



# City of Glendale

5850 West Glendale Avenue  
Glendale, AZ 85301

## Voting Meeting Agenda City Council

*Mayor Jerry Weiers*  
*Vice Mayor Yvonne J. Knaack*  
*Councilmember Ian Hugh*  
*Councilmember Manny Martinez*  
*Councilmember Norma Alvarez*  
*Councilmember Gary Sherwood*  
*Councilmember Sammy Chavira*

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Tuesday, September 9, 2014

6:00 PM

Council Chambers

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### Voting Meeting

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

#### CALL TO ORDER

#### PLEDGE OF ALLEGIANCE

#### PRAYER/INVOCATION

Any prayer/invocation that may be offered before the start of regular Council business shall be the voluntary offering of a private citizen, for the benefit of the Council and the citizens present. The views or beliefs expressed by the prayer/invocation speaker have not been previously reviewed or approved by the Council, and the Council does not endorse the religious beliefs or views of this, or any other speaker. A list of volunteers is maintained by the Mayor's Office and interested persons should contact the Mayor's Office for further information.

#### APPROVAL OF THE MINUTES OF AUGUST 12, 2014

1.      **14-177**              MINUTES OF AUGUST 12, 2014 VOTING MEETING  
                                 Staff Contact: Pamela Hanna, City Clerk

#### APPROVAL OF THE EXECUTIVE SESSION MINUTES OF JUNE 10, 2014 AND JULY 15, 2014 (Minutes not attached; exempted pursuant to A.R.S. § 38-431.03(B))

#### PROCLAMATIONS AND AWARDS

2.      **14-076**              PROCLAIM SEPTEMBER 15 - OCTOBER 15, 2014 AS HISPANIC HERITAGE MONTH  
                                 Staff Contact: Office of the Mayor  
                                 Accepted By: Joe Quintana, Superintendent, Glendale Elementary School District
3.      **14-108**              PROCLAIM SEPTEMBER 2014 NATIONAL PREPAREDNESS MONTH

Staff Contact: Mark Burdick, Fire Chief

Accepted By: Kelly Batton, Nikki Colleti and Virginia Meeker, volunteers  
with the Community Emergency Response Team (C.E.R.T.)

## CONSENT AGENDA

Items on the consent agenda are of a routine nature or have been previously studied by the City Council.  
Items on the consent agenda are intended to be acted upon in one motion unless the Council wishes to  
hear any of the items separately.

4.     **14-024**       APPROVE SPECIAL EVENT LIQUOR LICENSE, ST. LOUIS THE KING CHURCH  
                          Staff Contact: Susan Matousek, Revenue Administrator  
  
          Attachments:   [Application](#)  
                              [Calls for Service](#)
  
5.     **14-020**       APPROVE LIQUOR LICENSE NO. 5-14234, EL TATAKI SUSHI & MEXICAN  
                          GRILL  
                          Staff Contact: Susan Matousek, Revenue Administrator  
  
          Attachments:   [Map](#)  
                              [Calls for Service](#)
  
6.     **14-021**       APPROVE LIQUOR LICENSE NO. 5-14090, EASTWIND SUSHI & GRILL  
                          Staff Contact: Susan Matousek, Revenue Administrator  
  
          Attachments:   [Map](#)  
                              [Calls for Service](#)
  
7.     **14-023**       APPROVE LIQUOR LICENSE NO. 5-10968, RICARDO'S MEXICAN FOOD  
                          Staff Contact: Susan Matousek, Revenue Administrator  
  
          Attachments:   [Map](#)  
                              [Calls for Service](#)
  
8.     **14-031**       EXPENDITURE AUTHORIZATION FOR COOPERATIVE PURCHASE OF A  
                          FRONTLOAD TRUCK FROM TRUCKS WEST OF PHOENIX, INC. FOR  
                          COMMERCIAL SANITATION COLLECTION  
                          Staff Contact: Jack Friedline, Interim Director, Public Works
  
9.     **14-030**       AUTHORIZATION TO ENTER INTO A CONSTRUCTION AGREEMENT  
                          WITH TALIS CONSTRUCTION CORPORATION FOR STREET  
                          RECONSTRUCTIVE PAVING PROJECT  
                          Staff Contact: Jack Friedline, Interim Director, Public Works  
  
