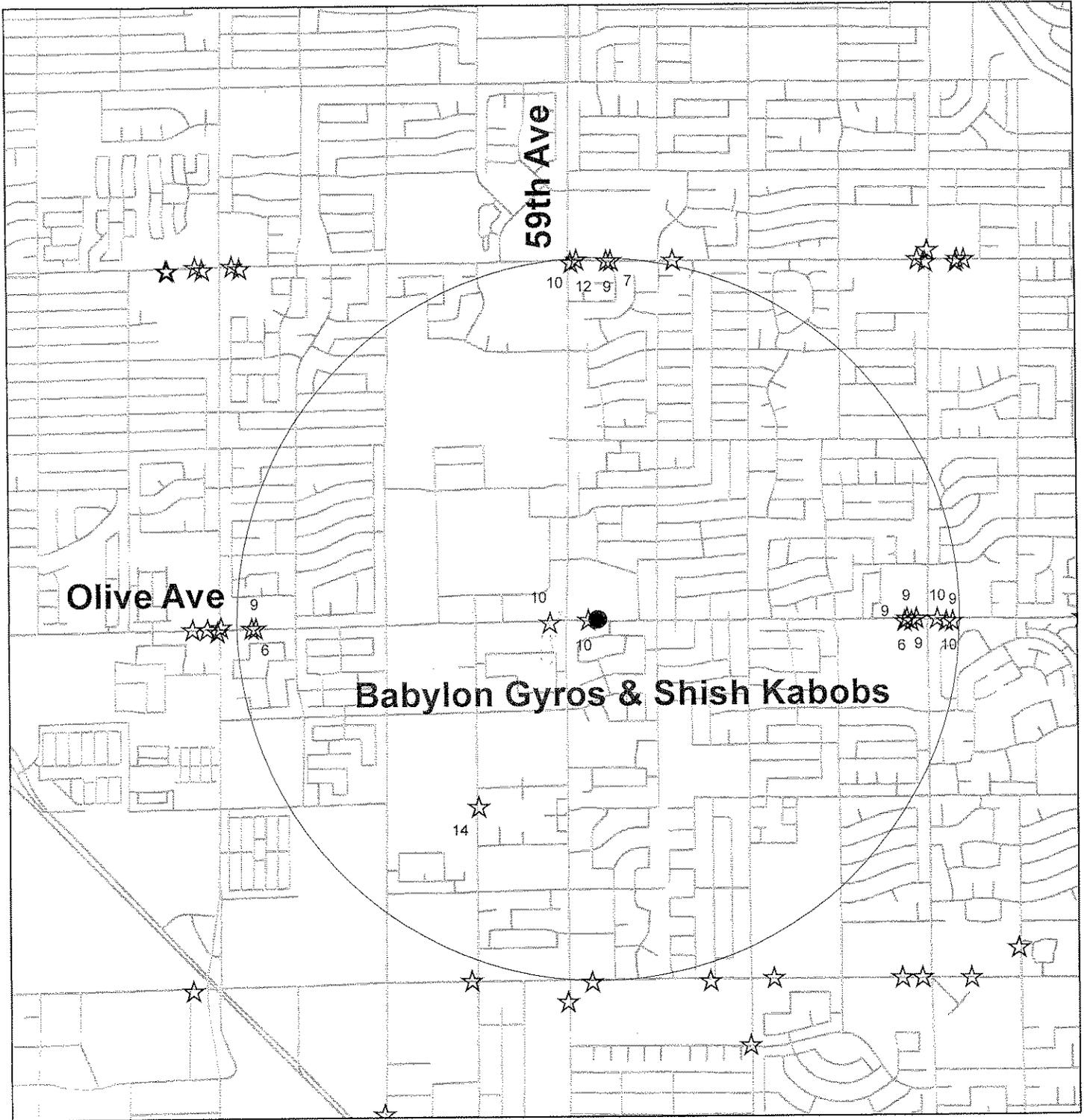
PLANNING DEPARTMENT: Approved the application with no comments.

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: Babylon Gyros & Shish Kabobs

LOCATION: 5826 W. Olive Ave. Ste. B101

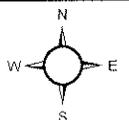
ZONING: C-1

APPLICANT: Fikri Francis Rahana

APPLICATION NO: 5-7093



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



GLENDALE POLICE DEPARTMENT

Liquor Application Worksheet

Date: **09-12-12**

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: **Babylon Gyros and Shish Kabobs**

Business Address: **5826 W. Olive Ave, Ste B101**

Applicant/s Information

Name: **Rahana, Fikri Francis**

Name:

Name:

Name:

Background investigation of applicant/s completed.

Calls for Service History:	Call history for location beginning: 9/12/2012	Other Sultes	New ownership call history beginning: 8/23/2012
Liquor Related			
Vice Related			
Drug Related		2	
Fights / Assaults			
Robberies		1	
Burglary / Theft	4	21	
911 calls			
Trespassing			
Accidents			
Fraud / Forgery			
Threats			
Criminal damage	1	2	
Other non-criminal*	1	15	
Other criminal		1	
Total calls for service	6	42	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:

Sam Shamon (Agent/Owner)

There are no known concerns with the current license holder.

Location History:

No significant Calls for Service history at this location.

Special Concerns:

None found

Background investigation complete:

Police Department recommendation has No Cause for Denial.

		Date
Investigating Officer – M. Ervin	<u>M. ERVIN</u>	<u>7-12-12</u>
CID Lieutenant or Commander	_____	_____
Deputy City Attorney	_____	_____
Chief of Police or designee	<u>[Signature]</u>	<u>7-12-12</u>



CITY COUNCIL REPORT

Meeting Date: **10/9/2012**
Meeting Type: **Voting**
Title: **LIQUOR LICENSE NO. 5-7194, LA CABANA**
Staff Contact: **Susan Matousek, Revenue Administrator**

Purpose and Recommended Action

This is a request for City Council to approve a person-to-person transferable series 6 (Bar – All Liquor) license for La Cabana located at 5130 North 43rd Avenue. The Arizona Department of Liquor Licenses and Control application (No. 06070062) was submitted by Teresa Raya Escalante.

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

Background Summary

The location of the establishment is in the Cactus District. The property is zoned C-3 (Heavy Commercial). The population density within a one-mile radius is 18,497. La Cabana is currently operating with an interim permit, therefore, the approval of this license will not increase the number of liquor licenses in the area.

Series	Type	Quantity
04	Wholesaler	2
06	Bar - All Liquor	4
09	Liquor Store - All Liquor	3
10	Liquor Store - Beer and Wine	8
12	Restaurant	1
	Total	18

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

One protest was received during the 20-day posting period and will be forwarded to the Arizona Department of Liquor Licenses and Control.



CITY COUNCIL REPORT

Attachments

Staff Report

Map

Police Calls for Service Report

Letter(s) of Protest



STAFF REPORT

Meeting Date: **10/9/2012**
To: **Horatio Skeete, Acting City Manager**
From: **Susan Matousek, Revenue Administrator**
Title: **LIQUOR LICENSE NO. 5-7194, LA CABANA**

General Information

Request: Person-to-Person Transferable

License: Series 6 (Bar – All Liquor)

Location: 5130 North 43rd Avenue

District: Cactus

Zoned: C-3 (Heavy Commercial)

Applicant: Teresa Raya Escalante

Owner: LITO, LLC

Background

1. The 60-day deadline for processing this license was October 2, 2012. A letter requesting an extension was sent to the Arizona Department of Liquor Licenses and Control on August 24, 2012.
2. The population density is 18,497 persons within a one-mile radius.
3. The business is over 300 feet from any church or school.
4. La Cabana 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

One protest was received during the 20-day posting period, August 9 through August 29, 2012. This citizen's concerns involved the noise coming from this establishment.

Review/Analysis

In accordance with A.R.S. § 4-201(G), the applicant bears the burden of showing City Council that

public convenience requires that the best interest of the community will be substantially served by the issuance of a license. Council, when considering this person-to-person transferable series 6 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.

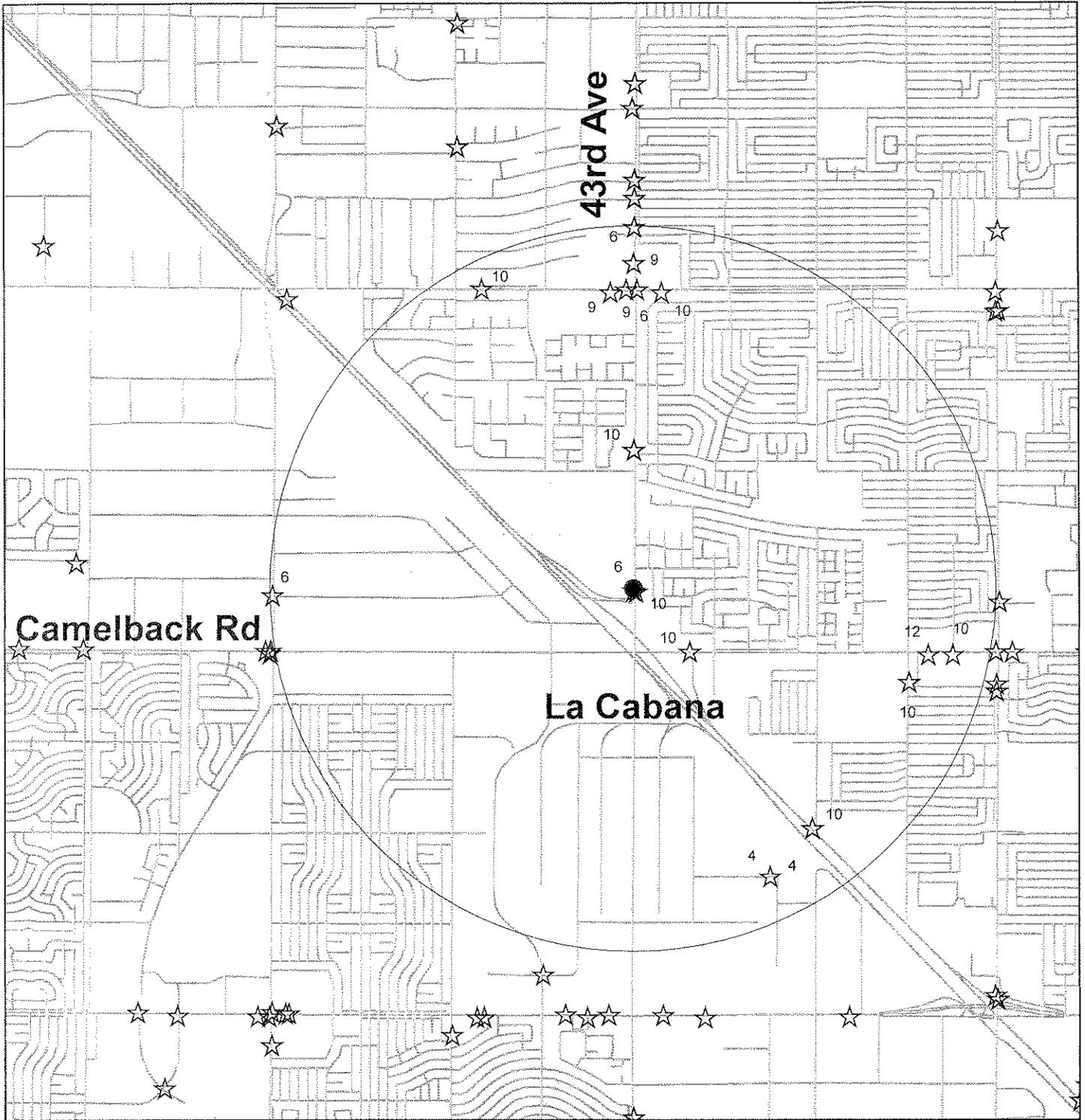
PLANNING DEPARTMENT: Approved the application with no comments.

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: La Cabana	
LOCATION: 5130 N. 43rd Avenue	ZONING: C-3
APPLICANT: Teresa Raya Escalante	APPLICATION NO: 5-7194

1284

GLENDALE POLICE DEPARTMENT

Liquor Application Worksheet

Date: 08-31-12

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

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

Application Type: **Person-to-Person Transfer**

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

Business Name: **La Cabana**

Business Address: **5130 N 43rd Ave**

Applicant/s Information

Name: **Escalante, Teresa Raya**

Name: **Najera, Guadalupe Elizabeth
(Manager)**

Name:

Name:

Background investigation of applicant/s completed.

Calls for Service History:	Call history for location beginning: 8/31/2007	Other Suites	New ownership call history beginning: 8/3/2012
Liquor Related	2		
Vice Related			
Drug Related	1		
Fights / Assaults	8		
Robberies			
Burglary / Theft	16		
911 calls			
Trespassing			
Accidents	1		
Fraud / Forgery			
Threats			
Criminal damage	4		
Other non-criminal*	24		3
Other criminal	6		1
Total calls for service	62	N/A	4

* 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:

Erario T. Pineda, (Agent)
ET LLC, (Owner)

Divestiture of onwership required by Arizona Department of Liquor Licenses and Control, Compliance Division per Consent Agreement.

Location History:

No significant Calls for Service history at this location.

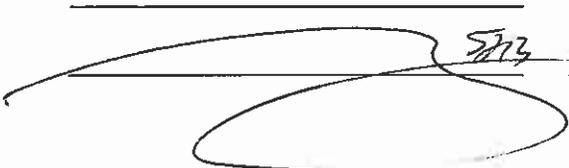
*The State Liquor Board does not consider Calls for Service information involving the previous license holder during their decision making process on "Person-to-Person" license transfers.

Special Concerns:

None found

Background investigation complete:

Police Department recommendation has No Cause for Denial.

		Date
Investigating Officer – M. Ervin	<u>M. ERVIN</u>	<u>9-6-12</u>
CID Lieutenant or Commander	_____	_____
Deputy City Attorney	_____	_____
Chief of Police or designee		<u>9/6/12</u>

Arizona Department of Liquor License and Control

CITY CLERK
CITY OF GLENDALE

2012 AUG 28 PM 3: 33

To whom it may concern,

The purpose of this letter is to inform you of my adamant objection to the re-issue of a liquor license to the La Cabana bar on North 43rd. Avenue & ¼ mile North of Camelback road.

As a resident of the area, I can tell you that many, many nights I could not get my needed sleep at night until the La Cabana had their liquor license revoked, essentially shutting them down. While there were many times I called the Police to complain about the objectionable noise, there were other nights I made an effort to ignore it, even wrapping a pillow around my head. However, once I did get to sleep, the pillow relaxed, and once again I was awakened by the dreadful noise.

The owner of the bar simply refused to get the message that he was infringing on the peace and well-being of residents in the area. He showed total disregard of continued complaints, and persisted in the abuse as his only concern was packing in the patrons to make a buck.

I applaud you greatly in the matter of taking action to revoke the liquor license of this business.

Regrettably, I now understand that application has been made to renew the liquor license of La Cabana bar. I am told that the business was purchased by a 'new' owner, so there is a likelihood that the process will proceed. I fully doubt that La Cabana was truly bought out, and is not subversively still owned by the same man, even though the name listed on the business reflects a 'new owner'. My rationale for feeling this way is this: La Cabana was told sometime back that they could alleviate their problems by submitting to the City of Glendale's proposal to address the acoustic noise travel by spending money to add needed noise barriers which would prevent the noise from spring boarding from the overpass ramp, etc. They did not comply.

Now that they have lost their ability to stay open, this new owner 'wants to comply' to the City's recommendations. My argument against the 'new owner' concept is simply that if the business was truly sold, any new owner would reasonably reject the property due to these far reaching restrictions, and choose another property to do business which did not have these limitations. I am suspect that this new owner is probably related to the 'former' owner, or at least a business partner.

I fear that if a liquor license is granted to La Cabana, I will again enter into another period of having to call the Police in the middle of the night to take action, so I can get up in the morning to teach my class, having had a full night of restful, relaxing sleep.

Timothy Schwartz
623-937-8077 AliveKicking@msn.com
PO Box 57321, Phoenix, AZ 85079-7321

5603 N. 41st LANE GLENDALE, AZ 85301





CITY COUNCIL REPORT

Meeting Date: **10/9/2012**
Meeting Type: **Voting**
Title: **LIQUOR LICENSE NO. 5-7255, CONNOLY'S BAR & GRILL**
Staff Contact: **Susan Matousek, Revenue Administrator**

Purpose and Recommended Action

This is a request for City Council to approve a person-to-person transferable series 6 (Bar - All Liquor) license for Connoly's Bar & Grill located at 5160 West Northern Avenue. The Arizona Department of Liquor Licenses and Control application (No. 06070744) was submitted by Michelle Ann Cambern.

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 Barrel District. The property is zoned C-2 (General Commercial). The population density within a one-mile radius is 18,925. Connoly's Bar & Grill 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	3
07	Bar - Beer and Wine	3
09	Liquor Store - All Liquor	5
10	Liquor Store - Beer and Wine	4
12	Restaurant	2
14	Private Club	1
	Total	18

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: 10/9/2012
To: Horatio Skeete, Acting City Manager
From: Susan Matousek, Revenue Administrator
Title: LIQUOR LICENSE NO. 5-7255, CONNOLY'S BAR & GRILL

General Information

Request: Person-to-Person Transferable

License: Series 6 (Bar - All Liquor)

Location: 5160 West Northern Avenue

District: Barrel

Zoned: C-2 (General Commercial)

Applicant: Michelle Ann Cambern

Owner: J & M Productions, LLC

Background

1. The population density is 18,925 persons within a one-mile radius.
2. The business is over 300 feet from any church or school.
3. Connoly's Bar & Grill 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 24 through September 13, 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 this person-to-person transferable series 6 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.

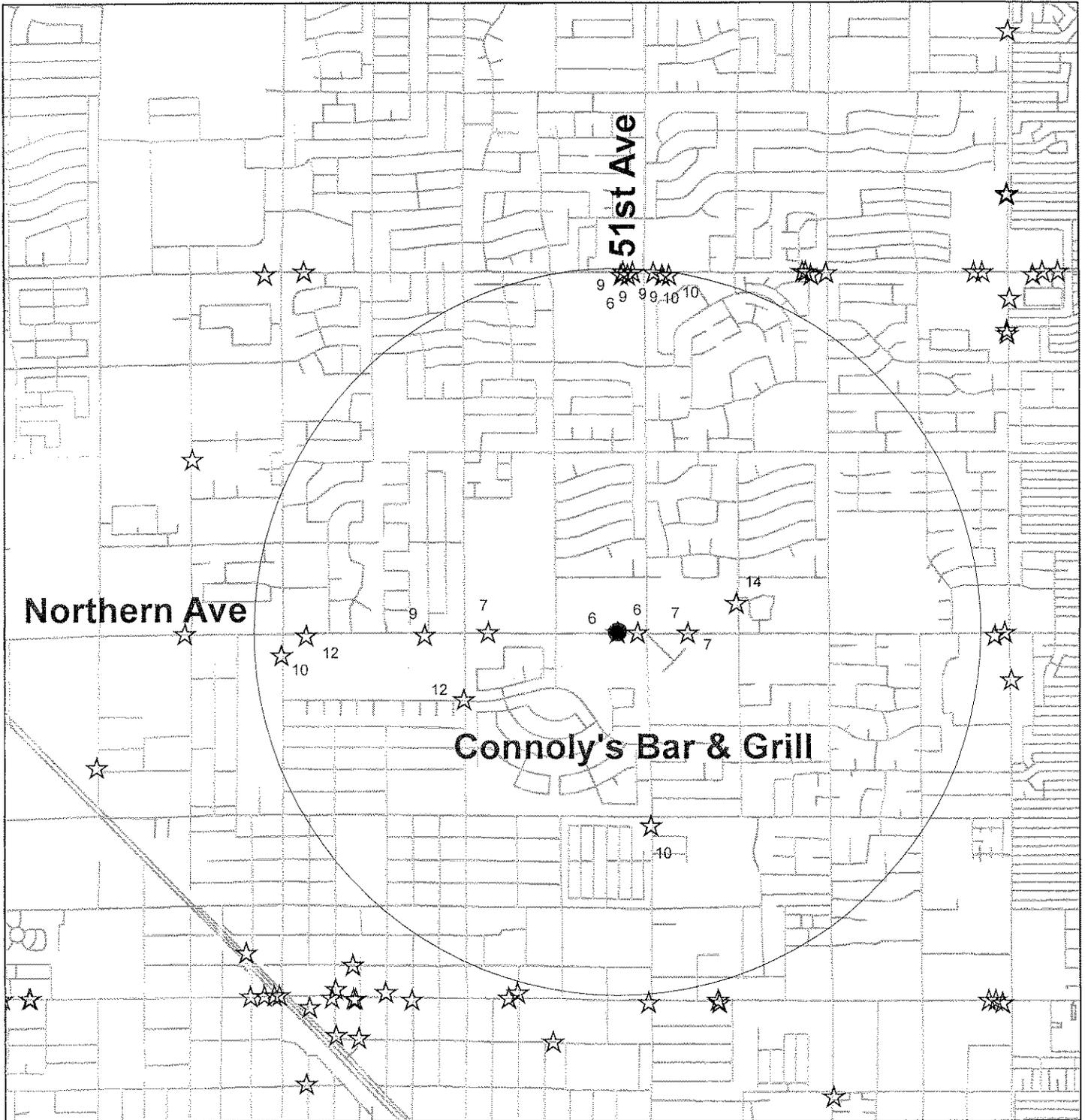
PLANNING DEPARTMENT: Approved the application with no comments.

POLICE DEPARTMENT: Recommended no cause for denial.

FIRE DEPARTMENT: Approved the application with no comments.

Staff Recommendation

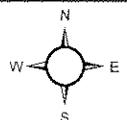
It is staff's recommendation to forward this application to the Arizona Department of Liquor Licenses and Control with a recommendation of approval.



BUSINESS NAME: Connolly's Bar & Grill	
LOCATION: 5160 W. Northern Ave	ZONING: C-2
APPLICANT: Michelle Ann Cambern	APPLICATION NO: 5-7255



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



12-92

GLENDALE POLICE DEPARTMENT

Liquor Application Worksheet

Date: 08-29-12

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

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

Application Type: **Person-to-Person Transfer**

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

Business Name: **Connolly's Bar & Grill**

Business Address: **5160 W. Northern Ave**

Applicant/s Information

Name: **Cambern, Michelle Ann**

Name: **Cambern, Jon Scott**

Name:

Name:

Background investigation of applicant/s completed.

Calls for Service History:	Call history for location beginning: 8/29/2007	Other Suites	New ownership call history beginning: 8/17/2012
Liquor Related	3		
Vice Related			
Drug Related	2		
Fights / Assaults	18		
Robberies	1		
Burglary / Theft	12		
911 calls			
Trespassing			
Accidents	3		
Fraud / Forgery	3		
Threats	2		
Criminal damage	3		
Other non-criminal*	23		
Other criminal	20		
Total calls for service	90	N/A	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:

Joanne Kurgan (Agent)
KT and Associates INC, (Owner)

There are no known concerns with the current license holder.

Location History:

No significant Calls for Service history at this location.

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

Special Concerns:

None found

Background investigation complete:

Police Department recommendation has No Cause for Denial.

		Date
Investigating Officer – M. Ervin	<u>M. ERVIN</u>	<u>8-29-12</u>
CID Lieutenant or Commander	_____	_____
Deputy City Attorney	_____	_____
Chief of Police or designee	<u>[Signature]</u>	<u>8/30/2012</u>



CITY COUNCIL REPORT

Meeting Date: **10/9/2012**
 Meeting Type: **Voting**
 Title: **AUTHORIZATION TO PURCHASE AMMUNITION**
 Staff Contact: **Debora Black, Interim Police Chief**

Purpose and Recommended Action

This is a request for City Council to approve the purchase from the San Diego Police Equipment Co., Inc. in an amount not to exceed \$72,412. The purchase will cover all of the practice and qualification ammunition needed for each police officer for the FY 2012-13.

Staff is requesting Council approve the purchase from the San Diego Police Equipment Co., Inc. in an amount not to exceed \$72,412.

Background Summary

This is a request to purchase ammunition for the Police Department. The ammunition is important for training and for each officer to complete annual qualification required by Arizona Peace Officer Standards and Training. The ammunition officers carry in their weapon is also replaced every year. The San Diego Police Equipment Co., Inc. is on an Arizona State Contract; use of this contract has been approved by Materials Management.

Budget and Financial Impacts

Cost	Fund-Department-Account
\$72,412	1700-12310-521400

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



STAFF REPORT

To: **Horatio Skeete, Acting City Manager**
From: **Debora Black, Interim Police Chief**
Item Title: **AUTHORIZATION TO PURCHASE AMMUNITION**
Requested Council Meeting Date: **10/9/2012**
Meeting Type: **Voting**

PURPOSE

This report contains information on the proposed purchase from the San Diego Police Equipment Co., Inc. in an amount not to exceed \$72,412. The purpose of this report is to request the City Manager forward this item to the City Council for their consideration and approval.

BACKGROUND

This is a request to purchase ammunition for the Police Department. This ammunition covers all of the training and qualifications for each police officer. The San Diego Police Equipment Co., Inc. is on an Arizona State Contract; use of this contract has been approved by Materials Management. The Police Department has been using this company for several years. The rate at which we are purchasing the ammunition is very competitive utilizing the Arizona Department of Public Safety contract. This contract was last bid in March 2009 according to the State procurement process.

ANALYSIS

This is our annual ammunition purchase. The ammunition is important for training and for each officer to complete annual qualification required by Arizona Peace Officer Standards and Training. The ammunition officers carry in their weapon is also replaced every year. It is important for this purchase to go forward at this meeting so that we can stay on-course with the annual training.

I will be recommending that City Council approve the purchase from the San Diego Police Equipment Co., Inc. in an amount not to exceed \$72,412.

Utilizing the State DPS Contract ensures the best pricing based upon the amount of ammunition purchased.

FISCAL IMPACTS

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



CITY COUNCIL REPORT

Meeting Date: **10/9/2012**
Meeting Type: **Voting**
Title: **PURCHASE AUTHORIZATION FOR CHEMICALS AND SERVICES**
Staff Contact: **Craig Johnson, P.E., Executive Director, Water Services**

Purpose and Recommended Action

This is a request for City Council to approve the authorization to spend more than \$50,000 for chemicals and services obtained under the cooperative purchasing agreement.

Background Summary

The city issues Invitations for Bids to vendors for purchases over \$50,000 as required by city ordinance. In 1999, the city entered into an Intergovernmental Cooperative Purchasing Agreement with a group of 21 public agencies to establish a cooperative group to procure materials and services, receive mutual benefits of improved competition, provide lower prices, and avoid duplication of effort. The agreement has worked well for Glendale and no agencies have opted out in the 13 years it has been in effect.

Council approval will allow the city to continue using contracts held by member agencies of the cooperative group pursuant to Resolution No. 3303 New Series, Inter-Governmental Agreement; passed, adopted and approved by Mayor and Council on June 12, 1999.

Community Benefit/Public Involvement

By leveraging the economies of scale of multiple agencies through the cooperative agreement, competitive prices and time savings are realized.

Budget and Financial Impacts

Cost	Fund-Department-Account
\$4,573,500	This will be taken from accounts across the 28 divisions of the Water Services Department



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

Other



STAFF REPORT

To: **Horatio Skeete, Acting City Manager**
From: **Craig Johnson, P.E., Executive Director, Water Services**
Item Title: **PURCHASE AUTHORIZATION FOR CHEMICALS AND SERVICES**
Requested Council Meeting Date: **10/9/2012**
Meeting Type: **Voting**

PURPOSE

This report contains information regarding required purchases of chemicals and services used in water and wastewater processes and operations. Water production and treatment requires the use of a variety of chemicals to effectively treat surface and ground water for public consumption. Wastewater collection and treatment also requires the use of chemicals to effectively treat wastewater to A+ effluent standards.

The purpose of this report is to request the City Manager forward this item to the City Council for their consideration and approval.

BACKGROUND

Water Services procures over \$6 million annually in chemicals and support services for use at the city's four water treatment plants, two wastewater reclamation facilities, and throughout the water distribution and wastewater collection systems. Of this total, over \$4.5 million in purchases are made using cooperative agreement contracts.

In 1999, the city entered into an Intergovernmental Cooperative Purchasing Agreement with a group of 21 public agencies, consisting of city, county, and state governmental agencies; school districts; and higher education institutions. The purpose was to establish a cooperative group to procure materials and services, receive mutual benefits of improved competition, provide lower prices, and avoid duplication of effort. This agreement has no sunset date and has worked very well for Glendale. No agencies have opted out of the agreement and the original bidding requirements are still followed.

Water Services has benefitted from this cooperative agreement and has historically purchased necessary chemicals and services used in the day-to-day operations of water and wastewater services. Examples of annual purchases made under cooperative contracts are chemicals: granulated activated carbon used in water treatment, and industrial strength bleach used in water

reclamation; pest control used by the Wastewater Collection division; laboratory testing and analysis services and laboratory supplies, both of which are used across the department; and employee work uniform services. Savings on these items are realized by obtaining combined quantity discounts offered under the group's collective buying power. Currently the items used are detailed, by line item, in the department's annual budget that is presented and approved by Council.

ANALYSIS

Staff will be requesting Council to approve the authorization to spend more than \$50,000 for chemicals and services obtained under the cooperative purchasing agreement.

This action will allow the city to continue using contracts held by member agencies of the cooperative group pursuant to Resolution No. 3303 New Series, Inter-Governmental Agreement; passed, adopted and approved by Mayor and Council on June 12, 1999.

The best prices are obtained for the city when large requests are submitted on behalf of the cities and agencies involved in cooperative agreements. Chemicals prices are bid in bulk amounts by vendors annually, thereby affording Glendale a large bulk price although individual site needs may not equal that amount. Service prices are assured by vendors when a cooperative agreement city begins a bidding process, and, when awarded, the same bid option is offered to other cooperative member cities. The additional benefit of eliminating duplication of staff labor and time is realized by using this option.

Chemical contracts are reviewed annually to calculate amounts. Other contracts are reviewed annually to verify need. In addition, contracts are renewed annually if terms and prices are determined to be in the city's best interest.

FISCAL IMPACTS

The total requested for the items purchased under cooperative agreements is \$4,573,500. Funding for this budgeted item is available in the FY 2012-13 operating budget of the Water Services Department.

**Cooperative Agreements
Water Services Department**

DESCRIPTION	PURCHASE ORDER TYPE	AMOUNT
Chlorine	Cooperative Agreement City of Chandler	\$ 130,000.00
Liquid Alum	Cooperative Agreement City of Chandler	\$ 470,000.00
Bleach 12%	Cooperative Agreement City of Chandler	\$ 200,000.00
Ferric Chlorine Bulk	Cooperative Agreement City of Chandler	\$ 200,000.00
Polymer C-358	Cooperative Agreement City of Chandler	\$ 284,000.00
Salt	Cooperative Agreement City of Chandler	\$ 410,000.00
Fluoride Bulk	Cooperative Agreement City of Chandler	\$ 60,000.00
Caustic Soda 25% and 50%	Cooperative Agreement City of Chandler	\$ 780,000.00
Pest Control-Manholes	Cooperative Agreement City of Peoria	\$ 75,000.00
Granular Activated Carbon	Cooperative Agreement City of Scottsdale	\$ 1,700,000.00
Lab Analysis Services	Cooperative Agreement City of Tempe	\$ 60,000.00
Carbon Dioxide	Cooperative Agreement City of Tempe	\$ 126,000.00
Uniform Service	Cooperative Agreement State of Arizona	\$ 78,500.00



CITY COUNCIL REPORT

Meeting Date: **10/9/2012**
Meeting Type: **Voting**
Title: **APPROVAL FOR PURCHASE OF TIRES**
Staff Contact: **Stuart Kent, Executive Director, Public Works**

Purpose and Recommended Action

This is a request for City Council to approve the purchase of tires from various vendors for use on city vehicles across the organization. The purchase amount requested is consistent with the Fiscal Year (FY) 2012-13 approved budgeted amount of \$423,041.

Background Summary

The Public Works Department is responsible for purchasing, maintaining, and repairing approximately 1,300 pieces of equipment in use in the organization; maintenance includes taking care of the tire needs of the vehicles and equipment. The department routinely purchases tires utilizing state and other cooperative contracts due to the preferred pricing offered by vendors and generally charges-back the cost related to repairs and maintenance to the corresponding departments. The cost related to tire purchases by department or division as a percentage is as follows: Sanitation Division (50%), Police and Fire Departments (30%), Water Services Department (5%), remaining city departments and motor pool (15%).

Previous Related Council Action

In May 2012, City Council approved the FY 2012-13 Public Works Department budget which included a line item for the purchase of tires in the about of \$423,041.

Budget and Financial Impacts

Cost	Fund-Department-Account
\$423,041	1040-13510-523220

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



STAFF REPORT

To: **Horatio Skeete, Acting City Manager**
From: **Stuart Kent, Executive Director, Public Works**
Item Title: **APPROVAL FOR PURCHASE OF TIRES**
Requested Council Meeting Date: **10/9/2012**
Meeting Type: **Voting**

PURPOSE

This report provides details related to the proposed purchase of tires to accommodate the needs of the vehicles in the organization. The purchase amount requested is consistent with the FY 2012-13 approved budgeted amount of \$423,041. Staff requests the City Manager forward this item to the City Council for their action.

BACKGROUND

The City of Glendale owns and maintains approximately 1,300 pieces of equipment. This equipment is used to support key city functions including police and fire services, sanitation services, utilities services, and parks and recreation services. It is estimated that this year, city vehicles will travel almost 8 million miles in service of the community.

The Equipment Management division of Public Works Department is responsible for purchasing, maintaining, and repairing these vehicles and charges-back the cost related to repairs and maintenance to the corresponding departments. Cost related to tire purchases by department or division as a percentage is as follows: Sanitation Division (50%), Police and Fire Departments (30%), Water Services Department (5%), remaining city departments and motor pool (15%).

If tires cannot be repaired or recapped, they require replacement in order to ensure vehicle safety and reliability. Equipment Management routinely purchases tires utilizing state and other cooperative contracts due to the preferred pricing offered by vendors.

ANALYSIS

Public Works recommends the approval of the purchase of tires in an amount not to exceed \$423,041. This action involves the use of five different state contracts and five different vendors based on the tire needs of each vehicle. As different vehicle types require different tires, the department researches the lowest cost offered through the existing state contracts. This flexibility

in purchasing is required to ensure that the needed tires are available for organizational use at the lowest cost.

The following table shows the vendors and amounts planned if this action is approved by Council:

State Contract	Vendor	Tire Purchase Amount
Arizona Department of Transportation	Redburn Tire Company	\$110,000
Arizona Department of Transportation	Purcell's Western States Tire	\$190,000
Arizona Department of Public Safety	North Valley Motorsports	\$9,000
Arizona Department of Transportation	Michelin North America	\$76,000
State Procurement Office	GCR Tire Centers	\$38,041
Total		\$423,041

FISCAL IMPACTS

The cost related to this item is \$423,041 which is consistent with the adopted budgeted amount for tire purchases this fiscal year. The replacement of tires, as well as all other Equipment Management services are charged back to the departments responsible for the vehicles.



CITY COUNCIL REPORT

Meeting Date: **10/9/2012**
Meeting Type: **Voting**
Title: **DOMESTIC VIOLENCE VICTIM SERVICES AND PROGRAM ENHANCEMENT GRANT**
Staff Contact: **Elizabeth Finn, Presiding Judge**

Purpose and Recommended Action

This is a request for City Council to waive reading beyond the title and adopt a resolution authorizing the acceptance of a two-year \$300,000 grant from the U.S. Department of Justice Office on Violence Against Women. This grant will continue funding several domestic violence victim services and add program enhancements.

Background Summary

Since 2005, Glendale City Court has worked with the Glendale Domestic Violence Task Force to submit three successful grant proposals to the U.S. Department of Justice. Those past proposals have resulted in \$1.2 million in grant funding. Among the services provided through these funds are a fulltime grant-funded protective order service coordinator who facilitates timely service of protective orders in Glendale and nine other area cities, a fulltime contracted court-based victim advocate who educates and assists Court customers seeking protective orders, overtime compensation for Glendale Police officers to serve domestic violence arrest warrants and salary for a part-time judge pro tempore to preside over protective order matters during lunch time. Continued grant funding will maintain these services and add a fulltime grant-funded domestic violence victim advocate to work within the Glendale Police Department's Family Violence Unit on cases involving high lethality (the most dangerous offenders) and new domestic violence-specific police reports to be utilized by Glendale officers taking the initial domestic violence report in the field.

Previous Related Council Action

On October 27, 2009, City Council adopted a resolution authorizing the acceptance of a two-year \$399,986 continuation grant from the U.S. Department of Justice Office on Violence Against Women for domestic violence victim services and program enhancements.

On November 27, 2007, City Council adopted a resolution authorizing the acceptance of a two-year \$399,978 continuation grant from the U.S. Department of Justice Office on Violence Against Women for domestic violence victim services and program enhancements.



CITY COUNCIL REPORT

On September 13, 2005, City Council adopted a resolution authorizing the acceptance of the original \$400,000 two-year grant from the U.S. Department of Justice Office on Violence Against Women for domestic violence victim services and program enhancements.

Community Benefit/Public Involvement

The continued acceptance of this grant will heighten the safety and well-being of domestic violence victims in Glendale and help empower them to break the cycles of abuse. Nearly one-third of American women report being assaulted by a current or former intimate partner at some point in their lives. Last year in Arizona, at least 96 people died as a result of a domestic violence related homicide.

Guidance in developing the grant has been provided by the Glendale Domestic Violence Task Force. Task Force partners include Glendale City Court, the Glendale City Prosecutor’s Office, the Glendale Police Department, the Glendale Family Advocacy Center, non-profit provider A New Leaf, the Maricopa County Attorney’s Office, and the Maricopa County Adult Probation Department.

Budget and Financial Impacts

Cost	Fund-Department-Account
\$300,000	1840-32157 DV Lethality Assessment Grant

Capital Expense? Yes No

Budgeted? Yes No

Requesting Budget or Appropriation Transfer? Yes No

If yes, where will the transfer be taken from? 1840-32118-510200 (Miscellaneous Grants)

Attachments

Staff Report

Resolution



STAFF REPORT

To: **Horatio Skeete, Acting City Manager**
From: **Elizabeth Finn, Presiding Judge**
Item Title: **DOMESTIC VIOLENCE VICTIM SERVICES AND PROGRAM ENHANCEMENT GRANT**
Requested Council Meeting Date: **10/9/2012**
Meeting Type: **Voting**

PURPOSE

Glendale City Court is requesting the City Manager forward this item to the City Council for their consideration to adopt a resolution authorizing the acceptance of a two-year \$300,000 grant from the U.S. Department of Justice. This grant will continue funding several domestic violence victim services and program enhancements.

BACKGROUND

Nearly one-third of American women report being assaulted by a current or former intimate partner at some point in their lives, according to information provided by the Arizona Coalition Against Domestic Violence. Last year in Arizona, at least 96 people died as a result of a domestic violence related homicide. Each year, thousands of American children also witness intimate partner violence within their families. Witnessing violence is a risk factor for long-term physical and mental health problems, including alcohol and substance abuse, being a victim of abuse, and perpetrating intimate partner violence.

The Glendale Domestic Violence Task Force was formed in December 2004 to provide comprehensive responses to a wide variety of local domestic violence issues. Task Force partners include Glendale City Court, the Glendale City Prosecutor's Office, the Glendale Police Department, the Glendale Family Advocacy Center, A New Leaf, the Maricopa County Attorney's Office, and the Maricopa County Adult Probation Department. The Task Force has endorsed a collaborative partnership to seek funding for various victim services and program enhancements.

Since 2005, Glendale City Court has worked with Glendale Domestic Violence Task Force members to submit three successful grant proposals to the U.S. Department of Justice Office on Violence Against Women. Those proposals have resulted in \$1.2 million in grant funding for the City of Glendale. The past grants have included the following services:

- A fulltime grant-funded Protective Order Service Coordinator who facilitates timely service of protective orders in Glendale and nine other area cities. This position is designed to achieve higher successful rates of service and reductions in length of time for service, thus improving the safety and wellbeing of domestic violence victims.
- A fulltime grant-funded Court Compliance Specialist who manages, coordinates and expands the activities of a Treatment Court calendar which specializes in monitoring domestic violence defendants' compliance with all Court orders
- A fulltime contracted court-based Victim Advocate who educates and assists Court customers seeking protective orders and connects those customers with community resources and victim rights information
- Overtime compensation for Glendale Police officers to facilitate the service of active domestic violence arrest warrants
- Salary for a judge pro tempore to preside over ex parte and contested protective order matters during lunch time from 12:00 noon to 1:30 PM
- Mandatory training opportunities required by the funding authority to enhance the professional development and education of City of Glendale domestic violence specialists through attendance at national domestic violence conferences

Glendale City Court is now prepared to accept \$300,000 in additional funding to continue supporting all these services, with the exception of the Court Compliance Specialist which has been sustained through a separate fund. Instead of the Court Compliance Specialist, the following two grant-funded services will be added:

- A new fulltime grant-funded Domestic Violence High Lethality Victim Advocate to work within the Glendale Police Department's Family Violence Unit. In addition to providing all standard victim services, this advocacy specialist will respond to crime scenes with detectives for interviews, home visits and safety planning within 72 hours of identifying a high lethality case where the victim is at great risk for serious injury or death. This High Lethality Advocate will keep the victim involved in prosecution efforts and conduct regular follow-up intervention in various forms throughout the life of the case.
- The development of innovative domestic violence-specific police reports to be utilized by Glendale officers taking the initial domestic violence report in the field. These new reports will require responding officers to obtain critical high lethality and coercive control information regarding the victim's relationship with the suspect. This information will help identify the most dangerous domestic violence offenders in our community. These enhanced reports will list requirements for collection of domestic violence case details and evidence that are not currently included in general offense reports. The added information will further assist detectives and prosecutors in gaining criminal convictions in domestic violence cases. The victim's copy of the report will include directions to obtain protective

orders. The victim's copy can also be used to show proof of the police report necessary for early rental-lease termination available per Arizona Revised Statutes. It also provides the victim with safety planning instructions, what steps to take next, and what future evidence to collect, preserve and report to police after the initial report is made.

ANALYSIS

On September 13, 2005, City Council adopted a resolution authorizing the acceptance of the original \$400,000 two-year grant from the U.S. Department of Justice Office on Violence Against Women for domestic violence victim services and program enhancements.

On November 27, 2007, City Council adopted a resolution authorizing the acceptance of a two-year \$399,978 continuation grant from the U.S. Department of Justice Office on Violence Against Women for domestic violence victim services and program enhancements.

On October 27, 2009, City Council adopted a resolution authorizing the acceptance of a two-year \$399,986 continuation grant from the U.S. Department of Justice Office on Violence Against Women for domestic violence victim services and program enhancements.

Alternative grant solicitations represent the only other funding options considered for the services and positions paid through this grant. However, to date, no formal alternative grant proposals have been submitted, due to the high levels of success achieved through the current funding stream. Other non-grant funding options are not realistic at this time, due to current economic conditions.

Governing/Advisory Body Input for this item has been provided by the Glendale Domestic Violence Task Force. This includes input from the Task Force's community non-profit provider A New Leaf. There are no associated Board/Commission actions or City Council Workshop guidance.

Glendale City Court requests the City Manager forward this item to the City Council for their consideration. The Court recommends the City Council waive reading beyond the title and adopt a resolution authorizing the acceptance of a two-year \$300,000 continuation grant from the U.S. Department of Justice Office on Violence Against Women for domestic violence victim services and program enhancements.