          Attachments:   [Construction Agreement - Talis Construction](#)  
                              [Bid Tabulation 131416](#)
  
10.    **14-002**       EXPENDITURE AUTHORIZATION FOR THE PURCHASE OF GRANULAR  
                          ACTIVATED CARBON FROM CALGON CARBON CORPORATION  
                          Staff Contact: Craig Johnson, P.E., Director, Water Services  
  
          Attachments:   [Calgon Carbon Agreement.pdf](#)



**CONSENT RESOLUTIONS**

- 11. 14-012** AUTHORIZATION OF FOUR LICENSE AGREEMENTS FOR VERIZON WIRELESS (VAW), LLC. FOR THE INSTALLATION OF A DISTRIBUTED ANTENNA SYSTEM (SMALL CELL) ON FOUR CITY STREETLIGHTS WITHIN PUBLIC RIGHT-OF-WAY  
Staff Contact: Jack Friedline, Interim Director, Public Works
- Attachments:** [Resolution 4841.doc](#)  
[Fee Guidelines](#)  
[Verizon License 19503 N 59th](#)  
[Verizon License Agr 20423 N 59th](#)  
[Verizon License 19800 N 75th](#)  
[Verizon License Agr 5655 N 67th](#)
- 12. 14-032** RENEWAL OF A LICENSE AGREEMENT FOR QWEST BROADBAND SERVICES, INC. DBA CENTURY LINK, INC. TO OPERATE A CABLE AND FIBER-BASED COMMUNICATIONS NETWORK WITHIN PUBLIC RIGHT-OF-WAY  
Staff Contact: Jack Friedline, Interim Director, Public Works
- Attachments:** [Resolution 4842.doc](#)  
[Qwest License Agreement](#)
- 13. 14-053** ONLINE TRAVEL TAXATION LITIGATION COMMON INTEREST AGREEMENT AMENDMENT  
Staff Contact: Michael Bailey, City Attorney
- Attachments:** [Resolution 4843.doc](#)  
[Amendment to Common Interest Agreement](#)
- 14. 14-056** AUTHORIZATION TO ACCEPT THE 2014 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM FUNDING AND ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH MARICOPA COUNTY  
Staff Contact: Debora Black, Police Chief
- Attachments:** [Resolution 4844.doc](#)  
[2014 JAG Memorandum of Understanding](#)
- 15. 14-058** AUTHORIZATION TO RATIFY THE ACCEPTANCE OF THE 2014 HIGH INTENSITY DRUG TRAFFICKING AREA GRANT AGREEMENT AND ACCEPT THE GRANT AGREEMENT ADJUSTMENT FROM THE CITY OF TUCSON TO PROVIDE OVERTIME FUNDING FOR THE WARRANT APPREHENSION NETWORK AND TACTICAL ENFORCEMENT DETAIL  
Staff Contact: Debora Black, Police Chief

**Attachments:**      [Resolution 4845.doc](#)  
[2014 HIDTA - Original Grant Document HT-14-2313](#)  
[2014 HIDTA - Grant Adjustment Notice HT-14-2313](#)

16.      14-061      AUTHORIZATION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH CITY OF PHOENIX POLICE DEPARTMENT FOR USE OF ITS RECORDS MANAGEMENT SYSTEM  
Staff Contact: Debora Black, Police Chief

**Attachments:**      [Resolution 4846.doc](#)  
[Agreement - IGA with Phoenix PD for RMS Explorer](#)

17.      14-067      AUTHORIZATION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE UNITED STATES DEPARTMENT OF JUSTICE DRUG ENFORCEMENT ADMINISTRATION TO CONTINUE PARTICIPATION IN A TASK FORCE  
Staff Contact: Debora Black, Police Chief

**Attachments:**      [Resolution 4847.doc](#)  
[Agreement - IGA with USDOJ DEA for Task Force](#)

18.      14-071      AUTHORIZATION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH GLENDALE ELEMENTARY SCHOOL DISTRICT NO. 40 FOR THE SERVICES OF A SCHOOL RESOURCE OFFICER AT TWO SCHOOL CAMPUSES  
Staff Contact: Debora Black, Police Chief