FISCAL IMPACTS

There are no fiscal impacts associated with this recommended action. There is no financial match required for this two-year grant. There are also no associated immediate, on-going or long-term costs or budget implications, other than staffing resources to implement, monitor and report grant activity outcomes. All staffing positions associated with this grant would end upon completion of the two-year budget cycle, unless alternative funding is identified and procured. This item is currently budgeted. The Account Name, Fund, and Account and Line Item Number are "DV Lethality Assessment Grant, 1840-32157, \$300,000."

RESOLUTION NO. 4617 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE SUBMISSION AND ACCEPTING THE \$300,000 GRANT OFFER FROM THE U.S. DEPARTMENT OF JUSTICE, OFFICE ON VIOLENCE AGAINST WOMEN, FOR DOMESTIC VIOLENCE VICTIM SERVICES AND PROGRAM ENHANCEMENTS.

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 two-year continuation grant offer in the amount of \$300,000 from the U.S. Department of Justice, Office on Violence Against Women, for domestic violence victim services and program enhancements.

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.

MAYOR

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

REVIEWED BY:

City Manager



CITY COUNCIL REPORT

Meeting Date: **10/9/2012**
Meeting Type: **Voting**
Title: **PROFESSIONAL SERVICES AGREEMENT WITH GREATER PHOENIX
ECONOMIC COUNCIL**
Staff Contact: **Dave McAlindin, Assistant Director, Economic Development**

Purpose and Recommended Action

This is a request for City Council to authorize the City Manager to enter into a professional services agreement with the Greater Phoenix Economic Council (GPEC) for FY 2012-13 in the amount of \$88,636, for participation in and support of their regional economic development program.

Background Summary

The city has had a professional services agreement in place with GPEC since 1989. The city's participation reflects regional cooperation, which is significant to businesses who are considering a metropolitan area. The organization promotes the region to a broad variety of national and international companies and generates editorial stories and advertisements in markets the city could not otherwise secure.

Through this agreement, GPEC will market the city and generate qualified business and industry prospects within targeted economic industries, as well as leverage public and private partnerships to locate such prospects.

Beginning in FY2009-10, due to economic conditions, GPEC assessed reduced fees for all participating cities. This reduction and GPEC's fee recalculation based on population, resulted in the City of Glendale being assessed a lower annual membership rate. GPEC communicated with all participating cities at that time, informing them that rates would not remain reduced, allowing communities to accurately plan for future budget allocations. In FY2011-12 the annual GPEC membership fee was \$75,258 which was a reduced rate. For this current fiscal year, GPEC has returned to the standard rate calculation based on population, therefore the dues for FY2012-13 are in the amount of \$88,636.

Previous Related Council Action

Council has appropriated funds for membership for more than 20 years.



CITY COUNCIL REPORT

Community Benefit/Public Involvement

GPEC provides greater economic growth within the community by generating prospective leads for new businesses, which ultimately creates more employment opportunities within the Glendale community. The approximate annual 3 to 1 return on investment that Glendale has experienced over the last five years has a positive direct impact on the city's general fund and serves as a benefit to the citizens of Glendale.

Budget and Financial Impacts

Cost	Fund-Department-Account
\$88,636	1000-16010-529600

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

Department Memorandum



STAFF REPORT

To: **Horatio Skeete, Acting City Manager**
From: **Dave McAlindin, Assistant Director, Economic Development**
Item Title: **PROFESSIONAL SERVICES AGREEMENT WITH GREATER PHOENIX
ECONOMIC COUNCIL**
Requested Council Meeting Date: **10/9/2012**
Meeting Type: **Voting**

PURPOSE

This report contains information on the proposed annual contract for professional services with Greater Phoenix Economic Council (GPEC). The purpose of this report is to request the City Manager forward this item to City Council for their consideration and approval.

BACKGROUND

The city has had a professional services agreement in place with GPEC since 1989. The city's participation reflects regional cooperation, which is significant to businesses who are considering a metropolitan area. The organization promotes the region to a broad variety of national and international companies and generates editorial stories and advertisements in markets the city could not otherwise secure.

Through this agreement, GPEC will market the city and generate qualified business and industry prospects within targeted economic industries, as well as leverage public and private partnerships to locate such prospects.

Beginning in FY2009-10, due to economic conditions, GPEC assessed reduced fees for all participating cities. This reduction and GPEC's fee recalculation based on population, resulted in the City of Glendale being assessed a lower annual membership rate. GPEC communicated with all participating cities at that time, informing them that rates would not remain reduced, allowing communities to accurately plan for future budget allocations. In FY2011-12, the annual GPEC membership fee was \$75,258 which was a reduced rate. For this current fiscal year, GPEC has returned to the standard rate calculation based on population, therefore, the dues for FY2012-13 are in the amount of \$88,636.

ANALYSIS

Staff has outlined below the advantages, disadvantages and alternatives to maintaining an annual contract with GPEC.

Advantages of GPEC Membership

- The projected annual estimated direct revenue generated by the last four GPEC locates is \$318,106 which resulted in the creation of more than 200 jobs and represents a 3.5:1 return on investment.
- In FY2011-12, 61 leads were received; the city met the qualifications and Glendale Economic Development Staff responded to 53.
- In FY2011-12 the City of Glendale located Alaska USA Federal Credit Union as a result of a GPEC lead.
- The City of Glendale has been a member of GPEC for over 20 years.
- Economic Development is currently working to locate multiple GPEC leads that are in motion.
- GPEC upgraded their website to become more community-centric. We have readily improved the hosted Glendale information. This upgrade is an important introduction and first impression for many in the site selection community.
- Economic Development staff enjoys a strong relationship with GPEC staff built over many years.
- GPEC is a strong voice for economic development at the Legislature.
- The city's relationship with GPEC is long-term and will have pluses and minuses in any given year; however, the net fiscal result has consistently been positive over the past five years.
- Regional marketing of shovel-ready sites.
- City Council approved the FY2012-13 Budget with appropriations to continue membership via the Economic Development Account (16010).

Disadvantages of GPEC Membership

- If the City of Glendale withdraws, the city will be the only major Valley community who is not a member.
- The city will no longer receive leads and will lose revenues and jobs.

Alternatives to GPEC Membership

- No additional regional organization exists within the Valley that provides the lead generation services and economic development advocacy that GPEC offers; therefore, Glendale Economic Development staff would only have internal resources to seek out and respond to leads with no access to the regional organization that generates hundreds of leads per year for the Greater Valley. The approximate 3.5:1 annual return on investment gained each year as a result of our GPEC membership would also be lost.
- Arizona Commerce Authority (ACA), the state's Economic Development agency, does receive leads for the greater Metropolitan area; however, they turn those leads over to GPEC to distribute according to client demands and city assets.

Staff is bringing this item forward to Council in October as it is standard practice within Glendale that the GPEC annual contract be discussed by Council in the fall. Although no specific deadline for approval is instituted, the contract covers FY2012-13 which has already commenced.

Staff strongly recommends continued membership in GPEC based upon the clear value listed in the advantages section above. Glendale generates net positive revenue from the relationship. GPEC provides strong national and international marketing of the Valley that could not be replaced by Glendale if the relationship were terminated.

FISCAL IMPACTS

GPEC dues are calculated based on approximately \$.39 per capita, using the 2011 Arizona Department of Administration Office of Employment and Population Statistics population estimates. For FY 2012-13, the GPEC annual membership fees are \$88,636 based on a population estimate of 227,446. As the population in Glendale fluctuates annually, the membership dues will also vary. City Council approved the FY 2012-13 Budget with appropriations to continue GPEC membership this fiscal year via the Economic Development Account (16010).

The city has experienced a positive return on investment as a direct result of our GPEC membership over the last five years.

**AGREEMENT BETWEEN
THE GREATER PHOENIX ECONOMIC COUNCIL
AND THE CITY OF GLENDALE
City Contract No. _____**

The City Council of the CITY OF GLENDALE, a municipal corporation (the "City"), has approved participation in and support of the regional economic development program of the GREATER PHOENIX ECONOMIC COUNCIL ("GPEC"), an Arizona non-profit corporation. The purpose of this agreement ("Agreement") is to set forth the regional economic development program that GPEC agrees to undertake, the support that the City agrees to provide, the respective roles of GPEC and the City and the payments of the City to GPEC for the fiscal year July 1, 2012 - June 30, 2013.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the CITY and GPEC agree as follows:

I. RESPONSIBILITIES OF GPEC

- A. **MISSION:** GPEC works to attract quality businesses to the Greater Phoenix Region from around the world, and advocate and champion foundational effects to improve the region's competitiveness.
- B. **GOALS:** GPEC is guided by and strategically focused on two specific long-range goals:
 - 1. Marketing the region to generate qualified business/industry prospects in targeted economic clusters.
 - 2. Leveraging public and private allies and resources to locate qualified prospects, improve overall competitiveness, and sustain organizational vitality.
- C. **RETENTION AND EXPANSION POLICY:**
 - 1. GPEC's primary role is image building, marketing and new business attraction for the Greater Phoenix region.
 - 2. Retention and expansion of existing businesses is primarily a local issue.
 - 3. GPEC can add value to retention and expansion of existing businesses through regional support and research on key retention and expansion projects.
 - 4. GPEC has a responsibility to advise the City when an existing company contacts GPEC regarding a retention or expansion issue.

D. ACTION PLAN AND BUDGET: In accordance with the Mission, Goals and Retention Policy set forth above and subject to the availability of adequate funding, GPEC shall implement the Action Plan and Budget adopted by GPEC's Board of Directors, a copy of which has been delivered to the City, receipt of which is hereby acknowledged. A copy of the Action Plan is attached hereto as **Exhibit A** ("GPEC Action Plan"). The City shall be informed of any changes in the adopted Action Plan which will materially affect or alter the priorities established therein. Such notification will be in writing and will be made prior to implementation of such changes. Notwithstanding the foregoing, the City acknowledges and agrees that GPEC may, in its reasonable judgment in accordance with its own practices and procedures, substitute, change, reschedule, cancel or defer certain events or activities described in the Action Plan as required by a result of changing market conditions, funding availability, unforeseen expenses or other circumstances beyond GPEC's reasonable control. GPEC shall solicit the input of the City on the formulation of future marketing strategies and advertisements. The Action Plan will be revised to reflect any agreed upon changes to the Action Plan.

E. PERFORMANCE TARGETS:

1. Specific performance targets, established by GPEC's Executive Committee and Board of Directors, are attached hereto as **Exhibit B** ("GPEC Performance Measures") and shall be used to evaluate and report progress on GPEC's implementation of the Action Plan. In the event of changing market conditions, funding availability, unforeseen expenses or other circumstances beyond GPEC's reasonable control, these performance targets may be revised with the City's prior written approval, or with the prior written approval of a majority of the designated members of GPEC's Economic Development Directors Team ("EDDT"). GPEC will provide monthly reports to the City discussing in detail its progress in implementing the Action Plan as well as reporting the numerical results for each performance measurement set forth in Exhibit B. GPEC shall provide a copy of its annual external audit for the preceding fiscal year to the City no later than December 31, 2012.
2. In the case of any benchmark which is not met, GPEC will meet with the EDDT to provide an explanation of the relevant factors and circumstances and discuss the approach to be taken in order to achieve the target(s). Failure to meet a performance target will not, by itself, constitute an event of default hereunder unless GPEC (i) fails to inform the City of such event or (ii) fails to meet with EDDT to present a plan for improving its performance during the balance of the term of the Agreement will constitute an event of default for which the City may terminate this Agreement pursuant to paragraph IV.J. below.

II. RESPONSIBILITIES OF THE CITY

- A. STAFF SUPPORT OF GPEC EFFORTS:** The City shall provide staff support to GPEC's economic development efforts as follows:
1. The City shall respond to leads or prospects referred by GPEC in a professional manner within the time frame specified by the lead or prospect if the City desires to compete and if the lead is appropriate for the City. When available, the City agrees to provide its response in the format developed jointly by EDDT and GPEC;
 2. The City shall provide appropriate local hospitality, tours and briefings for prospects visiting sites in the City;
 3. The City shall provide an official economic development representative to represent the City on the EDDT, which advises GPEC's President and CEO;
 4. The City shall cooperate in the implementation of GPEC/EDDT process improvement recommendations including the use of common presentation formats, exchange of information on prospects with GPEC's staff, the use of shared data systems, land and building data bases and private sector real estate industry interfaces;
 5. The City shall use its best efforts to respond to special requests by GPEC for particularized information about the City within three business days after the receipt of such request;
 6. In order to enable GPEC to be more sensitive to the City's requirements, the City shall, at its sole option, deliver to GPEC copies of any City approved economic development strategies, work plan, programs and evaluation criteria. GPEC shall not disclose the same to the other participants in GPEC or their representatives;
 7. The City shall utilize its best good faith efforts to cause an economic development professional representing the City to attend all marketing events and other functions to which the City has committed itself; and
 8. The City agrees to work with GPEC to improve the City's competitiveness and market readiness to support the growth and expansion of the targeted industries as identified for the City in **Exhibit C** ("Targeted Industries").
- B. RECOGNITION OF GPEC:** The City agrees to recognize GPEC as the City's officially designated regional economic development organization for marketing the Greater Phoenix region.

III. ADDITIONAL AGREEMENTS OF THE PARTIES

A. PARTICIPATION IN MARKETING EVENTS AND PROVISION OF TECHNICAL ASSISTANCE: Representative(s) of the City shall be entitled to participate in GPEC's marketing events provided that such participation shall not be at GPEC's expense. When requested and appropriate, GPEC will use its best efforts to provide technical assistance and support to City economic development staff for business location prospects identified and qualified by the City and assist the City with presentations to the prospect in the City or their corporate location.

B. COMPENSATION:

1. The City agrees to pay **\$88,636.00** for services to be provided by GPEC pursuant to the Agreement during the fiscal year ending on June 30, 2013, as set forth in this Agreement. This amount is based on approximately \$.39 per capita, based upon the 2011 Office of Employment and Population Statistics, Arizona Department of Administration population estimates, which listed the City as having a population of **227,446**. The payment by the City may, upon the mutual and discretionary approval of the board of directors of GPEC and the City Council, be increased or decreased from time to time during the term hereof in accordance with the increases or decreases of general application in the per capita payments to GPEC by other municipalities which support GPEC.
2. Funding of this Agreement shall be subject to the annual appropriations of funds for this activity by the City Council pursuant to the required budget process of the City.
3. Nothing herein shall preclude the City from contracting separately with GPEC for services to be provided in addition to those to be provided hereunder, upon terms and conditions to be negotiated by the City and GPEC.
4. GPEC shall submit invoices for payment on a quarterly basis. The foregoing notwithstanding, if GPEC has not provided the City with the audit required pursuant to paragraph I.E. above no later than December 31, 2012, no payments shall be made hereunder until the City receives the audit report. Invoices and monthly activity reports, substantially in the form of **Exhibit D** ("Reporting Mechanism for Contract Fulfillment") attached hereto, are to be submitted to the address listed under paragraph IV.P.

C. COOPERATION:

1. The parties acknowledge that GPEC is a cooperative organization effort between GPEC and the City. Accordingly, the City and GPEC covenant

and agree to work together in a productive and harmonious working relationship, to cooperate in furthering GPEC's goals for the 2012-2013 fiscal year.

2. The City agrees to work with GPEC, as necessary or appropriate, to revise the performance measures, and/or benchmarks, and/or goals for the FY 2013-2014 contract.
3. The City agrees to work with GPEC during the FY2012-2013 program year to develop a revised public sector funding plan, including a regional allocation formula for FY2013-2014, if determined to be necessary or appropriate.

IV. GENERAL PROVISIONS

- A. COVENANT AGAINST CONTINGENT FEES:** GPEC warrants that no person or selling agent has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. For a breach or violation of this warranty, the City shall have the right to terminate this Agreement without liability or, in its discretion, to deduct the commission, brokerage or contingent fee from its payment to GPEC.
- B. PAYMENT DEDUCTION OFFSET PROVISION:** GPEC recognizes the provisions of the City Code of the City of Glendale which require and demand that no payment be made to any contractor as long as there is any outstanding obligation due to the City, and directs that any such obligation be offset against payment due to GPEC.
- C. ASSIGNMENT PROHIBITED:** No party to this agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and no effect.
- D. INDEPENDENT CONTRACTOR; NO AGENCY:** Nothing contained in this Agreement creates any partnership, joint venture or agency relationship between the City and GPEC. At all times during the term of this Agreement, GPEC shall be an independent contractor and shall not be an employee of City. City shall have the right to control GPEC only insofar as to the results of GPEC's services rendered pursuant to this Agreement. GPEC shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. GPEC shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.
- E. INDEMNIFICATION AND HOLD HARMLESS:**
 1. During the term of this Agreement, GPEC shall indemnify, defend, hold, protect and save harmless the City and any and all of its Council members, officers and employees from and against any and all actions, suits,

proceedings, claims and demands, loss, liens, costs, expense and liability of any kind and nature whatsoever, for injury to or death of persons, or damage to property, including property owned by City, brought, made, filed against, imposed upon or sustained by the City, its officers, or employees in and arising from or attributable to or caused directly or indirectly by the negligence, wrongful acts, omissions or from operations conducted by GPEC, its directors, officers, agents or employees acting on behalf of GPEC.

2. Any party entitled to indemnity shall notify GPEC in writing of the existence of any claim, demand or other matter to which GPEC's indemnification obligations would apply, and shall give to GPEC a reasonable opportunity to defend the same at its own expense and with counsel reasonably satisfactory to the indemnified party.
3. Nothing in this Subsection E shall be deemed to provide indemnification to any indemnified party with respect to any liabilities arising from the fraud, negligence, omissions or willful misconduct of such indemnified party.

F. INSURANCE: GPEC shall procure and maintain for the duration of this Agreement, at GPEC's own cost and expense, insurance against claims for injuries to persons or damages to property which may arise from or in connection with this Agreement by GPEC, its agents, representatives, employees or contractors, in accordance with the Insurance Requirements set forth in **Exhibit E** ("Insurance Requirements"), attached hereto. The City acknowledges that it has received and reviewed evidence of GPEC's insurance coverage in effect as of the execution of this Agreement.

G. GRATUITIES. The City may, by written notice to GPEC, terminate the right of GPEC to proceed under this Agreement upon one (1) calendar day notice, if it is found that gratuities in the form of entertainment, gifts, or otherwise were offered or given by GPEC, or any agent or representative of GPEC, to any officer or employee of the City with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of such contract; provided that the existence of the facts upon which the City makes such findings shall be an issue and may be reviewed in any competent court. In the event of such termination, the City shall be entitled to pursue all legal and equitable remedies against GPEC available to the City.

H. EQUAL EMPLOYMENT OPPORTUNITY. During the performance of this Agreement, GPEC agrees as follows:

1. GPEC will not discriminate against any employee or applicant for employment because of race, color, religion, gender, sexual orientation,

national origin, age or disability. GPEC shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, gender, sexual orientation, national origin, age or disability. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. GPEC agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2. GPEC will, in all solicitations or advertisements for employees place by or on behalf of GPEC, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, gender, sexual orientation, national origin, age or disability.
3. GPEC will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement, provided that the foregoing provisions shall not apply to agreements or subcontracts for standard commercial supplies or new materials.
4. Upon request by the City, GPEC shall provide City with information and data concerning action taken and results obtained in regard to GPEC's Equal Employment Opportunity efforts performed during the term of this Agreement. Such reports shall be accomplished upon forms furnished by the City or in such other format as the City shall prescribe.

I. COMPLIANCE WITH FEDERAL AND STATE LAWS REQUIRED. GPEC understands and acknowledges the applicability of the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 and agrees to comply therewith in performing under any resultant agreement and to permit City inspection of its records to verify such compliance.

1. GPEC, and on behalf of any subcontractor GPEC has engaged to perform work for the City under this Agreement, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all applicable federal immigration laws and regulations that relate to its employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.
2. GPEC understands and acknowledges that any breach of warranty under subsection I(1) above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
3. The City retains the legal right to inspect the papers of GPEC or any subcontractor who performs work for the City under this Agreement to

ensure that GPEC or any such subcontractor is compliant with the warranty under subsection I(1) above.

4. City may conduct random inspections, and upon request of the City, GPEC shall provide copies of papers and records demonstrating continued compliance with the warranty under subsection I(1) above. GPEC agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in the City's exercise of its statutory duties and not deny access to GPEC's business premises or applicable papers or records for the purposes of enforcement of this subsection.
 5. GPEC agrees to incorporate into any subcontracts in performance of work under this Agreement the same obligations imposed upon itself and expressly accrue those obligations directly to the benefit of the City. GPEC also agrees to require any such subcontractor to incorporate into each of its own subcontracts in performance of work under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.
 6. GPEC's warranty and obligations under this entire subsection I 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 is no longer a requirement.
 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.
 8. GPEC certifies, under A.R.S. §§ 35-391 et seq., and 35-393 et seq., that it does not have "scrutinized" business operations, as defined in the preceding statutory sections, in the countries of Sudan or Iran.
- J. TERMINATION.** City shall have the right to terminate this Agreement if GPEC shall fail to duly perform, observe or comply with any covenant, condition or agreement on its part under this Agreement and such failure continues for a period of 30 days (or such shorter period as may be expressly provided herein) after the date on which written notice requiring the failure to be remedied shall have been given to GPEC by the City; provided, however, that if such performance, observation or compliance requires work to be done, action to be taken or conditions to be remedied which, by their nature, cannot reasonably be accomplished within 30 days, no event of default shall be deemed to have occurred or to exist if, and so long as, GPEC shall commence such action within that period and diligently and continuously prosecute the same to completion within 90 days or such longer period as the City may approve in writing. The foregoing notwithstanding, in the event of circumstances which render GPEC incapable of providing the services required to be performed hereunder, including,

but not limited to, insolvency or an award of monetary damages against GPEC in excess of its available insurance coverage and assets, the City may immediately and without further notice terminate this Agreement.

- K. RESPONSIBILITY FOR COMPLIANCE WITH LEGAL REQUIREMENTS.** GPEC's performance hereunder shall be in material compliance with all applicable federal, state and local health, environmental, and safety laws, regulations, standards, and ordinances in effect during the performance of this Agreement.
- L. INSTITUTION OF LEGAL ACTIONS.** Any legal actions instituted pursuant to this Agreement must be filed in the county of Maricopa, State of Arizona, or in the Federal District Court in the District of Arizona. In any legal action, the prevailing party in such action will be entitled to reimbursement by the other party for all costs and expenses of such action, including reasonable attorneys' fees as may be fixed by the Court.
- M. APPLICABLE LAW.** Any and all disputes arising under any Agreement to be awarded hereunder or out of the proposals herein called for, which cannot be administratively resolved, shall be tried according to the laws of the State of Arizona, and GPEC shall agree that the venue for any such action shall be in the State of Arizona.
- N. CONTINUATION DURING DISPUTES.** GPEC agrees that, notwithstanding the existence of any dispute between the parties, each party shall continue to perform the obligations required of it during the continuation of any such dispute, unless enjoined or prohibited by an Arizona court of competent jurisdiction.
- O. CITY REVIEW OF GPEC RECORDS.** GPEC must keep all Agreement records separate and make them available for audit by City personnel upon request.
- P. NOTICES.**

 - 1. Any notice, consent or other communication required or permitted under this Agreement shall be in writing and shall be deemed received at the time it is personally delivered, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express service or, if mailed, three (3) days after the notice is deposited in the United States mail addressed as follows:

If to City: Brian Friedman
Executive Director
Community and Economic Development Department
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301
Phone: (623) 930-2984

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

If to GPEC: Barry Broome
President and Chief Executive Officer
Greater Phoenix Economic Council
Two North Central Avenue, Suite 2500
Phoenix, Arizona 85004-4469
Phone: (602) 256-7700
FAX: (602) 256-7744

2. Any time period stated in a notice shall be computed from the time the notice is deemed received. Either party may change its mailing address or the person to receive notice by notifying the other party as provided in this subsection.

Q. TRANSACTIONAL CONFLICT OF INTEREST. All parties hereto acknowledge that this Agreement is subject to cancellation by the City pursuant to the provisions of Section 38-511, Arizona Revised Statutes.

R. NONLIABILITY OF OFFICIALS AND EMPLOYEES. No member, official or employee of the City will be personally liable to GPEC, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to GPEC or successor, or on any obligation under the terms of this Agreement. No member, official or employee of GPEC will be personally liable to the City, or any successor in interest, in the event of any default or breach by the GPEC or for any amount which may become due to the City or successor, or on any obligation under the terms of this Agreement.

S. NO WAIVER. Except as otherwise expressly provided in this Agreement, any failure or delay by any party in asserting any of its rights or remedies as to any default, will not operate as a waiver of any default, or of any such rights or remedies, or deprive any such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

- T. SEVERABILITY.** If any provision of this Agreement shall be found invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement will not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law, provided that the fundamental purposes of this Agreement are not defeated by such severability.
- U. CAPTIONS.** The captions contained in this Agreement are merely a reference and are not to be used to construe or limit the text.
- V. NO THIRD PARTY BENEFICIARIES.** No creditor of either party or other individual or entity shall have any rights, whether as a third-party beneficiary or otherwise, by reason of any provision of this Agreement.
- W. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS.**
1. This Agreement may be executed in up to three (3) duplicate originals, each of which is deemed to be an original. This Agreement, including twelve (12) pages of text and the below-listed exhibits which are incorporated herein by this reference, constitutes the entire understanding and agreement of the parties.

Exhibit A - GPEC Action Plan
Exhibit B - GPEC Performance Measures
Exhibit C - Targeted Industries
Exhibit D - Reporting Mechanism for Contract Fulfillment
Exhibit E - Insurance Requirements
 2. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.
 3. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City or GPEC, and all amendments hereto must be in writing and signed by the appropriate authorities of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed the Agreement this _____
day of _____, 2012.

CITY OF GLENDALE, an Arizona municipal
corporation

Horatio E. Skeete, Acting City Manager

ATTEST:

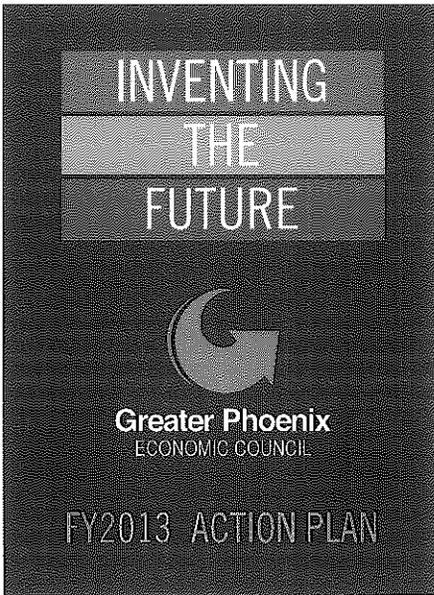
Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

Craig Tindall, City Attorney

GREATER PHOENIX ECONOMIC COUNCIL,
an Arizona nonprofit corporation

Barry Broome
President & Chief Executive Officer



www.gpecon.org



Renewable Energy



Biomedical/
Personalized
Medicine



Advanced
Business
Services



Manufacturing
& Logistics



Mission
Critical



Aerospace
& Aviation



Emerging
Tech

MEMBER COMMUNITIES

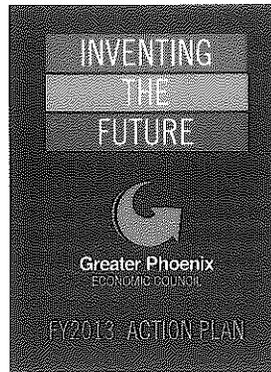
MARICOPA COUNTY
 APACHE JUNCTION
 AVONDALE
 BUCKEYE
 CASA GRANDE

CHANDLER
 FOUNTAIN HILLS
 GILA BEND
 GILBERT
 GLENDALE

GOODYEAR
 MARICOPA
 MESA
 PHOENIX
 PEORIA

QUEEN CREEK
 SCOTTSDALE
 SURPRISE
 TEMPE
 TOLLESON

WICKENBURG



GPEC Mission

Attract quality businesses
to the Greater Phoenix region
from around the world,
and advocate and
champion foundational
efforts to improve the
region's competitiveness.

2

- 4 GPEC Stakeholders
- 6 FY13 Metrics
- 7 FY13 Budget
- 8 Business Development
- 10 Competitiveness
- 12 Marketing and Communications
- 13 Stakeholder Engagement: Paving the way

What to Expect in the Following Pages

FY12 MILESTONES

momentum gained in the last year—select achievements and key benchmarks

FY13 ACTION ITEMS

sample of activities that adhere to a five-year vision and result in progress

DRIVES THESE FY13 METRICS

shows relationship between action items and annual performance goals

SUMMARY

Inventing the Future

It's a mantra shared by pioneers and entrepreneurs around the world. It's a conviction uniting individuals and teams of people everywhere who dare to make "it" their own. At GPEC, we are in the business of inventing the future. In competition with other metro markets for solid projects with quality jobs and notable capital investment, we are continually evaluating how to improve the region's business climate and secure our share of economic prosperity. Defying mediocrity, GPEC's efforts to implement a cutting-edge business development model, a more instinctive and sophisticated research practice, and a dynamic and creative marketing outfit, signify a boldness to create what does not currently exist and deliver better outcomes for the communities we serve.

Fiscal year 2013 represents the second year in the organization's five-year strategic plan, and the activities in the subsequent pages reflect not only progress, but also a steady continuation of the initiatives that will differentiate Greater Phoenix in the long-term.

With a clear path of strategies that will transcend the region as a true center of excellence, GPEC will keep inventing the future.

Vision and Progress

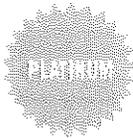
As approved by GPEC's Board of Directors in FY11, these strategic pillars will guide the organization's fiscal year activities, and by 2016, lead to the following vision statements:

Strategic Pillar	By 2016
Retention and Expansion	GPEC's R/E model will be best-in-class.
Next Generation	GPEC will elevate Greater Phoenix as a leading center of emerging technologies.
Attraction	GPEC will maintain its reputation as a credible, respectable and "go to" organization.
International	GPEC's foreign direct investment approach will be a national best practice.
Regional Brand	GPEC will successfully define Greater Phoenix as a region that is forward-thinking, innovative and business-friendly.
GPEC Brand	GPEC will be the nation's premier agency and leader in the economic development realm. In Arizona, GPEC will be the principal leadership organization.
Capital Markets / Venture Formation	GPEC will develop a science and technology-based fund that will drive regional innovation activity.

GPEC STAKEHOLDERS*

Member Communities

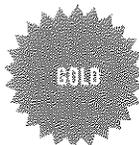
MARICOPA COUNTY	GILA BEND	PEORIA
APACHE JUNCTION	GILBERT	QUEEN CREEK
AVONDALE	GLENDALE	SCOTTSDALE
BUCKEYE	GOODYEAR	SURPRISE
CASA GRANDE	MARICOPA	TEMPE
CHANDLER	MESA	TOLLESON
FOUNTAIN HILLS	PHOENIX	WICKENBURG



Alliance Bank of Arizona
 APS
 Arizona Cardinals
 Arizona Diamondbacks
 Arizona Republic/Gannett
 Foundation
 Arizona State University
 AT&T
 Bank of America
 Banner Health
 BBVA Compass
 Chase
 Cox Communications
 D.L. Withers Construction
 DMB Associates

Ernst & Young
 Freeport McMoRan Copper &
 Gold Inc.
 Henry & Horne
 Hines
 Humana
 Kitchell
 Maracay Homes
 Maricopa Community Colleges
 Mayo Clinic
 MidFirst Bank
 PetSmart
 Phoenix Suns
 Power One
 Republic Services

SCF Arizona
 Squire Sanders
 SRP
 St. Joseph's Hospital & Medical
 Center
 University of Phoenix
 US Airways
 Verizon Wireless
 Walmart
 Waste Management
 Wells Fargo



A1A Vista Tech
 A.R. Mays Construction
 A.T. Still University
 AAA Arizona
 Abengoa/Abacus
 Aetna
 BlueCross BlueShield of Arizona
 Cancer Treatment Centers of
 America
 Cassidy Turley/BRE Commercial
 CBRE
 Celgene Corporation
 Central Arizona Commerce Park,
 LLC
 CenturyLink
 Coe & Van Loo Consultants, Inc.
 Colliers International
 CresaPartners
 Cushman & Wakefield
 Deloitte
 Deutsch Architecture Group

Digital Realty Trust
 E-Bay
 El Dorado Holdings
 Empire Southwest
 Gammage & Burnham
 Gilbane Building Co.
 Greenberg Traurig
 Green Loop Solutions
 HDR Architecture
 Hensel Phelps
 Hensley
 Howard S. Wright
 IASIS Healthcare
 JE Dunn Construction
 Jones Lang LaSalle
 Layton Construction
 Lewis & Roca LLP
 LGE Design Build
 M&I, A part of BMO Financial
 Group
 McCarthy Building Companies

The McShane Companies
 Macerich
 Meritage Homes
 Mortenson Construction
 Najafi Companies
 National Bank of Arizona
 Okland Construction
 Phoenix Children's Hospital
 Polsinelli Shughart
 Renaissance Companies
 SmithGroup
 SolarCity
 Southwest Airlines
 Sun Health
 Sundt Construction
 University of Arizona
 UPS
 Ware Malcomb
 Wespac Construction, Inc.
 Wood, Patel & Associates, Inc.



Air Products and Chemicals, Inc.
Arizona Office Technologies
Avnet
Bank of Arizona
Bryan Cave
Capital Commercial Investment, Inc.
Capital Group Companies
Clear Channel Outdoor
Comerica Bank
The CORE Institute
CoStar Group
Dibble Engineering
DIRTT
Ensemble DevMan of Arizona
Facilitec
Fennemore Craig
Fervor Creative
Goodmans Interior Structures
Grant Thornton
Intel Corporation
Job Brokers Inc./JBI Energy
Kelly Services
KTAR
Marsh

Merit Partners
MSS Technologies
On Q Financial
Osborn Maledon
The Plaza Companies
Quarles & Brady
Queen Creek/Landmark Companies
Renovalia Energy USA, Inc.
Rose Law Group
Scottsdale Healthcare
Snell & Wilmer LLP
Southwest Gas Corporation
Sun State Builders
Suntech America, Inc.
Target Commercial Interiors
Univita
USAA
WealthTrust Arizona
West Valley National Bank
Wist Office Products



Adolfson & Peterson Construction
American Institute of Architects
American Solar Electric
Applied Economics
Austin Commercial
Carefree Partners
CORE Construction
Dircks Moving Services
Gallagher & Kennedy
Grubb & Ellis

John C. Lincoln Health Network
Land Advisors Organization
Midwestern University
Plant Solutions
PTE Real Estate Group, LLC
SkySong, ASU Scottsdale Innovation Ctr
Sunstate Equipment Company

FY13 METRICS

Proposed Performance Metrics

	THRESHOLD	TARGET	STRETCH
Payroll Generated	\$185,028,506	\$203,531,356	\$223,884,492
Number of Jobs	4,378	4,816	5,297
High-wage Jobs	2,292	2,521	2,773
Average High-wage Salary	\$49,108	\$54,564	\$60,020
Qualified Prospects	199	219	241
Qualified International Prospects	35	39	43
Emerging Tech Assists	8	10	12
Reach of Editorial Placements	119M	131M	144M
Stakeholder Satisfaction with Business Attraction	7.0*	7.3*	7.6*
Competitive Position Progress	**	**	**
Meet or Exceed Cash Reserve Target	98%	100%	102%

* Based on a scale of 1 to 10

** As determined by GPEC's Executive Committee

FY13 BUDGET

July 1, 2012 - June 30, 2013

Revenues	FY11-12 Forecast	% of Total	FY11-12 Budget	% of Total	FY13 Budget	\$ Change	Change
Public Funds	\$ 1,883,031	40.7%	\$ 1,883,031	40.7%	\$ 2,100,555	\$ 217,524	11.6%
Private Funds	2,495,000	53.9%	2,500,000	54.1%	2,550,000	50,000	2.0%
In-Kind Pledge	91,900	2.0%	102,500	2.2%	91,900	(10,600)	-10.3%
Special Events, Prog. & Spon.	148,000	3.2%	130,000	2.8%	140,000	10,000	7.7%
Other Income	10,000	0.2%	8,000	0.2%	5,000	(3,000)	-37.5%
Total Revenues	\$ 4,627,931	100.0%	\$ 4,623,531	100.0%	\$ 4,887,455	\$ 263,924	5.7%
Operating Expenditures							
Business Attraction	341,000	7.3%	351,000	7.5%	354,000	3,000	0.9%
Marketing	167,000	3.6%	167,700	3.6%	240,500	72,800	43.4%
Research & Strategy	102,100	2.2%	107,100	2.3%	125,550	18,450	17.2%
External Relations	227,800	4.9%	232,800	5.0%	229,700	(3,100)	-1.3%
Resource Management	238,729	5.1%	243,729	5.2%	236,906	(6,823)	-2.8%
Personnel	3,147,081	67.7%	3,157,081	67.3%	3,318,946	161,865	5.1%
Facilities	427,700	9.2%	432,700	9.2%	\$ 449,000	16,300	3.8%
Expenses	\$ 4,651,410	100.0%	\$ 4,692,110	100.0%	\$ 4,954,602	262,492	5.6%
Net Income (Loss)	(23,479)	-0.5%	(68,579)	-1.5%	(67,147)	1,432	-2.1%
Less: Capital Expenditure	(25,000)	-0.5%	(20,000)	-0.4%	(40,000)	(20,000)	100.0%
Add: Depreciation	35,000	0.8%	35,000	0.8%	40,000	5,000	14.3%
Net Change in Cash Reserves	\$ (13,479)	-0.3%	\$ (53,579)	-1.2%	\$ (67,147)	\$ (13,568)	25.3%

* Forecasted results as of April 30, 2012

FY12 MILESTONES

National Recognition as the Best

Earned the highest ranking as “Best in Class” organization by national site-selection consultants. Conducted by New York-based Development Counsellors International, the survey named GPEC best among 50 regional and community economic development organizations in the country.

First-ever Foreign Direct Investment ExecuTour

Hosted China, Italy, Spain, Germany and Canada to a tour of the region and held an international business forum and exchange with more than 110 GPEC investors and community partners. Participating agents have since directed several leads and prospects to GPEC as a result.

Evaluation of Inventory

Under the leadership of the Community Building Consortium (CBC), GPEC worked to identify and assess the Valley’s large corporate campus sites and industrial sites. More than 50 sites have been vetted, packaged and are being promoted by GPEC’s team to site selectors, national developers and investment trusts to stimulate interest.

BUSINESS DEVELOPMENT

Create and maintain high-quality jobs and investment through targeted, direct selling

Proactively pursue the best projects that meet community and regional objectives

FY13 ACTION ITEMS

- *Work in Partnership Internationally*

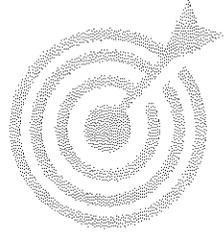
In thoughtful coordination with the Arizona Commerce Authority, GPEC will remodel the Arizona Global Network, focusing our strategy and resources in markets such as China, Canada and Western European countries.

- *Leverage Compelling Research*

Mining intelligence to create comprehensive data sets will build a business case and shape the value proposition for each of GPEC’s target industries, which will demonstrate and differentiate our level of professional expertise from the competition.

- *Maintain Lead Position with National Site Selectors*

GPEC will continue fostering relationships with the national site-selection community through regular communication, in-person meetings and hosting at ExecuTour/familiarization tours to uphold our reputation as “Best in Class” ranking economic development organization.



DRIVES THESE FY13 METRICS

- *Expand Region's Emerging Technology Platform*

In principle, emerging technologies change industries and alter daily living. In leveraging the region's core competencies, GPEC will partner with science and tech-based assets to create an innovation ecosystem and become a central resource for social entrepreneurs and companies in the digital IT, healthcare science and clean tech space.

- *Collaborate for Opportunities in California*

Based on market projections and a conviction that the Sun Corridor is where true opportunity lies within the Sun Belt, GPEC will remain an invested partner in the Arizona Sun Corridor with Tucson, Yuma, Flagstaff and Pinal County. Apart from the Sun Corridor partnership, GPEC will place a more intense focus on Orange County, LA Basin and Bay Area, expanding our existing sales channels in these regions.

- Pipeline of qualified prospects
- Total number of jobs created
- Number of high-wage jobs created
- Average high-wage salary
- Payroll generated
- Stakeholder satisfaction with business attraction

FY12 MILESTONES

Key Policy Achievements

Provided technical review and counsel to State and House leadership on the expansion of the Renewable Energy Tax Incentive Program to include other export industries. Signed by Governor Brewer, this \$630 million economic development program will shape our ability to deliver high-impact projects.

Value-add Research in Aerospace and Defense

Launched region-wide market intelligence initiative, providing communities with critical data and research on the Valley's primary contractors and large suppliers. An implementation model is currently underway, which is expected to both retain current businesses and attract new opportunities.

Convened on Personalized Medicine

In another first, GPEC hosted more than 200 attendees to a Personalized Medicine Summit, where state policy-makers and business and community leadership heard from world-renowned experts on best practice life science models. Attendees also learned about Arizona's unique public-private collaborations, which have led to major achievements in research, educational, and commercialization infrastructure.

COMPETITIVENESS

Guide new, strategic business opportunities through geographic and industry trend analyses

Evaluate targeted, sound economic development programs that enhance regional and state competitiveness

FY13 ACTION ITEMS

- *Retain Key Industries and Capture New Opportunities*

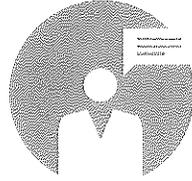
With the launch of a market intelligence pilot program initially focused on the aerospace and defense industry, GPEC will continue identifying potential threats and opportunities. The pilot program will be scaled to other sectors, including clean tech, to detect new areas of investment. GPEC member communities will build market intelligence through meetings with companies, and community and business leaders will be engaged at a high level to lend support to this effort.

- *Return to Washington, D.C.*

In conjunction with an educational outreach effort to Arizona's congressional delegation, GPEC will resume an Executive Mission to the nation's Capitol. Driven by immediate and long-term economic opportunities for the region and state, this trip will aim to broaden awareness of Greater Phoenix as a market rich with opportunity.

- *Build the Region's Future Around Science and Technology*

GPEC will place an emphasis on creating centers of excellence around impactful industries like clean tech, next-generation aerospace and defense, personalized medicine and IT. A blueprint to success will include promoting venture capital into the region and teaming with universities, with the intent to help new and existing businesses commercialize products and services.



DRIVES THESE FY13 METRICS

• *Support Workforce Development Efforts*

The region faces a considerable skills gap in occupations that are critical to growth industries. GPEC will collaborate with workforce development partners at Maricopa County, City of Phoenix and our educational partners at the Maricopa Community Colleges, Arizona State University and University of Phoenix to draw on national models and best practices to identify solutions to address this gap.

• *Research Opportunities in Clean Tech*

GPEC will continue to support the innovation, adoption and evolution of solar and other clean technologies. In tracking and monitoring developments within the clean tech industry, GPEC will analyze niche sectors and emerging technologies that are compatible with assets in the region.

- Pipeline of qualified prospects
- Pipeline of international prospects
- Average high-wage salary
- Emerging technology assists
- Competitive position progress
- Total need of additional placements

FY12 MILESTONES

New Era for gpec.org

Launched a brand new website, complete with data, detail and content-related marketing to satisfy not only location decision-makers, prospective employers and employees, but also existing and future GPEC investors and the community at-large.

California Perspective

Equipped the newly redesigned gpec.org with a geo-locator, allowing for targeted, California-specific messaging to users visiting the website from a California IP address. This application gives GPEC an edge in positioning the region competitively to a very specific audience.

Solar Still Positive

Despite questions surrounding Solyndra's fallout and its impact to the industry, GPEC secured positive news stories about the region's renewable energy and solar success in *Business Xpansion Journal*, *The Fiscal Times*, *Global Corporate Xpansion* and *World Trade 100*.