**Attachments:**      [Resolution 4848.doc](#)  
[Agreement - Glendale Elementary School District IGA FY 2014-15](#)

19.      14-072      AUTHORIZATION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH GLENDALE UNION HIGH SCHOOL DISTRICT FOR THE SERVICES OF A SCHOOL RESOURCE OFFICER AT TWO SCHOOL CAMPUSES  
Staff Contact: Debora Black, Police Chief

**Attachments:**      [Resolution 4849.doc](#)  
[Agreement - Glendale Union High School District IGA FY 2014-15](#)

20.      14-073      AUTHORIZATION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH PEORIA UNIFIED SCHOOL DISTRICT FOR THE SERVICES OF A SCHOOL RESOURCE OFFICER AT TWO SCHOOL CAMPUSES  
Staff Contact: Debora Black, Police Chief

**Attachments:**      [Resolution 4850.doc](#)  
[Agreement - Peoria Unified School District IGA FY 2014-15](#)

21.      14-098      AUTHORIZATION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH TOLLESON UNION HIGH SCHOOL DISTRICT NO. 214 FOR THE SERVICES OF A SCHOOL RESOURCE OFFICER AT ONE SCHOOL CAMPUS

Staff Contact: Debora Black, Police Chief

**Attachments:**

[Resolution 4851.doc](#)

[Agreement - IGA with Tolleson School District for SRO](#)

**22. 14-106**

AMENDMENT NO. 12 TO INTERGOVERNMENTAL AGREEMENT WITH ARIZONA DEPARTMENT OF ECONOMIC SECURITY FOR COMMUNITY ACTION PROGRAM FUNDING AND OPERATIONS

Staff Contact: Erik Strunk, Director, Community Services

**Attachments:**

[Resolution 4852.doc](#)

[IGA Amendment](#)

**23. 14-117**

AUTHORIZATION TO ENTER INTO A SETTLEMENT AGREEMENT; AND, TWO NEW DIGITAL BILLBOARD PLACEMENT LICENSE AGREEMENTS WITH LAMAR CENTRAL OUTDOOR, LLC FOR THE OPERATION OF DIGITAL BILLBOARDS ALONG THE AGUA FRIA FREEWAY (LOOP 101) BETWEEN BETHANY HOME ROAD AND ORANGEWOOD AVENUE

Staff Contact: Deborah Robberson, Deputy City Attorney

Staff Contact: Brian Friedman, Economic Development Director

**Attachments:**

[Resolution 4853](#)

[Settlement Agreement and Mutual Release](#)

[Digital Billboard Placement - Lamar- 7691 N 99 Avenue](#)

[Digital Billboard Placement - Lamar - 9802 W Bethany Home\\_09\\_05\\_14 Final](#)

## **PUBLIC HEARING - LAND DEVELOPMENT ACTIONS**

**24. 14-126**

ANNEXATION APPLICATION AN-173: SABRE BUSINESS PARK (PUBLIC HEARING REQUIRED)

Staff Contact: Jon M. Froke, AICP, Planning Director

**Attachments:**

[BLANK PETITION - AN-173](#)

[AN-173](#)

[AN-173A](#)

## **ORDINANCES**

**25. 14-033**

AUTHORIZATION TO AMEND THE LAND LEASE WITH VALLEY AVIATION SERVICES, LLC

Staff Contact: Jack Friedline, Interim Director, Public Works

**Attachments:**

[Ordinance 2903.doc](#)

[Amendment to Lease Agmt](#)

## **RESOLUTIONS**

**26. 14-089**

RESOLUTION OF APPROVAL FOR THE SALE OF THE GLENDALE ARENA NAMING RIGHTS TO THE GILA RIVER INDIAN COMMUNITY

Staff Contact: Tom Duensing, Director, Finance and Technology

**Attachments:**     [Resolution 4854.doc](#)  
                              [Agreement - IceArizona](#)

**27.     14-127     2014 PRIMARY ELECTION CANVASS OF VOTE**

Staff Contact: Pamela Hanna, City Clerk

**Attachments:**     [Resolution 4855](#)  
                              [Resolution Exhibits](#)

## **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. When your name is called by the Mayor, please proceed to the podium. State your name and the city in which you reside for the record. If you reside in the City of Glendale, please state the Council District you live in (if known) and begin speaking. Please limit your comments to a period of three 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)).