MARKETING & COMMUNICATIONS

Market region's strengths and assets using new, non-traditional tools

Position GPEC as reliable resource for stakeholders, policy-makers, citizens and media on key economic development issues

FY13 ACTION ITEMS

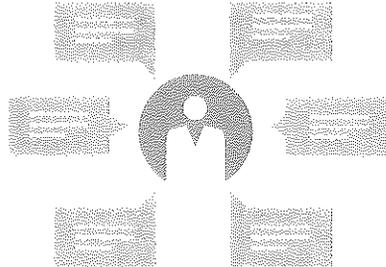
- *Implement a Geographic-centric Campaign*

Expanding on current messaging for California audiences, additional marketing and public relations efforts will be targeted toward heightened regions of opportunity such as Chicago, northern California and international targets such as China.

- *Devise Online Marketing Plan*

Following the launch of GPEC's revamped website, an increased marketing focus will be placed around online marketing, including search engine optimization, search marketing, social media and email marketing. Messaging for each online platform will give emphasis to repurposing easy-to-share information such as video and blog content.

DRIVES THESE FY13 METRICS



- Pipeline of qualified prospects
- Pipeline of international prospects
- Total reach of editorial placements

- *Continue Industry-focused Marketing*

GPEC's target industries will remain a marketing focus as value propositions for each are further developed and branded for continuity throughout the industry microsites, industry-specific collateral, presentations and messaging.

- *Increase National and International PR*

Business development and CEO-scheduled trips will be leveraged for increased public relations and media efforts at a national and international level. GPEC will also monitor national and international niche/trade publications for opportunities to better promote regional assets and publicize GPEC's agency-wide efforts.

STAKEHOLDER ENGAGEMENT

The active involvement by GPEC stakeholders carves a path for our region to become world-class and extraordinary. Stakeholder support enables GPEC to pursue economic opportunities while allowing investors to participate in key economic development activities.

Governance

Board of Directors

Provides effective oversight of the organization and helps shape GPEC's influence as a regional thought leader.

Executive Committee

Acts on behalf of the Board of Directors, advising on strategic direction and overall performance of annual goals.

Board-Level Committees

Performance Committee

Evaluates the performance of the organization and the President & CEO.

Nominating Committee

Serves to nominate the At-Large Directors and Board officers.

Audit Committee

Assesses internal controls and oversees auditors and the annual audit.

Finance Committee

Sets financial objectives for the organization and recommends the annual budgets as part of the Action Plan.

Leadership Councils and Advisory Groups

The collective professional expertise of GPEC's councils and advisory groups guides the CEO on key initiatives, leverages connections to further business development and competitiveness efforts, and supports implementation of programs.

GPEC Next Leadership Council*

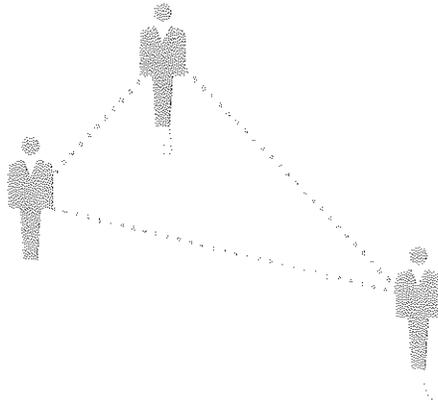
High-level advisory group designed to ensure the organization operates as "GPEC Next" model: innovative, integrated, proactive.

Healthcare Leadership Council*

Works together to establish Greater Phoenix as a center of excellence for personalized medicine anchored by innovative assets and world-class leadership.

International Leadership Council*

Advises on the direction and implementation of GPEC's foreign direct investment efforts; responsible for monitoring progress and providing guidance to increase program impacts.



Economic Development Directors Team

Advises CEO and staff on local economic development trends, offers insight on pulse of city/town council and partners with GPEC to finalize location decisions.

Community Building Consortium*

Applies collective commercial real estate experience to help capture business development opportunities and increase the region's transactional capabilities.

Marketing Committee*

Offers guidance on the development of regional branding, marketing and media efforts in support of our core mission of business development and regional competitiveness.

Innovation Council*

Guides and directs the planning and execution of a comprehensive economic development model to foster and promote a competitive environment for the formation, retention and expansion of growth industries in Greater Phoenix.

Ambassadors

At the foundation of GPEC's engagement activity are Ambassadors, whose broad range of professional backgrounds lend critical assistance to regional business-climate improvement and business development efforts.

Ambassadors

Help communicate, educate and inform stakeholders, policy-makers, citizens and media about key regional economic development issues.

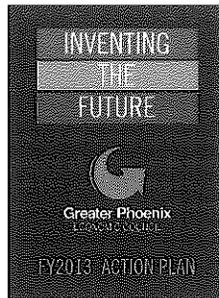
Certified Ambassadors

A qualifying program for Ambassadors who serve as an extension of the GPEC team and are given unique opportunities to interface more closely with GPEC's staff and board on program initiatives and mission-critical efforts.

Ambassador Steering Committee

Advises on strategic direction of Ambassadors Program; design activities relevant to and in support of GPEC's mission; serve as a sounding board for emerging initiatives and support implementation of programs.

**Eligibility determined by investment level or strategic appointment*



2 N. Central Ave., Suite 2500, Phoenix, AZ 85004

Phone: 602.256.7700 | Fax: 602.256.7744 | www.gpec.org



YouTube gpec greater phoenix

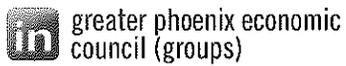


EXHIBIT B
GPEC PERFORMANCE MEASURES
FY 2012-2013

Specific performance targets as established by the GPEC Executive Committee and Board of Directors:

1. Payroll Generated	\$185.0M
2. Total Number of Jobs Created	4,378
3. Total Number of High-Wage Jobs	2,292
4. Average High-Wage Salary	\$49,108
5. Emerging Tech Assists	8
6. Number of Qualified Prospects	199
7. Number of Qualified International Prospects	35
8. Total Reach of Editorial Placements/Exposures	119M

GPEC continues to target high-wage industries (Renewable Energy; Biomedical/Personalized Medicine; Advanced Business Services; Manufacturing & Logistics; Mission Critical; Areospace & Aviation; Emerging Tech)

EXHIBIT C
TARGETED INDUSTRIES
FY2012-2013

GPEC and our member communities have identified targeted industries on a local and regional level, incorporating these industries into a regional economic development plan. For fiscal year 2012-2013, GPEC will continue its emphasis on the following: Renewable Energy; Biomedical/Personalized Medicine; Advanced Business Services; Manufacturing & Logistics; Mission Critical; Aerospace & Aviation; Emerging Tech.

Member communities will target the following:

Apache Junction

Business services; environmental technologies research and manufacturing; standard and advanced manufacturing; regional and corporate centers; medical institutions and/or associated satellite operations; mining support facilities; resort/tourist-oriented development; filmmaking (location shooting); expanded retail opportunities

Avondale

Advanced business services/information technology; renewable energies; Bio/medical/life sciences; manufacturing; higher education/lifelong learning, amateur sports and tourism

Buckeye

Advanced business services; renewable energy; high tech (data center and services); environmental technology / sustainability; standard manufacturing; medical and educational institutions; transportation/distribution; small business/incubator; aerospace/aviation

Casa Grande

Aviation/aerospace; biosciences and sustainability; corporate/regional headquarters; healthcare and medical services; standard manufacturing and transportation and distribution

Chandler

Advanced Business Services; corporate/regional headquarters, high-tech electronics and software development; aerospace/aviation and advanced materials; biosciences and sustainability.

Fountain Hills

Advanced business services; high-tech/IT; healthcare, medical and bio-medical; renewable energy; post-secondary institutions

Gila Bend

Clean technology (manufacturing/central station generation/R&D); warehousing/transportation/distribution; military supply chain; tourism/hospitality; standard manufacturing; agriculture/agri-biotechnology; food, fiber and natural products; aerospace/aviation

Gilbert

Corporate/regional headquarters; advanced business services; high-tech/software (R&D, data center, services); next generation electronics (sensors, optics); aerospace and defense (satellite, FAA repair); biotechnology and life sciences (R&D, oncology, regenerative medicine, cardiovascular science, medical device); clean technology and renewable energy (R&D, algae, biodiesel)

Glendale

Aviation/aerospace; software development; sports and entertainment; high-tech consultants; research and development; defense; financial services and insurance headquarters; resorts; healthcare and medical services; engineering and architectural

Goodyear

Advanced financial/business services; high-tech electronics and software development; aerospace/aviation; advanced materials; biosciences (treatment, medical diagnostics, research) and senior industries; food, fiber and natural products; transportation/distribution; standard manufacturing; environmental technology; sustainability

Maricopa (City)

High-wage employers (salaries averaging at least 125% of the median wage in Maricopa County) that generate at least 80% of income from exporting goods and services outside the region.

Mesa

Primary Target Industries: Healthcare, Education, Aerospace and Tourism

Secondary target industries: Advanced business services; regional and corporate centers; environmental technology; research & development; bioscience; sustainability

Peoria

Advanced business services; high technology (data centers, R&D); life sciences and healthcare technologies; advanced medical services; educational institutions; advanced and standard manufacturing; clean technologies research and manufacturing; entertainment and tourism

Phoenix

Advanced business services; aerospace and defense; bioscience; high tech/IT; renewable energy; higher education

Queen Creek

Aerospace and aviation; health and wellness; advanced financial/business services; arts, culture and experience; education

Scottsdale

Information technology/software; healthcare/biomedical; financial services; sports/lifestyle; solar/sustainable industries; education

Surprise

Environmental technology; advanced medical services; biotech; education and healthcare; transportation and distribution

Tempe

Advanced business services (financial services); high tech/software (R&D, data center and services); high-tech/next generation electronics; aerospace R&D/aviation; bioscience (research, drug development, treatment, medical diagnostics); corporate/regional headquarters; sustainability (environmental); advanced materials/plastics; senior industries; clean tech, renewable energy and manufacturing

Tolleson

Aerospace and advanced materials; food, fiber and natural products; transportation/distribution; standard manufacturing; environmental technology; sustainability

Wickenburg

Heavy industrial; standard manufacturing; transportation & distribution; rail services; food processing; mining support facilities; renewable energy; environmental technology research & manufacturing; healthcare and medical; educational institutions; tourism and filmmaking; expanded retail operations

EXHIBIT D
FY 2012-2013
REPORTING MECHANISM FOR CONTRACT FULFILLMENT

Monthly Activity Report - Month, Year

BUSINESS ATTRACTION PERFORMANCE METRICS:

GPEC Progress Toward Goals

Targeted Opportunities	Annual Contract Goal	Actual YTD	Goal YTD	% of Goal YTD
PAYROLL GENERATED (MILLIONS)				
AVERAGE HIGH WAGE SALARY				
NUMBER OF JOBS				
NUMBER OF HIGH-WAGE JOBS				
EMERGING TECHNOLOGY ASSISTS				
QUALIFIED PROSPECTS				
INTERNATIONAL PROSPECTS				
TOTAL REACH OF EDITORIAL PLACEMENTS				

GPEC continues to target high-wage industries (advanced business services, aerospace, life sciences, renewable energy, high-tech/IT)

KEY BUSINESS ATTRACTION ACTIVITIES AND OTHER GPEC ACTIVITIES

EXHIBIT E

INSURANCE REQUIREMENTS

The City's insurance requirements are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City in no way warrants that the minimum limits required of GPEC are sufficient to protect GPEC from liabilities that might arise out of this Agreement for GPEC, its agents, representatives, employees or Contractors and GPEC is free to purchase such additional insurance as may be determined necessary.

A. Minimum Scope and Limits of Insurance. GPEC shall provide coverage at least as broad as the categories set forth below with minimum coverage limits also listed below:

1. Commercial General Liability - Occurrence Form
(Form CG 0001, ed. 10/93 or any replacements thereof)

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

Each Occurrence	\$1,000,000
Personal and Advertising	\$1,000,000
General Aggregate	\$2,000,000
Products-Completed Operations	\$1,000,000

2. Automobile Liability - Any Auto or Owned, Hired and Non-Owned Vehicles (Form CA 0001, ed. 12/93 or any replacement thereof) Combined Single Limit of \$1,000,000 Per Accident for Bodily Injury and Property Damage

3. Workers' Compensation and Employers' Liability

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

B. Self-insured Retentions. Any self-insured retentions must be declared to and approved by the City. If not approved, the City may request that the insurer reduce or eliminate such self-insured retentions with respect to City, its officers, officials, agents, employees and volunteers.

C. Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability

a. The City, its officers, officials, agents, employees and volunteers are to be named as additional insureds with respect to liability arising out of: activities performed by or on behalf of GPEC, including the City's general supervision of GPEC; products and completed operations of GPEC; and automobiles owned, leased, hired or borrowed by GPEC.

b. GPEC's insurance shall include broad form contractual liability coverage.

c. The City, its officers, officials, agents, employees and volunteers shall be additional insureds to the full limits of liability purchased by GPEC, even if those limits of liability are in excess of those required by this Agreement.

d. GPEC's insurance coverage shall be primary insurance with respect to City, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees or volunteers shall be in excess of GPEC's insurance and shall not contribute to it.

e. GPEC'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 insurer's liability.

f. Coverage provided by GPEC shall not be limited to the liability assumed under the indemnification provisions of this Agreement.

g. The policies shall contain a waiver of subrogation against City, its officers, officials, agents, employees and volunteers for losses arising from work performed by GPEC for the City.

2. Workers' Compensation and Employers' Liability Coverage. The insurer shall agree to waive all rights of subrogation against City, its officers, officials, agents, employees and volunteers for any and all losses arising from work performed by the Contractor for the City.

- D. Notice of Cancellation.** Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice has been sent to City at the address provided herein for the giving of notice. Such notice shall be by certified mail, return receipt requested.
- E. Acceptability of Insurers.** Insurance is to be placed with insurers that have an AM Best financial rating of "A-" or better and be authorized by the State of Arizona Department of Insurance to transact business within the State. City in no way warrants that the above required minimum insurer rating is sufficient to protect GPEC from potential insurer insolvency.
- F. Verification of Coverage.** GPEC shall furnish City with Certificates of Insurance (ACORD form or equivalent approved by City) and with original endorsements effecting coverage as required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the Certificate of Insurance.

All certificates and endorsements are to be received and approved by City 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.

All certificates of insurance required by this Agreement shall be sent directly to City at the address and in the manner provided in this Agreement for the giving of notice. City's Agreement/Agreement number, GPEC's name and description of the Agreement shall be provided on the Certificates of Insurance. City reserves the right to require complete certified copies of all insurance policies required by this Agreement, at any time.

- G. Approval.** During the term of this Agreement, no modification may be made to any of GPEC's insurance policies which will reduce the nature, scope or limits of coverage which were in effect and approved by the City prior to execution of this Agreement.



Community & Economic Development Department
Memorandum

DATE: September 17, 2012
TO: Horatio Skeete, Acting City Manager
FROM: Dave McAlindin, Assistant Director, Economic Development
SUBJECT: Greater Phoenix Economic Council Annual Renewal Recommendation for FY13

The city of Glendale has maintained membership with the Greater Phoenix Economic Council (GPEC) since 1989. For this fiscal year, GPEC membership fees are \$88,636.

Background

The following information indicates the number of leads received from GPEC over the past five years, the number of leads we responded to, based on the company's criteria, and those we were not able to respond to because we did not meet the clients' specific criteria. The last four locates and the annual direct revenue based upon our Applied Economic Impact Model is also included.

1. Leads received – 7/1/2011 to 6/30/2012	61
2. Total Leads Responded – 7/1/2011 to 6/30/2012	53
3. Total Leads Received – 7/1/2007 to 6/30/2012	327
4. Total Leads Responded	181
5. Total Leads Did Not Respond (COG did not meet clients criteria)	146
6. Total Locates from GPEC Leads – 7/1/2007 to 6/30/2012 (Northdown Industries, InHouse Assist - Pathways, SkyJack, Alaska USA Federal Credit Union)	4
7. Projected annual Direct Revenue to COG	\$318,106

Advantages of GPEC Membership

- The city of Glendale has been a member of GPEC for over 20 years.
- ED is currently working to locate multiple GPEC leads that are in motion.
- GPEC upgraded their website to become more community-centric. We have readily improved the hosted Glendale information. This upgrade is an important introduction and first impression for many in the site selection community
- ED staff enjoys a strong relationship with GPEC staff built over several years.
- GPEC is a strong voice for economic development at the Legislature.

- The city's relationship with GPEC is long term and will have pluses and minuses in any given year. The net fiscal result is positive over the past five years.
- Regional marketing of shovel-ready sites.
- City Council approved the FY 13 Budget with appropriations to continue membership via the Economic Development Account (16010).

Disadvantages of GPEC Membership

- If COG withdraws, COG will be the only Valley city who is not a member besides El Mirage and Litchfield Park.
- Non-membership cities have no ability to follow up with leads because clients are generally anonymous.

Recommendation

Economic Development strongly recommends continued membership in GPEC based upon the clear value listed in the advantages section above. Glendale generates net positive revenue from the relationship. GPEC provides strong national and international marketing of the Valley that could not be replaced by Glendale if the relationship were terminated.

CC: Candace MacLeod, City Auditor
Brian Friedman, Executive Director, Community and Economic Development



CITY COUNCIL REPORT

Meeting Date: **10/9/2012**
Meeting Type: **Voting**
Title: **FISCAL YEAR 2012-13 BUDGET AMENDMENTS**
Staff Contact: **Sherry Schurhammer, Executive Director, Financial Services**

Purpose and Recommended Action

This is a request for City Council to consider and approve Fiscal Year (FY) 2012-13 budget amendments. The City of Glendale's total FY 2012-13 budget appropriation across all funds is unchanged. This request includes only intra-fund budget transfers and does not include budget transfers between funds.

Staff is requesting that Council waive reading beyond the title and adopt an ordinance approving the FY 2012-13 budget amendments.

Background Summary

The vast majority of the FY 2012-13 budget amendments shown in Exhibit A are associated with capital projects. During the course of FY 2011-12, project managers estimated their capital project carryover of appropriation authority and those carryover estimates were included in the FY 2012-13 adopted budget appropriations. The FY 2012-2013 adopted budget included 77 capital projects with carry-over estimates.

Of these 77 capital projects included in this fiscal year's adopted budget, 45 capital projects need carry-over adjustments at this time. Of the 45 capital projects, 29 projects require the carry-over adjustment to be reduced and 16 projects require the carry-over adjustment to be increased. Carry-over estimates are requested at the line-item account level, resulting in several line-item accounts associated with one capital project.

A reduction to a carry-over estimate is needed when a capital project's actual spending in the prior fiscal year exceeds the amount estimated at the time of the carry-over request. The reduction to the carry-over estimate included in the current fiscal year's project budget is done to ensure that a project's total appropriation limit is not exceeded and stays within budget. An increase to a carry-over estimate is needed when a capital project's actual spending in the prior fiscal year is less than the amount estimated at the time of the carry-over request. This increase is done to ensure that a capital project's total appropriation limit and budget is sufficient to complete the project. The Financial Services Department subsequently reconciles each department's actual spending from the prior fiscal year with their estimated carryover that is built into the FY 2012-2013 budget.



CITY COUNCIL REPORT

The other budget amendments are associated with appropriation changes within a respective department's budget to accommodate actual spending activity.

Previous Related Council Action

Council approved a similar ordinance for FY 2011-12 budget amendments on June 26, 2012 and May 22, 2012.

Budget and Financial Impacts

The City of Glendale's total FY 2012-13 budget appropriation across all funds remain unchanged. This request includes only intra-fund budget transfers and does not include transfers between funds.

Attachments

Staff Report

Ordinance



STAFF REPORT

To: **Horatio Skeete, Acting City Manager**
From: **Sherry Schurhammer, Executive Director, Financial Services**
Item Title: **FISCAL YEAR 2012-13 BUDGET AMENDMENTS**
Requested Council Meeting Date: **10/9/2012**
Meeting Type: **Voting**

PURPOSE

This report contains information on the proposed Fiscal Year (FY) 2012-13 budget amendments. The purpose of this report is to request the City Manager to forward this item to City Council for consideration and approval of these budget amendments. The City of Glendale's total FY 2012-13 budget appropriation across all funds is unchanged. This request includes only intrafund transfers and does not include budget transfers between funds.

BACKGROUND

A budget amendment is a transfer of appropriation authority and most amendments are done to reconcile the prior year's actual savings with requested carryover. The budget represents a plan for spending and is established several months before the current FY commenced.

As actual spending activity occurs, transfers of appropriation authority within and between departments is required to reflect changes to the initial spending plan. The causes of changes to the initial spending plan can be summarized as follows:

- unexpected expenses arise due to unforeseen circumstances,
- planned spending does not occur as work plans are modified to address changing circumstances,
- and reconciliation of carryover estimates included in the adopted budget, the vast majority of which are for capital improvement projects.

ANALYSIS

The vast majority of the FY 2012-13 budget amendments in Exhibit A are associated with capital projects. During the course of FY 2011-12, project managers estimated their capital project carryover of appropriation authority and those carryover estimates were included in the FY 2012-

13 adopted budget appropriations. The FY 2012-2013 adopted budget included 77 capital projects with carry-over estimates.

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The other budget amendments are associated with appropriation changes within a respective department's budget to accommodate actual spending activity.

Council approved a similar ordinance for FY 2011-12 budget amendments on June 26, 2012 and May 22, 2012.

FISCAL IMPACTS

The City of Glendale's total FY 2012-13 budget appropriation across all funds is unchanged. This request includes only intrafund budget transfers and does not include transfers between funds.

ORDINANCE NO. 2818 NEW SERIES

AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE TRANSFER OF APPROPRIATION AUTHORIZATION BETWEEN BUDGET ITEMS IN THE ADOPTED FISCAL YEAR 2012-2013 BUDGET.

WHEREAS, Glendale City Charter, Article VI, Sec. 11, authorizes the City Council, by ordinance, to transfer any unencumbered appropriation balance or portion thereof from one office, department or agency to another.

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

SECTION 1. That the following transfers of appropriation authorization in the adopted Fiscal Year 2012-2013 budget are hereby authorized:

[See Exhibit A attached hereto and incorporated herein by reference.]

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

FY 2012-13 CleanUp Ordinance - Exhibit A (through 9/18/12)

Line	Type of Transfer	Date	Transfer From...				Amount	Transfer To...					
			Fund	Rollup	Div	Division Description		Acct	Fund	Rollup	Div	Division Description	Acct
1	Carryover Adjustment	1st Qtr	1000	244	11801	Fund 1000 Non-Dept	510200	73	1000	112	10130	Barrel District	521000
2	Carryover Adjustment	1st Qtr	1000	244	11801	Fund 1000 Non-Dept	510200	6,587	1000	112	10140	Sahuaro District	521000
3	Carryover Adjustment	1st Qtr	1000	112	10150	Cactus District	521000	5,238	1000	244	11801	Fund 1000 Non-Dept	510200
4	Carryover Adjustment	1st Qtr	1000	244	11801	Fund 1000 Non-Dept	510200	174	1000	112	10160	Yucca District	521000
5	Carryover Adjustment	1st Qtr	1000	112	10170	Ocotillo District	521000	2,055	1000	244	11801	Fund 1000 Non-Dept	510200
6	Carryover Adjustment	1st Qtr	1000	121	10240	Elections	518200	6,097	1000	244	11801	Fund 1000 Non-Dept	510200
7	Carryover Adjustment	1st Qtr	1720	331	12610	Fire - Special Revenue Fund	551400	24,512	1720	245	11909	Fund 1720 Contingency	510200
8	Grant Appropriation	1st Qtr	1842	470	37060	ARWRF Facility UV System Imp	518200	40,000	1842	441	37021	CDBG-R	518200
9	CIP Carryover Adjustment	1st Qtr	1283	800	84200	Camelback Ranch Maint. Reserve	550800	937	1283	805	91035	Fund 1283 CIP Reserve	510200
10	CIP Carryover Adjustment	1st Qtr	1520	800	70454	Pasadena Park	550800	1	1520	805	91031	Fund 1520 CIP Reserve	510200
11	CIP Carryover Adjustment	1st Qtr	1560	800	73404	Paseo Linear Park Additions	551000	10,437	1560	805	91032	Fund 1560 CIP Reserve	510200
12	CIP Carryover Adjustment	1st Qtr	1600	800	67803	Dev. Agree. - Signals	550800	1,893	1600	805	91028	Fund 1600 CIP Reserve	510200
13	CIP Carryover Adjustment	1st Qtr	1980	800	68103	Street Scallop	551200	12,826	1980	805	91002	Fund 1980 CIP Reserve	510200
14	CIP Carryover Adjustment	1st Qtr	1980	800	68104	Street Beautification	551200	923	1980	805	91002	Fund 1980 CIP Reserve	510200
15	CIP Carryover Adjustment	1st Qtr	1980	800	68104	Street Beautification	552600	7,733	1980	805	91002	Fund 1980 CIP Reserve	510200
16	CIP Carryover Adjustment	1st Qtr	1980	800	68121	Street Light Repair	550800	38,577	1980	805	91002	Fund 1980 CIP Reserve	510200
17	CIP Carryover Adjustment	1st Qtr	2040	800	75024	800MHz Comm Equip	551400	1,395	2040	805	91006	Fund 2040 CIP Reserve	510200
18	CIP Carryover Adjustment	1st Qtr	2060	800	70515	T-Bird Park Improvements	550800	5,505	2060	805	91005	Fund 2060 CIP Reserve	510200
19	CIP Carryover Adjustment	1st Qtr	2060	800	70520	Sahuaro Ranch Park Improv.	551200	1	2060	805	91005	Fund 2060 CIP Reserve	510200
20	CIP Carryover Adjustment	1st Qtr	2080	800	77510	Electrical/Lighting Upgrades	551200	2,416	2080	805	91001	Fund 2080 CIP Reserve	510200
21	CIP Carryover Adjustment	1st Qtr	2080	800	77510	Electrical/Lighting Upgrades	552400	953	2080	805	91001	Fund 2080 CIP Reserve	510200
22	CIP Carryover Adjustment	1st Qtr	2100	800	84400	Downtown Land Acquisition	550400	414,290	2100	805	91003	Fund 2100 CIP Reserve	510200
23	CIP Carryover Adjustment	1st Qtr	2120	800	79517	Runway Land Purchase	550400	5,958,695	2120	805	91021	Fund 2120 CIP Reserve	510200
24	CIP Carryover Adjustment	1st Qtr	2130	800	84307	Myrtle Ave Cul Gateway - Match	551200	2,122	2130	805	91000	Fund 2130 CIP Reserve	510200
25	CIP Carryover Adjustment	1st Qtr	2130	800	84307	Myrtle Ave Cul Gateway - Match	552400	20,521	2130	805	91000	Fund 2130 CIP Reserve	510200
26	CIP Carryover Adjustment	1st Qtr	2180	800	79004	Local Drainage Problems	550800	90,547	2180	805	91009	Fund 2180 CIP Reserve	510200
27	CIP Carryover Adjustment	1st Qtr	2180	800	79004	Local Drainage Problems	551200	1,128	2180	805	91009	Fund 2180 CIP Reserve	510200
28	CIP Carryover Adjustment	1st Qtr	2180	800	79004	Local Drainage Problems	552000	5,879	2180	805	91009	Fund 2180 CIP Reserve	510200
29	CIP Carryover Adjustment	1st Qtr	2180	800	79004	Local Drainage Problems	552400	21,897	2180	805	91009	Fund 2180 CIP Reserve	510200
30	CIP Carryover Adjustment	1st Qtr	2180	800	79004	Local Drainage Problems	552500	1,495	2180	805	91009	Fund 2180 CIP Reserve	510200
31	CIP Carryover Adjustment	1st Qtr	2180	800	79004	Local Drainage Problems	552600	8,296	2180	805	91009	Fund 2180 CIP Reserve	510200
32	CIP Carryover Adjustment	1st Qtr	2180	800	79006	AZDES Permit	550800	893	2180	805	91009	Fund 2180 CIP Reserve	510200
33	CIP Carryover Adjustment	1st Qtr	2180	800	79006	AZDES Permit	551000	2,767	2180	805	91009	Fund 2180 CIP Reserve	510200
34	CIP Carryover Adjustment	1st Qtr	2180	800	79006	AZDES Permit	551200	3,567	2180	805	91009	Fund 2180 CIP Reserve	510200
35	CIP Carryover Adjustment	1st Qtr	2180	800	79006	AZDES Permit	552400	147	2180	805	91009	Fund 2180 CIP Reserve	510200
36	CIP Carryover Adjustment	1st Qtr	2180	800	79006	AZDES Permit	552600	175	2180	805	91009	Fund 2180 CIP Reserve	510200
37	CIP Carryover Adjustment	1st Qtr	2210	800	65005	Smart Traffic Signals	550800	19,106	2210	805	91017	Fund 2210 CIP Reserve	510200

FY 2012-13 CleanUp Ordinance - Exhibit A (through 9/18/12)

Line	Type of Transfer	Date	Transfer From...					Amount	Transfer To...				
			Fund	Rollup	Div	Division Description	Acct		Fund	Rollup	Div	Division Description	Acct
38	CIP Carryover Adjustment	1st Qtr	2210	800	65007	Grand Ave Access Enhancements	518200	9,925	2210	805	91017	Fund 2210 CIP Reserve	510200
39	CIP Carryover Adjustment	1st Qtr	2210	800	65007	Grand Ave Access Enhancements	550400	9,218	2210	805	91017	Fund 2210 CIP Reserve	510200
40	CIP Carryover Adjustment	1st Qtr	2210	800	65007	Grand Ave Access Enhancements	551200	10,262	2210	805	91017	Fund 2210 CIP Reserve	510200
41	CIP Carryover Adjustment	1st Qtr	2210	800	65007	Grand Ave Access Enhancements	552500	10,324	2210	805	91017	Fund 2210 CIP Reserve	510200
42	CIP Carryover Adjustment	1st Qtr	2210	800	65016	Northern Ave Super Street	550200	1,713	2210	805	91017	Fund 2210 CIP Reserve	510200
43	CIP Carryover Adjustment	1st Qtr	2210	800	65016	Northern Ave Super Street	551000	32,028	2210	805	91017	Fund 2210 CIP Reserve	510200
44	CIP Carryover Adjustment	1st Qtr	2210	800	65016	Northern Ave Super Street	552600	514	2210	805	91017	Fund 2210 CIP Reserve	510200
45	CIP Carryover Adjustment	1st Qtr	2210	800	65022	PE & Oversight for Transp. Pkg	550200	3,637	2210	805	91017	Fund 2210 CIP Reserve	510200
46	CIP Carryover Adjustment	1st Qtr	2210	800	65022	PE & Oversight for Transp. Pkg	551000	68,017	2210	805	91017	Fund 2210 CIP Reserve	510200
47	CIP Carryover Adjustment	1st Qtr	2210	800	65022	PE & Oversight for Transp. Pkg	551200	158,367	2210	805	91017	Fund 2210 CIP Reserve	510200
48	CIP Carryover Adjustment	1st Qtr	2210	800	65022	PE & Oversight for Transp. Pkg	552600	1,091	2210	805	91017	Fund 2210 CIP Reserve	510200
49	CIP Carryover Adjustment	1st Qtr	2210	800	65072	Expanded Safety Program	550200	166	2210	805	91017	Fund 2210 CIP Reserve	510200
50	CIP Carryover Adjustment	1st Qtr	2210	800	65072	Expanded Safety Program	550800	21,960	2210	805	91017	Fund 2210 CIP Reserve	510200
51	CIP Carryover Adjustment	1st Qtr	2210	800	65072	Expanded Safety Program	551000	3,154	2210	805	91017	Fund 2210 CIP Reserve	510200
52	CIP Carryover Adjustment	1st Qtr	2210	800	65072	Expanded Safety Program	552400	4,747	2210	805	91017	Fund 2210 CIP Reserve	510200
53	CIP Carryover Adjustment	1st Qtr	2210	800	65072	Expanded Safety Program	552500	240	2210	805	91017	Fund 2210 CIP Reserve	510200
54	CIP Carryover Adjustment	1st Qtr	2210	800	65072	Expanded Safety Program	552600	50	2210	805	91017	Fund 2210 CIP Reserve	510200
55	CIP Carryover Adjustment	1st Qtr	2210	800	65078	Airport Matching Funds	550800	63	2210	805	91017	Fund 2210 CIP Reserve	510200
56	CIP Carryover Adjustment	1st Qtr	2210	800	65078	Airport Matching Funds	551000	16	2210	805	91017	Fund 2210 CIP Reserve	510200
57	CIP Carryover Adjustment	1st Qtr	2210	800	65078	Airport Matching Funds	551200	987	2210	805	91017	Fund 2210 CIP Reserve	510200
58	CIP Carryover Adjustment	1st Qtr	2210	800	65078	Airport Matching Funds	552400	19	2210	805	91017	Fund 2210 CIP Reserve	510200
59	CIP Carryover Adjustment	1st Qtr	2210	800	65078	Airport Matching Funds	552600	16	2210	805	91017	Fund 2210 CIP Reserve	510200
60	CIP Carryover Adjustment	1st Qtr	2210	800	65086	51st Avenue HES Projects	518200	495	2210	805	91017	Fund 2210 CIP Reserve	510200
61	CIP Carryover Adjustment	1st Qtr	2210	800	65086	51st Avenue HES Projects	550800	2,158	2210	805	91017	Fund 2210 CIP Reserve	510200
62	CIP Carryover Adjustment	1st Qtr	2210	800	65086	51st Avenue HES Projects	551200	6,578	2210	805	91017	Fund 2210 CIP Reserve	510200
63	CIP Carryover Adjustment	1st Qtr	2210	800	65086	51st Avenue HES Projects	552400	21,317	2210	805	91017	Fund 2210 CIP Reserve	510200
64	CIP Carryover Adjustment	1st Qtr	2210	800	65086	51st Avenue HES Projects	552500	2,906	2210	805	91017	Fund 2210 CIP Reserve	510200
65	CIP Carryover Adjustment	1st Qtr	2210	800	65089	Pavement Management	550800	138,477	2210	805	91017	Fund 2210 CIP Reserve	510200
66	CIP Carryover Adjustment	1st Qtr	2210	800	65089	Pavement Management	552000	1,145	2210	805	91017	Fund 2210 CIP Reserve	510200
67	CIP Carryover Adjustment	1st Qtr	2210	800	65089	Pavement Management	552400	1,030	2210	805	91017	Fund 2210 CIP Reserve	510200
68	CIP Carryover Adjustment	1st Qtr	2360	800	60008	WAWRF Phase IV	550200	1,789	2360	805	91014	Fund 2360 CIP Reserve	510200
69	CIP Carryover Adjustment	1st Qtr	2360	800	60008	WAWRF Phase IV	550800	18,395	2360	805	91014	Fund 2360 CIP Reserve	510200
70	CIP Carryover Adjustment	1st Qtr	2360	800	60008	WAWRF Phase IV	552000	184	2360	805	91014	Fund 2360 CIP Reserve	510200
71	CIP Carryover Adjustment	1st Qtr	2360	800	60009	West Area WRF Service Wtr Sys.	550200	134	2360	805	91014	Fund 2360 CIP Reserve	510200
72	CIP Carryover Adjustment	1st Qtr	2360	800	60009	West Area WRF Service Wtr Sys.	550800	2,394	2360	805	91014	Fund 2360 CIP Reserve	510200
73	CIP Carryover Adjustment	1st Qtr	2360	800	60009	West Area WRF Service Wtr Sys.	552000	15	2360	805	91014	Fund 2360 CIP Reserve	510200
74	CIP Carryover Adjustment	1st Qtr	2360	800	60009	West Area WRF Service Wtr Sys.	552400	179	2360	805	91014	Fund 2360 CIP Reserve	510200

FY 2012-13 CleanUp Ordinance - Exhibit A (through 9/18/12)

Line	Type of Transfer	Date	Transfer From...					Amount	Transfer To...				
			Fund	Rollup	Div	Division Description	Acct		Fund	Rollup	Div	Division Description	Acct
75	CIP Carryover Adjustment	1st Qtr	2400	800	61001	Fire Hydrant Replacement	550200	57	2400	805	91015	Fund 2400 CIP Reserve	510200
76	CIP Carryover Adjustment	1st Qtr	2400	800	61001	Fire Hydrant Replacement	550800	636	2400	805	91015	Fund 2400 CIP Reserve	510200
77	CIP Carryover Adjustment	1st Qtr	2400	800	61001	Fire Hydrant Replacement	552000	6	2400	805	91015	Fund 2400 CIP Reserve	510200
78	CIP Carryover Adjustment	1st Qtr	2400	800	61001	Fire Hydrant Replacement	552400	29	2400	805	91015	Fund 2400 CIP Reserve	510200
79	CIP Carryover Adjustment	1st Qtr	2400	800	61036	Zn4 Groundwater Trtment Plant	550800	11,459	2400	805	91015	Fund 2400 CIP Reserve	510200
80	CIP Carryover Adjustment	1st Qtr	2400	800	61036	Zn4 Groundwater Trtment Plant	551200	5,371	2400	805	91015	Fund 2400 CIP Reserve	510200
81	CIP Carryover Adjustment	1st Qtr	2400	800	61036	Zn4 Groundwater Trtment Plant	552400	432	2400	805	91015	Fund 2400 CIP Reserve	510200
82	CIP Carryover Adjustment	1st Qtr	2420	800	63018	Camelback Swr Rehab	550800	859,871	2420	805	91016	Fund 2420 CIP Reserve	510200
83	CIP Carryover Adjustment	1st Qtr	1520	805	91031	Fund 1520 CIP Reserve	510200	1	1520	800	70453	Discovery Park	550800
84	CIP Carryover Adjustment	1st Qtr	2040	805	91006	Fund 2040 CIP Reserve	510200	830	2040	800	75012	Police Digital Comm. System	522700
85	CIP Carryover Adjustment	1st Qtr	2040	805	91006	Fund 2040 CIP Reserve	510200	544	2040	800	75012	Police Digital Comm. System	551400
86	CIP Carryover Adjustment	1st Qtr	2040	805	91006	Fund 2040 CIP Reserve	510200	21	2040	800	75012	Police Digital Comm. System	552600
87	CIP Carryover Adjustment	1st Qtr	2060	805	91005	Fund 2060 CIP Reserve	510200	190	2060	800	70500	Parks Redevelopment	551200
88	CIP Carryover Adjustment	1st Qtr	2060	805	91005	Fund 2060 CIP Reserve	510200	54	2060	800	70500	Parks Redevelopment	552600
89	CIP Carryover Adjustment	1st Qtr	2060	805	91005	Fund 2060 CIP Reserve	510200	5,262	2060	800	70512	Facilities Renovation	551400
90	CIP Carryover Adjustment	1st Qtr	2100	805	91003	Fund 2100 CIP Reserve	510200	414,290	2100	800	84407	New Development Infrastructure	550400
91	CIP Carryover Adjustment	1st Qtr	2120	805	91021	Fund 2120 CIP Reserve	510200	11,032	2120	800	79516	Airport-RSA Remove Blast Fence	550800
92	CIP Carryover Adjustment	1st Qtr	2120	805	91021	Fund 2120 CIP Reserve	510200	850	2120	800	79516	Airport-RSA Remove Blast Fence	551200
93	CIP Carryover Adjustment	1st Qtr	2120	805	91021	Fund 2120 CIP Reserve	510200	49	2120	800	79516	Airport-RSA Remove Blast Fence	552000
94	CIP Carryover Adjustment	1st Qtr	2120	805	91021	Fund 2120 CIP Reserve	510200	281	2120	800	79516	Airport-RSA Remove Blast Fence	552400
95	CIP Carryover Adjustment	1st Qtr	2180	805	91009	Fund 2180 CIP Reserve	510200	208	2180	800	79000	Bethany Home Outfall Channel	551200
96	CIP Carryover Adjustment	1st Qtr	2180	805	91009	Fund 2180 CIP Reserve	510200	90,759	2180	800	79000	Bethany Home Outfall Channel	552400
97	CIP Carryover Adjustment	1st Qtr	2180	805	91009	Fund 2180 CIP Reserve	510200	6,976	2180	800	79000	Bethany Home Outfall Channel	552500
98	CIP Carryover Adjustment	1st Qtr	2180	805	91009	Fund 2180 CIP Reserve	510200	38,848	2180	800	79000	Bethany Home Outfall Channel	552600
99	CIP Carryover Adjustment	1st Qtr	2210	805	91017	Fund 2210 CIP Reserve	510200	14,796	2210	800	65088	Downtown Alley Improvements	550800
100	CIP Carryover Adjustment	1st Qtr	2210	805	91017	Fund 2210 CIP Reserve	510200	514,930	2210	800	65091	Airport RPZ Acquisition	518200
101	CIP Carryover Adjustment	1st Qtr	2360	805	91014	Fund 2360 CIP Reserve	510200	984	2360	800	60007	Arrwhd Wtr Reclam Fac Imps	550200
102	CIP Carryover Adjustment	1st Qtr	2360	805	91014	Fund 2360 CIP Reserve	510200	9,798	2360	800	60007	Arrwhd Wtr Reclam Fac Imps	550800
103	CIP Carryover Adjustment	1st Qtr	2360	805	91014	Fund 2360 CIP Reserve	510200	1,242	2360	800	60007	Arrwhd Wtr Reclam Fac Imps	551200
104	CIP Carryover Adjustment	1st Qtr	2360	805	91014	Fund 2360 CIP Reserve	510200	100	2360	800	60007	Arrwhd Wtr Reclam Fac Imps	552400
105	CIP Carryover Adjustment	1st Qtr	2360	805	91014	Fund 2360 CIP Reserve	510200	150	2360	800	60007	Arrwhd Wtr Reclam Fac Imps	552600
106	CIP Carryover Adjustment	1st Qtr	2400	805	91015	Fund 2400 CIP Reserve	510200	13,244	2400	800	61003	Oasis Water Campus	551200
107	CIP Carryover Adjustment	1st Qtr	2400	805	91015	Fund 2400 CIP Reserve	510200	405	2400	800	61013	Water Line Replacement	550200
108	CIP Carryover Adjustment	1st Qtr	2400	805	91015	Fund 2400 CIP Reserve	510200	1,551	2400	800	61013	Water Line Replacement	550800
109	CIP Carryover Adjustment	1st Qtr	2400	805	91015	Fund 2400 CIP Reserve	510200	879	2400	800	61013	Water Line Replacement	551200
110	CIP Carryover Adjustment	1st Qtr	2400	805	91015	Fund 2400 CIP Reserve	510200	31	2400	800	61013	Water Line Replacement	552000
111	CIP Carryover Adjustment	1st Qtr	2400	805	91015	Fund 2400 CIP Reserve	510200	23	2400	800	61013	Water Line Replacement	552400

FY 2012-13 CleanUp Ordinance - Exhibit A (through 9/18/12)

Line	Type of Transfer	Date	Transfer From...					Amount	Transfer To...				
			Fund	Rollup	Div	Division Description	Acct		Fund	Rollup	Div	Division Description	Acct
112	CIP Carryover Adjustment	1st Qtr	2400	805	91015	Fund 2400 CIP Reserve	510200	1,713	2400	800	61023	Water System Security	550800
113	CIP Carryover Adjustment	1st Qtr	2400	805	91015	Fund 2400 CIP Reserve	510200	145	2400	800	61023	Water System Security	552400
114	CIP Carryover Adjustment	1st Qtr	2420	805	91016	Fund 2420 CIP Reserve	510200	132,553	2420	800	63016	Sewer Line Replacement	550200
115	CIP Carryover Adjustment	1st Qtr	2420	805	91016	Fund 2420 CIP Reserve	510200	652,869	2420	800	63016	Sewer Line Replacement	550800
116	CIP Carryover Adjustment	1st Qtr	2420	805	91016	Fund 2420 CIP Reserve	510200	8,308	2420	800	63016	Sewer Line Replacement	552000
117	CIP Carryover Adjustment	1st Qtr	2420	805	91016	Fund 2420 CIP Reserve	510200	12,461	2420	800	63016	Sewer Line Replacement	552600
118	CIP Carryover Adjustment	1st Qtr	2420	805	91016	Fund 2420 CIP Reserve	510200	45,617	2420	800	63024	Citywide Manhole Rehab	550800
119	CIP Carryover Adjustment	1st Qtr	2420	805	91016	Fund 2420 CIP Reserve	510200	1,887	2420	800	63024	Citywide Manhole Rehab	552000
120	CIP Carryover Adjustment	1st Qtr	2420	805	91016	Fund 2420 CIP Reserve	510200	6,176	2420	800	63024	Citywide Manhole Rehab	552400



CITY COUNCIL REPORT

Meeting Date: **10/9/2012**
Meeting Type: **Voting**
Title: **FORMATION OF AN AUDIT COMMITTEE**
Staff Contact: **Diane Goke, Chief Financial Officer**

Purpose and Recommended Action

This is a request for City Council to adopt an ordinance forming an audit committee. Such a committee is typical for most jurisdictions our size and is recommended by the Government Finance Officers Association (GFOA) as a component of prudent financial management and best practices.