**This agenda has been reviewed and approved for posting by Brenda S. Fischer, ICMA-CM, City Manager.**



## Legislation Description

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**File #: 14-177, Version: 1**

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**MINUTES OF THE  
GLENDALE CITY COUNCIL MEETING  
Council Chambers  
5850 West Glendale Avenue  
August 12, 2014  
6:00 p.m.**

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

Also present were Brenda Fischer, City Manager; Julie Frisoni, Assistant City Manager; Jennifer Campbell, Assistant City Manager; Michael Bailey, City Attorney; Pamela Hanna, City Clerk and Darcie McCracken, Deputy City Clerk.

Mayor Weiers called for the Pledge of Allegiance.

The prayer/invocation was given by Ms. Brooke Mulder.

### **APPROVAL OF THE MINUTES OF JUNE 24, 2014 and July 15, 2014**

**It was moved by Councilmember Martinez, and seconded by Councilmember Chavira, to dispense with the reading of the minutes of the June 24, 2014 Regular City Council meeting and the July 15, 2014 Special City Council Meeting, as each member of the Council had been provided copies in advance, and approve them as written. The motion carried unanimously.**

### **BOARDS, COMMISSIONS AND OTHER BODIES**

#### **APPROVE RECOMMENDED APPOINTMENTS TO BOARDS, COMMISSIONS & OTHER BODIES**

PRESENTED BY: Councilmember Ian Hugh

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	08/23/2014	08/23/2016
Nadine Yuhasz	Cholla	Reappointment	08/23/2014	08/23/2016
Carol Ladd - Chair	Cactus	Reappointment	08/23/2014	08/23/2015

Jessica Koory - Vice Chair	Ocotillo	Reappointment	08/23/2014	08/23/2015
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**Aviation Advisory Commission**

Victoria Rogen - Chair	Mayoral	Appointment	08/12/2014	11/24/2014
Quentin Tolby - Vice Chair	Cactus	Appointment	08/12/2014	11/24/2014

**Board of Adjustment**

Tonya Blakely	Cactus	Appointment	08/12/2014	06/30/2016
Carl Dietzman	Ocotillo	Appointment	08/12/2014	04/26/2017

**Commission on Persons with Disabilities**

Diane Lesser - Vice Chair	Cactus	Appointment	08/12/2014	02/26/2015
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**Public Safety Personnel Retirement System Fire Board-Update Term Ending Date**

Mark Manor	N/A	Appointment		07/01/2016
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**It was moved by Councilmember Hugh, and seconded by Councilmember Chavira, to appoint Carol Ladd, Nadine Yuhasz and Jessica Koory to the Arts Commission; Victoria Rogen and Quentin Tolby to the Aviation Advisory Commission; Tonya Blakely and Carl Dietzman to the Board of Adjustment; Diane Lesser to the Commission on Persons with Disabilities and Mark Manor to the Public Safety Personnel Retirement System Fire Board, for the terms listed above. The motion carried unanimously.**

**PROCLAMATIONS AND AWARDS**

**RECOGNITION OF COMMUNITY SERVICE FOR BRUCE LARSON**

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

This is a request to present a plaque recognizing Mr. Bruce Larson for his four years of community service on Glendale's Planning Commission (PC).

**RECOGNITION OF COMMUNITY SERVICE FOR ROBERT PETRONE**

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

This is a request to present a plaque recognizing Mr. Robert Petrone for his four years of community service on Glendale's Planning Commission (PC).

**CONSENT AGENDA**

Ms. Brenda Fischer, City Manager, read agenda item numbers 1 through 21.

Councilmember Alvarez requested that items 10 and 13 be heard separately.

**1. APPROVE SPECIAL EVENT LIQUOR LICENSE, OUR LADY OF PERPETUAL HELP**

**PRESENTED BY:** Susan Matousek, Revenue Administrator

This is a request for City Council to approve a special event liquor license for Our Lady of Perpetual Help,

submitted by Ofelia Loera. The event will be held at Our Lady of Perpetual Help located at 5614 West Orangewood Avenue on Friday, October 17, from 5 p.m. to 10 p.m.; and Saturday and Sunday, October 18 and 19, from 11 a.m. to 10 p.m. The purpose of this special event liquor license is for a fundraiser at their Unity Fall Festival.

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

**2. APPROVE LIQUOR LICENSE NO. 5-13840, GLENDALE MINI MART**

PRESENTED BY: Susan Matousek, Revenue Administrator

This is a request for City Council to approve a new, non-transferable series 10 (Liquor Store - Beer and Wine) license for Glendale Mini Mart located at 5904 West Glendale Avenue. The Arizona Department of Liquor Licenses and Control application (No. 10076542) was submitted by Samyeh Fayeze Daghlawi.

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

**3. AUTHORIZATION TO ENTER INTO A LINKING AGREEMENT WITH ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC. FOR GIS LICENSE RENEWAL**

PRESENTED BY: Tom Duensing, Director, Finance and Technology

This is a request for City Council to authorize entering into a five (5) year linking agreement with Environmental Systems Research Institute, Inc. (ESRI) which will allow the purchase of an ArcGIS License Renewal using a cooperative purchase agreement between the State of Arizona, contract ADSP010-00000131, and ESRI in an amount not to exceed \$301,796.52 effective 8/12/2014 through 8/1/2019 (\$50,299.42 per year plus an additional \$50,299.42 contingency to be used anytime during the contract period). The amount includes the annual ESRI ArcGIS license renewal and an estimated 20% contingency for applicable taxes, fees, and additional licenses during the agreement.

**4. AUTHORIZATION TO ENTER INTO A LINKING AGREEMENT WITH SHI INTERNATIONAL CORPORATION FOR ONGOING SOFTWARE LICENSES, SUPPORT, AND MAINTENANCE**

PRESENTED BY: Tom Duensing, Director, Finance and Technology

This is a request for City Council to authorize entering into a five (5) year linking agreement with SHI International Corp. (SHI), effective 8/12/2014 - 8/31/2019. This agreement will allow the procurement of licenses, support, and maintenance of approved products using a cooperative purchase agreement between the State of Arizona, contract ADSP011-007500, and SHI. Purchases made against this agreement will follow City purchasing guidelines.

**5. AUTHORIZATION FOR THE RENEWAL OF ORACLE PEOPLESOFT AND DATABASE SOFTWARE MAINTENANCE AND SUPPORT**

PRESENTED BY: Tom Duensing, Director, Finance and Technology

This is a request for City Council to approve the one year renewal of Oracle software maintenance and support for PeopleSoft and Oracle databases using a cooperative purchase agreement between the State of Arizona, contract ADSP011-007500, and SHI International Corp. in an amount not to exceed \$540,252.64. This amount

includes the annual Oracle PeopleSoft and database support and maintenance plus an estimated 10% increase for fluctuation of taxes and fees.

**6. AUTHORIZATION FOR THE RENEWAL OF MICROSOFT ENTERPRISE LICENSES AND HOSTED SERVICES**

PRESENTED BY: Tom Duensing, Director, Finance and Technology

This is a request for City Council to approve the renewal of software licenses and hosted services over a three year period with Microsoft for the City's Microsoft Enterprise Agreement (EA) using a cooperative purchase agreement between the State of Arizona, contract ADSP011-007500, and SHI International Corp. in an amount not to exceed \$826,985.34 (\$229,661.78 per year plus an additional annual \$46,000 contingency). The amount includes the annual Microsoft EA renewal plus an estimated 20% increase for fluctuation of taxes, fees, and additional licenses during the agreement.

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

PRESENTED BY: Debora Black, Police Chief

This is a request for City Council to authorize the Glendale Police Department (GPD) to purchase ammunition from San Diego Police Equipment Company, Incorporated in an amount not to exceed \$105,000. This purchase will cover all of the ammunition needs for each police officer in Fiscal Year (FY) 2014-15.

**8. AUTHORIZATION TO ENTER INTO A SERVICES AGREEMENT WITH MOTOROLA SOLUTIONS, INC. FOR COMMUNICATION SYSTEMS SERVICE**

PRESENTED BY: Debora Black, Police Chief

This is a request for City Council to authorize the City Manager to enter into a three-year services agreement with Motorola Solutions, Inc. (Motorola) in a total amount not to exceed \$90,000 for communication systems service.

**9. AUTHORIZATION TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH WESTERN TOWING OF PHOENIX, INC.**

PRESENTED BY: Debora Black, Police Chief

This is a request for City Council to authorize the City Manager to enter into a professional services agreement with Western Towing of Phoenix, Inc. (Western Towing) in an amount not to exceed \$55,000 annually for towing services.