Staff recommends Council waive reading beyond the title and adopt an ordinance amending Glendale City Code Chapter 2 (Administration), Article VIII (Boards, Commissions, etc.) by establishing an audit committee.

Background Summary

As a part of our continuing effort to increase transparency related to the city's financial data, a review of "Best Practices," as recommended by GFOA, highlighted some opportunities for the accessibility of financial information for our public. This year's budget process also highlighted the interest the public has in the financial operations of the city. The Financial Services Department believes that the creation of an Audit Committee will strengthen the relationship between the various levels of our governmental structure through opening up the financial records of the city for greater review. The committee will allow the council greater oversight on the implementation of fiscal policies. This committee will complement the other financial reporting tools and documents provided publicly such as "Follow Your Money" and the quarterly financial reports; and in addition, the audits performed by the Internal Auditor that are now available online for the public.

Community Benefit/Public Involvement

An Audit Committee provides an additional layer of oversight for the details related to the city's finances. It provides members of the public and City Council an opportunity to directly participate in the audit of the city's finances as a member of the committee. Not only does this increase transparency, but is also aimed at providing continued opportunities to showcase the methods and practices of the city's Financial Services Department.



CITY COUNCIL REPORT

Budget and Financial Impacts

There are no direct costs associated with the establishment of this committee. Staff will need to dedicate more time to the annual audit process in order to support the committee's involvement; however, staff has the capacity to do this.

Capital Expense? Yes No

Budgeted? Yes No

Requesting Budget or Appropriation Transfer? Yes No

If yes, where will the transfer be taken from?

Attachments

Staff Report

Ordinance



STAFF REPORT

To: **Horatio Skeete, Acting City Manager**
From: **Diane Goke, Chief Financial Officer**
Item Title: **FORMATION OF AN AUDIT COMMITTEE**
Requested Council Meeting Date: **10/9/2012**
Meeting Type: **Voting**

PURPOSE

Staff requests that the City Manager consider placing the adoption of an ordinance for the formation of an Audit Committee on a City Council evening agenda. The committee would be part of an annual financial review team. Such a committee is typical for most jurisdictions our size and is recommended by the Government Finance Officers Association (GFOA) as a component of prudent financial management and best practices.

BACKGROUND

Staff presented the idea of an audit committee to the City Council at the September 4, 2012 workshop and Council recommended proceeding with the formation of the committee.

As a part of our continuing effort to increase transparency related to the city's financial data, a review of "Best Practices," as recommended by GFOA, highlighted some opportunities for improving the accessibility of financial information for our public. This year's budget process also highlighted the interest the public has in the financial operations of the city. The Financial Services Department believes that the creation of an Audit Committee will strengthen the relationship between the various levels of our governmental structure as well as the public by opening up the financial records of the city for greater review. The committee will allow the council greater oversight on the implementation of fiscal policies and provide additional information to the public. This committee will complement the other financial reporting tools and documents provided publicly such as "Follow Your Money" and the quarterly financial reports; and in addition, the audits performed by the Internal Auditor that are now available online for the public.

Proposed Audit Committee Details:

To further open the city's finances to the public and City Council, an Audit Committee will provide a purpose of providing greater transparency to the annual fiscal year audit process.



STAFF REPORT

The Audit Committee will have the following responsibilities:

- Review and approve the annual audit plan for the annual fiscal year-end auditor
- Participate in the review of the city's annual financial statements
- Review the results of the city's external audit and any findings addressed in the management letter
- Ensure staff develops a follow-up plan to address audit findings

Frequency of Meetings:

The Audit Committee will determine the number of meetings needed to complete their scope of work. Generally, Audit Committees meet at least quarterly throughout the fiscal year, except for the individual meeting with the external auditor during the "audit season."

ANALYSIS

Municipalities across the country utilize an audit committee or similar body to participate in the annual auditing of their finances. Most local political subdivisions in the valley have such a committee including the City of Phoenix, City of Goodyear, City of Scottsdale, Maricopa and Pinal Counties, and several school districts in the valley. These committees give citizens and Councilmembers more direct access to the financial details of the city than they may have the opportunity to receive in other forums. This would benefit the city by ensuring the city's finances are accessible and verifiable to the public, and demonstrates staff's commitment to sound financial practices through the exercise of engaging the committee as it participates in the audit process.

The recommended membership is as follows: two Councilmembers (which is standard among other jurisdictions for this type of committee), two citizens (with financial background or audit experience), and the City Manager. As shown, no member of the city's Financial Services Department will be included in the committee in a voting capacity; however, staff recommends the Chief Financial Officer be assigned to the committee as the primary liaison for the committee as this is also a common industry practice.

The committee's participation in the annual audit process will be abbreviated as the auditing of the city's financial statements began this summer and will be complete in October. However, the function of the committee will be as described above going forward.

FISCAL IMPACTS

There are no direct costs associated with the establishment of this committee. Staff will need to dedicate more time to the annual audit process in order to support the committee's involvement; however, staff has the capacity to do this.

ORDINANCE NO. 2819 NEW SERIES

AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AMENDING GLENDALE CITY CODE CHAPTER 2 (ADMINISTRATION), ARTICLE VIII (BOARDS, COMMISSIONS, ETC.) BY ESTABLISHING AN AUDIT COMMITTEE.

WHEREAS, at the September 4, 2012 Council Workshop, staff presented to Council the preliminary framework for the establishment of an Audit Committee; and

WHEREAS, it is the desire of the City Council to establish an Audit Committee to provide an additional layer of oversight for the details related to the City's finances.

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

SECTION 1. That Glendale City Code Chapter 2 (Administration), Article VIII (Boards, Commissions, Etc.) is hereby amended by adding a Division 7 to read as follows:

“DIVISION 7. AUDIT COMMITTEE

Sec. 2-321. Established.

There is hereby established within the City of Glendale an Audit Committee whose members shall be appointed by the council of the City of Glendale.

Sec. 2-322. Purpose.

The committee will have oversight of the external audit which will include reviewing and approving the annual audit plan, participating in a review of the city's annual financial statements, reviewing the results of the city's external audit and findings addressed in the management letter, and ensuring staff develops a follow-up plan to address audit findings.

Sec. 2-323. Members.

(a) The committee shall be composed of five (5) members who shall serve without compensation. Two of the five (5) members shall be residents of the City of Glendale who have a financial background preferably in public or internal auditing. The remaining members shall be two (2) members of city council and the city manager.

(b) The chairperson and vice-chairperson of the committee shall be appointed by the mayor and city council from among the committee members. The term of appointment for the chairperson and vice-chairperson shall be for a period of one (1) year.

(c) The Chief Financial Officer shall serve as secretary and staff liaison to the committee.

Sec. 2-324. Meetings and rules.

(a) The committee shall establish and adopt such rules, regulations or bylaws as it deems necessary for the conduct of its business and performance of its duties.

(b) The committee shall establish a set time for regular meetings, which shall be at least semi-annually if there is business to conduct.

(c) A majority of the commission shall constitute a quorum and the affirmative vote of a majority of the committee members present and voting shall be required to take action.

Sec. 2-325. Recommendation to council.

All recommendations forwarded by the committee to the city council and other actions of the committee must receive an affirmative vote of not less than a majority of the members present at the meeting at which an item is voted upon by the committee.”

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

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CITY COUNCIL REPORT

Meeting Date: **10/9/2012**
Meeting Type: **Voting**
Title: **GROUND LEASE WITH VIESTE**
Staff Contact: **Stuart Kent, Executive Director, Public Works**

Purpose and Recommended Action

This is a request for City Council to waive reading beyond the title and adopt an ordinance authorizing the City Manager to enter into a 30 year ground lease with Vieste SPE, LLC (Vieste) for six acres of city-owned property at the Glendale Municipal Landfill (Landfill).

Background Summary

Over the past two years, Public Works staff has been working with Vieste on a 30 year agreement for the development of a waste-to-energy facility at the Landfill. When Vieste initially approached the city with this opportunity, the focus was on the waste-to-energy facility which requires Vieste to obtain a power purchase agreement (PPA). This step is requiring more time than anticipated, therefore, in an effort to capitalize on opportunities while the PPA negotiations are in process, a phased-project approach is being proposed with the first phase being a mixed waste processing facility. The facility will be financed and constructed by Vieste at no cost to the city. This facility will take solid waste materials currently disposed at the Landfill, separate and sort recyclables from the waste, and return the waste back to the Landfill. The recyclable materials then will be sold on the commodity market through our Materials Recovery Facility.

Implementing a mixed waste processing facility at the Landfill provides several key opportunities for the city:

1. Vieste and the city estimate that the process will remove a minimum of 26,000 tons of recyclable materials from the Landfill annually thereby increasing the Landfill's lifespan by as much as three years.
2. The city is guaranteed an annual Recycling Management Fee of \$476,000 with an annual escalator of .5%.
3. Vieste will pay the city \$100,000 annually to lease six acres of city-owned property.

The city will guarantee a commodity price of \$.0666/pound of recyclables sold on the market. Staff conducted an analysis of the past ten years of recycling commodities sales and confirmed that the required tonnage is sustainable and reasonable for both parties. The city will also collect lease, disposal, property tax, and sales tax revenues as shown in the following chart. The city will incur some operational expenses related to this phase of the project in an amount of



CITY COUNCIL REPORT

approximately \$1.2 million dollars. Staff estimates the net revenue realized from phase one will be approximately \$561,000 annually. The following chart shows the revenues and expenses related to this phase of the project.

Applicable Fund	Type	Year One
Landfill Fund	Lease Revenue	\$100K
Landfill Fund	Recycling Management Fee	\$476K
Landfill Fund	Landfill Disposal Revenue	\$1.07M
Landfill Fund	Landfill Expense	(\$1.2M)
Landfill Net		446K
General Fund	Prop Tax/GF ST	\$115K
Total Impact All Funds		561K

Previous Related Council Action

At the May 1, 2012 City Council Workshop, staff received direction to move forward with solidifying an agreement with Vieste Energy, LLC for the implementation of a waste-to-energy facility.

At the October 2, 2012 City Council Workshop, staff updated Council on the opportunity to phase the project, with the first phase being a mixed waste processing facility. Council directed staff to bring forward an agreement for their consideration at a Voting Meeting.

Community Benefit/Public Involvement

Apart from the revenue generating opportunities for both the Landfill and General Fund, the implementation of the mixed waste processing facility will positively impact the lifespan of the Landfill by diverting approximately 26,000 tons annually.



CITY COUNCIL REPORT

Budget and Financial Impacts

The operating expense impacts of \$1,200,000 to the Landfill enterprise fund will occur in FY 2013-14 instead of the current fiscal year.

Capital Expense? Yes No

Budgeted? Yes No

Requesting Budget or Appropriation Transfer? Yes No

If yes, where will the transfer be taken from?

Attachments

Staff Report

Ordinance

Agreement



STAFF REPORT

To: **Horatio Skeete, Acting City Manager**
From: **Stuart Kent, Executive Director, Public Works**
Item Title: **GROUND LEASE WITH VIESTE**
Requested Council Meeting Date: **10/9/2012**
Meeting Type: **Voting**

PURPOSE

The purpose of this report is to provide information about the opportunity to implement a mixed waste processing facility with Vieste SPE, LLC, and Vieste Energy, LLC, (Vieste) at the Glendale Municipal Landfill (Landfill). Staff requests the City Manager forward this item to City Council for their approval, which includes a ground lease and a waste delivery and acceptance agreement. Both agreements are for 30 years.

BACKGROUND

Over the past two years, Public Works staff has been working with Vieste on the development of a waste-to-energy facility at the Landfill. When Vieste initially approached the city with this opportunity, the focus was on the waste-to-energy facility which requires Vieste to obtain a power purchase agreement (PPA) with one or more end-users capable of purchasing the 12 megawatts of power that is expected to be generated. The process to obtain the PPA is requiring more time than anticipated, therefore, in an effort to capitalize on opportunities while the PPA negotiations are in process, a phased-project approach is being proposed.

The first phase is the financing and construction of a mixed waste processing facility by Vieste. This facility will take solid waste materials currently disposed at the Landfill, separate and sort recyclables from the waste, and return the waste back to the Landfill. The recyclable materials then will be sold on the commodity market through our Materials Recovery Facility (MRF). The city will receive a fee for the marketing of these materials for the first 26,000 tons of recyclable material that Vieste generates and will have the opportunity to share in the revenues for additional tonnage that we market.

The second phase of the project will be the waste-to-energy facility. This phase will gasify the waste brought to the facility through a proven technology process that is already in use in the United States, Canada and other countries around the world. Parts of the waste stream that can be recycled, such as metals, will be sorted and marketed separately. The remainder of the waste stream will be processed to create synthetic gas, which can be used to heat steam and power turbines that generate electricity. Once the second phase is implemented, only the metals (aluminum and ferrous metals) will be recycled. The second phase will benefit the city through



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the extension of Landfill life and through the generation of revenue, based on a performance guarantee of energy produced. This project is consistent with the ongoing efforts of the Landfill operations to maximize opportunities to improve the financial and environmental impacts of the Landfill.

ANALYSIS

Staff has completed a thorough analysis on the benefits and costs related to both phases of this project and recommends the city move forward with implementation. The construction of a mixed waste processing facility at the Landfill provides several opportunities for the city including revenue generation and a more sustainable Landfill operation. The financial terms of the agreement are described below.

Recycling Management Fee Revenue:

Vieste estimates that the mixed waste processing facility will remove a minimum of 26,000 tons of recyclable materials from the Landfill annually and the city is guaranteed an annual Recycling Management Fee of \$476,000 in year one, with an annual escalator of .5%.

Sale of Recycling Commodities Details:

The city agrees to guarantee Vieste \$.0666/per pound of recyclables sold on the recycling commodities market. This rate increases gradually over the thirty year term of the agreement up to \$.077/per pound. Staff conducted an analysis of the past ten years of recycling commodities sales and confirmed that the required tonnage and the rate proposed would on average yield to the positive for the city. Over the past ten years, the city has collected approximately \$.0738 per pound on recyclables sold. From FY 2003 to FY 2007, the average value was \$.0598/pound and from FY 2008 to FY 2012, the value increased to \$.0876/pound. Therefore, staff believes the city will consistently meet the floor price required to cover the floor price offered to Vieste.

Lease, Property and Sales Tax Revenue:

This project involves the building of a facility to process the materials. Vieste is solely responsible for all capital investment including construction, permitting, and securing necessary environmental approvals from regulatory agencies. Vieste will be subject to property tax, a portion of which will be returned to the city from Maricopa County and will be allocated to the General Fund. The city will also collect annual lease revenue from Vieste which starts at \$100,000 in year one and will escalate each year by 2% over the 30 year term of the lease. The lease revenue is subject to the city's commercial rental tax rate per City Code and will be allocated to the General Fund.

Landfill Expense and Landfill Disposal Revenue:

As part of the agreement, the city will deliver a minimum of 120,000 tons and up to 180,000 tons to Vieste for processing annually and will pay Vieste a fee when delivering this tonnage. The fee



STAFF REPORT

rates are \$7.50/ton (2% escalation annually) for the first 120,000 tons delivered, and \$5.00/ton (2% escalation annually) for the remaining 60,000 tons, for a total of 180,000 tons. Assuming the city delivers the maximum 180,000 tons annually, the city will pay Vieste approximately \$1.2M. In exchange, Vieste will pay the city a fee when returning the materials that could not be processed back to the Landfill. The rate will be \$7.50/ton (2% escalation annually) for the first 120,000 tons, and \$5.00/ton (2% escalation annually) for the remaining tonnage. Assuming Vieste is able to process the maximum amount of the maximum delivered by the city, they would pay the city approximately \$1.07M.

Other Considerations:

Staff estimates the net revenue realized from phase one will be approximately \$561,000 annually. Removing these recyclable materials from the Landfill will also positively impact the Landfill lifespan by diverting approximately 26,000 tons annually.

FISCAL IMPACTS

Below is a chart detailing the revenues and expenses described in the Analysis section of the report for year one of the project.

Applicable Fund	Type	Year One
Landfill Fund	Lease Revenue	\$100K
Landfill Fund	Recycling Management Fee	\$476K
Landfill Fund	Landfill Disposal Revenue	\$1.07M
Landfill Fund	Landfill Expense	(\$1.2M)
Landfill Net		446K
General Fund	Prop Tax/GF ST	\$115K
Total Impact All Funds		561K

ORDINANCE NO. 2820 NEW SERIES

AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE MAYOR AND/OR CITY MANAGER AND CITY CLERK TO EXECUTE A GROUND LEASE WITH VIESTE SPE, LLC, FOR SIX ACRES OF LAND LOCATED AT THE GLENDALE LANDFILL, 11480 WEST GLENDALE AVENUE.

WHEREAS, the City is the owner of the Glendale Landfill in Glendale, Arizona; and

WHEREAS, the City desires to lease to Vieste SPE, LLC certain space at the Glendale Landfill.

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

SECTION 1. That the City has determined that certain space at the Glendale Landfill shall be leased to Vieste SPE, LLC for the operation of a Mixed Waste Processing Facility.

SECTION 2. That the Mayor and/or City Manager and the City Clerk are hereby authorized and directed to execute on behalf of the City of Glendale the Ground Lease with Vieste SPE, LLC, for six acres of land at the Glendale Landfill located at 11480 West Glendale Avenue. A copy of said ground lease is on file in the office of the City Clerk.

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

GROUND LEASE

THIS GROUND LEASE ("Ground Lease") is made and entered into as of the Effective Date (defined below), by and between **CITY OF GLENDALE**, a municipal corporation in the State of Arizona, ("City"), and **VIESTE SPE, LLC**, an Arizona limited liability company registered to do business in Arizona ("Vieste"). The "Effective Date" shall be the date upon which the last of City and Vieste executed this Ground Lease, as indicated on the signature page hereof.

W I T N E S S E T H:

WHEREAS, Section 2-166 of the Glendale City Code authorizes the City Council of the City to sell, lease, exchange or otherwise dispose of City property for the best interests of City and the determination of the City Council shall be final; and

WHEREAS, the City Council of City has duly authorized and approved the lease of the Premises (as defined in Section 1 herein); and

WHEREAS, Vieste desires to use the Premises, as further described in Section 1 of the Ground Lease, to construct and operate a Public Utility Regulatory Policies Act qualified, base load, renewable energy production facility with a gross nameplate generating capability of 14.3 megawatt from municipal solid waste and an approximately two to five megawatt PV solar installation (the "Energy Facilities"), a waste recycling sorting facility (the "Waste Facilities") and an interactive learning center that provides educational experience for all technologies implemented (the "Educational Facilities") (collectively, the "Facility").

WHEREAS, contemporaneously with and as part of the consideration for this Ground Lease, City and Vieste have entered into a Waste Supply Agreement ("Waste Agreement"), which will be recorded with the Glendale City Clerk.

In consideration of the mutual covenants contained herein, and intending to be legally bound hereby, City and Vieste hereby agree as follows:

1. **PREMISES:**

(a) City hereby leases to Vieste and Vieste hereby leases from City, subject to the provisions of this Ground Lease, all of that certain tract, approximately six (6) acres in size, a part of the "City Landfill" located at 11480 West Glendale Avenue, Glendale, Arizona 85307, Maricopa County, Arizona, more particularly described on Exhibit A attached hereto (said description shall be replaced upon receipt of a surveyed description as provided in Section 14) together with all rights accruing thereto (all of foregoing being referred to herein as the "Premises") and as depicted on Exhibit B attached hereto, together with a depiction of the City Landfill.

(b) Fee title to the Premises will at all times during the Term of this Ground Lease (defined below) remain with the City, and possession of the entire Premises will be delivered to Vieste upon execution of this Ground Lease.

(c) City shall have the right at all reasonable times and upon reasonable prior notice and compliance with reasonable security requirements, to enter upon the Premises for any lawful purpose, provided such action does not unreasonably interfere with Vieste's use, occupancy or security of the Premises.

(i) Without limiting the generality of the foregoing, City and any furnisher of utilities and other services shall have the right, at its own cost, whether for its own benefit or for the benefit of others, to maintain existing and future utility, mechanical, electrical and other systems and to enter upon the Premises at all reasonable times to make such repairs, replacements or alterations thereto which may, in the opinion of City, be deemed necessary or advisable and from time to time to construct or install over, in or under the Premises such systems or parts thereof and, in connection with such maintenance, use the Premises for access to other parts of the City Landfill otherwise not conveniently accessible; provided that in the exercise of such right of access, repair, alteration or new construction, City shall not unreasonably interfere with the actual use and occupancy of the Premises by Vieste, shall not affect any buildings or other structures, and shall not result in above-ground improvements or alterations. All such work shall be scheduled with Vieste and shall be conducted in a manner that minimizes inconvenience.

(ii) If any personal property of Vieste, the location of which has not been previously approved by the City, obstructs the access of City or any utility company furnishing utility service to any of the existing utility, mechanical, electrical and other systems that serve City's Landfill or other parcels, and thus interferes with the inspection, maintenance or repair of any such system, Vieste shall upon request move such property, as reasonably directed by City or utility company, in order that access may be had to the system for inspection, maintenance or repair. If Vieste fails to move such property after direction from the City or utility company to do so, City or the utility company may move it, and Vieste shall pay the cost of such moving upon demand, and Vieste hereby waives any claim for damages as a result thereof, except for claims for damages arising from City's sole negligence.

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

2. **TERM:**

(a) The term of this Ground Lease shall commence on the Effective Date.

(i) Notwithstanding the provisions of Subsection (a) of this Section 2, the obligation of Vieste to pay the rent shall be as set forth in Section 3 below.

(ii) If Vieste so elects, it may, at its sole cost and expense, obtain a policy of title insurance from a title insurance company insuring Vieste's marketable title in the leasehold estate created hereunder free and clear of all liens and encumbrances whatsoever.

(b) The "Initial Term" of this Ground Lease shall be for a period commencing on the Effective Date and terminating on the date that is thirty (30) years after the Commercial Operation Date as defined in the Waste Agreement, unless sooner terminated or extended. So long as Vieste is not in default either at the time of exercise or at the commencement of any extension term, Vieste may extend the term of this Ground Lease for one (1) additional five (5) year period of time (the "Extension Term") by providing to City not less than one hundred eighty (180) days written notice of its election of the Extension Term, and at the rent set forth in Section 3 below, subject to all other terms and conditions of this Ground Lease. Notwithstanding the foregoing, Vieste's right to elect the Extension Term is contingent upon the construction of the Energy Facilities being commenced within five (5) years after the Rent Commencement Date and such Energy Facilities being completed and generating power on or before seven (7) years after the Rent Commencement Date. City and Vieste agree to execute a certificate provided by City that confirms the Commercial Operation Date.

3. **RENT:** Vieste agrees to pay rent for the Premises as set forth below commencing on the earlier of the Commercial Operation Date or January 1, 2014 (sometimes referred to as the "Rent Commencement Date") through the earlier of (i) the expiration of this Ground Lease, or (ii) termination of this Ground Lease by Vieste. Annual rent installments shall be paid on or before the Rent Commencement Date and on or before each anniversary of the Rent Commencement Date, in advance, during the term or any extended term of this Ground Lease, without deduction or setoff. Payment of rent shall be made to the City at such place as the City shall from time to time designate in writing delivered to the Vieste. If the term of the Ground Lease does not terminate on the anniversary of the Rent Commencement Date, then rent for the last year of the Ground Lease shall be prorated on a per diem basis.

Rent for the first Lease Year (defined as a consecutive twelve (12) month period commencing on the Rent Commencement Date and expiring on the last day of the calendar month twelve (12) months thereafter) shall be \$100,000. Rent for each Lease Year thereafter shall increase by two percent (2%) and shall continue throughout the Initial Term and each Extension Term, if properly exercised. In addition, Vieste shall pay to City all applicable taxes on the rent.

4. **USE OF PREMISES:**

(a) Vieste shall use the Premises for its business of sorting and recycling waste, converting municipal solid waste, yard waste, other discarded material, and other forms of waste into renewable energy, generating solar energy, and, subject to the indemnification and insurance provisions of this Lease, operating an interactive learning center providing educational experience for the foregoing technologies as well as associated uses necessary to accomplish the same (the "Permitted Use") and for no other purpose, without the prior written consent of City, which consent may be withheld in City's sole discretion. Vieste shall develop, construct, commission, start-up, operate, and maintain the Facility, and make all necessary improvements to the Premises in order to carry out the Permitted Use, and Vieste shall be obligated to continually operate the business contemplated in the Permitted Use upon completion of the improvement, all in accordance with the Waste Agreement.

(b) Vieste will comply with all federal, state, and local governmental regulations, including City's ordinances, regulations, and rules pertaining to City's landfill, that are

applicable to Vieste's use of the Premises and shall cause the Premises to comply with (i) all laws and other governmental statutes, codes, ordinances, rules, orders, permits, licenses, authorizations, directions and determinations now or hereafter enacted, whether or not presently contemplated, including without limitation all Environmental Laws (as hereinafter defined) (collectively, "*Legal Requirements*"), applicable to the Premises or the use thereof, and (ii) all contracts, agreements, insurance policies, permits, licenses and restrictions applicable to the Premises or the ownership, occupancy or use thereof, including but not limited to, all such Legal Requirements, contracts, insurance policies, agreements, permits, licenses and restrictions which (x) require structural, unforeseen or extraordinary changes or (y) relate to environmental protection or hazardous waste matters. Notwithstanding the foregoing, neither Vieste nor Vieste's Tenant shall be responsible for any violations of Environmental Law or any contamination occurring on the Premises prior to the Effective Date or arising out of Landlord's work as Ground Lessee for the development of the Premises. Landlord shall remain liable therefor.

As used herein "*Environmental Law*" shall mean any applicable law, statute or ordinance relating to public health, safety or the environment, including, without limitation, relating to releases, discharges or emissions to air, water, land or groundwater, to the withdrawal or use of groundwater, to the use and handling of polychlorinated biphenyls or asbestos, to the disposal, transportation, treatment, storage or management of solid or hazardous wastes or to exposure to toxic or hazardous materials, to the handling, transportation, discharge or release of gaseous or liquid substances and any regulation, order, notice or demand issued pursuant to such law, statute or ordinance, in each case applicable to the Premises or Vieste or the operation, construction or modification of the Premises, including without limitation the following: the Clean Air Act, the Federal Water Pollution Control Act, the Safe Drinking Water Act, the Toxic Substances Control Act, the Comprehensive Environmental Response Compensation and Liability Act as amended by the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act as amended by the Solid and Hazardous Waste Amendments of 1984, the Occupational Safety and Health Act, the Emergency Planning and Community Right-to-Know Act of 1986, the Solid Waste Disposal Act, and any state statutes addressing similar matters, and any state statute providing for financial responsibility for cleanup or other actions with respect to the release or threatened release of hazardous substances and any state nuisance statute.

"Hazardous Materials" means each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined, determined or identified as hazardous or toxic under any Environmental Law. Without limiting the generality of the foregoing, the term shall mean and include:

- (1) "Hazardous Substance(s)" as defined in CERCLA, the Superfund Amendments and Reauthorization Act of 1986, or Title III of the Superfund Amendment and Reauthorization Act, each as amended, and regulations promulgated thereunder including, but not limited to, asbestos or any substance containing asbestos, polychlorinated biphenyls, any explosives, radioactive materials, chemicals known or suspected to cause cancer or reproductive toxicity, pollutants, effluents, contaminants, emissions, infectious wastes, any petroleum or petroleum-derived waste or product or

related materials and any items defined as hazardous, special or toxic materials, substances or waste;

(2) "Hazardous Waste" as defined in the Resource Conservation and Recovery Act of 1976, as amended, and regulations promulgated thereunder;

(3) "Materials" as defined as "Hazardous Materials" in the Hazardous Materials Transportation Act, as amended, and regulations promulgated thereunder; and

(4) "Chemical Substance or Mixture" as defined in the Toxic Substances Control Act, as amended, and regulations promulgated thereunder.

(5) "Governmental Authorities" means the United States, the State of Arizona and any political subdivision thereof, and any and all agencies, departments, commissions, boards, bureaus, bodies, councils, offices, authorities, or instrumentality of any of them, of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

(6) "Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, storing, escaping, leaching, dumping, discarding, burying, abandoning, or disposing into the environment.

(c) Vieste shall be responsible for all obligations related to, and shall comply with the terms of any reciprocal easement agreement, declaration of covenants, easements and restrictions or similar agreements recorded on or before the Effective Date against the Premises.

(d) For a period of five (5) years beginning with the Rent Commencement Date, the City hereby grants to Vieste the exclusive right to develop, construct and operate a waste to energy facility at the City Landfill where the Premises are located (the "Exclusivity Period"). Immediately following the expiration of the Exclusivity Period, the City grants to Vieste a right of first refusal to develop, construct and operate a waste to energy facility at the City Landfill ("Energy Facility ROFR"). The Energy Facility ROFR shall be in effect for the two (2) year period beginning at the expiration of the Exclusivity Period (the "Energy Facility ROFR Period").

If, during the Energy Facility ROFR Period, the City receives a bona fide offer in writing from a third party, who, in the reasonable opinion of City, is financially able to develop, construct and operate a waste to energy facility at the City Landfill (the "Facility Offer"), and if the City is willing to accept the Facility Offer, then, the City must first notify Vieste in writing of the offer (the "City's Notice"). Attached to the City's Notice shall be a statement, signed by a City official, stating the City's intent to accept the Facility Offer and setting forth the terms of the Facility Offer. Within thirty (30) days after the receipt of the City's Notice, Vieste may, at its option, elect to develop, construct and operate the waste to energy facility at the City Landfill pursuant to the terms and conditions set forth in the Facility Offer ("Vieste's Election"), **except that**, as a part of Vieste's Election, Vieste shall agree that it will commence construction of the

Energy Facility no later than six (6) months from Vieste's Election ("Energy Facility Commencement") and that the Energy Facility will be sufficiently and substantially completed for the purposes of the initial operation of the Energy Facility no later than twenty-four (24) months from Vieste's Election ("Initial Construction Completion").

If Vieste does not timely perform within the Energy Facility Commencement or the Initial Construction Completion, then Energy Facility ROFR shall, at the City's election, be deemed null and void, *ab initio*, and Vieste shall have no further rights under the Energy Facility ROFR. However, in the event that Vieste has commenced construction pursuant to its Energy Facility ROFR election but has failed to timely perform the Initial Construction Completion, City may demand that Vieste remove all partial construction of the Energy Facility from the Premises, leave the Premises in the same condition it was in prior to Vieste's commencement of the Energy Facility, cause any remediation of the Premises to be performed, and defend and hold harmless City for from and against any Claims and Environmental Claims as set forth in Section 10 below. City shall have the right, but not the obligation, to perform a Phase I Assessment (and, if necessary, a Phase II Assessment) to ensure the condition of the Premises, and Vieste shall reimburse City therefor as additional rent. The aforementioned removal of partial construction and remediation shall not affect, or apply to, Vieste's Waste Facilities or Educational Facilities.

If Vieste does not timely exercise its Energy Facility ROFR as set forth above, then Vieste's Energy Facility ROFR shall expire, and the City may accept the Offer; provided, however, that if the City does not accept the Offer or if the third party does not perform its obligation under the Offer, then Vieste will continue to have its Energy Facility ROFR set forth herein for the remainder of the Energy Facility ROFR Period, and the above procedure shall repeat.

5. **TAXES AND UTILITY EXPENSES; MAINTENANCE:**

(a) Commencing on the Rent Commencement Date, and continuing throughout the term, Vieste shall pay all utility fees and charges, including water, sewer, electricity, and gas fees or charges that are imposed with respect to the Premises or any improvements thereon.

(b) Commencing on the Rent Commencement Date, and continuing throughout the term, Vieste shall be responsible for the payment of taxes and special assessments, if any, on the Premises.

(i) Vieste shall pay any leasehold tax, possessory interest tax, sales tax, personal property tax, transaction privilege tax or other exaction assessed or assessable as a result of its occupancy of the Property or conduct of business at the Premises under authority of this Ground Lease, including any such tax assessable on the City. In the event that laws or judicial decisions result in the imposition of a real property tax on the interest of the City, such tax shall also be paid by Lessee for the period this Ground Lease is in effect.

(ii) Vieste acknowledges that it is a "prime lessee", as defined in A.R.S. § 42-6201 and that it is subject to excise tax liability under this Ground Lease pursuant to Title 42.

(c) Lessee shall, at its own cost, obtain and maintain in full force and effect during the term of this Ground Lease all licenses and permits required for the operations authorized by this Ground Lease.

(d) Any refunds or rebates of amounts paid in accordance with this Section 5 shall belong to Vieste and, with the exception of amounts assessed by City, City shall aid Vieste in obtaining any such refund or rebate, provided that the cost of obtaining the same shall be paid by Vieste. This section does not apply to any refund or rebates of assessment from a special district that incorporates the Premises.

(e) Vieste shall be responsible for maintenance of the Premises and only the Premises. If the Premises are part of a larger municipal enterprise or facility (an "City Facility"), Vieste shall have no responsibility for maintaining any other portion of the City Facility or any other parcel adjacent to the Premises, nor shall Vieste have any obligation to reimburse any party for costs in connection with such maintenance. In the event of any inconsistency between this Ground Lease and any agreement, easement or other instrument governing maintenance, operation or cost of the Premises or any other real property in the vicinity of the Premises, the provisions of this Ground Lease shall control.

6. **IMPROVEMENTS:**

(a) The improvements on the Premises shall be undertaken and completed (i) in a manner that is consistent with Arizona Revised Statutes Title 34 ("Title 34") if applicable, and as discussed in Section 7(b) below, (ii) subject to City's prior approval of the design of the Facility, and (iii) at the sole cost and expense of Vieste.

(b) Vieste shall secure all applicable building permits and approvals from City and Vieste will obtain the approval of the final plans and specifications by any and all federal, state, municipal, and other governmental authorities, offices, and departments having jurisdiction in the matter, and provide conformed copies of executed approvals to City. Upon completion of any improvements or modifications, Lessee shall furnish to City two complete sets of detailed plans and specifications of the work as completed.

(c) City shall have no liability for any structural or other defect in any plans approved by it or improvements constructed pursuant to such plans or any failure of such plans to comply with any requirements hereof or of law. Any person constructing improvements or causing improvements to be constructed on the Premises shall be solely responsible for the safety thereof and for compliance with all governmental or other requirements pertaining thereto, and approval by City shall not be deemed to satisfy or to exempt any person from the obligation to comply with any applicable governmental or other requirements.

(d) Consistent with the requirements of Title 34, as applicable, prior to the commencement of any construction on the Property, Vieste shall provide City with payment and performance bonds in amounts equal to the full amount of the written construction contract pursuant to which such construction is to be done. Each bond shall be filed with the City Clerk immediately upon execution thereof.

(e) Vieste shall begin construction of the initial building and improvements to the Property within a reasonable period of time following the issuance of a building permit and shall substantially complete such construction, subject to unavoidable delay caused by force majeure, within twenty-four (24) months after commencement of construction. In the event Vieste commences construction of the improvements for the Permitted Use but does not

complete construction of the improvements; or, if the improvements for the Permitted Use are completed but are inoperable or abandoned, such failure shall be an event of default, and Vieste shall remove the partial or completed improvements prior to surrender of the Premises. This obligation shall survive termination or expiration of this Ground Lease.

(f) During the Initial Term and any properly exercised Extension Terms, title to the improvements shall be in Vieste, and the risk of loss of the improvements shall at all times be borne by the Vieste. Subject to removal under Section 6(e) above, at the expiration or early termination of this Ground Lease, title to the Improvements shall be in City.

7. **REQUIREMENTS OF PUBLIC AUTHORITY:**

(a) Vieste shall, during the term of this Ground Lease, comply with all laws and regulations of any governmental authority with respect to the Premises ("Applicable Laws"), and nothing herein shall impede City's police powers to any extent; provided that Vieste may contest the validity of any such law or regulation (but not the City's police powers) at Vieste's sole cost. The City shall have no obligation to participate or assist Vieste.

(b) Vieste acknowledges that the City has advised Vieste that the City considers this Ground Lease and any construction related thereto subject to compliance with Title 34. City will cooperate as is reasonably necessary to assist Vieste with Title 34 compliance. Vieste will defend, indemnify and hold harmless City for, from and against any claims, damages, losses, lawsuits of any nature or kind arising out of Vieste's determination not to comply with Title 34 or that Title 34 does not apply, including, but not limited to, all attorneys' fees, expert fees and costs, penalties, interest, and any other charges assessed against the City, as more fully set forth in Section 10(b) below.

8. **LIENS:**

(a) Vieste shall take all measures necessary to prevent any type of lien or security interest being filed against the Premises and shall to be promptly discharged any mechanic's or other lien filed against the Premises by reason of any act or omission of Vieste, provided that this subsection (a) shall not be applicable to (i) the lien of any leasehold mortgage or deed of trust permitted under this Ground Lease; (ii) any statutory liens that do not interfere with the Permitted Use and are not otherwise in violation of this Ground Lease; or (iii) easements permitted by Section 12. It is understood and agreed that Vieste shall have the right to contest any lien filed against the Premises.

(b) Vieste shall not use its leasehold interest in the Premises, or any equipment installed thereupon or therein, as collateral for any financing arrangement that is not directly related to the Permitted Use and shall not allow any type of lien or security interest to be filed against the Premises, or any equipment installed thereupon or therein, that is not directly related to the Permitted Use. This subsection (b) shall govern in the event of a conflict between subsection (a) above and this subsection (b).

9. **ASSIGNMENT AND SUBLETTING:** The parties acknowledge that City is relying on Vieste's experience in the industry related to the Permitted Use, and that, therefore, Vieste may not assign or sublease this Ground Lease or any part of the Premises without obtaining the consent of City, which consent will not be unreasonably withheld. Notwithstanding the foregoing, Vieste may, upon thirty (30) days written notice to City, assign

Vieste's leasehold interest to an Affiliate (defined below); provided that such assignment shall not relieve Vieste or Parent (defined in the attached Guaranty of Ground Lease) of any of their obligations hereunder. In no way limiting the foregoing, the City's refusal to give consent to a proposed assignment by Vieste shall not be deemed unreasonable if, among other things, (i) City has knowledge that the proposed assignee or any of its Affiliates has a significant or material history of litigation or disputes involving the proposed assignee or any of its Affiliates; (ii) the proposed assignee or any of its Affiliates is in the waste disposal or waste hauling business; (iii) the proposed assignee is not considered creditworthy by the City in its reasonable judgment, which, at a minimum, means having financial capability that is not less than the financial capability of Vieste as of the Effective Date, taking into account other financial assurances provided by Vieste in this Ground Lease; or (iv) the proposed assignee does not, in the City's reasonable judgment, have the requisite technical experience relating to the assumption of Vieste's obligations hereunder. For purposes of this Ground Lease, and in no way limiting the foregoing, the sale or transfer of fifty percent (50%) or more of the direct or indirect voting, legal or equitable interest in Vieste as compared to the interests as of the date of this Ground Lease, in a single transaction or in a series of transactions, shall be deemed to be an assignment of Vieste's rights and obligations under this Agreement and subject to the provisions of this Section 9.

For purposes of an assignment or sublease, the term "Affiliate" means, when used with reference to a specified Person, any other Person that directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the specified Person. For purposes of the foregoing, "control," "controlled" and "under common control" with respect to any Person means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, partnership interests or other ownership interests, by contract or otherwise. The term "Person" means any individual, corporation, partnership, limited liability company, joint venture, trust, association, joint stock company, estate, unincorporated organization or other business entity, government agency or any business entity whose existence may be authorized by a government agency.

10. **INDEMNITY AND INSURANCE:**

(a) In addition to full replacement coverage for all buildings and equipment on the premises, Vieste agrees to provide and keep in force general liability insurance naming City as a named insured as required by Exhibit D.

(b) To the maximum extent permitted by applicable law, Vieste agrees to indemnify, defend and save City harmless for, from and against liability, obligations, losses, claims, damages, injury or damage to any person or property, actions, suits, proceedings, costs and expenses, including attorney's fees, arising out of, connected with, or resulting directly or indirectly from Vieste's construction and use of the Premises including, but not limited to, any claims arising out of Title 34, (provided, for purposes of indemnification, but not defense, the liability is not caused by City, its agents or employees; and, for purposes of defending City, the liability is not caused solely by City; however, it shall be deemed that City shall be fully indemnified and defended by Vieste as to all matters relating to Title 34, no liability or negligence being imputed to City as to Vieste's failure to comply with Title 34), or resulting from any acts or omissions of Vieste or anyone under its direction or control, including, but not limited to Vieste's agents or employees or anyone under its direction or control (all of the

foregoing collectively referred to in this Ground Lease as "Claims"). Notwithstanding anything contained in this Ground Lease, the indemnification arising under this subsection and all indemnification obligations of Vieste to City under this Ground Lease shall continue in full force and effect, notwithstanding the fulfillment or non-fulfillment of any obligations under the Ground Lease and survives the termination or expiration of the Ground Lease.

(c) In addition to the indemnification set forth above, Vieste will defend, indemnify and hold harmless City for, from and against any loss or Vieste incurs in connection with or as a result of this Ground Lease that directly or indirectly arises out of the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal or presence of Hazardous Materials by Vieste ("Environmental Claims"). This indemnity will apply whether the Hazardous Materials are on, under or about City's property or operations or property leased by City. The indemnity includes but is not limited to attorneys' fees, expert fees and costs (including the reasonable estimate of the allocated cost of in-house counsel and staff). The indemnity extends to City and all of its elected officials, officers, employees, agents, successors and assigns and survives the termination or expiration of this Ground Lease. For purposes of this Ground Lease:

(i) "Environmental Laws" shall mean any federal, state or local statute, regulation or ordinance or any judicial or administrative decree or decision, whether now existing or hereinafter enacted, promulgated or issued, with respect to any Hazardous Materials, drinking water, groundwater, wetlands, landfills, open dumps, storage tanks, underground storage tanks, solid waste, waste water, storm water runoff, waste emissions or wells. Without limiting the generality of the foregoing, the term shall encompass each of the following statutes, and regulations, orders, decrees, permits, licenses and deed restrictions now or hereafter promulgated thereunder, and amendments and successors to such statutes and regulations as may be enacted and promulgated from time to time: (i) the Comprehensive Environmental Response, Compensation and Liability Act (codified in scattered sections of 26 U.S.C., 33 U.S.C., 42 U.S.C. and 42 U.S.C. Section 9601 et seq.) ("CERCLA"); (ii) the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.) ("RCRA"); (iii) the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.); (iv) the Toxic Substances Control Act (15 U.S.C. Section 2061 et seq.); (v) the Clean Water Act (33 U.S.C. Section 1251 et seq.); (vi) the Clean Air Act (42 U.S.C. Section 7401 et seq.); (vii) the Safe Drinking Water Act (21 U.S.C. Section 349, 42 U.S.C. Section 201 and Section 300f et seq.); (viii) the National Environmental Policy Act (42 U.S.C. Section 4321 et seq.); (ix) the Superfund Amendments and Reauthorization Act of 1986 (codified in scattered sections of 10 U.S.C., 29 U.S.C., 33 U.S.C. and 42 U.S.C.); (x) Title III of the Superfund Amendment and Reauthorization Act (40 U.S.C. Section 1101 et seq.); (xi) the Uranium Mill Tailings Radiation Control Act (42 U.S.C. Section 7901 et seq.); (xii) the Occupational Safety and Health Act (29 U.S.C. Section 655 et seq.); (xiii) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Section 136 et seq.); (xiv) the Noise Control Act (42 U.S.C. Section 4901 et seq.); and (xv) the Emergency Planning and Community Right to Know Act (42 U.S.C. Section 1100 et seq.).

(ii) "Hazardous Materials" means each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined, determined or identified as hazardous or toxic under any Environmental Law. Without limiting the generality of the foregoing, the term shall mean and include:

(1) "Hazardous Substance(s)" as defined in CERCLA, the Superfund Amendments and Reauthorization Act of 1986, or Title III of the Superfund Amendment and Reauthorization Act, each as amended, and regulations promulgated thereunder including, but not limited to, asbestos or any substance containing asbestos, polychlorinated biphenyls, any explosives, radioactive materials, chemicals known or suspected to cause cancer or reproductive toxicity, pollutants, effluents, contaminants, emissions, infectious wastes, any petroleum or petroleum-derived waste or product or related materials and any items defined as hazardous, special or toxic materials, substances or waste;

(2) "Hazardous Waste" as defined in the Resource Conservation and Recovery Act of 1976, as amended, and regulations promulgated thereunder;

(3) "Materials" as defined as "Hazardous Materials" in the Hazardous Materials Transportation Act, as amended, and regulations promulgated thereunder; and

(4) "Chemical Substance or Mixture" as defined in the Toxic Substances Control Act, as amended, and regulations promulgated thereunder.

(5) "Governmental Authorities" means the United States, the State of Arizona and any political subdivision thereof, and any and all agencies, departments, commissions, boards, bureaus, bodies, councils, offices, authorities, or instrumentality of any of them, of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

(6) "Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, storing, escaping, leaching, dumping, discarding, burying, abandoning, or disposing into the environment.

11. **CONDEMNATION**: If the whole of the Premises shall be taken or condemned by any competent authority (other than the City) for any public use or purpose under any statute or by right of eminent domain, or by a private purchase in lieu thereof under threat of such eminent domain proceedings, then in either of such events, this Ground Lease shall expire on the date when the Premises shall be so taken and the rent shall be prorated as of that date. In the event that part of the Premises shall be taken or condemned and the part so taken shall result in (i) cutting off or severely impairing direct access from the Premises to any adjoining street or highway, or (ii) in Vieste's reasonable opinion, materially impacting Vieste's ability to do business on the Premises, then, in such event, Vieste may elect to terminate this Ground Lease as of the date possession shall be taken by such authority. Such notice of election to terminate shall be given in writing to City within ninety (90) days after official notice to Vieste of the portion to be taken. Condemnation awards shall be paid in the following priority: first, to City for the value of City's fee interest (unless City is the condemning authority, in which case City will have no award); second to Vieste for the value of Vieste's leasehold interest; and third to Vieste for the unamortized value of its improvements on the Premises, determined in accordance with Vieste's customary accounting practice.

12. **UTILITY EASEMENTS AND ROADS:** Upon prior written approval by City, which approval may be withheld in City's reasonable discretion, Vieste may agree to reasonable easements to utility providers, contractors, subcontractors representatives, invitees, permittees, agents and leasehold mortgagees and their designees as may be required to demolish, design, construct, renovate, replace, own, operate, maintain, and service the improvements on the Premises, and City will, after such approval, execute any documents reasonably necessary to evidence the same. Vieste acknowledges that a recorded, dedicated roadway easement in a certain area may not be possible, since the roads within the City Landfill change from time to time. However, City will provide reasonable access to the Premises. City will assist Vieste by providing such reasonable access to the Premises which will enable Vieste to obtain a title insurance access endorsement or similar endorsement for the Premises and to obtain the permits and licenses necessary to develop, construct and operate the Facilities on the Premises.

13. **MORTGAGES:**

(a) City recognizes that Vieste is securing outside funding for the development of the Facility. Vieste may mortgage its interest in this Lease or any part thereof under any first or other leasehold mortgage, provided that City is notified in writing of the making of any such mortgage, and the terms of such mortgage do not conflict with this Ground Lease. Any such leasehold mortgage shall be subordinate to the City's fee title to the land comprising the Premises and the city landfill.

(b) City's right to terminate this Lease pursuant to Section 17 after a default by Vieste is subject to City's first delivering to any leasehold mortgagee, simultaneously with delivery thereof to Vieste, notice of such default. In addition to any cure periods granted to Vieste set forth under Section 17, City shall afford to a leasehold mortgagee the additional time provided below (i) to cure such Event of Default, and City shall accept such performance as if the same had been done by Vieste, or (ii) to cause the leasehold mortgagee or its designee to assume this Lease and cure Vieste's Event of Default within such additional time period. City also agrees that as a result of any default there shall be no cancellation, amendment or termination of this Lease by joint action of City and Vieste without first providing a leasehold mortgagee an opportunity to satisfy said default within the same time period.

(i) In the case of an Event of Default arising from the failure of Vieste to pay any sums of money that this Lease requires (each, a "Monetary Default"), City shall afford a leasehold mortgagee whose interest has been duly noticed to the City an additional period of sixty (60) calendar days from the date of notice of default to cure such default.

(ii) In the case of an Event of Default that is not a Monetary Default, except as provided below, City shall afford a leasehold mortgagee whose interest has been duly noticed to the City an additional an additional period of ninety (90) days from the date of notice of default to cure such default, provided that City is not subject to the assessment of any penalty. If the City is subject to a Risk of Penalty (defined in Section 17(e) below), regardless of any indemnification or insurance provisions of this Ground Lease (which shall remain in effect), the right to cure shall be for a period equal to the period mandated by any applicable

regulatory authority with respect to City's obligation to cure or rectify any violations relating to is permits, licenses, or other authorizations.

(c) Intentionally Deleted.

(d) Intentionally Deleted.

(e) Intentionally Deleted.

14. **CITY'S PRELIMINARY DUTIES:** Within 30 days after the Effective Date, City, to the extent such information is in City's possession, shall provide to Vieste at the main notice address shown in Section 20 below, or shall make available at City's office, copies of (i) any existing survey and legal description of the Premises and any existing title insurance and related supporting materials for the Premises, (ii) all existing soils reports, environmental site assessments and similar materials in City's possession relating to the Premises and (iii) all existing permits, development approvals, licenses and other entitlements affecting the Premises. The City does not guarantee that the information provided is complete or accurate and provides no warranties as to the information provided under this Section 14. City shall cooperate reasonably with Vieste in connection with all due diligence, permitting and development activity at the Premises.

15. **QUIET ENJOYMENT AND PERMITTED USES:**

(a) City covenants and warrants that Vieste shall peacefully have and enjoy the sole possession of the Premises. In addition, Vieste shall peacefully have and enjoy common non-exclusive use of all common areas and common facilities of the City Landfill, if any, during the term free from the adverse claims of any persons, firms or other entities whatsoever. City will fully protect Vieste in the full, complete and absolute possession of the Premises and Vieste's rights of non-exclusive use of the common areas and common facilities, if applicable, subject, in all cases, to the terms and conditions of this Ground Lease. City agrees not to file or cause any zoning change to be made that would affect the Premises without the prior written approval of Vieste.

(b) City represents and warrants that the use of the Premises for the Permitted Use is a permitted use under the Applicable Laws applicable to the Premises, and that Vieste will be permitted without delay to obtain the building permits and authorizations necessary for the construction and operation of the facility contemplated by the Permitted Use without the imposition of charges other than charges of the type and amount which are customarily and normally charged in the locality in which the Premises are located. Subject to all then existing rights and agreements and zoning restrictions, Vieste shall have the right, during the term of this Ground Lease, to construct, operate and maintain the Facility at Vieste's sole risk, cost and expense.

(c) The City shall not file or cause any zoning change which would prohibit or materially restrict the construction or operation of the Energy Facilities for a five (5) year period after the Rent Commencement Date (the "Limitation Period") and, if the construction of the Energy Facilities has been begun within five (5) years after the Rent Commencement Date, then the Limitation Period shall be extended to seven (7) years.

16. **CITY DEFAULT:** If City shall default in the performance of any agreement or obligation in this Lease or breach any of City's representations and warranties set forth in this Lease, and shall not cure such default within one hundred eighty (180) days after notice from Vieste specifying the default, Vieste shall have all rights and remedies available to it at law and in equity, including injunctive relief.

17. **DEFAULTS:**

(a) Vieste is in default of the Ground Lease if:

(i) Vieste's failure to pay any installment of rent for a period of thirty (30) days after it is due;

(ii) The lapse or cancellation of required insurance coverage which is not remedied and corrected by Vieste within three (3) days after such lapse or cancellation;

(iii) Vieste fails to comply with any other obligation herein contained and the continuance of such failure for a period of thirty (30) days after receipt by Vieste from City of notice in writing specifying in detail the nature of such failure (unless the cure cannot reasonably be completed in thirty (30) days, in which event, so long as Vieste has commenced the cure within the thirty-day period and diligently prosecutes the same to completion, up to a maximum of ninety (90) days, Vieste shall not be in default); or

(iv) Vieste is in default under the Waste Agreement, in which event, no further cure period is to be provided under this Ground Lease.

(v) Vieste (a) is unable to pay its debts as such debts become due; (b) makes a general assignment or an arrangement or composition with or for the benefit of its creditors; (c) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against such party under any bankruptcy or similar law; or (d) takes any action for the purpose of effecting any of the foregoing.

(vi) A proceeding or case is commenced, without the application or consent of Vieste, in any court of competent jurisdiction, seeking: (a) its liquidation, reorganization of its debt, dissolution or winding up, or composition or readjustment of its debt; (b) the appointment of a receiver, custodian, liquidator or the like of Vieste or of all or any substantial part of its assets; or (c) insolvency, reorganization of its debts, winding up, composition or adjustment of debts, and such proceeding remains in effect, for a period of ninety (90) days.

(vii) Any representation made by Vieste under Section 21 below is false in any material respect when made and Vieste fails to remedy such false representation within sixty (60) days after written notice thereof by City; provided, however, that if such breach is not susceptible to cure within sixty (60) days, this such sixty (60) day cure period should be extended for an additional period (not to exceed one hundred eighty (180) days, provided Vieste is diligently pursuing such cure) to cure such breach.

(b) If Vieste is in default, City may, subject to the provisions of Section 13 hereof regarding a leasehold mortgagee, give to Vieste a notice of its election to terminate this Ground Lease upon a date (at least ten (10) days after the date of the notice) specified in such notice, and, if Vieste fails to cure the default within the thirty (30) days thereafter for any event

of default under (a)(i)-(iii) above (no further notice being required under (a)(iv)), then this Ground Lease shall terminate, Vieste will surrender the Premises in accordance with the terms of this Ground Lease (including, but not limited to, the removal of partially completed, non-operational or abandoned improvements, if required under Section 6(e) above), no further rental shall be due hereunder, and no further duties or obligations shall be due by either party, except for any provisions that survive termination. Notwithstanding the above, while the lapse or cancellation of required insurance coverage shall be a default subject to cure under this Ground Lease, such cure shall not be effective unless a new or renewed policy is issued which specifically provides the required coverage to City for any liability arising during the lapsed or previously uncovered period.

(c) Without limitation of the foregoing, City acknowledges and agrees that it shall have no right to cause any rental obligation hereunder to be accelerated, and City hereby waives the benefit of any statutory or common law which would have provided such right.

(d) City shall send a copy of any notice of default to any person to whom Vieste has requested in writing (pursuant to Section 20) such notice be sent

(e) If the City gives notice of any default which by its nature cannot be cured within the period specified in the preceding subsection, then such period shall be extended for so long as Vieste is proceeding with best efforts to cure such default as soon as reasonably possible under the circumstances, and provided that the City is not subject to the assessment of any penalty. Notwithstanding the foregoing, if any breach or default by Vieste under this Ground Lease subjects City to any risk of loss, liabilities, legal actions, penalties, fines, etc., with respect to any permits, licenses or authorization relating to the City Landfill operations (“Risk of Penalty”), Vieste’s right to cure (and any leasehold mortgagee’s right to cure under Section 13) shall be for a period equal to the period mandated by any applicable regulatory authority with respect to City’s obligation to cure or rectify any violations relating to its permits, licenses, or other authorizations. In addition, Vieste shall immediately cease any and all activity causing the assessment of the penalty and make every effort to immediately remedy the default.

(f) City shall have all rights and remedies provided by law or in equity, subject to any specific limitations set forth above.

18. **WAIVERS**: Neither party hereto shall be deemed to have waived any right hereunder for failure to complain of any act or omission of the other party.

19. **INTENTIONALLY DELETED.**

20. **CITY REPRESENTATIONS**: City represents and warrants that:

(a) City has fee simple title to the Premises and the power and authority to execute and deliver this Ground Lease and to comply with all the provisions hereof.

(b) Intentionally Deleted.

(c) Intentionally Deleted.

(d) At all times Vieste shall have free and unobstructed access to the Premises as indicated by City. City grants to Vieste, its employees, contractors, subcontractors representatives, invitees, permittees, agents and leasehold mortgagees (collectively, the "Vieste Agents") the right to gain access to the Premises through a non-exclusive route or routes through the City Landfill to be designated by City from time to time and to use the streets, driveways, sidewalks, and walkways on and adjacent to the City Landfill for the purposes of pedestrian and vehicular ingress and egress to and from, the Premises in order to carry out the Permitted Use and to exercise the privileges granted in this Ground Lease. In the event a portion of the existing access or future access as agreed to by the parties is temporarily obstructed, alternate access shall be provided by City.

(e) The execution and entry into this Ground Lease, the execution and delivery of the documents and instruments to be executed and delivered by City hereunder, and the performance by City of City's duties and obligations under this Ground Lease and of all other acts necessary and appropriate for the full consummation of the lease of the Premises as contemplated herein, are consistent with and not in violation of, and will not create any adverse condition under, any contract, agreement or other instrument to which City is a party, any judicial order or judgment of any nature by which City is bound.

(f) To the best of City's actual knowledge, City has received no notice of, nor is City aware of, any pending, threatened or contemplated action by any governmental authority or agency having the power of eminent domain, which might result in all or any part of the Premises being taken by condemnation or conveyed in lieu thereof.

(g) To the best of City's actual knowledge, there is no action, suit or proceeding pending or, to City's knowledge, threatened by or against or affecting City or the Premises which does or will involve or affect the Property or title thereto or City's ability to perform its obligations under this Ground Lease or any documents entered into pursuant to this Ground Lease.

(h) No assessments have been made against any portion of the Premises which are unpaid (except ad valorem taxes for the current year), whether or not they have become liens; and City shall notify Vieste of any such assessments which are brought to City's attention after the execution of this Ground Lease.

(i) To the best of City's actual knowledge, there is no dispute involving or concerning the location of the lines and corners of the Premises, and, such lines and corners are clearly marked; to City's knowledge there are no encroachments on the Premises, no gaps or gores exist within the Premises and no portion of the Premises is located within any "Special Flood Hazard Area" designated by the United States Department of Housing and Urban Development and/or Federal Emergency Management Agency, or in any area similarly designated by any agency or other governmental authority; and no portion of the Premises is located within a watershed area imposing restrictions upon use of the Premises or any part thereof.

(j) To the best of City's actual knowledge, there are no violations of state or federal law, municipal or county ordinances, or other legal requirements with respect to the Premises, or any legal requirements with respect to the Premises.

(k) No prior options or rights of first refusal have been granted by City to any third parties to purchase or lease any interest in the Premises, or any part thereof, which are effective as of the Effective Date.

(l) City is not indebted to any contractor, laborer, mechanic, materialmen, architect or engineer for work, labor or services performed or rendered, or for materials supplied or furnished, in connection with the Premises for which any person could claim a lien against the Premises and has not done any work on the Premises within one hundred eighty (180) days prior to the Effective Date. City shall provide Vieste's title company with a sufficient owner's affidavit and/or indemnity agreement as required by such title insurance company so that Vieste shall be able to obtain, at its sole cost and expense, a leasehold title insurance policy in form and substance satisfactory to Vieste.

(m) During City's ownership of the Premises to date, although the Premises are located within a portion of the City Landfill, the Premises have not been operated as a municipal waste facility and landfill. City has no actual knowledge as to any inspections, audits, inquiries, or other investigations that have been or are being conducted by any Government Authority or other authorized person with respect to the presence or discharge of Hazardous Materials at the Premises or the quality of the air, or surface or subsurface conditions at the Premises. During the Term of this Lease, the City shall provide to Vieste a copy of any written notice of a governmental inspection or investigation within fifteen (15) days after receipt.

(n) City will defend, indemnify and otherwise hold Vieste harmless from any and all claims, including any and all costs, expenses, and attorneys' fees which Vieste may incur as a result of City's breach of its representations made in this Ground Lease. City will, promptly upon receiving any such notice or learning of any such contemplated or threatened action, give Vieste notice thereof.

21. **VIESTE REPRESENTATIONS:** Vieste represents and warrants that:

(a) It is an entity duly organized and validly existing under the laws of the State of Arizona.

(b) The execution, delivery and performance of this Ground Lease by Vieste has been duly authorized by all requisite company action and does not require any other company action or approval.

(c) It has the power and authority to execute and deliver this Ground Lease and to perform its obligations hereunder.

(d) The execution of this Ground Lease and the full performance and enjoyment of the rights of Vieste under this Ground Lease will not breach or in any way be inconsistent with (i) the terms and conditions of any license, contract, understanding, or agreement, whether express, implied, written, or oral between the Vieste and any third party, (ii) the provisions of its organizational documents, or (iii) any order, writ, injunction or decree of any court or governmental authority entered against it or by which any of its property is bound.

22. **NOTICES:**

(a) Any and all notices, demands or requests required or permitted hereunder shall be in writing and shall be effective upon personal delivery or two (2) business days after being deposited in the U. S. Mail, registered or certified, return receipt requested, postage prepaid, or one (1) business day after being deposited with any commercial air courier or express service, addressed as follows:

If to City:
City Manager
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

If to Vieste:
VIESTE Energy, LLC
105 West Adams Street, Suite 2700
Chicago, IL 60603
Attention: Co-Managing Member

With a copy to:
City Attorney
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

With a copy to:
Ridenour, Hinton & Lewis, P.L.L.C
Attention: James R. Hinton
201 North Central Avenue, Suite 3300
Phoenix, AZ 85004

Notice shall be deemed to have been given upon receipt or refusal. The telephone numbers listed above are for purposes of providing the same to overnight delivery services and are not to be otherwise used for notice purposes. Upon agreement of the parties, notice may be provided via electronic delivery provide that in all cases notice shall be deemed to be given only upon acknowledgement of receipt by the receiving party.

23. **MISCELLANEOUS:**

(a) This Ground Lease may be simultaneously executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

(b) In the event that any provisions of this Ground Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.

(c) This Ground Lease, together with all exhibits attached hereto, constitutes the entire agreement between the parties hereto, and supersedes all prior agreements and may be modified only in writing.

(d) It is expressly understood and agreed that enforcement of the terms and conditions of this Ground Lease, and all rights of action relating to such enforcement, shall be strictly reserved to the parties hereto, and nothing contained in this Ground Lease shall give or allow any such claim or right of action by any other or third person or entity on this Ground Lease. It is the express intention of the parties hereto that any person or entity, other than the parties to this Ground Lease, receiving services or benefits under this Ground Lease shall be deemed to be incidental beneficiaries only.

(e) The parties acknowledge that this Ground Lease is subject to cancellation by City pursuant to A.R.S. § 38-511, the provisions of which are incorporated herein. The parties represent that, to the best of their knowledge, no basis exists for City to cancel this Ground Lease pursuant to A.R.S. § 38-511 as of the date hereof. Vieste covenants not to employ as an employee, an agent or, with respect to the subject matter of this Ground Lease, a consultant, any person significantly involved in initiating, negotiating, securing, drafting or creating this Ground Lease on behalf of City within three (3) years from execution of this Ground Lease, unless a waiver of A.R.S. § 38-511 is provided by City

(f) Either party shall, without charge and within sixty (60) days after any request of the other, certify in writing to any person specified in such request, as to the existence, amendment, validity of this Ground Lease and the existence of any default or counterclaim hereunder. Any such certificate may be relied upon by any party requesting it and by any person to whom the same may be exhibited.

(g) This Ground Lease shall be construed under and governed by the laws of the State of Arizona.

(h) The parties shall execute a Memorandum of Ground Lease in the form set forth as Exhibit C attached hereto, setting forth the parties, term extension options, rights of first refusal and other provisions requested by Vieste.

(i) As used herein, the singular shall include the plural and the masculine gender shall include the feminine and neuter genders unless the context shall require otherwise. Section headings are for convenience and shall not be used to construe this Ground Lease. This Ground Lease may be executed in multiple counterparts each of which shall be an original. The terms "City" and "Vieste" as used herein shall mean only the owner at the time of City's or Vieste's

interest herein (or any part thereof) and upon the sale or assignment of the interest of either party hereto, their successors in interest shall be deemed to be City or Vieste, as the case may be.

(j) Unless otherwise expressly provided herein, the provisions of this Ground Lease shall bind and inure to the benefit of City and Vieste and their respective successors.

(k) City warrants that no commissions, brokerage fees, or any other similar fees arising as a result of, or because of the consummation of this Ground Lease Ground Lease have are due, and City agrees to indemnify and hold Vieste harmless from any such claim.

24. **IMMIGRATION LAW COMPLIANCE:**

(a) Vieste, for itself and on behalf 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.

(i) Any breach of warranty of this section is considered a material breach of this Ground Lease and is subject to penalties up to and including termination of this Ground Lease.

(ii) The City retains the legal right to inspect the papers of any Vieste or subcontractor employee who performs work under this Ground Lease to ensure that the Vieste or any subcontractor is compliant with the warranty under section.

(iii) The City may conduct random inspections, and upon request of the City, Vieste must provide copies of papers and records of Vieste demonstrating continued compliance with the warranty under this Section 24.

(iv) Vieste agrees to keep papers and records available for inspection by the City during normal business hours.

(v) Vieste must cooperate with the 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 24.

(vi) Vieste must incorporate into any subcontract agreements that are allowable under this Ground Lease, if any, the same obligations imposed upon Vieste and expressly accrue those obligations directly to the benefit of the City.

(vii) Vieste must require any allowable subcontractor to incorporate into each of its own subcontracts under this Ground Lease the same obligations above and expressly accrue those obligations to the benefit of the City.

(viii) Vieste's warranty and obligations under this section to the City is continuing throughout the term of this Ground Lease 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.

(b) 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.

25. **PROHIBITION ON BUSINESS WITH IRAN AND SUDAN:** Vieste 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 Ground Lease will not have, “scrutinized” business operations, as defined in the preceding statutory sections, in the countries of Sudan or Iran.

26. **GUARANTY OF GROUND LEASE:** This Ground Lease is conditioned upon receipt of the executed Guaranty of Ground Lease by Vieste Energy, LLC, an Indiana limited liability company, in form attached hereto.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Ground Lease to be executed by their duly authorized officers as of the day and year set forth below their respective signatures.

CITY:

CITY OF GLENDALE, a municipal corporation in the State of Arizona

By: _____
Name: _____
Title: _____

Date of Execution: _____

Approved as to form:

City Attorney

Attestation:

City Clerk (Seal)

VIESTE:

VIESTE SPE, LLC, an Arizona limited liability company

By: _____
Name: _____
Title: _____

Date of Execution: _____

LIST OF EXHIBITS
and
ATTACHMENTS

Exhibit A: Description of Premises

Exhibit B: Depiction of Premises and City Landfill

Exhibit C: Form of Memorandum of Ground Lease

Exhibit D: Tenant Insurance Requirements

Guaranty of Ground Lease

EXHIBIT A

DESCRIPTION OF PREMISES

**LEGAL DESCRIPTION
FOR
WTE FACILITY**

THAT PORTION OF GLO LOT 1 OF SECTION 1, TOWNSHIP 2 NORTH, RANGE 1 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA. LYING FULLY WITHIN THAT PARCEL OF LAND DESCRIBED IN DEED 1991-475093 MARICOPA COUNTY RECORDER, DESCRIBED AS FOLLOWS;

COMMENCING AT THE NORTHEAST CORNER OF SAID GLO LOT 1; THENCE SOUTH ALONG THE EAST LINE OF SAID GLO LOT 1 A DISTANCE OF 1,010.00 FEET; THENCE DEPARTING SAID EAST LINE, WEST PARALLEL WITH AND 1,010.00 FEET SOUTH OF THE NORTH LINE OF SAID GLO LOT 1 A DISTANCE OF 193.00 FEET TO THE **POINT OF BEGINNING**; THENCE CONTINUING WEST PARALLEL WITH AND 1,010.00 FEET SOUTH OF SAID NORTH LINE A DISTANCE OF 630.00 FEET; THENCE NORTH PARALLEL WITH AND 823.00 FEET WEST OF SAID EAST LINE A DISTANCE OF 415.00 FEET; THENCE EAST PARALLEL WITH AND 595.00 FEET SOUTH OF SAID NORTH LINE A DISTANCE OF 630.00 FEET; THENCE SOUTH, PARALLEL WITH AND 193.00 FEET WEST OF SAID EAST LINE A DISTANCE OF 415.00 FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINING 261,450 SQUARE FEET MORE OR LESS.

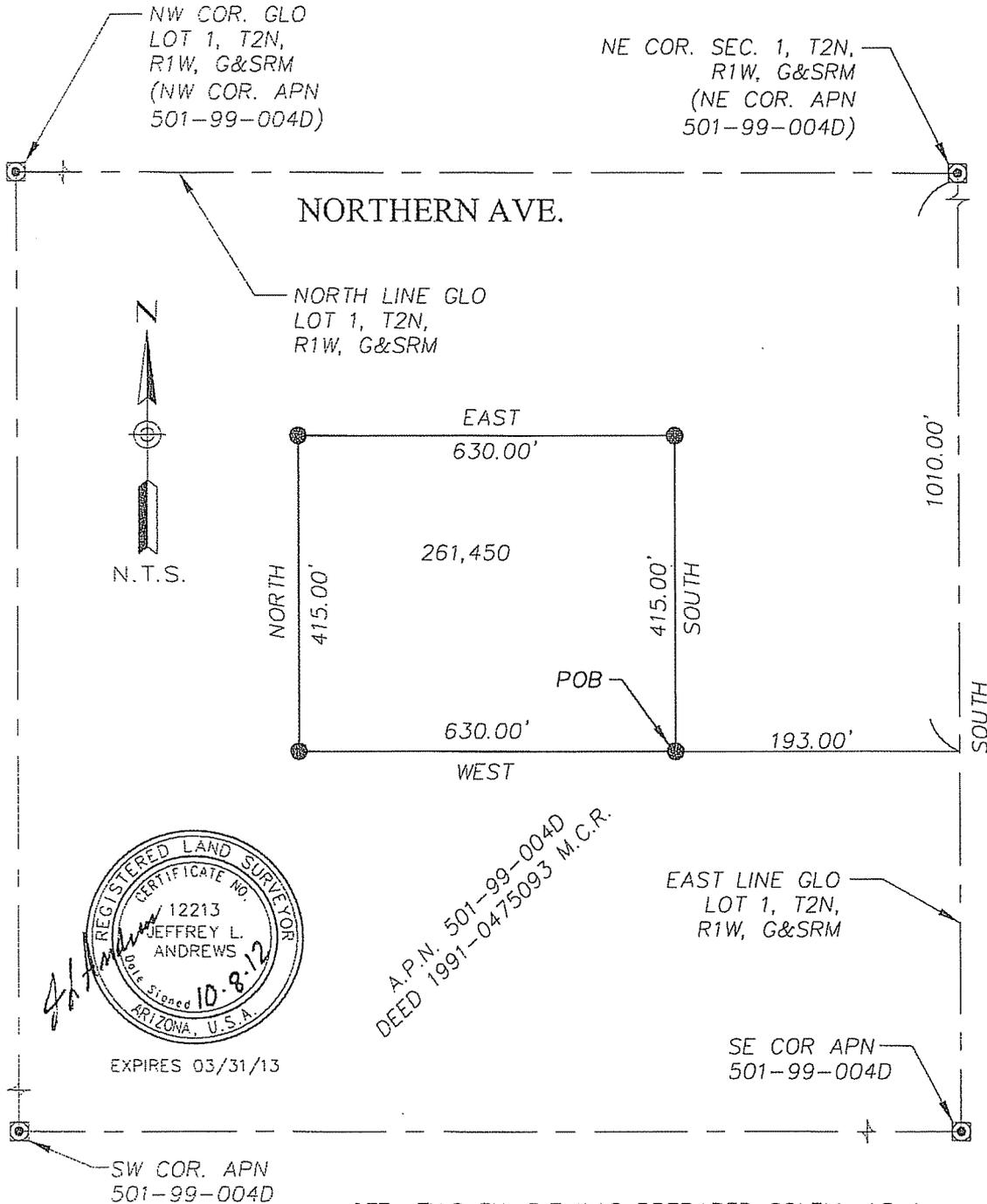
NOTE: LEGAL DESCRIPTION PREPARED WITHOUT BENEFIT OF FULL SECTIONAL SURVEY BREAKDOWN.

LEGAL DESCRIPTION SHOWN HEREON IS NOT INTENDED FOR CONVEYANCE OF REAL PROPERTY.



EXPIRES 03/31/13

EXHIBIT



NOTE: THIS EXHIBIT WAS PREPARED SOLELY AS A REFERENCE FOR THE LEGAL DESCRIPTION TO WHICH IT IS ATTACHED. IT IS NOT MEANT TO BE A STANDALONE DOCUMENT NOR THE RESULT OF A FIELD SURVEY.

	BY	DATE
DESIGNED	SAT	OCT 2012
DRAWN	SAT	OCT 2012

ALPHA ENGINEERING
 4645 N. 12TH ST., STE. 200 PHOENIX, ARIZONA 85014
 PHONE (602) 266.7200 FAX (602) 266.2701

WTE FACILITY

JOB NUMBER	09015
SHEET	OF
1	1

EXHIBIT B

DEPICTION OF PREMISES AND CITY LANDFILL

Northern Avenue

Proposed Location of
Waste to Energy Facility



Glendale Avenue

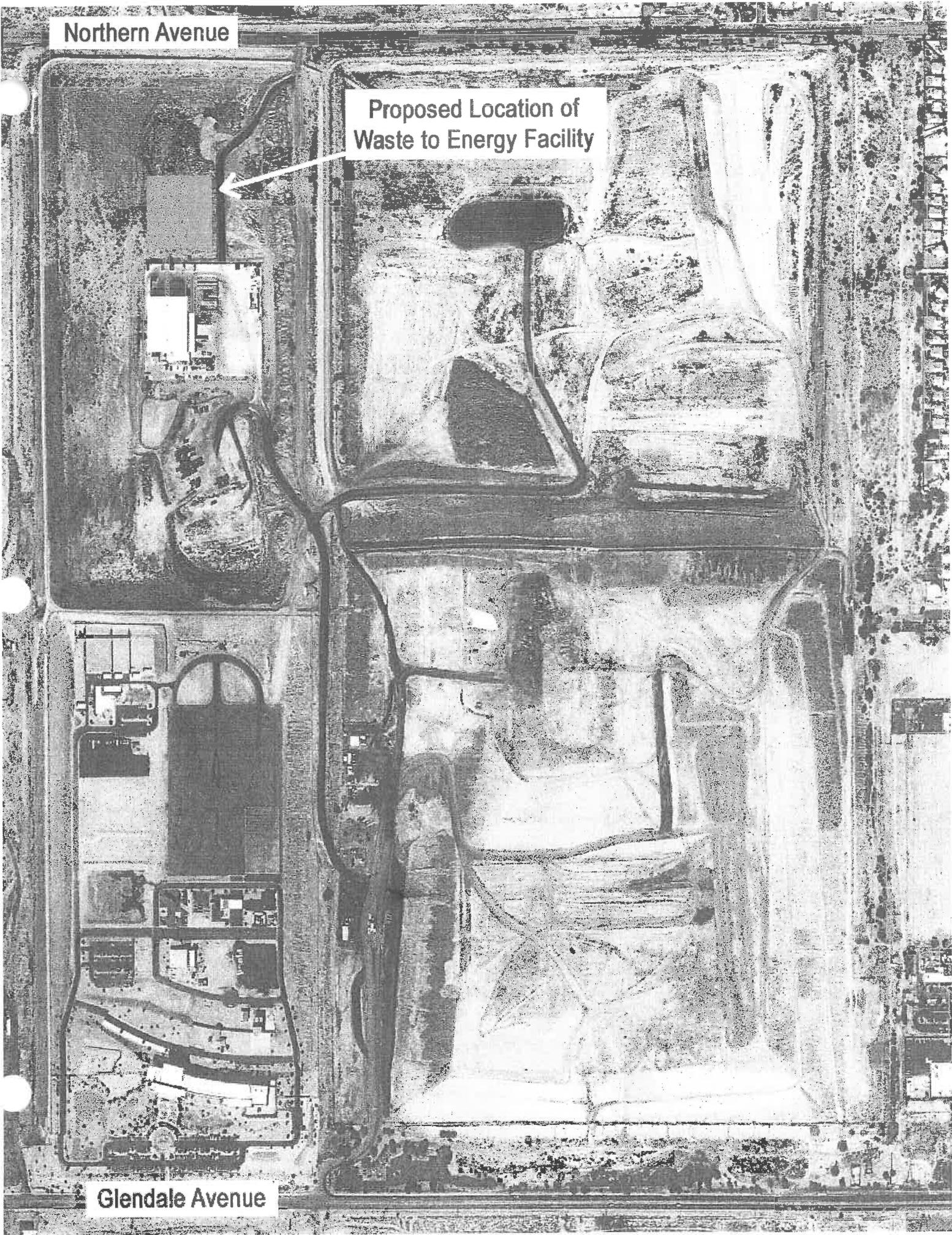


EXHIBIT C

FORM OF MEMORANDUM OF LEASE

WHEN RECORDED MAIL TO:

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

SPACE ABOVE THIS LINE FOR RECORDER'S USE
ONLY

MEMORANDUM OF GROUND LEASE

THIS MEMORANDUM OF GROUND LEASE ("Memorandum") shall evidence that there is in existence a Ground Lease as described herein. The parties have executed this Memorandum for recording purposes only as to the Ground Lease hereinafter described, and it is not intended to and shall not modify, amend, supersede or otherwise affect the terms and provisions of said Lease. In the event of any conflict between this Memorandum and the Ground Lease, the Ground Lease shall control. All of the capitalized terms contained herein are defined in the Ground Lease.

1. Name of Document: Ground Lease
2. Name of Ground Lessor: **CITY OF GLENDALE**, a municipal corporation in the State of Arizona
3. Name of Ground Lessee: **VIESTE SPE, LLC**, an Arizona limited liability company registered to do business in Arizona
4. Address of Ground Lessor: City Manager
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

With a copy of notices to:

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

5. Address of Ground Lessee: VIESTE Energy, LLC
105 West Adams Street, Suite 2700
Chicago, IL 60603
Attention: Co-Managing Member

With a copy of notices to:
Ridenour, Hienton & Lewis, P.L.L.C
Attention: James R. Hienton
201 North Central Avenue, Suite 3300
Phoenix, AZ 85004

6. Date of Lease: _____, 2012

7. Premises: Subject to the provisions of this Ground Lease, all of that certain tract, approximately six (6) acres in size, a part of the "City Landfill" located at 11480 West Glendale Avenue, Glendale, Arizona 85307, Maricopa County, Arizona, more particularly described on Exhibit A attached hereto.

8. Commencement Date: No later than January 1, 2014

9. Initial Lease Term: 30 years

Extension Term 1 5-year Extension Term if exercised pursuant to Ground Lease

10. Energy Facility Right of First Refusal: Under Section 4(d) of the Ground Lease:

"For a period of five (5) years beginning with the Rent Commencement Date, the City hereby grants to Vieste the exclusive right to develop, construct and operate a waste to energy facility at the City Landfill where the Premises are located (the "Exclusivity Period"). Immediately following the expiration of the Exclusivity Period, the City grants to Vieste a right of first refusal to develop, construct and operate a waste to energy facility at the City Landfill ("Energy Facility ROFR"). The Energy Facility ROFR shall be in effect for the two (2) year period."

This Memorandum of Ground Lease may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

A copy of the Ground Lease is on file with Ground Lessor in the City Clerk's Office and with Ground Lessee at their addresses forth above.

[Signature Pages Follow]

GROUND LESSOR:

CITY OF GLENDALE, a municipal
corporation in the State of Arizona

By: _____

Name: _____

Title: _____

Date of Execution: _____

Approved as to form:

City Attorney

Attestation:

City Clerk

EXHIBIT A
To
Memorandum of Ground Lease

LEGAL DESCRIPTION OF PREMISES

**LEGAL DESCRIPTION
FOR
WTE FACILITY**

THAT PORTION OF GLO LOT 1 OF SECTION 1, TOWNSHIP 2 NORTH, RANGE 1 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA. LYING FULLY WITHIN THAT PARCEL OF LAND DESCRIBED IN DEED 1991-475093 MARICOPA COUNTY RECORDER, DESCRIBED AS FOLLOWS;

COMMENCING AT THE NORTHEAST CORNER OF SAID GLO LOT 1; THENCE SOUTH ALONG THE EAST LINE OF SAID GLO LOT 1 A DISTANCE OF 1,010.00 FEET; THENCE DEPARTING SAID EAST LINE, WEST PARALLEL WITH AND 1,010.00 FEET SOUTH OF THE NORTH LINE OF SAID GLO LOT 1 A DISTANCE OF 193.00 FEET TO THE **POINT OF BEGINNING**; THENCE CONTINUING WEST PARALLEL WITH AND 1,010.00 FEET SOUTH OF SAID NORTH LINE A DISTANCE OF 630.00 FEET; THENCE NORTH PARALLEL WITH AND 823.00 FEET WEST OF SAID EAST LINE A DISTANCE OF 415.00 FEET; THENCE EAST PARALLEL WITH AND 595.00 FEET SOUTH OF SAID NORTH LINE A DISTANCE OF 630.00 FEET; THENCE SOUTH, PARALLEL WITH AND 193.00 FEET WEST OF SAID EAST LINE A DISTANCE OF 415.00 FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINING 261,450 SQUARE FEET MORE OR LESS.

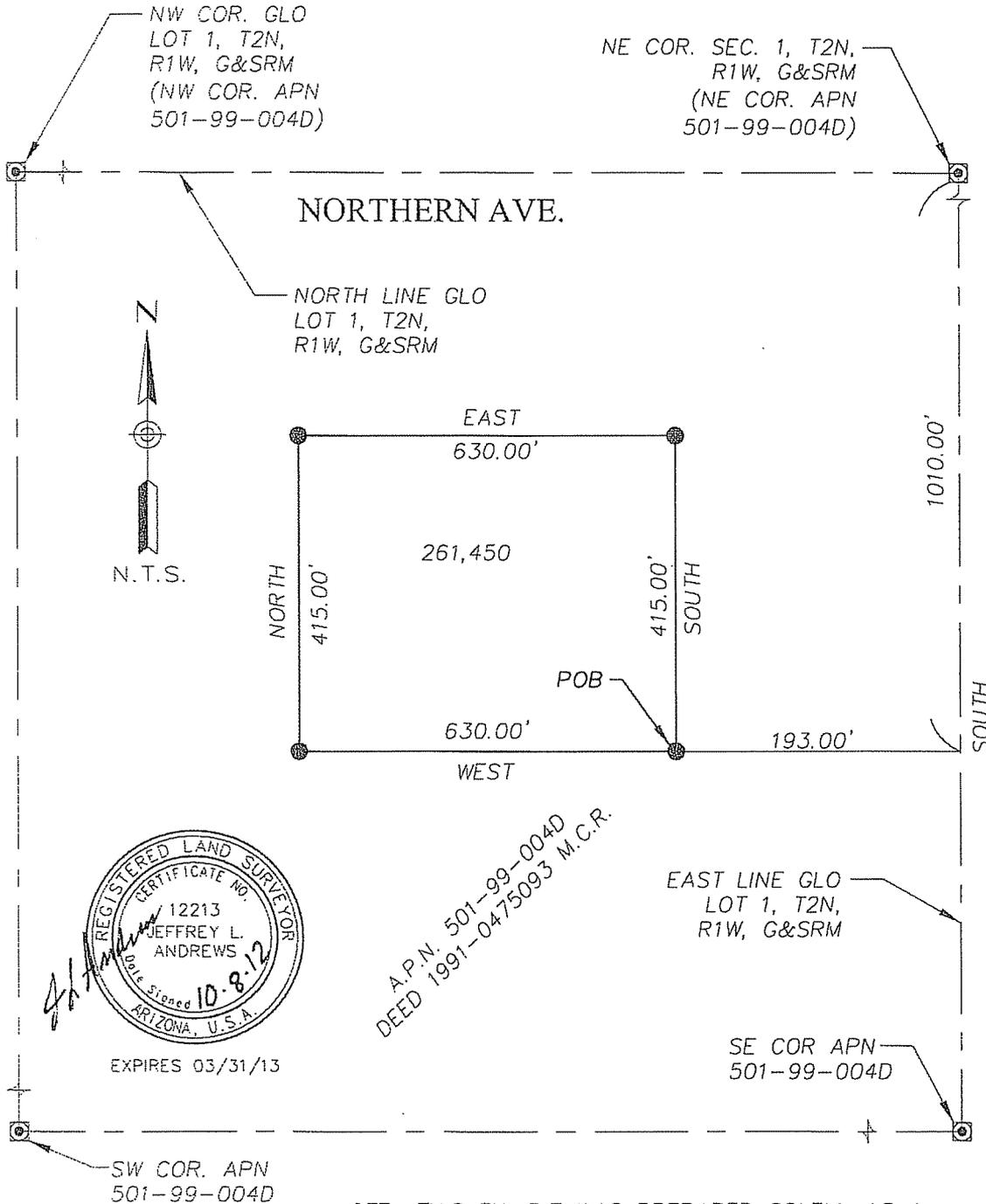
NOTE: LEGAL DESCRIPTION PREPARED WITHOUT BENEFIT OF FULL SECTIONAL SURVEY BREAKDOWN.

LEGAL DESCRIPTION SHOWN HEREON IS NOT INTENDED FOR CONVEYANCE OF REAL PROPERTY.



EXPIRES 03/31/13

EXHIBIT



NOTE: THIS EXHIBIT WAS PREPARED SOLELY AS A REFERENCE FOR THE LEGAL DESCRIPTION TO WHICH IT IS ATTACHED. IT IS NOT MEANT TO BE A STANDALONE DOCUMENT NOR THE RESULT OF A FIELD SURVEY.

	BY	DATE
DESIGNED	SAT	OCT 2012
DRAWN	SAT	OCT 2012

ALPHA ENGINEERING
 4645 N. 12TH ST., STE. 200 PHOENIX, ARIZONA 85014
 PHONE (602) 266.7200 FAX (602) 266.2701

WTE FACILITY

JOB NUMBER	09015
SHEET	OF
1	1

EXHIBIT D

TENANT INSURANCE REQUIREMENTS

Definitions. Capitalized terms that are used but not otherwise defined in this Exhibit D (this “Exhibit”) shall have the meanings set forth in this Ground Lease.

1. Tenant shall maintain the following insurance coverages during the Ground Lease Term, or for such additional time as required in any section below:

- Statutory Workers’ Compensation
- Commercial General Liability (including Liquor Liability)
- Commercial Automobile Liability
- Excess Liability
- All Risk Property and Boiler & Machinery

The above coverages shall comply with the following:

a. **Statutory Workers’ Compensation:** Tenant shall maintain statutory workers’ compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over all employees of Tenant engaged in the performance of work relating to management of the Premises.

b. **Commercial General Liability:** Tenant shall maintain commercial general liability insurance covering all operations by or on behalf of Tenant on an occurrence basis insuring against bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, products and completed operations. Further, the policy shall include coverage for liquor liability, if applicable, and the hazards commonly referred to as XCU (explosion, collapse, and underground). The policy shall contain severability of interest provisions and shall be at least as broad as Insurance Service Office (ISO) form 1986. The limits of commercial general liability insurance required of Tenant shall be no less than the following:

- \$1,000,000 bodily injury and property damage each occurrence
- \$2,000,000 general aggregate (annual)
- \$2,000,000 products/completed operations aggregate, and
- \$1,000,000 personal and advertising injury

In the event the commercial general liability insurance policy is written on a “claims-made” basis, the retroactive date shall be no later than the Ground Lease Effective Date. Coverage shall extend for at least five (5) years after termination of the Ground Lease and shall be evidenced by annual certificates of insurance.

c. **Commercial Automobile Liability:** Tenant shall maintain commercial automobile liability insurance with respect to all vehicles used in the performance of work at the Premises and away from the Premises, whether owned, non-owned, borrowed, leased or hired, with limits no less than the following:

\$1,000,000 combined single limit for bodily injury and property damage.
The commercial automobile liability insurance shall be endorsed with the MCS-90 endorsement in accordance with Applicable Laws.

d. **Excess Liability:** Tenant shall maintain excess liability insurance on an occurrence basis, insuring against bodily injury, personal injury, and property damage, and all other coverages as specified in Sections l(b) (commercial general liability) and l(c)(automobile liability) of this Exhibit over and above the limits required for each such coverage. The limits of excess liability insurance shall be no less than the following:

\$25,000,000 each occurrence
\$25,000,000 annual aggregate
\$25,000,000 products / completed operations (annual).

Total per occurrence limits of \$25,000,000 may be satisfied in any combination of primary and excess policies of insurance. Any applicable retention shall be the sole responsibility of Tenant.

e. **All Risk Property:** Tenant shall maintain all risk property and boiler & machinery insurance to insure against physical loss or damage to the Premises (including any personal property owned by the City and used in connection with the Premises) and all personal property of Tenant while at the Premises. Such coverage shall be written on a replacement cost basis, include flood and earthquake coverage, and shall not be subject to co-insurance.

GUARANTY OF GROUND LEASE

In order to induce City to enter into the Ground Lease (“Ground Lease”) by and between the City of Glendale, a municipal corporation in the State of Arizona (“City”) and Vieste SPE, LLC, an Arizona limited liability company (“Vieste”), Vieste Energy, LLC, an Indiana limited liability company (“Parent”), as the owner of greater than fifty one percent (51%) of the voting and equity interests in Vieste, and as the managing member of Vieste, hereby unconditionally guarantees the prompt and complete performance of and compliance with all covenants, obligations and duties of Vieste arising under or relating to the Ground Lease. Parent’s obligations pursuant to this paragraph are primary and not secondary, and City need not seek satisfaction of any breach from Vieste before seeking satisfaction from Parent, which waives any notice of acceptance of this Guaranty. If City, for any reason, seeks to enforce Parent’s compliance with the provisions of this Guaranty, the same rights and remedies and choice of law provisions as are included in the Ground Lease shall apply. In addition, Parent hereby makes the same representations and warranties as to Parent as those made by Vieste pursuant to Section 21 of the Ground Lease, except that Parent represents that it is a limited liability company duly formed and validly existing under the laws of the State of Indiana.

Notices given to Parent shall be delivered and deemed received in the same manner as set forth in Section 22 of the Ground Lease. Parent acknowledges that it has received a copy of the Ground Lease.

This Guaranty shall continue in full force and effect until all obligations of Tenant under the Agreement have been paid or performed in full. Parent agrees that the obligations of Parent pursuant to this Guaranty shall remain in full force and effect without regard to, and shall not be released, discharged or affected in any way by any of the following (whether or not Parent shall have any knowledge thereof): any termination, amendment, modification or other change in the Ground Lease; (b) any failure, omission or delay on the part of City to conform or comply with any term of the Ground Lease; (c) any waiver, compromise, release, settlement or extension of time of performance or observance of any of the obligations or agreements contained in the Ground Lease; (d) any dissolution of Parent or any voluntary or involuntary bankruptcy, insolvency, reorganization, arrangement, readjustment, assignment for the benefit of creditors, composition, receivership, liquidation, marshalling of assets and liabilities or similar events or proceedings with respect to Tenant, Parent or any other guarantor of Tenant’s obligations, as applicable, or any of their respective property or creditors, or any action taken by any trustee or receiver or by any court in any such proceeding; (e) any merger or consolidation of Tenant, Parent, or any other guarantor of Tenant’s obligations into or with any person, or any sale, lease or transfer of any of the assets of Tenant, Parent or any other guarantor of Tenant’s obligations to any other person; or (f) any change in the ownership of the capital stock or equity ownership of Tenant, Parent or any other guarantor of Tenant’s obligations or any change in the relationship between Tenant, Parent or any other guarantor of the Ground Lease obligations, or any termination of any such relationship.

Parent waives any defense arising by reason of any disability or other defense of Tenant or by reason of the cessation from any cause whatsoever of the liability of Tenant. Tenant waives all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Guaranty.

IN WITNESS WHEREOF, the undersigned has executed this Guaranty as of the date of the foregoing Ground Lease.

Vieste Energy, LLC,
an Indiana Limited Liability Company

By: _____

Its: _____

TIN: _____

Address:



CITY COUNCIL REPORT

Meeting Date: **10/9/2012**
Meeting Type: **Voting**
Title: **WASTE SUPPLY AGREEMENT WITH VIESTE**
Staff Contact: **Stuart Kent, Executive Director, Public Works**

Purpose and Recommended Action

This is a request for City Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into a 30 year waste supply agreement with Vieste SPE, LLC, and Vieste Energy, LLC, (Vieste) for the implementation of a mixed waste processing facility at the Glendale Municipal Landfill (Landfill).

Background Summary

Over the past two years, Public Works staff has been working with Vieste on a 30 year agreement for the development of a waste-to-energy facility at the Landfill. When Vieste initially approached the city with this opportunity, the focus was on the waste-to-energy facility which requires Vieste to obtain a power purchase agreement (PPA). This step is requiring more time than anticipated, therefore, in an effort to capitalize on opportunities while the PPA negotiations are in process, a phased-project approach is being proposed with the first phase being a mixed waste processing facility. The facility will be financed and constructed by Vieste at no cost to the city. This facility will take solid waste materials currently disposed at the Landfill, separate and sort recyclables from the waste, and return the waste back to the Landfill. The recyclable materials then will be sold on the commodity market through our Materials Recovery Facility.

Implementing a mixed waste processing facility at the Landfill provides several key opportunities for the city:

1. Vieste and the city estimate that the process will remove a minimum of 26,000 tons of recyclable materials from the Landfill annually thereby increasing the Landfill's lifespan by as much as three years.
2. The city is guaranteed an annual Recycling Management Fee of \$476,000 with an annual escalator of .5%.
3. Vieste will pay the city \$100,000 annually to lease six acres of city-owned property.

The city will guarantee a commodity price of \$.0666/pound of recyclables sold on the market. Staff conducted an analysis of the past ten years of recycling commodities sales and confirmed that the required tonnage is sustainable and reasonable for both parties. The city will also collect lease, disposal, property tax, and sales tax revenues as shown in the following chart. The city will



CITY COUNCIL REPORT

incur some operational expenses related to this phase of the project in an amount of approximately \$1.2 million dollars. Staff estimates the net revenue realized from phase one will be approximately \$561,000 annually. The following chart shows the revenues and expenses related to this phase of the project.

Applicable Fund	Type	Year One
Landfill Fund	Lease Revenue	\$100K
Landfill Fund	Recycling Management Fee	\$476K
Landfill Fund	Landfill Disposal Revenue	\$1.07M
Landfill Fund	Landfill Expense	(\$1.2M)
Landfill Net		446K
General Fund	Prop Tax/GF ST	\$115K
Total Impact All Funds		561K

Previous Related Council Action

At the May 1, 2012 City Council Workshop, staff received direction to move forward with solidifying an agreement with Vieste Energy, LLC for the implementation of a waste-to-energy facility.

At the October 2, 2012 City Council Workshop, staff updated Council on the opportunity to phase the project, with the first phase being a mixed waste processing facility. Council directed staff to bring forward an agreement for their consideration at a Voting Meeting.

Community Benefit/Public Involvement

Apart from the revenue generating opportunities for both the Landfill and General Fund, the implementation of the mixed waste processing facility will positively impact the lifespan of the Landfill by diverting approximately 26,000 tons annually.



CITY COUNCIL REPORT

Budget and Financial Impacts

The operating expense impacts of \$1,200,000 to the Landfill enterprise fund will occur in FY 2013-14 instead of the current fiscal year.

Capital Expense? Yes No

Budgeted? Yes No

Requesting Budget or Appropriation Transfer? Yes No

If yes, where will the transfer be taken from?

Attachments

Staff Report

Resolution

Agreement



STAFF REPORT

To: **Horatio Skeete, Acting City Manager**
From: **Stuart Kent, Executive Director, Public Works**
Item Title: **WASTE SUPPLY AGREEMENT WITH VIESTE**
Requested Council Meeting Date: **10/9/2012**
Meeting Type: **Voting**

PURPOSE

The purpose of this report is to provide information about the opportunity to implement a mixed waste processing facility with Vieste SPE, LLC, and Vieste Energy, LLC, (Vieste) at the Glendale Municipal Landfill (Landfill). Staff requests the City Manager forward this item to City Council for their approval which includes a ground lease and a waste delivery and acceptance agreement. Both agreements are for 30 years.

BACKGROUND

Over the past two years, Public Works staff has been working with Vieste on the development of a waste-to-energy facility at the Landfill. When Vieste initially approached the city with this opportunity, the focus was on the waste-to-energy facility which requires Vieste to obtain a power purchase agreement (PPA) with one or more end-users capable of purchasing the 12 megawatts of power that is expected to be generated. The process to obtain the PPA is requiring more time than anticipated, therefore, in an effort to capitalize on opportunities while the PPA negotiations are in process, a phased-project approach is being proposed.

The first phase is the financing and construction of a mixed waste processing facility by Vieste. This facility will take solid waste materials currently disposed at the Landfill, separate and sort recyclables from the waste, and return the waste back to the Landfill. The recyclable materials then will be sold on the commodity market through our Materials Recovery Facility (MRF). The city will receive a fee for the marketing of these materials for the first 26,000 tons of recyclable material that Vieste generates and will have the opportunity to share in the revenues for additional tonnage that we market.

The second phase of the project will be the waste-to-energy facility. This phase will gasify the waste brought to the facility through a proven technology process that is already in use in the United States, Canada and other countries around the world. Parts of the waste stream that can be recycled, such as metals, will be sorted and marketed separately. The remainder of the waste stream will be processed to create synthetic gas, which can be used to heat steam and power turbines that generate electricity. Once the second phase is implemented, only the metals (aluminum and ferrous metals) will be recycled. The second phase will benefit the city through



STAFF REPORT

the extension of Landfill life and through the generation of revenue, based on a performance guarantee of energy produced. This project is consistent with the ongoing efforts of the Landfill operations to maximize opportunities to improve the financial and environmental impacts of the Landfill.

ANALYSIS

Staff has completed a thorough analysis on the benefits and costs related to both phases of this project and recommends the city move forward with implementation. The construction of a mixed waste processing facility at the Landfill provides several opportunities for the city including revenue generation and a more sustainable Landfill operation. The financial terms of the agreement are described below.

Recycling Management Fee Revenue:

Vieste estimates that the mixed waste processing facility will remove a minimum of 26,000 tons of recyclable materials from the Landfill annually and the city is guaranteed an annual Recycling Management Fee of \$476,000 in year one, with an annual escalator of .5%.

Sale of Recycling Commodities Details:

The city agrees to guarantee Vieste \$.0666/per pound of recyclables sold on the recycling commodities market. This rate increases gradually over the thirty year term of the agreement up to \$.077/per pound. Staff conducted an analysis of the past ten years of recycling commodities sales and confirmed that the required tonnage and the rate proposed would on average yield to the positive for the city. Over the past ten years, the city has collected approximately \$.0738 per pound on recyclables sold. From FY 2003 to FY 2007, the average value was \$.0598/pound and from FY 2008 to FY 2012, the value increased to \$.0876/pound. Therefore, staff believes the city will consistently meet the floor price required to cover the floor price offered to Vieste.

Lease, Property and Sales Tax Revenue:

This project involves the building of a facility to process the materials. Vieste is solely responsible for all capital investment including construction, permitting, and securing necessary environmental approvals from regulatory agencies. Vieste will be subject to property tax, a portion of which will be returned to the city from Maricopa County and will be allocated to the General Fund. The city will also collect annual lease revenue from Vieste which starts at \$100,000 in year one and will escalate each year by 2% over the 30 year term of the lease. The lease revenue is subject to the city's commercial rental tax rate per City Code and will be allocated to the General Fund.

Landfill Expense and Landfill Disposal Revenue:

As part of the agreement, the city will deliver a minimum of 120,000 tons and up to 180,000 tons to Vieste for processing annually and will pay Vieste a fee when delivering this tonnage. The fee



STAFF REPORT

rates are \$7.50/ton (2% escalation annually) for the first 120,000 tons delivered, and \$5.00/ton (2% escalation annually) for the remaining 60,000 tons, for a total of 180,000 tons. Assuming the city delivers the maximum 180,000 tons annually, the city will pay Vieste approximately \$1.2M. In exchange, Vieste will pay the city a fee when returning the materials that could not be processed back to the Landfill. The rate will be \$7.50/ton (2% escalation annually) for the first 120,000 tons, and \$5.00/ton (2% escalation annually) for the remaining tonnage. Assuming Vieste is able to process the maximum amount of the maximum delivered by the city, they would pay the city approximately \$1.07M.

Other Considerations:

Staff estimates the net revenue realized from phase one will be approximately \$561,000 annually. Removing these recyclable materials from the Landfill will also positively impact the Landfill lifespan by diverting approximately 26,000 tons annually.

FISCAL IMPACTS

Below is a chart detailing the revenues and expenses described in the Analysis section of the report for year one of the project.

Applicable Fund	Type	Year One
Landfill Fund	Lease Revenue	\$100K
Landfill Fund	Recycling Management Fee	\$476K
Landfill Fund	Landfill Disposal Revenue	\$1.07M
Landfill Fund	Landfill Expense	(\$1.2M)
Landfill Net		446K
General Fund	Prop Tax/GF ST	\$115K
Total Impact All Funds		561K

RESOLUTION NO. 4618 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE CITY MANAGER TO EXECUTE THE "WASTE SUPPLY AGREEMENT" WITH VIESTE SPE, LLC, AND VIESTE ENERGY, LLC, FOR THE OPERATION OF A MIXED WASTE PROCESSING FACILITY LOCATED AT THE GLENDALE LANDFILL, 11480 WEST GLENDALE AVENUE.

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

SECTION 1. That the City Manager or his designee is hereby authorized to execute and deliver the "Waste Supply Agreement" with Vieste SPE, LLC and Vieste Energy, LLC, for the operation of a mixed waste processing facility located at the Glendale Landfill, 11480 West Glendale Avenue, Glendale, AZ. A copy of said agreement is currently on file with the City Clerk.

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

MAYOR

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

REVIEWED BY:

City Manager

WASTE SUPPLY AGREEMENT

by and between

City of Glendale,

a municipal corporation in the

State of Arizona

(“City”),

Vieste SPE, LLC,

an Arizona limited liability company

(“Operator”)

and

Vieste Energy, LLC,

an Indiana limited liability company

(“Parent”)

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EXHIBITS

Exhibit A	Description of Site and Waste Delivery Point
Exhibit B	Waste Specifications
Exhibit C	Fees
Exhibit D	Operator Insurance Requirements

WASTE SUPPLY AGREEMENT

This Waste Supply Agreement (this “Agreement”), dated as of _____, 2012 (the “Effective Date”), is made by and between the City of Glendale, a municipal corporation in the State of Arizona (“City”), Vieste SPE, LLC, an Arizona limited liability company (“Operator”), and Vieste Energy, LLC, an Indiana limited liability company (“Parent”).

WHEREAS, City collects and disposes of non-hazardous municipal solid waste in the City of Glendale;

WHEREAS, Operator is in the business of recovering recyclable materials from municipal solid waste and converting municipal solid waste, yard waste, other discarded material, and other forms of waste into renewable energy to be sold to others through the use of its energy conversion equipment and related improvements;

WHEREAS, Operator and City have entered into that certain Ground Lease dated of even date herewith (the “Ground Lease”), under which City leases to Operator, and Operator leases from City, that certain parcel of land located on the premises of the City’s landfill located at 11480 West Glendale Avenue, Glendale, Arizona 85307, consisting of approximately six (6) acres, including certain easements incident thereto, as more particularly described in the Ground Lease and on Exhibit A attached hereto (the “Site”);

WHEREAS, as a Phase 1, Operator will initially construct facilities to collect and sort municipal solid waste (the “Waste Facilities”) on the Site and operate such Waste Facilities to sort recyclable materials from the waste stream;

WHEREAS, as a Phase 2, Operator will construct a waste-to-energy facility conversion equipment and related improvements (the “Energy Facilities”) on the Site and adjacent to the Waste Facilities and operate such Energy Facilities for the conversion of solid waste into renewable energy;

WHEREAS, Operator and City desire to enter into this Agreement to govern the rights and obligations between Operator and City related to the supply of municipal solid waste to the Site; and

WHEREAS, Parent owns greater than fifty one percent (51%) of the voting and equity interests in Operator, and is the managing member of Operator, and to induce City to enter into this Agreement, Parent has agreed to guaranty the prompt and full performance of all of Operator’s obligations under this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, City and Operator agree as follows:

1. DEFINITIONS.

1.1.1 “Affiliate” means, when used with reference to a specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is

controlled by or is under common control with the specified Person. For purposes of the foregoing, “control,” “controlled” and “under common control” with respect to any Person means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, partnership interests or other ownership interests, by contract or otherwise.

1.1.2 “Agreement” has the meaning set forth in the introductory paragraph.

1.1.3 “Business Day” means any day other than a Saturday, Sunday, or federal holiday.

1.1.4 “City” has the meaning set forth in the introductory paragraph.

1.1.5 “City Law Change Costs” has the meaning set forth in Section 6.6 below.

1.1.6 “City’s Scale House” means the scale house owned and operated by City used for weighing each delivery of Waste to the Landfill.

1.1.7 “Commercial Operation” means, as of a date certain, that the Waste Facilities (i) are commissioned in accordance with the terms of the EPC Contract, (ii) the “Substantial Completion Date” as defined in the EPC Contract has occurred, and (iii) are operating and able to receive and sort Recovered Recyclables from the Waste received at the Waste Facilities. **[Need to see the EPC Agreement.]**

1.1.8 “Commercial Operation Date” means the date on which Commercial Operation first occurs.

1.1.9 “Commission” means the Arizona Corporation Commission.

1.1.10 “Commission RES Rules” means the Commission’s Renewable Energy Standard Rules in effect on the date hereof and as amended and supplemented from time to time.

1.1.11 “Confidential Information” has the meaning set forth in Section 13.1 below.

1.1.12 “Credit Measurement Year” means each twelve (12)-month period beginning as of the Initial Operation Date and on each anniversary of the Initial Operation Date through the term of this Agreement.

1.1.13 “Day” means the twenty-four hour period beginning immediately after 12:00 o’clock midnight MST each day.

1.1.14 “Dispute” has the meaning set forth in Section 17.1 below.

1.1.15 “Effective Date” has the meaning set forth in the introductory paragraph.

1.1.16 “Energy Facilities” has the meaning set forth in the Recitals above.

1.1.17 “Environmental Attributes” means all of the presently existing or future benefits, emissions reductions, environmental air quality credits, emission reduction credits, renewable energy credits, offsets and allowances, attributable to the Energy Facilities, to the electricity produced by the Energy Facilities, or to the displacement by the Energy Facilities of fossil-fuel derived or other conventional energy generation (other than production tax credits or other monetary grants or tax credits), or otherwise attributable to the generation, purchase, sale or use of electrical energy from or by the Energy Facilities, howsoever entitled or named, resulting from the avoidance, reduction, displacement or offset of the emission of any gas, chemical or other substance, including any of the same arising out of presently existing or future legislation or regulation concerned with oxides of nitrogen, sulfur or carbon, with particulate matter, soot or mercury, or implementing the United Nations Framework Convention on Climate Change (“UNFCCC”) or the Kyoto Protocol to the UNFCCC or crediting “early action” emissions reductions, or law or regulations involving or administered by the Clean Air Markets Division of the Environmental Protection Agency, or any successor state of federal agency given jurisdiction over a program involving the transferability of Environmental Attributes, and any right of any owner or purchaser of renewable energy to report ownership of accumulated renewable energy certificates to any agency, authority or other party in compliance with applicable law and includes rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program. Environmental Attributes also includes any such Environmental Attributes attributable to the diversion of Waste from landfills.

1.1.18 “EPC Agreement” means the agreement between Operator and Abener Engineering and Construction Services, L.L.C., a Delaware limited liability company, to construct the Facilities.

1.1.19 “Event of Default” has the meaning set forth in Section 11.1 below.

1.1.20 “Facilities” means the Waste Facilities and the Energy Facilities.

1.1.21 “Ferrous Metals Recyclables” means ferrous metal material recovered from the Waste. Ferrous Metals Recyclables includes, but is not limited to, recyclables that comply with the Ferrous Specifications set forth in the ISRI Circular.

1.1.22 “Financing Documents” means, collectively, the contracts, agreements and documents by and between the Operator or any Affiliate of Operator and the Financing Parties, pursuant to which the financing for the acquisition, development, construction, ownership, operation, maintenance or leasing of the Facilities (or portfolio of assets that includes the Facilities or any interest therein) is documented.

1.1.23 “Financing Parties” means the Persons (including any trustee or agent on behalf of such Person) providing debt financing or refinancing, equity, tax equity or similar funding to Operator or any Affiliate of Operator for the acquisition, development,

construction, ownership, operation, maintenance or leasing of the Facilities (or portfolio of assets that includes the Facilities or any interest therein).

1.1.24 “Force Majeure Event” has the meaning set forth in Section 12.1 below.

1.1.25 “Forced Outage” means an unplanned component failure, transmission system failure, or other condition that requires all or part of the Energy Facilities to be removed from service immediately.

1.1.26 “Government Agency” means any federal, state, local, territorial, tribal or municipal government and any department, commission, board, bureau, agency, instrumentality, judicial or administrative body thereof having jurisdiction over the Facilities, Operator or City, as the case may be.

1.1.27 “Ground Lease” has the meaning set forth in the Recitals above.

1.1.28 “Initial Operation Date” means the Commercial Operation Date.

1.1.29 “ISRI Circular” means the most current version of the Institute of Scrap Recycling Industries, Inc. Scrap Specifications Circular.

1.1.30 “Landfill” means the City’s landfill located at 11480 West Glendale Avenue, Glendale, Arizona 85307.

1.1.31 “Law” means any statute, law, rule or regulation or any judicial or administrative interpretation thereof having the effect of the foregoing imposed by a Government Agency, whether in effect now or at any time in the future.

1.1.32 “Maximum Waste Amount” has the meaning set forth in Section 2.2.2.2 below.

1.1.33 “Minimum Waste Amount” has the meaning set forth in Section 2.2.2.1 below.

1.1.34 “Month” means a calendar month.

1.1.35 “MST” means Mountain Standard Time.

1.1.36 “Non-ferrous Metals Recyclables” means non-ferrous metal material recovered from the Waste. Non-ferrous Metals Recyclables includes, but is not limited to, recyclables that comply with the Non-Ferrous Specifications set forth in the ISRI Circular.

1.1.37 “Operator” has the meaning set forth in the introductory paragraph.

1.1.38 “Person” means any individual, corporation, partnership, limited liability company, joint venture, trust, association, joint stock company, estate, unincorporated

organization or other business entity, Government Agency or any business entity whose existence may be authorized by a Government Agency.

1.1.39 “Prime Rate” means the per annum rate of interest published by the Wall Street Journal as the prime lending rate or “prime rate”, with adjustments in that varying rate to be made on the same day as any change in that rate is so published.

1.1.40 “Prime Rate Margin” means, for any date, a rate per annum equal to 6%.

1.1.41 “Ramp-up Period” has the meaning set forth in Section 2.2.1 below.

1.1.42 “Receiving Party” has the meaning set forth in Section 13.1 below.

1.1.43 “Recovered Recyclables” means the recyclable material Operator diverts from the Waste stream and delivers to City for marketing pursuant to Section 2.6 below. Recovered Recyclables consists of Ferrous Metals Recyclables, Non-ferrous Metals Recyclables and Single Stream Recyclables.

1.1.44 “Recyclable Marketing and Management Fee” has the meaning set forth on Exhibit C attached hereto.

1.1.45 “Recycling Program” means the City’s program to collect recyclable materials from residents and businesses separate from the City’s general collection of Waste.

1.1.46 “Residual Fee” has the meaning set forth in Exhibit C attached hereto.

1.1.47 “Residuals” means any waste or ash derived from the Waste that remains after Operator has sorted Recovered Recyclables from the Waste and/or converted the Waste into renewable energy.

1.1.48 “Single Stream Recyclables” means paper fibers, plastics, and other containers recovered from the Waste. Single Stream Recyclables includes, but is not limited to, recyclables that comply with the Single Stream Specifications set forth in the ISRI Circular.

1.1.49 “Site” has the meaning set forth in the Recitals above.

1.1.50 “Specifications” means the Waste specifications attached hereto as Exhibit B, or as detailed in an applicable purchase order or change order mutually agreed upon in writing by Operator and City, in their discretion.

1.1.51 “State” means the State of Arizona.

1.1.52 “Term” has the meaning set forth in Section 8 below.

1.1.53 “Transferring Party” has the meaning set forth in Section 13.1 below.

1.1.54 “Waste” means the solid waste delivered by City to the Site to be processed in Operator’s Waste Facilities, which may include municipal solid waste, garbage, brush, debris, animal carcasses, rubbish, refuse, yard waste, other discarded material, and other forms of waste acceptable to Operator; provided, however, that such Waste must meet Operator’s Specifications as set forth in Section 2.4; provided further that the term “Waste” shall specifically exclude any materials collected by City in its Recycling Program.

1.1.55 “Waste Delivery” means the delivery of Waste to the Site, which shall be the responsibility of City.

1.1.56 “Waste Delivery Point” has the meaning set forth in Section 3.1 below.

1.1.57 “Waste Facilities” has the meaning set forth in the Recitals above.

1.1.58 “Waste Tipping Fee” has the meaning set forth in Exhibit C attached hereto.

1.1.59 “Week” means a seven day period beginning on Sunday and concluding on Saturday.

1.1.60 “Weekly Maximum Waste Amount” has the meaning set forth in Section 2.2.2 below.

2. SUPPLY OF WASTE

2.1 Delivery and Acceptance. City shall deliver to Operator, and Operator shall accept from City, Waste by delivery thereof to the Waste Delivery Point under the terms and conditions set forth in this Agreement.

2.2 Supply of Waste.

2.2.1 Operator and City acknowledge and agree there shall be no obligation on Operator to accept any Waste and no obligation on City to supply any Waste between the Effective Date and the Initial Operation Date. Operator and City further acknowledge that if the Energy Facilities are constructed concurrently with the Waste Facilities and the Waste Facilities will not begin operations separate from the Energy Facilities, there may be a ramp-up period of up to three (3) months after the Initial Operation Date (the “Ramp-up Period”) during which the Operator may test, modify, repair and replace parts of the Energy Facilities to enable the Energy Facilities to operate efficiently and economically, and during which Period Operator may instruct City not to deliver Waste to the Facilities, in which case City will not be required to pay a Waste Tipping Fee and Operator will not be required to pay a Residual Fee with respect to the Waste not delivered, but the Waste not delivered to Operator at its request will be counted towards City’s Minimum Waste Amount. Notwithstanding the foregoing, the Base Marketing and Management Fee shall begin to be payable upon the Initial Operation Date of the Waste Facilities.

2.2.2 After the Commercial Operation Date and for the remainder of the Term, City shall supply Operator the amounts of Waste as defined herein and Operator shall accept from City the amounts of Waste as defined herein; provided that the Waste delivered shall not be less than the Minimum Waste Amount and not greater than the Maximum Waste Amount, except as otherwise provided herein; subject to the right of Operator to refuse deliveries of Waste during the Ramp-up Period as provided in Section 2.2.1.

2.2.2.1 “Minimum Waste Amount” means the minimum amount of Waste for every twelve (12) Month period after the Commercial Operation Date that City shall supply Operator and Operator shall accept from City. Operator and City agree that as of the Commercial Operation Date, the Minimum Waste Amount shall be 120,000 tons of Waste per twelve (12) Month period; provided that if the Waste Facilities are operated at less than ninety-three percent (93%) of their rated capacity (the “Estimated Operational Efficiency”) during an applicable twelve (12) month period, the Minimum Waste Amount requirement shall be reduced proportionately based on the percentage of the rated capacity met (the “Actual Operational Efficiency”) as compared to the Estimated Operational Efficiency. For example, if the Actual Operational Efficiency during any applicable period is eighty-five percent (85%), the Minimum Waste Amount shall be reduced to 109,677 tons ($120,000 * 85 / 93$).

2.2.2.2 “Maximum Waste Amount” means the maximum amount of Waste for every twelve (12) Month period after the Commercial Operation Date that City shall supply Operator and Operator shall accept from City. Operator and City agree that as of the Commercial Operation Date, the Maximum Waste Amount shall be 180,000 tons of Waste per twelve (12) Month period.

During the Term, City shall deliver to the Waste Delivery Point six days (Monday through Saturday) per Week, no less than the weekly pro rata amount of the Minimum Waste Amount and up to the weekly pro rata amount of the Maximum Waste Amount (the “Weekly Maximum Waste Amount”); provided that for any week that City is not able to deliver the Weekly Maximum Waste Amount, City may increase the Weekly Maximum Waste Amount deliverable to Operator in subsequent weeks to make up the shortfall, provided that (i) in no event shall the total amount of Waste delivered to Operator during any week exceed the Weekly Maximum Waste Amount plus 10% of that amount, and (ii) in no event shall the total deliveries of Waste during any contract year exceed the aggregate Maximum Waste Amount for the year. By way of example, assume that the Weekly Maximum Waste Amount during any calendar week is 2,700 tons, and that during a particular week the total Waste delivered to Operator was 2,350 tons. In this instance, City would be entitled to deliver the 350 ton shortfall in subsequent weeks; provided that the annual Maximum Waste Amount is not exceeded; and provided that the maximum deliverable amount for any subsequent week does not exceed 2,970 (2,700 plus 10% of 2,700). Any shortfall in the delivery of the Weekly Maximum Waste Amount each week can be carried over cumulatively in the manner described (i.e., the remaining shortfall of 80 tons may be carried forward to subsequent weeks until any shortfall has been addressed or the annual Maximum Waste Amount has been delivered).

2.2.3 Operator acknowledges and agrees that it may not obtain waste for use in the Facilities from any supplier other than City without the written consent of City, which consent may be withheld in City's sole and absolute discretion.

2.3 Excess Waste. If at any time during the Term City wishes to supply Waste or Operator wishes to receive Waste greater than the Maximum Waste Amount, the requesting party shall deliver a written request to the other party. The Parties agree to negotiate in good faith additional terms and conditions for the supply and receipt of additional Waste and/or the expansion of the Facilities, including the payment of additional fees by City and/or Operator. Notwithstanding the foregoing, if any expansion of the Facilities would likely require that Waste from alternate suppliers (i.e., other than City owned Waste at the Landfill), the City's decision to authorize the expansion of the Facilities may be made in the City's sole and absolute discretion. If City authorizes the use of Waste from alternate suppliers, City shall have the right to retain any fees collected from such alternate suppliers in excess of the fees agreed upon by City and Operator.

2.4 Specifications of Waste.

2.4.1 All Waste delivered by City to Operator at the Site shall conform to the Specifications set forth in Exhibit B. In addition, during the term of this Agreement, City agrees to deliver to Operator Waste in the same general composition as is collected by or delivered to City from time to time (i.e., City agrees not to pre-process or otherwise segregate its stream of Waste in a manner that would materially alter its composition as compared to the general composition of Waste as collected by or delivered to the Landfill), and City will use commercially reasonable efforts not to materially alter the types of Waste that it is willing to accept from the types of waste that City is accepting as of the date of this Agreement; provided that nothing in this paragraph shall prohibit City from accepting any other types or amounts of waste so long as the acceptance of such waste does not interfere with City's ability to deliver sufficient Waste consistent with the foregoing equal to the Minimum Waste Amount.

2.4.2 Operator shall have an opportunity to inspect each delivery of Waste at the Site at the time of each delivery. If Operator desires to reject entire loads of Waste for failure to meet the Specifications, it must do so promptly upon delivery of the Waste at the Waste Delivery Point, and, upon such rejection, City shall be responsible for returning the rejected Waste to the Landfill at its expense. Otherwise, after Waste has been delivered to the Site, to the extent Operator subsequently determines that any Waste does not conform to the Specifications, Operator shall promptly inform City and send evidence of such non-conformance (if necessary) to City, and shall be responsible to remove such non-conforming Waste and (a) return it at Operator's expense to a location within the Landfill designated by City, or (b) if City does not designate a location, dispose of such non-conforming Waste in the reasonable discretion of Operator, with the reasonable cost of such disposal to be reimbursed by City. Non-conforming Waste shall not be subject to either a Waste Tipping Fee or a Residual Fee.

2.4.3 Should the parties disagree whether any delivered Waste conforms to the Specifications, such dispute shall be resolved in accordance with the procedures set forth in Section 17.1.

2.4.4 The Specifications have been established primarily to address issues relating to the use of Waste in the Energy Facilities, taking into consideration (i) the process for converting Waste into power, as intended by Operator with respect to its Energy Facilities at the date of execution of this Agreement, (ii) the nature and character of the Waste currently generated in the City of Glendale, and (iii) the nature and character of the Waste for qualification as a Biogas Electricity Generator under the Commission RES Rules. As a result, if the Energy Facilities are constructed, the Specifications shall be subject to review, from time to time, to be compatible with any further development or changes to the Energy Facilities, or changes in the nature and character of the Waste generated in the City of Glendale, or changes in the regulations affecting the Commission RES Rules; provided, however, that in no event may the Specifications be modified without the written consent of both parties. City and Operator will discuss any new Specifications and mutually agree to any such changes to the Specifications in writing.

2.5 Operator Priority to Receive Waste. City agrees that Operator shall have priority to all Waste received by the City at the Landfill up to the Maximum Waste Amount.

2.6 Marketing of Recyclables. Operator hereby engages City to prepare for market and market the Recovered Recyclables. Operator shall be responsible for processing, baling and delivery of the Recovered Recyclables to City at a point designated by City for further processing by City in the City's existing Materials Recovery Facility and sale by City. Operator shall pay City, an annual Recyclable Marketing and Management Fee as set forth in Exhibit C.

2.7 Priority of Landfill Operations. Notwithstanding anything herein to the contrary, Operator understands and agrees that City's primary interest and obligation is the safe and conforming operation of the Landfill in compliance with applicable Laws and permit conditions, and that any interest of Operator in the Waste shall remain secondary to the operation and management of the Landfill to comply with applicable Laws and permit conditions. Notwithstanding anything herein to the contrary, Operator, and Operator's rights and interests under this Agreement, shall not interfere with City's compliance with any permits, authorizations, licenses, Laws, ordinances or regulations related to the Landfill, including, without limitation, the design, division, construction, operation, expansion (vertical or horizontal), maintenance, and monitoring of the Landfill, or the closure and post-closure of the Landfill. City shall be free at all times during the term hereof to take any action in connection with the Landfill that City deems necessary, in City's sole judgment, to comply with any applicable Law, without regard to the effect of such action on the quantity or quality of Waste to be made available to Operator. Nothing in this Agreement shall require City to incur costs or expenses in taking any actions that are not required to be taken by City in this Agreement with respect to compliance with applicable Laws and permits relating to the Landfill and City's operations at the Landfill (without taking into account Operator's activities for purposes of making the foregoing determination). Notwithstanding anything to the contrary set forth in this Agreement, (i) in the event of any action or event that in the reasonable judgment of City may create a health or safety emergency at or relating to the Landfill, or (ii) if the delivery of Waste to

Operator pursuant to the terms of this Agreement may, in the reasonable judgment of City, result in non-compliance of any legal requirement or permit of City or Operator, then City may, in addition to any other remedy it may have hereunder, cease delivery of Waste to Operator during the existence of any of the foregoing conditions, and the suspension of the delivery of Waste pursuant to the terms of this sentence shall not be a breach of this Agreement and shall not give rise to any liabilities or obligations to City hereunder or otherwise, including, but not limited to, consequential or special damages.

3. DELIVERY OF WASTE

3.1 Waste Delivery Point. “Waste Delivery Point” means the portion of the Site designated by Operator as the location where each Waste Delivery by City shall be made, such location being more particularly described on Exhibit A attached hereto. Operator shall bear all responsibility (including all costs thereof) for installation, operation and maintenance of all facilities at and downstream of the Waste Delivery Point necessary to receive and process Waste in a timely and efficient manner.

3.2 Waste Delivery Days. All deliveries of Waste made by City to the Site shall be on Monday through Saturday between the hours of 7:00 a.m. and 5:00 p.m. MST, unless Operator agrees in writing to change such times and dates.

3.3 Title. Title to all Environmental Attributes and title to and all liability associated with Waste shall pass to Operator only after Waste is delivered to the Waste Delivery Point and the Waste has passed the initial Operator inspection referred to in Section 2.4.2 and conforms to the Specifications; provided that any Waste that does not pass the initial inspection is promptly returned to the possession of City.

3.4 Monthly Notifications. During the Term, City shall notify Operator in writing on or before 9:00 am local time on or before the 20th day of each Month, or 9:00 am the following Business Day if the 20th day of the Month is not a Business Day, of the following: (a) the estimated quantities of Waste to be delivered to the Waste Delivery Point for the following Month, and (b) the estimated type and character of Waste to be delivered to the Waste Delivery Point if unusual or abnormal for such Month, which estimates shall be informational only and not binding on City.

3.5 Consistent Waste Delivery Schedule. City shall use commercially reasonable efforts to establish and maintain, based upon the Minimum Waste Amount set forth in Section 2.2.2.1, a consistent schedule for the delivery of Waste for each Week without unduly large fluctuations. In the event that City revises its estimates of its schedule of delivery of Waste, or if a fluctuation in the consistent delivery of Waste is unavoidable, City shall promptly notify Operator of such modification or fluctuation of which it becomes actually aware.

4. MEASUREMENT OF WASTE AND RESIDUALS

4.1 City’s Scale House. City, at its expense, shall continue to furnish, install and maintain equipment for City’s Scale House, and shall comply with all applicable Laws relating to the operation of City’s Scale House with respect to its Landfill operations. Except as otherwise provided herein, measurement of Waste and Residuals delivered hereunder shall be by

City's Scale House, which is owned, operated, and maintained by City and located on City owned property. All measurements shall be made at City's expense by City. Operator shall be able, at its own expense, to connect to the City scale system to receive real time data regarding the amount of Waste being delivered to the Facilities and the amount of Residuals returned to City or ash sold by Operator. City shall furnish Operator with a monthly measurement statement on or before the fifteenth (15th) day of the Month following the Month in which the Waste and Residuals included in such statement were delivered or sold. The measurement statement shall show total deliveries of Waste and Residuals during the preceding Month. If City's measurement statement is not questioned by Operator within fifteen (15) Days after receipt of same by Operator, the quantities shown on the statement shall be deemed final and binding on Operator. Operator acknowledges that City is required to comply with weights and measures requirements of the State and that so long as City is required to test and/or calibrate the equipment at City's Scale House at least once each year and City provides Operator with details relating to any tests or calibration, the City scales shall not be subject to any other testing or calibration. If for any reason City is no longer subject to any State testing on at least an annual basis, or if City fails to provide the testing/calibration information that it provides to the State, Operator may, at its expense, test the accuracy of City's scales, but not more than one (1) time in any consecutive twelve (12) month period. City shall be given at least three (3) days' prior written notice of any test proposed by Operator and may have a representative present. After City's receipt of Operator's notice to test City's scales, City shall not perform any repairs, maintenance or any other adjustments to the scales until the Operator test is completed. Operator shall supply City with a copy of each calibration report. If any calibration test performed by or at the request of Operator demonstrates an inaccuracy of (x) plus-or-minus 3% or more, the billings based on such meter shall be corrected by the amount of the inaccuracy for the period which is definitely known to be affected and City shall recalibrate, repair and/or replace its scales as soon as reasonably practicable, or (y) less than plus-or-minus 3%, no such corrections of billings will be made and the previous readings shall be deemed to have been accurate. If a re-calibration, repair, or replacement is required and the relevant period of inaccuracy is not definitely known or agreed-upon, such correction in the relevant billings shall be made for a period extending for half of the time elapsed since the date of the preceding calibration test, not to exceed six (6) months. All adjustments to correct previous measurement statements and billings shall be made promptly by City. Operator and City may, by written agreement, establish special procedures for a specific problem or accept delivery of quantities not computed in a manner described herein.

5. (intentionally deleted)

6. PAYMENTS; FEES; EXPENSES

Operator and City agree to make the payments set forth below:

6.1 Payments by City.

6.1.1 City shall pay to Operator a Waste Tipping Fee as set forth on Exhibit C.

6.1.2 City shall pay Operator a Recyclable Resale Fee as set forth on Exhibit C.

6.2 Payments by Operator.

6.2.1 Operator shall pay to City a Residual Fee as set forth on Exhibit C.

6.2.2 Operator shall pay to City a Legal Review Fee as set forth on Exhibit C.

6.2.3 Operator shall pay to City a Recyclable Marketing and Management Fee determined and payable as set forth on Exhibit C.

6.3 Operator's Monthly Invoice. Operator shall deliver to City a monthly invoice on or before the twentieth (20th) day of each Month for the net amount of the Waste Tipping Fee less the Residual Fee for the preceding Month. Payment therefore shall be made by Electronic Funds Transfer ("EFT") to the account specified on Operator's invoice. Such payment must be received on or before the twentieth (20th) day after receipt by City of Operator's invoice. If City, acting in good faith, disputes any invoiced amount, City shall timely pay the undisputed amount of the invoice and provide written notice of the Dispute pursuant to Section 17.1. Upon resolution of any such Dispute, any unpaid amounts due from City shall be promptly paid to Operator. All invoices under this Agreement shall be delivered to the applicable party at the address provided for such party in the Notices section of this Agreement. On City's request, Operator will make available copies of measurement records applicable to any invoice during normal business hours. Any errors in an invoice from Operator shall be reported by City to Operator in writing within sixty (60) days after receipt of such invoice. To the extent Operator agrees that adjustments are warranted, Operator shall make such adjustments within thirty (30) days after its receipt of such report of error. Each invoice becomes final as to City if Operator has not received such a report of error from City within sixty (60) days of City's receipt of such invoice.

6.4 City's Monthly Recyclable Resale Statement and Payment. City shall deliver to Operator, on or before the twentieth (20th) day of each Month, a statement setting forth the amount of the Recyclable Resale Fee for the preceding Month, along with Payment for the Recyclable Resale Fee, which shall be made by Electronic Funds Transfer ("EFT") to the account specified by Operator. If Operator, acting in good faith, disputes any statement of Recyclable Resale Fee received from City, Operator shall written notice of the Dispute pursuant to Section 17.1. Upon resolution of any such Dispute, any unpaid amounts due from City shall be promptly paid to Operator. All statements under this Agreement shall be delivered to the applicable party at the address provided for such party in the Notices section of this Agreement. On Operator's request, City will make available copies of records of revenues received by City for its resale of the Recovered Recyclables applicable to any statement during normal business hours. Any errors in a statement from City shall be reported by Operator to City in writing within sixty (60) days after receipt of such statement. To the extent City agrees that adjustments are warranted, City shall make such adjustments within thirty (30) days after its receipt of such report of error. Each statement becomes final as to Operator if City has not received such a report of error from Operator within sixty (60) days after Operator's receipt of such statement.

6.5 Late Payments. Late payment of any invoice submitted hereunder or any payment due pursuant to Section 6.4 shall bear interest at a rate per annum equal to the Prime

Rate plus the Prime Rate Margin, but not to exceed the maximum rate of interest provided by any applicable Law.

6.6 Other Adjustments. To the extent there is any change in an ordinance, rule, regulation or zoning adopted by the City solely in its discretion that applies solely to Operator or Operator's line of business, affecting the Facilities from and after the Effective Date that results in the incurrence of additional costs and expenses by Operator, including any taxes, environmental compliance expenses and other expenses, charges, fees, assessments or costs of compliance (such costs collectively referred to as the "City Law Change Costs"), City shall reimburse Operator for any such City Law Change Costs incurred by Operator; provided, however, City shall have received from Operator reasonable documentation establishing that (a) Operator is liable to pay such City Law Change Cost, and (b) Operator has paid the full amount of the City Law Change Cost. Reimbursement by City for any City Law Change Costs shall be made only by way of an increase in prospective Waste Tipping Fees. The increase in the Waste Tipping Fee each month shall be an amount the numerator of which shall be the sum of City Law Change Costs paid by Operator during such month, and the denominator of which shall be the tons of Waste accepted by Operator during such month, which amount shall be reflected on the monthly measurement statement delivered by Operator to City.

6.7 No Offsets, Etc. All payments required to be made by one party to the other party under this Agreement shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, other than those allowed by the terms of this Agreement.

7. REPRESENTATIONS AND WARRANTIES; INSURANCE

7.1 Operator Representations and Warranties. Operator represents and warrants to City that (i) it is an entity duly organized and validly existing under the laws of the State of Arizona, (ii) the execution, delivery and performance of this Agreement by Operator have been duly authorized by all requisite company action and do not require any other company action or approval, (iii) it has the power and authority to execute and deliver this Agreement and to perform its obligations hereunder, and (iv) the execution of this Agreement and the full performance and enjoyment of the rights of the Operator under this Agreement will not breach or in any way be inconsistent with (a) the terms and conditions of any license, contract, understanding, or agreement, whether express, implied, written, or oral between the Operator and any third party, (b) the provisions of its organizational documents, or (c) any order, writ, injunction or decree of any court or governmental authority entered against it or by which any of its property is bound.

7.2 City Representations and Warranties. City represents and warrants to Operator that (i) it is a municipal corporation duly organized and validly existing under the laws of the State of Arizona, (ii) the execution, delivery and performance of this Agreement by City have been duly authorized by all requisite action and do not require any additional action or approval, (iii) it owns the Landfill, has the power and authority to execute and deliver this Agreement and to perform its obligations hereunder, and (iv) the execution of this Agreement and the full performance and enjoyment of the rights of the City under this Agreement will not breach or in any way be inconsistent with (a) the terms and conditions of any license, contract, understanding, or agreement, whether express, implied, written, or oral between the City and any third party,

(b) the provisions of its organizational documents, or (c) any order, writ, injunction or decree of any court or governmental authority entered against it or by which any of its property is bound.

7.3 Waste Specifications. City represents and warrants to Operator that it will not implement changes to its Recycling Program that are not required by applicable Laws if such changes would materially and negatively alter the nature or amounts of Recovered Recyclables in the stream of Waste delivered to the Waste Delivery Point.

7.4 Insurance. During the term of this Agreement, Operator agrees to maintain at a minimum the amounts and types of insurance set forth on Exhibit D attached hereto.

7.5 Limitation on Damages. Notwithstanding anything to the contrary contained herein, neither party shall be liable to the other party for incidental, special, consequential, punitive or indirect damages of any nature.

8. TERM

8.1 Term. The term of this Agreement shall continue in full force and effect until the date that is thirty (30) years after the Commercial Operation Date unless earlier terminated as provided herein, or extended as provided herein (the "Term").

8.2 Term Extension. If Operator has constructed the Energy Facilities by January 1, 2019, Operator may extend the initial Term for one (1) period of five (5) years under the same terms and conditions of this Agreement; provided, however, that Operator shall provide written notice to City of such extension at least one hundred eighty (180) Days prior to the end of the initial Term; and provided that Operator has also extended the Ground Lease for a corresponding term.

9. DUTIES AND OBLIGATIONS OF OPERATOR

9.1 Disposal of Residuals. Except as provided in this Section 9.1, unless City is prohibited by applicable Law from accepting Residuals, Operator shall deliver the Residuals to the Landfill and pay the City the Residual Fee for all such Residuals. Notwithstanding the foregoing, Operator may, in its discretion, sell any ash generated by the Energy Facilities to one or more third parties and retain the proceeds from such sale; provided that Operator shall nonetheless be required to pay a Residual Fee to the City for all ash sold to third parties. If Operator sells any ash for an amount in excess of the Residual Fee, Operator shall be entitled to retain revenues in excess of the Residual Fee payable to City.

9.2 Commercial Operation Requirements. Operator shall use its commercially reasonable efforts to achieve the Commercial Operation Date by December 26, 2013. If for any reason construction of the Waste Facilities have not begun by January 1, 2014, or if the Waste Facilities have not begun Commercial Operation by December 31, 2014, City may, in its sole and absolute discretion, terminate this Agreement upon written notice to Operator; provided that Operator may suspend City's ability to terminate this Agreement pursuant to this Section 9.2 so long as it pays City a fee of \$10,000 per month, payable in advance as of the first day of each month following December 31, 2014, until Operator begins Commercial Operation of the Waste Facilities. If Operator fails to make a payment for any month after City has given Operator thirty

(30) days written notice of non-payment, or if the Waste Facilities have not begun Commercial Operation by December 31, 2019, City may, in its sole and absolute discretion, terminate this Agreement upon written notice to Operator.

9.3 Facilities Construction. The Facilities shall be constructed in accordance with all construction and drainage requirements as provided in the EPC Agreement. Construction of the Facilities shall be subject to the normal plan review, licensing, inspection, and permitting requirements of City.

9.4 Waste Storage. Operator shall develop and set aside storage space at the Site sufficient to store Waste delivered by City in accordance with the provisions of this Agreement to the Waste Delivery Point.

9.5 Facilities Employees. Operator shall use commercially reasonable efforts to employ at the Waste Facilities at least fifteen (15) individuals on a full-time (forty (40) hours per week) basis, and five (5) additional individuals on a full-time (forty (40) hours per week) basis at the Energy Facilities if constructed.

10. TAXES

10.1 City Taxes. City shall pay the amount of any and all excise, ad valorem, sales, use or similar taxes now or hereafter imposed by a Government Agency by reason of the transportation or supply of Waste delivered hereunder to Operator at the Waste Delivery Point, if any. City will furnish Operator with satisfactory exemption certificates when exemption from any such taxes or other costs is claimed. City shall promptly notify the Operator of the estimated amount of taxes due hereunder, and provide evidence of payment thereof satisfactory to Operator.

10.2 Operator Taxes. Except as otherwise provided in Section 6.6 with respect to City Law Change Costs, Operator shall pay the amount of any and all excise, ad valorem, sales, use or similar taxes now or hereafter imposed by a Government Agency by reason of the supply or use of Waste delivered or made available hereunder to Operator from and after receipt of the Waste at the Waste Delivery Point. Operator will furnish City with satisfactory exemption certificates when exemption from any such taxes is claimed. Operator shall promptly notify the City of the estimated amount of taxes or other costs due hereunder, and provide evidence of payment thereof satisfactory to City.

11. DEFAULT; TERMINATION

11.1 Event of Default

11.1.1 The occurrence of any one of the following will constitute an Event of Default with respect to City:

11.1.1.1 City fails to make payments for undisputed amounts due under this Agreement to Operator within thirty (30) days after written notice from Operator that such payment is unpaid and due;

11.1.1.2 City fails to comply with any material provision of this Agreement (other than the obligation to pay money when due, which is covered by Section 11.1.1.1 above), and such failure continues uncured for ninety (90) days after written notice thereof by Operator; provided, however, that subject to the provisions of Section 12 (Force Majeure) if such breach is not susceptible to cure within ninety (90) days, then such ninety (90) day cure period shall be extended for an additional period (not to exceed one hundred eighty (180) days, provided City is diligently pursuing such cure) to cure such breach;

11.1.1.3 City (a) is unable to pay its debts as such debts become due; (b) makes a general assignment or an arrangement or composition with or for the benefit of its creditors; (c) fails to controvert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against such Party under any bankruptcy or similar Law; or (d) takes any action for the purpose of effecting any of the foregoing;

11.1.1.4 A proceeding or case is commenced, without the application or consent of City, in any court of competent jurisdiction, seeking: (a) its liquidation, reorganization of its debts, dissolution or winding-up, or the composition or readjustment of its debts; (b) the appointment of a receiver, custodian, liquidator or the like of City or of all or any substantial part of its assets; or (c) similar relief in respect of City under any Law relating to bankruptcy, insolvency, reorganization of its debts, winding-up, composition or adjustment of debt, and such proceeding remains in effect, for a period of ninety (90) days; and

11.1.1.5 Any representation made by City under Section 7.2 is false in any material respect when made and City fails to remedy such false representation within thirty (30) days after written notice thereof by Operator; provided, however, that if such breach is not susceptible to cure within thirty (30) days, this such thirty (30) day cure period should be extended for an additional period (not to exceed one hundred eighty (180) days, provided City is diligently pursuing such cure) to cure such breach.

11.1.1.6 Any uncured default by the City pursuant to the Ground Lease.

11.1.2 The occurrence of any one of the following constitute an Event of Default with respect to Operator:

11.1.2.1 Operator fails to make payments for undisputed amounts due under this Agreement to City within thirty (30) days after written notice from City that such payment is unpaid and due;

11.1.2.2 Operator fails to comply with any material provision of this Agreement (other than the obligation to pay money when due which is covered by Section 11.1.2.1 above), and such failure continues uncured for ninety (90) days after written notice thereof by City; provided, however, that subject to the provisions of Section 12 (Force Majeure) if such breach is not susceptible to cure

within ninety (90) days, then such ninety (90) day cure period shall be extended for an additional period (not to exceed one hundred eighty (180) days, provided Operator is diligently pursuing) to cure such breach; provide further, however, that notwithstanding the foregoing, if any breach or default by Operator under this Agreement subjects City to any risk of loss, liabilities, legal actions, penalties, fines, etc., with respect to any permits, licenses or authorization relating to City's Landfill operations ("Risk of Penalty"), Operator's right to cure shall be for a period equal to the period mandated by any applicable regulatory authority with respect to City's obligation to cure or rectify any violations relating to its permits, licenses, or other authorizations; provide further, however, that in circumstances involving Risk of Penalty, the additional cure periods otherwise made available to Financing Parties in Sections 11.3 shall not apply.

11.1.2.3 Operator (a) is unable to pay its debts as such debts become due; (b) makes a general assignment or an arrangement or composition with or for the benefit of its creditors; (c) fails to controvert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against such Party under any bankruptcy or similar law; or (d) takes any action for the purpose of effecting any of the foregoing;

11.1.2.4 A proceeding or case is commenced, without the application or consent of Operator, in any court of competent jurisdiction, seeking: (a) its liquidation, reorganization of its debt, dissolution or winding up, or composition or readjustment of its debt; (b) the appointment of a receiver, custodian, liquidator or the like of Operator or of all or any substantial part of its assets; or (c) insolvency, reorganization of its debts, winding up, composition or adjustment of debts, and such proceeding remains in effect, for a period of ninety (90) days; and

11.1.2.5 Any representation made by Operator under Section 7.1 is false in any material respect when made and Operator fails to remedy such false representation within sixty (6) days after written notice thereof by City; provided, however, that if such breach is not susceptible to cure within sixty (60) days, this such sixty (60) day cure period should be extended for an additional period (not to exceed one hundred eighty (180) days, provided Operator is diligently pursuing such cure) to cure such breach.

11.1.2.6 Any uncured default by the Operator pursuant to the Ground Lease.

11.2 Remedies for Default. Subject to the limitations contained in Section 11.3.1, if an Event of Default occurs with respect to a defaulting party at any time during the Term, the non-defaulting party may (a) deliver a written notice that establishes a date (which date will be no earlier than thirty (30) days after the non-defaulting party delivers notice) on which this Agreement will be terminated, (b) set off, recoup, net and apply undisputed amounts due and payable to the defaulting party against undisputed amounts due and payable from the non-defaulting party, and (c) pursue any other remedies available at Law or in equity, including actual damages, subject to the limitation on damages provided in Section 7.5.

11.3 Financing Party Cure Rights. City recognizes that Operator is securing outside funding for the development of the Facilities contemplated under this Agreement. City's right to exercise the option to terminate the operational aspects of this Agreement pursuant to Section 11.2 is subject to City's first delivering to the Financing Parties, simultaneously with delivery thereof to Operator, notice to Operator under Section 11.1. Except as provided in Section 11.1.2.2 with respect to matters involving a Risk of Penalty, in addition to any cure periods granted to Operator set forth under Section 11.1, City shall afford to the Financing Parties the additional time provided below to cure such Event of Default or to cause the Financing Parties' designee to assume this Agreement and cure such Operator Event of Default within such additional time period; provided that any designee of the Financing Parties would be an eligible assignee of Operator pursuant to the provisions of Section 18.1.

11.3.1 In the case of an Event of Default arising from the failure of Operator to pay any sums of money that this Agreement requires (each, a "Monetary Default"), City shall afford the Financing Parties an additional period of sixty (60) Days from the later of (a) the receipt of City's notice to the Financing Parties pursuant to Section 11.3 to cure such default, or (b) the expiration of the applicable cure period in this Agreement, for the Financing Parties to cause Operator to cure such default.

11.3.2 In the case of an Event of Default that is not a Monetary Default, except as provided below, City shall afford the Financing Parties an additional period of ninety (90) days from the later of (a) the receipt of City's notice to the Financing Parties pursuant to Section 11.3 to cure such default, or (b) the expiration of the applicable cure period in this Agreement, for the Financing Parties to cause Operator to cure such default.

11.4 Effect of Termination. Notwithstanding expiration or termination of this Agreement for any reason, (a) each party will remain responsible for payment of any amounts due pursuant to Section 11.2 and for the payment of expenses as are required of it hereunder and for the performance of obligations to be performed prior to the effective date of termination; and (b) the Confidentiality provisions of Section 13.1 and any other provisions providing for performance after expiration or earlier termination of this Agreement shall survive such expiration or termination. Except to the extent expressly provided herein, no termination of this Agreement shall be deemed to be a waiver or relieve any party from damages caused by reason of a material misrepresentation or a material breach of a representation, warranty, covenant or agreement made by the other party, if such misrepresentation or breach is the cause of such termination.

12. FORCE MAJEURE

12.1 Force Majeure Event. As used in this Agreement "Force Majeure Event" means any event or circumstance that wholly or partly prevents or delays performance of any obligations arising under this Agreement, but only if and to the extent such event or circumstance is beyond the reasonable control of, and not the result of the fault or negligence of, or caused by, the Party seeking to have its performance obligation excused thereby, which by the exercise of due diligence such Party could not reasonably have been expected to avoid, and which by exercise of due diligence it has been unable to overcome, including but not limited to: (1) acts of God, including but not limited to landslide, lightning, earthquake, storm, hurricane,

flood, drought, tornado, or other natural disasters and weather related events; (2) fire or explosions; (3) transportation accidents affecting delivery of equipment only if such accident occurs prior to the Commercial Operation Date of the Waste Facilities; (4) sabotage, blockade, riot, acts of terrorism, war (declared or undeclared) and acts of public enemy; (5) strikes, work stoppages or other labor disputes or (6) restraint by court order or other Governmental Authority; provided that such restraint is of a general nature and not specific to the Facilities, the Agreement or the City or Operator and does not arise from any action or inaction of the Party claiming the Force Majeure Event that is in contravention of this Agreement or in violation of Law.

Force Majeure Events shall not include: (i) a failure of performance of any third party, except to the extent that such failure was caused by an event that would otherwise satisfy the definition of a Force Majeure Event as defined above; (ii) economic hardship; (iii) lack of need for, or the availability of more favorable terms for the purchase or sale of, Waste during the Term; (iv) failure to timely apply for, obtain or maintain Permits; (v) breakage or malfunction of equipment (except to the extent that such failure was caused by an event that would otherwise satisfy the definition of a Force Majeure Event as defined above); and (vii) a Forced Outage of the Energy Facilities (except to the extent that such outage was caused by an event that would otherwise satisfy the definition of a Force Majeure Event as defined above).

12.2 Applicability of Force Majeure Event.

12.2.1 Neither party will be in breach or liable for any delay or failure in its performance under this Agreement to the extent such performance is prevented or delayed due to a Force Majeure Event;

12.2.2 The delay in performance will be of no greater scope and of no longer duration than is directly caused by the Force Majeure Event; and

12.2.3 The party whose performance is delayed or prevented by the Force Majeure Event will proceed with commercially reasonable efforts to overcome the events or circumstances preventing or delaying performance and will provide weekly written progress reports to the other party during the period that performance is delayed or prevented, describing actions taken and to be taken to remedy the consequences of the Force Majeure Event, the schedule for such actions, and the expected date by which performance will no longer be affected by the Force Majeure Event.

12.2.4 Notwithstanding the foregoing, if the failure to by Operator to cure a Force Majeure Event would subject City to a Risk of Penalty as defined in Section 11.1.2.2, Operator shall use its best efforts to overcome the events or circumstances preventing or delaying performance and will provide weekly written progress reports to City during the period that performance is delayed or prevented, describing actions taken and to be taken to remedy the consequences of the Force Majeure Event, the schedule for such actions, and the expected date by which performance will no longer be affected by the Force Majeure Event.

13. CONFIDENTIALITY

13.1 Confidential Information. As used herein, “Confidential Information” shall be only that information provided to City that is clearly marked as “CONFIDENTIAL” and that reasonably seeks to protect commercially confidential or proprietary information, such as information regarding Operator’s advertising, distribution, supply, manufacture, development, marketing, customers, governmental and regulatory correspondence, strategic plans, business activities, finances, or information regarding its costs, productivity, business practices or technological advances. Confidential Information shall be held by the City as confidential information in accordance with the City’s record retention schedules and thereafter destroyed, provided however, should the Confidential Information not be destroyed in accordance with the records retention schedule, the Confidential Information will continue to be treated as confidential.

13.2 Restrictions. The City shall make no use of Confidential Information except to advance the purposes of this Agreement in accordance with its terms, and shall use reasonable efforts to keep secret and prevent the disclosure of such Information to third parties. Confidential Information shall remain the sole and absolute property of Operator and City shall make reasonable efforts to restrict disclosure of the Confidential Information to those of its employees, representatives, consultants or contractors having a need to know such Information to accomplish the purposes of this Agreement.

13.3 Limitations. The above restrictions on the use and disclosure of Confidential Information shall not apply to any Confidential Information that (i) is already known to City (other than by way of disclosure by Operator) or has been independently developed by City at the time of disclosure, as evidenced by written records; or (ii) is or becomes generally available to the public other than through any act or omission of City in breach of this Agreement; or (iii) is acquired by City from a third party having the lawful right to disclose the same. Notwithstanding any provisions of this Agreement regarding confidentiality, secrets, or protected rights, Operator acknowledges that all documents provided to City may be subject to disclosure by laws related to open public records.

13.4 Public Records. Notwithstanding any provisions of this Agreement regarding confidentiality, secrets, or protected rights, Operator acknowledges that all documents provided to City may be subject to disclosure by laws related to open public records.

13.4.1 Operator understands that disclosure of some or all of the Confidential Information subject to this Agreement may be required by law. In the event City receives a request for disclosure that is reasonably calculated to incorporate Confidential Information, City agrees to provide Operator with notice of that request, which shall be deemed given when received by or personally delivered to Operator or deposited with a nationally recognized courier (e.g., FedEx or UPS) by City for overnight delivery to the address of Operator specified below for notices.

13.4.2 Within five (5) Days after notice is given by City, Operator will inform City in writing of any objection by Operator to the disclosure of the requested

Information. Failure by Operator to object timely shall be deemed to waive any objection and any remedy against City for disclosure.

13.4.3 If Operator objects to disclosure within the time specified, Operator agrees to handle all aspects related to request, including properly communicating with the requestor and timely responding with information the disclosure of which Operator does not object thereto.

13.4.4 Operator agrees to indemnify and hold harmless City from any claims, actions, lawsuits, or any other controversy or remedy, in whatever form, that arise from the failure to comply with the request for information and the laws pertaining to public records, including, without limitation, the failure to disclose the Information within the notice period provided above, and defend City in any legal action and payment of any penalties or judgments. In no way limiting any other provisions of this Agreement, the provisions of this Section 13 shall survive the termination of this Agreement.

14. GOVERNING LAW

14.1 Governing Law. This Agreement shall be governed, interpreted and construed in accordance with the substantive laws of the State of Arizona, without regard to any conflict-of-laws or choice-of-law principles thereof. Each Party hereto irrevocably (a) submits to the jurisdiction of the federal and state courts located in Phoenix, Arizona; (b) waives any objection that it may have to the laying of venue of any proceedings brought in any such court; and (c) waives any claim that such proceedings have been brought in an inconvenient forum.

15. INDEMNIFICATION

15.1 City Indemnification. To the extent allowed by applicable Law, City shall indemnify, defend, and hold harmless Operator, its affiliates and each of their respective current or former officers, directors, employees, representatives and agents (the "Operator Indemnitees") from all third party actions, losses, claims, demands, damages, costs, and liabilities (including reasonable attorneys' fees) to which any Operator Indemnitees are or may become subject insofar as they arise out of or are alleged or claimed to arise out of (i) any material breach by City of any covenant or obligation or any of its representations or warranties hereunder, (ii) any claim brought by or on behalf of an injured party due to physical injury or death arising out of City's delivery of Waste to the Waste Delivery Point as contemplated herein, (iii) any claim against Operator or damages incurred by Operator resulting from the failure of Waste to meet the Specifications at the time of delivery to Operator at the Waste Delivery Point, provided that once Operator has accepted the Waste, City shall have no responsibility or obligation relating to the use of the Waste by Operator, or (iv) any grossly negligent or willful act or omission by City or its employees, agents or subcontractors; provided that Operator Indemnitees shall not be indemnified to the extent of any liability arising from or relating to the bad faith, fraud, willful misconduct or negligence of Operator.

15.2 Operator Indemnification. Operator shall indemnify, defend, and hold harmless City, its affiliates and each of their respective current or former officers, directors, employees, representatives and agents (the "City Indemnitees") from all third party actions, losses, claims,

demands, damages, costs and liabilities (including reasonable attorneys' fees) to which any City Indemnitees are or may become subject insofar as they arise out of or are alleged or claimed to arise out of (i) any material breach by Operator of any covenant or obligation or any of its representations or warranties hereunder, (ii) any claim brought by or on behalf of an injured party due to personal injury or death arising out of Operator's receipt of Waste at the Waste Delivery Point or use of Waste in the Facilities, or (iii) any grossly negligent or willful act or omission by Operator or its employees, agents, or subcontractors; provided that City Indemnitees shall not be indemnified to the extent of any liability arising from or relating to the bad faith, fraud, willful misconduct or negligence of City. Operator waives any right of subrogation against City.

15.3 Indemnification Notice. A party entitled to indemnification hereunder agrees to give prompt written notice (in no event later than ten (10) Business Days following its receipt) to the indemnifying party after the receipt by such party of any written notice to the commencement of any action, suit, proceeding, or investigation, or threat thereof, made in writing for which such party will claim indemnification pursuant to this Agreement. Unless, in the reasonable judgment of the indemnified party, a conflict of interest may exist between the indemnified party and the indemnifying party with respect to a claim, the indemnifying party may assume the defense of such claim with counsel reasonably satisfactory to the indemnified party. If the indemnifying party is not entitled to, or elects not to, assume the defense of such claim, it will not be obligated to pay the fees and expenses of more than one counsel with respect to such claim. The indemnifying party will not be subject to any liability of any settlement made without its consent, which shall not be unreasonably withheld.

16. NOTICES

16.1 Notices. Any communications or notices required or permitted to be given by either party under this Agreement shall be in writing, and shall be either personally delivered or sent by nationally recognized courier (e.g., FedEx or UPS), to the addresses set forth below, or to such other addresses as designated by one party to the other party by notice pursuant hereto.

If to Operator:

Vieste SPE
105 West Adams Street, Suite 2700
Chicago, IL 60603
Attention: Co-Managing Member

With a required copy to:

James R. Hinton
Ridenour, Hinton & Lewis, P.L.L.C.
201 North Central Ave., Suite 3300
Phoenix, AZ5004

If to City:

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

With a required copy to:

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

A notice shall be deemed to be given at the time of delivery in the case of personal delivery, or upon confirmed receipt (including courier confirmation) in the case of commercial courier.

17. DISPUTE RESOLUTION

17.1 Dispute or Claim. Any cause of action, claim or dispute which either party may have against the other arising out of or relating to this Agreement, including, but not limited to, the interpretation of the terms hereof or any Laws or regulations that affect this Agreement, or the transactions contemplated hereunder, or the breach, termination or validity thereof (“Dispute”) shall be submitted in writing to the other party. The written submission of any Dispute shall include a concise statement of the question or issue in dispute together with a statement listing the relevant facts and appropriate supporting documentation.

17.2 Good Faith Resolution. The parties agree to cooperate in good faith to expedite the resolution of any Dispute. Pending resolution of a Dispute, the parties shall proceed diligently with the performance of their obligations under this Agreement.

17.3 Informal Negotiation. The parties shall first attempt in good faith to resolve any Dispute through informal negotiations by senior management of each party. If the parties are unable to resolve any Dispute through informal negotiations, each party shall be free to seek any remedy available to such party in law or equity as determined in its discretion.

17.4 Arbitration; Equitable Remedies. Notwithstanding the foregoing, if the parties are unable to resolve any Dispute relating to whether Waste being delivered to Operator meets the Specifications as provided in Section 2.4.3 through the informal negotiations described in Section 17.3 within thirty (30) days after a party’s receipt of written notice of such Dispute, then either party may submit the Dispute for resolution by final and binding arbitration. Such arbitration shall be administered pursuant to the Commercial Arbitration Rules of the American Arbitration Association in effect at the time of the arbitration or such other rules that the parties may mutually agree upon, and shall be conducted in Phoenix, Arizona. Within ten (10) days after either party submits a request for arbitration, each party shall submit a list of three (3) acceptable arbitrators in the order of preference. If there is a match of any names on the respective lists, the highest ranked person on either of the lists will be the arbitrator. If there is no match, the two highest ranked potential arbitrators on each list shall, within three (3) Business Days, jointly select an arbitrator, who shall be the arbitrator for the proceedings. If the two potential arbitrators fail to agree on an acceptable arbitrator within the specified time period, then

either party may request that the then Presiding Judge of the Superior Court of the State of Arizona, County of Maricopa, make such appointment. Any award or determination rendered by the arbitrator may be entered in any court having jurisdiction.

17.5 Recovery of Costs. If any legal proceeding (including, without limitation, arbitration) shall be brought to recover any amount due under this Agreement, or for or on account of any breach of or to enforce or interpret any of the terms, covenants or conditions of this Agreement, the prevailing party shall be entitled to an award of its fees and costs (whether taxable or not) including, without limitation, expert witness fees, all litigation or dispute resolution related expenses, and reasonable attorneys' fees incurred in connection with such action, and any appeal therefrom, which award shall be made by the court (or arbitrator, if applicable), not a jury.

18. ASSIGNMENT

18.1 Assignment. Except as provided herein, the rights and obligations under this Agreement may not be assigned or transferred by either party without the prior written consent of the other party, such consent not to be unreasonably withheld, conditioned, or delayed, except that either party may, upon thirty (30) Days written notice to the other party, assign this Agreement to an Affiliate; provided that such assignment shall not relieve the assigning party of any of its obligations hereunder. Notwithstanding the foregoing, City may assign all of its rights, duties and obligations hereunder to a third party purchaser of the Landfill without the consent of Operator (provided that any such purchaser agrees in a writing (in a form reasonably acceptable to Operator) to assume all of City's duties and obligations hereunder, and provided that City shall remain liable under the terms of this Agreement for any failure in performance of the obligations of the City set out in this Agreement relating to periods prior to the effective date of any authorized assignment). In no way limiting the foregoing, the City's refusal to give consent to a proposed assignment by Operator shall not be deemed unreasonable if, among other things, (i) City, or any of its Affiliates, has a significant or material history of litigation or disputes involving the proposed assignee or any of its Affiliates; (ii) the proposed assignee or any of its Affiliates is in the waste disposal or waste hauling business; (iii) the proposed assignee is not considered creditworthy by the City in its reasonable judgment, which, at a minimum, means having financial capability that is not less than the financial capability of Operator as of the Effective Date, taking into account other financial assurances provided by Operator in this Agreement; or (iv) the proposed assignee does not, in the City's reasonable judgment, have the requisite technical experience relating to the assumption of Operator's obligations hereunder. For purposes of this Agreement, and in no way limiting the foregoing, the sale or transfer of fifty percent (50%) or more of the direct or indirect voting, legal or equitable interest in Operator as compared to the interests as of the date of this Agreement, in either case in a single transaction or in a series of transactions, shall be deemed to be an assignment of Operator's rights and obligations under this Agreement and subject to the provisions of this Section 18.1.

18.2 Collateral Assignment. Notwithstanding Section 18.1 above, upon the giving of written notice to the other party, either party may assign this Agreement to a collateral assignee pursuant to a form of collateral assignment reasonably acceptable to the non-assigning party; provided that the party requesting the collateral assignment shall pay the reasonable costs and expenses of the non-assigning party relating to the review and negotiation of a mutually

acceptable form of collateral assignment. Any collateral assignment hereunder shall acknowledge the right, but not the obligation, of the collateral assignee or its permitted assignee under the collateral assignment to take all actions and exercise all rights of the assigning party in accordance with this Agreement, to have itself or its permitted assignee substituted for the assigning party under this Agreement, or to sell, assign, transfer or otherwise dispose of this Agreement to a permitted assignee; provided that, at a minimum, any subsequent sale, assignment, or transfer of this Agreement to any third party other than collateral assignee shall be subject to the same limitations and restrictions on transfer and assignment as set forth in Section 18.1 above, and provided that no such sale, transfer or assignment shall be made unless all obligations of the assigning party hereunder are current or are brought current at the time of such sale, transfer or assignment. Notwithstanding anything in this Agreement to the contrary, neither party shall terminate this Agreement or any of its obligations hereunder as the result of any default of the other party under this Agreement until after notice of such default is given by the party claiming the default to the collateral assignee and the expiration of any cure periods provided for in this Agreement, which cure periods shall begin to run from the time notice is given to the alleged defaulting party. Any process, stay or injunction issued by any Government Agency or pursuant to any bankruptcy or insolvency proceeding involving a party that would prohibit the collateral assignee from exercising such cure rights shall extend such cure periods for the period of such prohibition and if this Agreement is rejected or otherwise terminated as a result of any bankruptcy or insolvency proceeding affecting the assigning party, the non-assigning party will, at the request of the collateral assignee, enter into a new agreement with the collateral assignee or a permitted assignee thereof having terms no less favorable to the non-assigning party than the terms of this Agreement; provided that any obligations of the assigning party that were outstanding at the time of any such bankruptcy or insolvency proceeding are paid in full or brought current, as the case may be, at the time any such new agreement is entered into (without taking into account the effect of any such bankruptcy or insolvency proceedings).

19. GENERAL

19.1 Waiver or Delay. Any waiver or delay by either party of exercising any remedy for any breach of any provision hereof shall not be construed to be a waiver of any subsequent breach of such provisions or a waiver of the provision itself or any waiver of any other breach.

19.2 Independent Contractors. Operator and City are independent contractors and nothing in this Agreement shall be construed to create a partnership, joint venture, license or employment relationship between the parties.

19.3 Entire Agreement. Except with respect to the Ground Lease, this Agreement constitutes the entire agreement of the parties with regard to its subject matter and supersedes all previous oral or written representations, agreements and understandings between Operator and City. This Agreement may be changed only by a writing signed by both parties which specifically indicates the terms or provisions of this Agreement are being amended by such writing.

19.4 Enforceability. In the event that any one or more provisions of this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement,

and all other provisions shall remain in full force and effect. If any of the provisions are held to be excessively broad, any such provision shall be reformed and construed by limiting and reducing it so as to be enforceable to the maximum extent permitted by Law.

19.5 Document Execution. Each party to this Agreement shall execute, acknowledge and deliver such further instruments and documents, and do all such other acts and things as may be required by Law or as may be reasonably necessary to carry out the intents and purposes of this Agreement. The parties will cooperate with each other and offer reasonable assistance in carrying out their respective responsibilities under this Agreement.

19.6 Binding. This Agreement shall be binding upon the parties and their respective successors and permitted assigns and shall insure to the benefit of the parties and their respective successors and permitted assigns.

19.7 Agreement Preparation. This Agreement was not prepared by either party to the exclusion of the other and shall not be construed against either party by reason of its preparation.

19.8 Headings. The headings used in this Agreement are for convenience of reference only and are not a part of the text hereof.

19.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall together constitute a single agreement. This Agreement may also be executed via facsimile or electronically in “pdf” format, and each copy shall be deemed an original.

[end of document; signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate by their representatives duly authorized as of the date first written above.

CITY:

CITY OF GLENDALE, ARIZONA

OPERATOR:

Vieste SPE, LLC

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

Parent Guaranty

Notwithstanding anything herein to the contrary, to induce City to enter into the foregoing Waste Supply Agreement, Vieste Energy, LLC, an Indiana limited liability company (“Parent”), as the owner of greater than fifty one percent (51%) of the voting and equity interests in Vieste SPE, LLC, an Arizona limited liability company (“Operator”), and as the managing member of Operator, hereby unconditionally guarantees the prompt and complete performance of and compliance with all covenants, obligations and duties of Operator arising under or relating to the Waste Supply Agreement. Parent’s obligations pursuant to this paragraph are primary and not secondary, and City need not seek satisfaction of any breach from Operator before seeking satisfaction from Parent, which waives any notice of acceptance of this Guaranty. If City, for any reason, seeks to enforce Parent’s compliance with the provisions of this Guaranty, the same rights and remedies and choice of law provisions as are included in the Waste Supply Agreement shall apply. In addition, Parent hereby makes the same representations and warranties as to Parent as those made by Operator pursuant to Section 7.1 of the Waste Supply Agreement, except that Parent represents that it is a limited liability company duly formed and validly existing under the laws of the State of Indiana.

Notices given to Parent shall be delivered and deemed received in the same manner as set forth in Section 16 of the Waste Supply Agreement with respect to Operator.

This Guaranty shall continue in full force and effect until all obligations of Operator under the Agreement have been paid or performed in full. Parent agrees that the obligations of Parent pursuant to this Guaranty shall remain in full force and effect without regard to, and shall not be released, discharged or affected in any way by any of the following (whether or not Parent shall have any knowledge thereof): (a) any termination, amendment, modification or other change in the Waste Supply Agreement; (b) any failure, omission or delay on the part of City to conform or comply with any term of the Waste Supply Agreement; (c) any waiver, compromise, release, settlement or extension of time of performance or observance of any of the obligations or agreements contained in the Waste Supply Agreement; (d) any dissolution of Parent or any voluntary or involuntary bankruptcy, insolvency, reorganization, arrangement, readjustment, assignment for the benefit of creditors, composition, receivership, liquidation, marshalling of assets and liabilities or similar events or proceedings with respect to Operator, Parent or any other guarantor of Operator’s obligations, as applicable, or any of their respective property or creditors, or any action taken by any trustee or receiver or by any court in any such proceeding; (e) any merger or consolidation of Operator, Parent, or any other guarantor of Operator’s obligations into or with any person, or any sale, lease or transfer of any of the assets of Operator, Parent or any other guarantor of Operator’s obligations to any other person; or (f) any change in the ownership of the capital stock or equity ownership of Operator, Parent or any other guarantor of Operator’s obligations or any change in the relationship between Operator, Parent or any other guarantor of Subsidiary’s obligations, or any termination of any such relationship.

Parent waives any defense arising by reason of any disability or other defense of Operator or by reason of the cessation from any cause whatsoever of the liability of Operator. Operator waives all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Guaranty.

[Parent’s signature is on the following page.]

IN WITNESS WHEREOF, the undersigned has executed this Parent Guaranty as of the date of the foregoing Waste Supply Agreement.

Vieste Energy, LLC,
An Indiana Limited Liability Company

By: _____
Its: _____

EXHIBIT A

DESCRIPTION OF SITE AND WASTE DELIVERY POINT

[attached]

EXHIBIT B
WASTE SPECIFICATIONS

Acceptable Waste Types: In general “Acceptable Waste” is defined as that waste defined as Municipal Solid Waste (“MSW”) by the Arizona Corporation Commission in accordance with the definition of a “Biogas Electricity Generator” as defined in the Arizona Administrative Code (“A.A.C.”) R14-2-1802(A)(1) as of the effective date of the Definitive Agreement and further defined as follows:

1. Municipal Solid Waste

- a. Typical MSW generated from residential households and commercial establishments such as retail stores, restaurants, warehouses and other non-manufacturing facilities. The MSW may include waste from the following solid waste composition categories: paper products, plastics, organics (wood, yard and food), glass, metals (ferrous and nonferrous) and other waste such as textiles/clothes, carpet/upholstery, disposable diapers, small furniture/mattresses, rubber products and miscellaneous organics.
- b. Non-treated wood and lumber, paper, metals and plastic construction debris incidental to MSW is acceptable.
- c. Household Hazardous Waste (HHW) that is typically part of MSW generated from residential households and is the result of the use of materials that are labeled for and sold for "home use".

2. Yard Waste

- a. Yard waste may include brush, cuttings, trimmings, limbs, logs, leaves and pruning from trees, shrubs and lawns. All yard waste shall be delivered in lengths no larger than five (5) feet and a maximum of 12-inch diameter.
- b. Yard Waste shall only be an Acceptable Waste Type from and after the date on which the Energy Facilities are commissioned pursuant to the contract to construct the Energy Facilities.

Unacceptable Waste: “Unacceptable Waste” means discarded material that: (i) is or contains any infectious waste, radioactive, volatile, corrosive, flammable, explosive, biomedical, bio-hazardous material or hazardous, dangerous, or toxic substances, as defined pursuant to or listed or regulated under applicable federal, state or local law; (ii) is prohibited by federal, state or local law, regulation, rule, code, ordinance, order, permit or permit condition from being received, handled, transported to or disposed of at the Facilities; (iii) Operator reasonably believes would, as a result of or upon receipt or disposition, be a violation of local, state or federal law, regulation or ordinance, including land use restrictions or conditions applicable to the Facility; or (iv) in Operator’s opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Operator or City to potential liability.

Unacceptable Waste includes all “Listed” and “Characteristic” waste pursuant to the Resource Conservation and Recovery Act (RCRA) hazardous waste definitions.

Specifically, Unacceptable Waste includes the following, but not limited to:

1. Refrigerant/fluorocarbons (CFC) containing appliances.
2. Appliances such as refrigerators, freezers, air conditioners, ovens, dish washers, stoves, grills and other appliances.
3. Computers, printers, copiers, televisions and other electronics.
4. Mercury containing waste such as thermometers, switches, fluorescent lighting and any item that the mercury containing elements have not been removed.
5. Sludge of any type (except that after the Energy Facilities have been completed and are operational and if a facility producing energy from such sludge qualifies as a an Eligible Renewable Energy Resource under the Commission RES Rules or the Commission otherwise authorizes energy produced from such sludge to count toward a utility’s Annual Renewable Energy Requirement under the Commission RES Rules, up to 7.5% of the first 150,000 tons of Delivered Waste annually may consist of sludge, and up to 10.0% of the Delivered Waste above 150,000 tons annually may consist of sludge).
6. Partial or whole automotive, truck and heavy equipment tires.
7. Lead acid storage batteries.
8. Regulated asbestos containing material (RACM).
9. Waste containing polychlorinated biphenyls (PCBs).
10. Medical waste of any type.
11. Propane and other gas cylinders, tanks or vessels.
12. Construction & demolition (C&D) waste.
13. Liquid waste of any type including do-it yourself motor oil.
14. Industrial waste of any type.
15. Power and utility poles.
16. Street sweeping debris.

EXHIBIT C

FEES

WASTE TIPPING FEE

City shall pay to Operator a “Waste Tipping Fee” for each ton of Waste delivered by City to the Waste Delivery Point. The Waste Tipping Fee shall initially be Seven Dollars and Fifty Cents (\$7.50) per ton for up to the Minimum Waste Amount and Five Dollars and Zero Cents (\$5.00) per ton for all Waste above the Minimum Waste Amount, and each rate shall escalate at a rate of two percent (2.0%) per year over the rate for the immediately preceding year. The initial adjustment shall occur on the first anniversary of the Commercial Operation Date, with subsequent adjustments occurring on each anniversary of the Commercial Operation Date.

RESIDUAL FEE

Operator shall pay to City a “Residual Fee” for residuals left over from the recovery of Recovered Recyclables by Operator and/or the preparation of the Waste into feedstock for the Energy Facilities or ash produced by the Energy Facilities, with the residual fee to be Seven Dollars and Fifty Cents (\$7.50) per ton of residuals equal to the Minimum Waste Amount and Five Dollars and Zero Cents (\$5.00) per ton for all residuals above the Minimum Waste Amount, and each rate shall escalate at a rate of two percent (2.0%) per year over the rate for the immediately preceding year. The initial adjustment shall occur on the first anniversary of the Commercial Operation Date, with subsequent adjustments occurring on each anniversary of the Commercial Operation Date. Except for ash generated by the Energy Facilities, which Operator may sell as provided in Section 9.1, Operator shall deliver all residuals to City, unless the City is unable to accept the residuals, or instructs Operator to deliver the residuals to another location. If City is unable to accept the residuals or instructs Operator to deliver the residuals to another location, City shall reimburse Operator for all costs Operator incurs in disposing of such residuals.

LEGAL REVIEW FEE

Operator shall be responsible for and reimburse to City the reasonable expense, not to exceed Fifty Thousand Dollars (\$50,000) in the aggregate (the “Legal Review Fee”), in connection with the legal review by a third party legal firm selected by City for legal advice related to this Agreement and the Ground Lease. The Legal Review Fee shall be paid by Operator to City upon closing of funding for Operator’s development of the Waste Facilities.

RECYCLABLE MARKETING AND MANAGEMENT FEE

Operator shall pay City a “Recyclable Marketing and Management Fee” comprised of the Base Marketing and Management Fee, the Marketing and Management Fee Incentive, and the Recyclable Resale Incentive. All payments to City will be made at the times designated below, and shall be made by EFT to the account specified by City. In addition, the parties acknowledge that if Operator develops the Energy Facilities and enters into a related power purchase agreement that in any way relates to or involves City, the parties will, in good faith, negotiate any additional host or other similar fees that may be appropriate under the circumstances.

“Base Marketing and Management Fee” shall be \$476,000 per year, such amount to escalate at a rate of 0.50% per year beginning on the first anniversary of the Commercial Operation Date, with subsequent adjustments occurring on each anniversary of the Commercial Operation Date. The Base Marketing and Management Fee shall be payable on a monthly basis, in arrears, with each monthly payment due on or before each monthly anniversary of the Initial Operation Date.

“Marketing and Management Fee Incentive” shall be \$0.0034 per pound of Recovered Recyclables in excess of 26,000 per year (or after the Energy Facilities achieve Commercial Operation, 12,600 per year) diverted from the Waste delivered to the Site, with the per pound rate to escalate at a rate of 0.50% per year beginning on the first anniversary of the Commercial Operation Date, with subsequent adjustments occurring on each anniversary of the Commercial Operation Date. The Marketing and Management Fee Incentive shall be due and payable on or before the twentieth (20th) day following the end of each Credit Measurement Year.

“Recyclable Resale Incentive” shall equal the “Base Recyclable Resale Incentive” plus the “Additional Recyclable Resale Incentive.” The Recyclable Resale Incentive shall be due and payable on or before the twentieth (20th) day following the end of each Credit Measurement Year.

The “Base Recyclable Resale Incentive” equals 15% of any Base Excess Recyclable Revenue. Base Excess Recyclable Revenue is, for each Credit Measurement Year, the total revenue received by Operator for its resale of Recovered Recyclables less the “Projected Recycling Revenue Floor” amount from the chart below for the applicable Credit Measurement Year, less any Credited Refund Amount. The Projected Recycling Revenue Floor is used only as a baseline for determining the Base Recyclable Resale Incentive, and shall not be construed as a guaranty by City of any amount of revenue to Operator relating to the resale of Recovered Recyclables.

Credit Measurement Year ending in	Projected Recycling Revenue Floor – <u>Waste Facility Only</u> (Combination Ferrous, Non-ferrous and Single Stream Recyclables)	Projected Recycling Floor – <u>Waste and Energy Facilities (No Single Stream Recyclables)</u>
2014	\$4,750,000	\$3,750,000
Thereafter	Increases at a rate of 0.50% per year.	Increases at a rate of 0.50% per year.

The “Additional Recyclable Resale Incentive” shall equal 10% of any Additional Excess Recyclable Revenue. Additional Excess Recyclable Revenue is, for each Credit Measurement Year, the revenue received by Operator for its resale of Recovered Recyclables above the “Additional Recyclable Resale Trigger” amount from the chart below for the applicable Credit Measurement Year. The Additional Recyclable Resale Trigger is used only as a baseline for determining the Additional Recyclable Resale Incentive, and shall not be construed as a guaranty by City of any amount of revenue to

Operator relating to the resale of Recovered Recyclables. The Additional Recyclable Resale Incentive is in addition to the Base Recyclable Resale Incentive to be paid with respect to any revenues above the Additional Recyclable Resale Trigger.

Credit Measurement Year ending in	Additional Recyclable Resale Trigger – <u>Waste Facility Only</u> (Combination Ferrous, Non-ferrous and Single Stream Recyclables)	Additional Recyclable Resale Trigger – <u>Waste and Energy Facilities</u> (No Single Stream Recyclables)
2014	\$5,251,000	\$4,194,000
Thereafter	Increases at a rate of 0.50% per year.	Increases at a rate of 0.50% per year.

RECYCLABLE RESALE FEE

City shall pay Operator a monthly “Recyclable Resale Fee” equal to the actual proceeds received by City for its resale of the Recovered Recyclables during the prior Month.

In addition to the monthly Recyclable Resale Fee, City shall, if applicable, pay Operator, within thirty (30) days after the end of each Credit Measurement Year, an annual “Supplemental Recyclable Resale Fee”, computed as follows; provided that Operator shall not be entitled to the Supplemental Recyclable Resale Fee with respect to any Recovered Recyclables delivered to the City that do not meet the applicable specifications in the ISRI Circular:

- The Average Floor Recyclable Rate for each Credit Measurement Year is as follows:

Credit Measurement Year ending in	Average Floor Recyclable Rate (per pound of Recovered Recyclables resold by City) – <u>Waste Facility Only</u> (Combination Ferrous, Non- ferrous and Single Stream Recyclables)	Average Floor Recyclable Rate (per pound of Recovered Recyclables resold by City) – <u>Waste and Energy Facilities</u> (No Single Stream Recyclables)
2014	\$0.0666	\$0.1664
2015	\$0.0669	\$0.1673
2016	\$0.0673	\$0.1681
2017	\$0.0676	\$0.1689
2018	\$0.0679	\$0.1698
2019	\$0.0683	\$0.1706
2020	\$0.0686	\$0.1715

2021	\$0.0690	\$0.1723
2022	\$0.0693	\$0.1732
2023	\$0.0696	\$0.1741
2024	\$0.0700	\$0.1749
2025	\$0.0703	\$0.1758
2026	\$0.0707	\$0.1767
2027	\$0.0711	\$0.1776
2028	\$0.0714	\$0.1785
2029	\$0.0718	\$0.1794
2030	\$0.0721	\$0.1803
2031	\$0.0725	\$0.1812
2032	\$0.0728	\$0.1821
2033	\$0.0732	\$0.1830
2034	\$0.0736	\$0.1839
2035	\$0.0739	\$0.1848
2036	\$0.0743	\$0.1857
2037	\$0.0747	\$0.1867
2038	\$0.0751	\$0.1876
2039	\$0.0754	\$0.1885
2040	\$0.0758	\$0.1895
2041	\$0.0762	\$0.1904
2042	\$0.0766	\$0.1914
2043	\$0.0770	\$0.1923
Thereafter	Increases at a rate of 0.50% per year.	Increases at a rate of 0.50% per year.

- The “Actual Recyclable Revenue” is the total amount of the Recyclable Resale Fee paid by City to Operator during the Credit Measurement Year.
- The “Actual Recyclable Rate” is computed as Actual Recyclable Revenue, divided by the number of pounds of Recovered Recyclables resold by City during the Credit Measurement Year.
- If the Actual Recyclable Rate is less than the Average Floor Recyclable Rate **and** the Actual Recyclable Revenue is less than the Additional Recyclable Resale Trigger for the Credit Measurement Year, City shall pay Operator an amount (the “Supplemental Recyclable Resale Fee”) equal to the Average Floor Recyclable Rate minus the Actual Recyclable Rate, times the number of pounds of Recovered Recyclables resold by City during the Credit Measurement Year.

Refund of Supplemental Recyclable Resale Fee: If a Supplemental Recyclable Resale Fee is paid by City to Operator for any year, Operator shall, within thirty (30) days after the end of any subsequent Credit Measurement Year, refund to City an amount (the “Credited Refund Amount”) equal to any excess of Actual Recyclable Revenue paid to Operator during that subsequent Credit Measurement Year above the Additional Recyclable Resale Trigger for the year in which that subsequent Credit Measurement Year concluded. If the Credited Refund Amount is less than the Supplemental Recyclable Resale Amount, any remaining Supplemental Recyclable Resale Amount not yet refunded to City shall be added to any Credited Refund Amount for a subsequent year. The intent of this paragraph is that the aggregate unrefunded Supplemental Recyclable Resale Fees paid by City shall be subject to refund in any subsequent year during the term of this Agreement where the Additional Recyclable Resale Trigger is met up to the difference between the Actual Recyclable Revenue paid to Operator and the Additional Recyclable Resale Trigger amount for that year.

Short Credit Measurement Years – Year of Initial Commercial Operations for Energy Facilities: For purposes of determining the Marketing and Management Fee Incentive, the Recyclable Resale Incentive, and the Supplemental Recyclable Resale Fee, if applicable, during the Credit Measurement Year in which the Energy Facilities (if developed) achieve Commercial Operations, (i) the regular Credit Measurement Year shall be separated into two short Credit Measurement Years, with the first short Credit Measurement Year ending on the day prior to such Commercial Operations, and the second short Credit Measurement Year beginning as of the day such Commercial Operations begin, (ii) the baseline targets for purposes of determining the Marketing and Management Fee Incentive and the Recyclable Resale Incentive for the two short Credit Measurement Years shall be pro-rated, based on the number of days in each short Credit Measurement Year divided by 365 (with no proration being necessary for the determination of the Supplemental Recyclable Resale Fee since that fee is not based on annual targets), and (iii) the appropriate targets from columns relating to “Waste Facility Only” and “Waste and Energy Facilities” shall be used for the respective short Credit Measurement Years. For subsequent Credit Measurement Years, the targets for the respective Incentives and Fees shall be based on the “Waste and Energy Facilities” targets.

EXHIBIT D

OPERATOR INSURANCE REQUIREMENTS

Definitions. Capitalized terms that are used but not otherwise defined in this Exhibit D (this “Exhibit”) shall have the meanings set forth in this Waste Supply Agreement.

1. Operator shall maintain the following insurance coverages during the Term, or for such additional time as required in any section below:

- Statutory Workers’ Compensation
- Commercial General Liability (including Liquor Liability)
- Commercial Automobile Liability
- Excess Liability
- All Risk Property and Boiler & Machinery

The above coverages shall comply with the following:

a. **Statutory Workers’ Compensation:** Operator shall maintain statutory workers’ compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over all employees of Operator engaged in the performance of work relating to management of the Facilities.

b. **Commercial General Liability:** Operator shall maintain commercial general liability insurance covering all operations by or on behalf of Operator on an occurrence basis insuring against bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, products and completed operations. Further, the policy shall include coverage for liquor liability and the hazards commonly referred to as XCU (explosion, collapse, and underground). The policy shall contain severability of interest provisions and shall be at least as broad as Insurance Service Office (ISO) form 1986. The limits of commercial general liability insurance required of Operator shall be no less than the following:

\$1,000,000 bodily injury and property damage each occurrence

\$2,000,000 general aggregate (annual)

\$2,000,000 products/completed operations aggregate, and

\$1,000,000 personal and advertising injury

In the event the commercial general liability insurance policy is written on a “claims-made” basis, the retroactive date shall be no later than the Effective Date. Coverage shall extend for at least five (5) years after termination of the Waste Supply Agreement and shall be evidenced by annual certificates of insurance.

c. **Commercial Automobile Liability**: Operator shall maintain commercial automobile liability insurance with respect to all vehicles used in the performance of work at the Facilities and away from the Facilities, whether owned, non-owned, borrowed, leased or hired, with limits no less than the following:

\$1,000,000 combined single limit for bodily injury and property damage.

The commercial automobile liability insurance shall be endorsed with the MCS-90 endorsement in accordance with Applicable Laws.

d. **Excess Liability**: Operator shall maintain excess liability insurance on an occurrence basis, insuring against bodily injury, personal injury, and property damage, and all other coverages as specified in Sections 1(b) (commercial general liability) and 1(c)(automobile liability) of this Exhibit over and above the limits required for each such coverage. The limits of excess liability insurance shall be no less than the following:

\$25,000,000 each occurrence

\$25,000,000 annual aggregate

\$25,000,000 products/completed operations (annual).

Total per occurrence limits of \$25,000,000 may be satisfied in any combination of primary and excess policies of insurance. Any applicable retention shall be the sole responsibility of Operator.

e. **All Risk Property**: Operator shall maintain all risk property and boiler & machinery insurance to insure against physical loss or damage to the Facilities (including any personal property owned by the City and used in connection with the Facilities) and all personal property of Operator while at the Facilities. Such coverage shall be written on a replacement cost basis, include flood and earthquake coverage, and shall not be subject to co-insurance.



CITY COUNCIL REPORT

Meeting Date: **10/9/2012**
Meeting Type: **Voting**
Title: **INTERGOVERNMENTAL AGREEMENT WITH THE MARICOPA COUNTY DEPARTMENT OF TRANSPORTATION FOR USE OF CITY INSPECTORS ON NORTHERN PARKWAY**
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 Maricopa County for the use of city inspectors on the Northern Parkway project.

Background Summary

The first phase of Northern Parkway is currently under construction, encompassing a four-mile stretch along the Butler Drive alignment, from Sarival Avenue to Litchfield Road, and then shifting southeastward along Northern Avenue to Dysart Road. This roadway will ultimately become a 12.5-mile, high-capacity expressway connecting Loop 303 to US 60 (Grand Avenue).

The purpose of this IGA is to provide inspection services by city personnel for the first phase of the Northern Parkway project. The city will provide eligible inspection services, and the county shall apply the eligible costs of these services toward the city's local match contribution to the project in accordance with the 2008 Northern Parkway IGA.

Previous Related Council Action

On April 26, 2011, City Council approved an IGA between Maricopa County and the City of Glendale for ownership, operation and maintenance of Northern Parkway from Sarival Avenue to Dysart Road.

On September 23, 2008, City Council approved an IGA between Maricopa County and the cities of El Mirage, Peoria and Glendale for construction of Northern Parkway from Loop 303 to Grand Avenue. As provided in the 2008 IGA, Maricopa County is responsible for arranging and overseeing the construction of the Northern Parkway project, including field engineering and inspection work.



CITY COUNCIL REPORT

Community Benefit/Public Involvement

Upon completion, Northern Parkway will provide regional connectivity, enhance east-west mobility, serve expected population and employment growth, reduce travel time, augment flood protection and enhance economic development potential in western Glendale.

Public meetings specifically addressing the Northern Parkway were held in February and July 2003, and in June and December of 2005. Seven meetings with individual neighborhoods were held in January through March 2006.

Budget and Financial Impacts

As outlined in the IGA, city staff will provide inspection services for Northern Parkway construction from Sarival Avenue to Dysart Road. At the agreed-upon rate of \$45.00 per hour, staff estimates the cost of construction inspection services will total approximately \$265,000, which the county will apply toward the city's local match contribution to the Northern Parkway Project.

Inspection services provided by Transportation staff are estimated to be \$95,000, and inspection services provided by Engineering Department staff will cost approximately \$170,000. The cost of inspection services will be charged to the Northern Parkway Project account (2210-65016-551200), which is GO-funded. Funding is available in the FY 2012-13 capital improvement plan. The expenditure of matching funds for Northern Parkway was authorized by City Council on September 23, 2008.

Capital Expense? Yes No

Budgeted? Yes No

Requesting Budget or Appropriation Transfer? Yes No

If yes, where will the transfer be taken from?

Attachments

Staff Report

Resolution

Agreement



STAFF REPORT

To: **Horatio Skeete, Acting City Manager**
From: **Jamsheed Mehta, AICP, Executive Director, Transportation Services**
Item Title: **INTERGOVERNMENTAL AGREEMENT WITH THE MARICOPA COUNTY DEPARTMENT OF TRANSPORTATION FOR USE OF CITY INSPECTORS ON NORTHERN PARKWAY**
Requested Council Meeting Date: **10/9/2012**
Meeting Type: **Voting**

PURPOSE

This report describes the need to enter into an intergovernmental agreement (IGA) with the Maricopa County Department of Transportation (MCDOT) for the use of city inspectors on the Northern Parkway project. The purpose of this report is to request that this item be placed on an agenda for City Council action.

BACKGROUND

The first phase of Northern Parkway is currently under construction, encompassing a four-mile stretch along the Butler Drive alignment, from Sarival Avenue to Litchfield Road, and then shifting southeastward along Northern Avenue to Dysart Road. This roadway will ultimately become a 12.5-mile, high-capacity expressway connecting Loop 303 to US 60 (Grand Avenue).

The purpose of this IGA is to provide inspection services by city personnel for the first phase of the Northern Parkway project. The city will provide eligible inspection services, and the county shall apply the eligible costs of these services toward the city's local match contribution to the project in accordance with the 2008 Northern Parkway IGA.

ANALYSIS

MAG federal funds are committed to complete the Northern Parkway from Loop 303 to Loop 101 over the next 14 years. The total cost of the 14-year project is \$330.83 million. These federal funds require a 30 percent local match, which totals \$99.25 million. As part of an agreement, those matching funds have been committed by all four partner communities: Glendale at 40

percent (\$39.7 million); Maricopa County at 30 percent (\$29.78 million); Peoria at 20 percent (19.85 million); and El Mirage at 10 percent (\$9.925 million).

This IGA provides for Glendale staff to inspect Northern Parkway construction work. The rate for the inspectors and material testing technicians will be \$45.00 per hour, and the county will apply the eligible costs of these services toward the city's local match contribution. City inspectors will be trained on the county's automated system to complete required weekly timesheets, and the city will provide monthly reports to the county on charges to the project.

Because the city will be responsible for maintenance of Glendale's portion of the roadway once construction is complete, it is beneficial for Glendale employees to conduct the inspections to help ensure that construction meets city standards.

On September 23, 2008, City Council approved an IGA between Maricopa County and the cities of El Mirage, Peoria and Glendale for improvements to Northern Parkway from Loop 303 to Grand Avenue. As provided in the 2008 IGA, Maricopa County is responsible for overseeing the construction of the Northern Parkway project, including field engineering and inspection work.

On April 26, 2011, City Council approved an IGA between Maricopa County and the City of Glendale for ownership, operation and maintenance of Northern Parkway from Sarival Avenue to Dysart Road. This IGA states that the city will accept ownership of the project right-of-way upon completion of the project and transfer of land.

Public meetings specifically addressing the Northern Parkway were held in February and July 2003, and in June and December 2005. An agency scoping meeting was held in February 2005, and meetings with individual neighborhoods were held in January through March 2006.

FISCAL IMPACTS

As outlined in the IGA, city staff will provide inspection services for Northern Parkway construction from Sarival Avenue to Dysart Road. At the agreed-upon rate of \$45.00 per hour, staff estimates the cost of construction inspection services will total approximately \$265,000, which the county will apply toward the city's local match contribution to the Northern Parkway Project.

Inspection services provided by Transportation staff are estimated to be \$95,000, and inspection services provided by Engineering Department staff will cost approximately \$170,000. The cost of inspection services will be charged to the Northern Parkway Project account (2210-65016-551200), which is GO-funded. Funding is available in the FY 2012-13 capital improvement plan. The expenditure of matching funds for Northern Parkway was authorized by City Council on September 23, 2008.

RESOLUTION NO. 4619 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 MARICOPA COUNTY DEPARTMENT OF TRANSPORTATION FOR CONSTRUCTION INSPECTION SERVICES FOR NORTHERN PARKWAY FROM SARIVAL AVENUE TO DYSART ROAD.

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

SECTION 1. That it is deemed in the best interest of the City of Glendale and the citizens thereof that an Intergovernmental Agreement with the Maricopa County Department of Transportation for construction inspection services for Northern Parkway from Sarival Avenue to Dysart Road 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

INTERGOVERNMENTAL AGREEMENT
BETWEEN MARICOPA COUNTY AND THE CITY OF GLENDALE
FOR CONSTRUCTION INSPECTION SERVICES FOR NORTHERN
PARKWAY

FROM SARIVAL AVENUE TO DYSART ROAD

(TT195)

(C-64-11- _____ -2-00)

This Intergovernmental Agreement (**Agreement**) is between the County of Maricopa, a political subdivision of the State of Arizona (**County**), and the City of Glendale, a municipal corporation (**City**). The County and City are collectively referred to as the **Parties** or individually as a **Party**.

This Agreement shall become effective as of the date it is approved by the Maricopa County Board of Supervisors.

STATUTORY AUTHORIZATION

1. A.R.S. Section 11-251 and Sections 28-6701 *et. seq.* authorize the County to lay out, maintain, control and manage public roads within the County.
2. A.R.S. Sections 11-951 *et. seq.* authorize public agencies to enter into Intergovernmental Agreements for the provision of services or for joint or cooperative action.
3. A.R.S. Section 9-240 and Sections 9-276 *et. seq.* authorize the City to lay out and establish, regulate and improve streets within the City, and to enter into this Agreement.

BACKGROUND

4. On December 26, 2008, the Maricopa County Board of Supervisors approved an Intergovernmental Agreement (C-91-09-081-M-00) between the County and the Cities of El Mirage, Glendale, and Peoria for improvements to Northern Parkway from State

clarified the responsibilities of the parties to that agreement for cost sharing, design, construction, construction management, rights-of-way acquisition, utility relocation, and maintenance of the overall Northern Parkway project (from Sarival Avenue to Grand Avenue).

5. The overall Northern Parkway project, as defined in the 2008 IGA, is a principal arterial roadway that will have more traffic-carrying capacity than a typical arterial and will enable traffic to travel faster compared to typical arterials. The project will also link El Mirage, central Glendale, unincorporated portions of Maricopa County, and southern Peoria to the rapidly developing far West Valley. Finally, the project will provide improved access from Peoria, El Mirage, unincorporated Maricopa County, and Glendale to downtown Phoenix via the Northern Parkway – Grand Avenue route. For the purposes of this Agreement, the “Project” is defined as the segment of the overall Northern Parkway project from Sarival Avenue to Dysart Road.
6. As provided in the 2008 IGA, the County is the lead agency for the overall Northern Parkway project, including the Project that is the subject of this Agreement, and is responsible for issuing and managing design and construction contracts, including field engineering and inspection work, at the direction of the Northern Parkway Executive Committee. Also, as provided in the 2008 IGA, the County is responsible for arranging and overseeing the construction of the overall Northern Parkway project, including the Project that is the subject of this Agreement, including field engineering and inspection work.
7. On May 16, 2011, the Maricopa County Board of Supervisors approved an Intergovernmental Agreement (C-91-09-081-M-00, 2011 IGA) between the County and the City of Glendale for ownership, operation and maintenance of Northern Parkway from Sarival Avenue to Dysart Road. Among other things, the 2011 IGA identified and defined the responsibilities of the parties to that agreement for the ownership, operation and maintenance of the Project. Specifically, the City will accept ownership of the Project right-of-way upon completion of the Project and transfer of land rights.
8. The purpose of this Agreement is, in accordance with the County’s previously established lead role related to inspections and the City’s previously established responsibility to ultimately accept ownership of the Project right-of-way, to provide additional inspection services for the Project by the City. The City will be allowed to apply the value of these services toward the City’s local match contribution to the Project in accordance with the 2008 Northern Parkway IGA. Recognizing that the City will ultimately accept ownership of the Project right-of-way, the Parties consider it appropriate for the City to participate in inspections as described in this Agreement.
9. This is a federally-funded project and a part of the Maricopa Association of Governments (MAG) Regional Transportation Plan, Arterial Life Cycle Program (ALCP). County staff costs and other necessary expenses (direct costs) will be considered as either reimbursable costs or as local matching funds. The City of Glendale is also contributing reimbursable and local matching funds for the Project and, once construction is complete, the County will turn the Project over to the City to operate and maintain.

PURPOSE OF THE AGREEMENT

10. The purpose of this Agreement is to supplement the 2008 IGA and the 2011 IGA by identifying and defining the responsibilities of the County and the City for Project inspection services and related Project matching funds.

TERMS OF THE AGREEMENT

11. Responsibilities of the County:

- 11.1 The County shall allow the City to provide eligible inspection services for the Project to be conducted in a manner agreed upon by the County and the City.
- 11.2 The County shall comply with all County policies and procedures, as applicable, in the course of completing the Project.
- 11.3 The County shall collaborate with the City to reach agreement on the City personnel to be used for the Project-related inspection services.
- 11.4 The County shall receive detailed monthly reports from the City which shall outline the inspection services provided by the City and their charges to the Project ("Reports"). The County's resident engineer ("County Resident Engineer") shall review the Reports and if appropriate, approve them and return them promptly to the City. If the Reports cannot be approved, the County Resident Engineer shall return the Reports to the City with an explanation concerning why they could not be approved. The City shall make any necessary changes to the Reports and resubmit them to the County. The County shall approve the Reports only if there is mutual agreement between the Parties. Inspection services listed in a Report that is not approved shall not be applied toward the City's local match contribution to the Project.
- 11.5 If requested by the City, the County shall apply the City's eligible Project inspection costs, appropriately documented by the City in the Reports, toward the City's local match contribution to the Project in accordance with the 2008 Northern Parkway IGA.

12. Responsibilities of the City:

- 12.1 The City shall provide inspection services for the Project in a manner agreed upon by the County and the City. The City shall request the County apply the costs of these services toward the City's local match contribution to the Project in accordance with the 2008 Northern Parkway IGA.
- 12.2 The City shall comply with all County policies and procedures, as applicable, in the course of completing the Project.
- 12.3 The City shall collaborate with the County to reach agreement on the City

personnel to be used for the Project related inspection services.

- 12.4 The City shall provide the County Resident Engineer, for pre-approval, all required and current certifications and chargeable rates applicable to labor and equipment.
- 12.5 The City's chosen personnel shall report to the County Resident Engineer and must comply with all County hardware/software computer requirements.
- 12.6 The City's chosen personnel shall use the County's automated system to complete their required weekly timesheets.
- 12.7 The City shall report the results of the inspection to the County's Resident Engineer for the Project.
- 12.8 The City shall provide the County's Resident Engineer with detailed monthly reports which shall outline the inspection services provided by the City and their charges to the Project. All charges must be kept current for both credits toward the local match contribution and County reporting purposes. The report will include hours, mileage, authorized lab work and the cost of these services. The rate for inspectors as well as material testing technicians will be \$45 per hour. When approved by the County Resident Engineer, the report will be returned to the City's Transportation Department, who will then authorize payment of the City's GO funds for work performed.
- 12.9 The City's inspection personnel assigned to this Project will remain employees of the City and will not be considered employees of the County.

GENERAL TERMS AND CONDITIONS

13. By entering into this Agreement, the Parties agree that to the extent permitted by law, each Party will indemnify and save the other Party harmless, including any of the Parties' departments, agencies, officers, employees, elected officials or agents, from and against all loss, expense, damage or claim of any nature whatsoever which is caused by any activity, condition or event arising out of the performance or nonperformance by the indemnifying Party of any of the provisions of this Agreement. By entering into this Agreement, each Party indemnifies the other against all liability, (including, but not limited to, vicarious liability), losses and damages of any nature for or on account of any injuries or death of persons or damages to or destruction of property arising out of or in any way connected with the performance or nonperformance of this Agreement, except such injury or damage as shall have been occasioned by the negligence of that other Party. The damages which are the subject of this indemnity shall include but not be limited to the damages incurred by any Party, its departments, agencies, officers, employees, elected officials or agents. In the event of an action, the damages which are the subject of this indemnity shall include costs, expenses of litigation and reasonable attorney's fees.
14. This Agreement shall become effective as of the date it is approved by the Maricopa

County Board of Supervisors and remain in full force and effect until all stipulations previously indicated have been satisfied except that it may be amended upon written Agreement by all Parties. Any Party may terminate this Agreement upon furnishing the other Parties with a written notice at least thirty (30) days prior to the effective termination date.

15. This Agreement shall be subject to the provisions of A.R.S. § 38-511.
16. The Parties warrant that they are in compliance with A.R.S. § 41-4401 and further acknowledge that:
 - 16.1 Any contractor or subcontractor who is contracted by a Party to perform work on the Project shall warrant their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214(A), and shall keep a record of the verification for the duration of the employee's employment or at least three years, whichever is longer.
 - 16.2 Any breach of the warranty, shall be deemed a material breach of the contract that is subject to penalties up to and including termination of the contract.
 - 16.3 The Parties retain the legal right to inspect the papers of any contractor or subcontractor employee who works on the Project to ensure that the contractor or subcontractor is complying with the warranty above and that the contractor agrees to make all papers and employment records of said employee available during normal working hours in order to facilitate such an inspection.
 - 16.4 Nothing in this Agreement shall make any contractor or subcontractor an agent or employee of the Parties to this Agreement.
17. The Parties warrant that they do not have scrutinized business operations in Sudan or Iran, as prohibited by A.R.S. §§ 35-391.06 and 35-393.06, and further acknowledge that any contractor or subcontractor who is contracted by a party to perform work on the Project shall warrant that they do not have scrutinized business operations in Sudan or Iran.
18. Each Party to this Agreement warrants that neither it nor any contractor or vendor under contract with the Party to provide goods or services toward the accomplishment of the objectives of this Agreement is suspended or debarred by any federal agency which has provided funding that will be used in the Project described in this Agreement.
19. Each of the following shall constitute a material breach of this Agreement and an event of default ("Default") hereunder: A Party's failure to observe or perform any of the material covenants, conditions or provisions of this Agreement to be observed or performed by that Party ("Defaulting Party"), where such failure shall continue for a period of thirty (30) days after the Defaulting Party receives written notice of such failure from the non-defaulting party provided, however, that such failure shall not be a Default if the Defaulting Party has commenced to cure the Default within such thirty (30) day period and thereafter is diligently pursuing such cure to completion, but the total

aggregate cure period shall not exceed ninety (90) days unless the Parties agree in writing that additional time is reasonably necessary under such circumstances to cure such default. In the event a Defaulting Party fails to perform any of its material obligations under this Agreement and is in Default pursuant to this Section, the non-defaulting party, at its option, may terminate this Agreement. Further, upon the occurrence of any Default and at any time thereafter, the non-defaulting party may, but shall not be required to, exercise any remedies now or hereafter available to it at law or in equity.

20. All notices required under this agreement to be given in writing shall be sent to:

Maricopa County Department of Transportation
Attn: Intergovernmental Liaison
2901 W. Durango St.
Phoenix, AZ 85009

Glendale Department of Transportation
Attn: City Engineer
5800 West Glenn Drive, Suite 315
Glendale, Arizona 85301

Glendale City Attorney's Office
Attn: City Attorney
5850 W. Glendale Ave., Suite 450
Glendale, AZ 85301

All notices required or permitted by this Agreement or applicable law shall be in writing and may be delivered in person (by hand or courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, and shall be deemed sufficiently given if served in a manner specified in this paragraph. Either Party may by written notice to the other specify a different address for notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail, the notice shall be deemed given 72 hours after the notice is addressed as required in this paragraph and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next-day delivery shall be deemed given 24 hours after delivery of the notice to the Postal Service or courier.

21. This Agreement does not imply authority to perform any tasks, or accept any responsibility, not expressly stated in this Agreement.
22. This Agreement does not create a duty or responsibility unless the intention to do so is clearly and unambiguously stated in this Agreement.
23. This Agreement does not grant authority to control the subject roadway, except to the extent necessary to perform the tasks expressly undertaken pursuant to this Agreement.
24. Any funding provided for in this Agreement, other than in the current fiscal year, is

contingent upon being budgeted and appropriated by the Maricopa County Board of Supervisors and the Glendale City Council in such fiscal year. This Agreement may be terminated by any Party at the end of any fiscal year due to non-appropriation of funds without any liability to the non-terminating party.

25. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assignees. Neither Party shall assign its interest in this Agreement without the prior written consent of the other Party.
26. This Agreement and all Exhibits attached to this Agreement set forth all of the covenants, promises, agreements, conditions and understandings between the Parties to this Agreement, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between the Parties other than as set forth in this Agreement, and those agreements which are executed contemporaneously with this Agreement. This Agreement shall be construed as a whole and in accordance with its fair meaning and without regard to any presumption or other rule requiring construction against the party drafting this Agreement. This Agreement cannot be modified or changed except by a written instrument executed by all of the Parties hereto. Each party has reviewed this Agreement and has had the opportunity to have it reviewed by legal counsel.
27. The waiver by any Party of any right granted to it under this Agreement is not a waiver of any other right granted under this Agreement, nor may any waiver be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived.
28. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law, but if any provision shall be invalid or prohibited under the law, such provision shall be ineffective to the extent of such prohibition or invalidation but shall not invalidate the remainder of such provision or the remaining provisions.
29. Except as otherwise provided in this Agreement, all covenants, agreements, representations and warranties set forth in this Agreement or in any certificate or instrument executed or delivered pursuant to this Agreement shall survive the expiration or earlier termination of this Agreement for a period of one (1) year.
30. Nothing contained in this Agreement shall create any partnership, joint venture or other agreement between the Parties hereto. Except as expressly provided in this Agreement, no term or provision of this Agreement is intended or shall be for the benefit of any person or entity not a party to this Agreement, and no such other person or entity shall have any right or cause of action under this Agreement.
31. Time is of the essence concerning this Agreement. Unless otherwise specified in this Agreement, the term "day" as used in this Agreement means calendar day. If the date for performance of any obligation under this Agreement or the last day of any time period provided in this Agreement falls on a Saturday, Sunday or legal holiday, then the date for performance or time period shall expire at the close of business on the first day thereafter which is not a Saturday, Sunday or legal holiday.

32. Sections and other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
33. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same instrument. Faxed, copied and scanned signatures are acceptable as original signatures.
34. The Parties agree to execute and/or deliver to each other such other instruments and documents as may be reasonably necessary to fulfill the covenants and obligations to be performed by such party pursuant to this Agreement.
35. The Parties hereby agree that the venue for any claim arising out of or in any way related to this Agreement shall be Maricopa County, Arizona.
36. This Agreement shall be governed by the laws of the State of Arizona.
37. Unless otherwise lawfully terminated by the Parties, this Agreement expires upon fulfillment of all terms of the Agreement.

End of Agreement - Signature Page Follows

IN WITNESS WHEREOF, the Parties have executed this Agreement.

MARICOPA COUNTY

CITY OF GLENDALE

Recommended by:

Recommended by:

John B. Hauskins, P.E. Date
Transportation Director

City Engineer Date

Approved and Accepted by:

Approved and Accepted by:

Max Wilson, Chairman Date
Board of Supervisors

Mayor Date

Attest by:

Attest by:

Clerk of the Board Date

City Clerk Date

APPROVAL OF DEPUTY COUNTY ATTORNEY AND CITY ATTORNEY

I hereby state that I have reviewed the proposed Intergovernmental Agreement and declare the Agreement to be in proper form and within the powers and authority granted to the Parties by their respective governing bodies under the laws of the State of Arizona.

Deputy County Attorney Date

City Attorney Date



CITY COUNCIL REPORT

Meeting Date: **10/9/2012**
Meeting Type: **Voting**
Title: **MEMORANDUM OF UNDERSTANDING WITH THE ARIZONA DEPARTMENT OF PUBLIC SAFETY FOR COMMERCIAL VEHICLE ENFORCEMENT MATTERS**
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 memorandum of understanding (MOU) with DPS for commercial vehicle enforcement matters. The MOU will allow the Police Department to access the Arizona Department of Public Safety (DPS) commercial vehicle inspection database.

Staff is requesting Council waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into a MOU with DPS for commercial vehicle enforcement matters.

Background Summary

This MOU is needed so that the Police Department can access the DPS database to enter and record inspection information. The Police Department currently has 4 officers who are certified to perform commercial vehicle inspections. The inspections ensure that drivers and owners of commercial vehicles are operating in accordance with the Federal Motor Carrier regulations.

Community Benefit/Public Involvement

Commercial vehicle inspections ensure the drivers of commercial vehicles are traveling safely through our city and that they are not endangering themselves or other citizens on the roadways.

Attachments

Staff Report

Resolution

Agreement



STAFF REPORT

To: **Horatio Skeete, Acting City Manager**
From: **Debora Black, Interim Police Chief**
Item Title: **MEMORANDUM OF UNDERSTANDING WITH THE ARIZONA
DEPARTMENT OF PUBLIC SAFETY FOR COMMERCIAL VEHICLE
ENFORCEMENT MATTERS**
Requested Council Meeting Date: **10/9/2012**
Meeting Type: **Voting**

PURPOSE

This report contains information on the proposed memorandum of understanding (MOU) with the Arizona Department of Public Safety (DPS). The purpose of this report is to request the City Manager forward this item to the City Council for their consideration and approval.

The MOU will allow the Police Department to access the Arizona Department of Public Safety (DPS) commercial vehicle inspection database.

BACKGROUND

This MOU is needed so that the Police Department can access the DPS database to enter and record inspection information. The Police Department currently has four officers who are certified to perform commercial vehicle inspections. An inspection includes review of log books, tires, weight, brakes, and lights. The inspections ensure that drivers and owners of commercial vehicles are operating in accordance with the Federal Motor Carrier regulations. This ensures the drivers of the vehicles are traveling safely through our city and that they are not endangering themselves or other citizens on the roadways.

ANALYSIS

The four certified officers are already inspecting commercial vehicles. Entering into this agreement allows for the efficient and seamless sharing of information between law enforcement agencies across the state. Access to the DPS database will allow officers to expedite the inspections and return to other duties in a timely manner.

I will be recommending that City Council waive reading beyond the title and authorize the City Manager to enter into a MOU with DPS for commercial vehicle enforcement matters.

FISCAL IMPACTS

DPS will provide access to the database at no cost to the city.

RESOLUTION NO. 4620 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF A MEMORANDUM OF UNDERSTANDING WITH THE ARIZONA DEPARTMENT OF PUBLIC SAFETY REGARDING COMMERCIAL VEHICLE ENFORCEMENT ON BEHALF OF THE GLENDALE POLICE DEPARTMENT.

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

SECTION 1. That it is deemed in the best interest of the City of Glendale and the citizens thereof that a Memorandum of Understanding with the Arizona Department of Public regarding commercial vehicle enforcement on behalf of the Glendale Police Department 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

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE ARIZONA DEPARTMENT OF PUBLIC SAFETY (DPS)
AND THE CITY OF GLENDALE POLICE DEPARTMENT
REGARDING COMMERCIAL VEHICLE ENFORCEMENT MATTERS**

This agreement supersedes all previous agreements related to these topics.

The purpose of this agreement is to establish procedures for:

1. Using Commercial Vehicle Safety Alliance (CVSA) decals.
2. Using the ASPEN software program.

This agreement becomes effective on the last date of the signature page and shall remain in effect for (5) years or when THE CITY OF GLENDALE POLICE DEPARTMENT disbands their commercial vehicle enforcement program. Either party may cancel this agreement on thirty (30) days written notice to the other party. Notice of such cancellation shall be sent registered mail to the other party. This agreement is subject to cancellation for conflict of interest pursuant to A.R.S. §38-511.

THE CITY OF GLENDALE POLICE DEPARTMENT shall appoint one person as the contact with DPS for all matters addressed in this document.

THE CITY OF GLENDALE POLICE DEPARTMENT shall indemnify and hold harmless DPS for the actions of THE CITY OF GLENDALE POLICE DEPARTMENT employees. THE CITY OF GLENDALE POLICE DEPARTMENT shall at all times be acting as an independent contractor and not as an agent or joint venturer of the State of Arizona.

THE CITY OF GLENDALE POLICE DEPARTMENT shall not assign or transfer any of its duties under this agreement.

Neither party shall charge the other for any administrative fees for work performed pursuant to this agreement.

To the extent required by A.R.S. §§12-1518(B) and 12-133, the parties shall resolve any dispute arising out of this agreement by arbitration.

The parties shall comply with Arizona Executive Order 2009-09 and any other Federal or State laws relating to equal opportunity and non-discrimination, including the Americans with Disabilities Act.

Pursuant to A.R.S. §§35-391.06 and 35-393.06, both of the Parties hereby warrant, and represent that they do 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.

1. Using CVSA Decals

CVSA is an association of state/provincial/territory, federal and commercial vehicle industry officials. CVSA is responsible for setting enforcement standards in the United States, Canada and Mexico to improve commercial vehicle safety.

DPS is a member of CVSA.

CVSA permits member agencies to enable local agencies to issue and affix state-owned CVSA decals to vehicles which meet specific safety standards following an inspection.

DPS has the authority to provide such decals to local agencies.

THE CITY OF GLENDALE POLICE DEPARTMENT shall follow all current procedures for affixing decals as documented in the CVSA Operations Manual, Section 5 available at www.cvsa.org. A copy is attached hereto.

DPS shall provide the decals at no cost to THE CITY OF GLENDALE POLICE DEPARTMENT upon request. DPS will mail them to THE CITY OF GLENDALE POLICE DEPARTMENT on a quarterly basis as DPS receives them from CVSA.

At the end of each quarter, THE CITY OF GLENDALE POLICE DEPARTMENT shall return unused decals to DPS or destroy unused decals, whichever is requested by DPS.

THE CITY OF GLENDALE POLICE DEPARTMENT shall secure decals in such a way that they will not be lost or stolen.

THE CITY OF GLENDALE POLICE DEPARTMENT shall notify DPS if the THE CITY OF GLENDALE POLICE DEPARTMENT no longer has Level I certified officers who conduct motor carrier inspections.

2. ASPEN Software Program

ASPEN is a federally developed software program which is used nationwide by officers who conduct motor carrier inspections. Inspection data is downloaded from ASPEN computers to the SAFER data mailbox which enables the data to be incorporated into DPS' SAFETYNET system and Federal Motor Carrier Safety Administration's (FMCSA) Motor Carrier Management Information System (MCMIS).

The following are basic principles of this program:

- DPS is the lead agency for collecting, storing and uploading motor carrier inspection information
- Only inspections documented using ASPEN software can be downloaded directly to SAFER
- ASPEN software shall be current to be compatible with SAFER/SAFETYNET
- ASPEN does not preclude the use of handwritten inspection reports

THE CITY OF GLENDALE POLICE DEPARTMENT shall be responsible for maintaining its own ASPEN program from the standpoint of hardware and software issues, as well as officer training.

- a) THE CITY OF GLENDALE POLICE DEPARTMENT shall designate a computer specialist to handle the following functions:
- Maintain software and hardware to keep it compatible with SAFER
 - Resolve software and hardware problems that officers may encounter with the program
 - Set up software to make it agency-specific
 - Update THE CITY OF GLENDALE POLICE DEPARTMENT computers with new versions of the software and new editions of the Inspection Selection System (ISS)

- Resolve download and data entry problems after officers submit their inspections to SAFER
 - Attend ASPEN-related training conducted by DPS
- b) THE CITY OF GLENDALE POLICE DEPARTMENT shall purchase all hardware and software necessary to run ASPEN. Hardware shall comply with minimum standards required to run the program.
- c) DPS shall conduct training for THE CITY OF GLENDALE POLICE DEPARTMENT officers.
- d) DPS shall, at no charge, provide THE CITY OF GLENDALE POLICE DEPARTMENT with one copy of new releases of ASPEN software, as well as the most current versions of ISS. THE CITY OF GLENDALE POLICE DEPARTMENT shall install this software on all machines per FMCSA requirements, which will be provided by DPS.
- e) THE CITY OF GLENDALE POLICE DEPARTMENT officers shall download data daily via modem. If officers use air cards or other methods of field transmission, inspections shall be downloaded after each inspection is completed.
- f) A printed copy of the signed inspection report shall be sent to DPS after download has been completed. This copy must have the officer's and driver's signatures. Reports shall be mailed to:

Commercial Vehicle Enforcement
 Arizona Department of Public Safety
 Mail Drop 1240
 PO Box 6638
 Phoenix, AZ 85005

STATE OF ARIZONA

THE CITY OF GLENDALE POLICE
 DEPARTMENT

 Robert Halliday, Director

 Agency Head

 Date

 Date

W. B. Schneider
 Approved as to Form (9-3-12 email)



CITY COUNCIL REPORT

Meeting Date: **10/9/2012**
Meeting Type: **Voting**
Title: **REAPPOINTMENT OF CITY JUDGE**
Staff Contact: **Jim Brown, Acting Human Resources Director**

Purpose and Recommended Action

This is a request for the City Council to reappoint City Judge John Burkholder to a four-year term. His current term expires October 31, 2012.

Background Summary

Judge John Burkholder has served as City Judge in Glendale since 1995 and is eligible for reappointment to a four-year term. The Judicial Selection Advisory Board unanimously recommends Judge Burkholder's reappointment based on the results of his reappointment interview, letters of recommendation received on his behalf, confidential survey results conducted by a private research firm and other reappointment materials.

Community Benefit/Public Involvement

The confidential survey and questionnaire on reappointment was mailed to 281 recipients. Public input on reappointment was sought through advertisement in *The Arizona Republic* and *Maricopa Lawyer* (published by the Maricopa County Bar Association). The survey results and all letters of input have been provided to the Mayor and Council, along with letters of recommendation.