**11. INDEPENDENT CONTRACTOR AGREEMENT WITH ARIZONA COMMUNITY ACTION ASSOCIATION FOR COMMUNITY ACTION PROGRAM FUNDING**

PRESENTED BY: Erik Strunk, Director, Community Services

This is a request for City Council to authorize the City Manager to enter into an agreement with the Arizona Community Action Association (ACAA) to accept \$110,041 in Community Action Program (CAP) funding.



**12. AUTHORIZATION TO EXTEND AGREEMENT TERMS, APPROVE EXPENDITURE OF FUNDS AND EXPENDITURE AUTHORIZATION FOR PURCHASE OF SODIUM HYPOCHLORITE FROM DPC ENTERPRISES, L.P.**

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

This is a request to City Council for expenditure authorization with DPC Enterprises, L.P. for the purchase of sodium hypochlorite in an amount not to exceed \$1,021,200 (\$255,300 annually for contract extension years 2 through 5), including approval for the expenditure of funds in the amount of \$49,216.77 for purchases made during April, May, and June 2014, and to authorize the City Manager or designee to extend the agreement terms annually at their discretion over the remaining four years of the contract.

**14. BURLINGTON NORTHERN SANTA FE RAILWAY COMPANY PIPELINE LICENSE AGREEMENT**

PRESENTED BY: Jack Friedline, Interim Director, Public Works

This is a request for City Council to authorize the City Manager to enter into a pipeline license agreement with the Burlington Northern Santa Fe (BNSF) Railway Company for a sanitary sewer line installed under the BNSF railroad tracks along Grand Avenue south of the Maryland Avenue bridge.

**15. EXPENDITURE AUTHORIZATION FOR ELECTRICITY SERVICE FROM ARIZONA PUBLIC SERVICE COMPANY FOR STREETLIGHTS**

PRESENTED BY: Jack Friedline, Interim Director, Public Works

This is a request for City Council to authorize the expenditure of funds for electricity service with Arizona Public Service Company (APS) in the approximate amount of \$920,000 in fiscal year (FY) 2014-15 for the operation of city-owned streetlights.

**16. EXPENDITURE AUTHORIZATION FOR ELECTRICITY SERVICE FROM SALT RIVER PROJECT FOR STREETLIGHTS**

PRESENTED BY: Jack Friedline, Interim Director, Public Works

This is a request for City Council to authorize the expenditure of funds for electricity service with Salt River Project (SRP) in the approximate amount of \$950,000 in fiscal year (FY) 2014-15 for the operation of city-owned streetlights.

**17. EXPENDITURE AUTHORIZATION FOR COOPERATIVE PURCHASE OF TIRES AND SERVICES PHOENIX TIRE, INC. FOR PUBLIC WORKS**

PRESENTED BY: Jack Friedline, Interim Director, Public Works

This is a request for City Council to authorize the expenditure of funds for the cooperative purchase of tires and services from Phoenix Tire, Inc. in a total amount not to exceed \$110,000 for fiscal year (FY) 2014-15.

**18. EXPENDITURE AUTHORIZATION FOR COOPERATIVE PURCHASE OF TIRES FROM MICHELIN NORTH AMERICA, INC. FOR PUBLIC WORKS**

PRESENTED BY: Jack Friedline, Interim Director, Public Works

This is a request for City Council to authorize the expenditure of funds for the cooperative purchase of tires from Michelin North America, Inc. in a total amount not to exceed \$125,000 for fiscal year (FY) 2014-15.

**19. EXPENDITURE AUTHORIZATION FOR COOPERATIVE PURCHASE OF TIRES FROM PURCELL TIRE COMPANY FOR PUBLIC WORKS**

PRESENTED BY: Jack Friedline, Interim Director, Public Works

This is a request for City Council to authorize the expenditure of funds for the cooperative purchase of tires from Purcell Tire Company in a total amount not to exceed \$400,000 for fiscal year (FY) 2014-15.

**20. AUTHORIZATION TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH LSW ENGINEERS ARIZONA, INC. FOR ENGINEERING SERVICES TO REPLACE COMPUTER ROOM AIR CONDITIONER UNITS IN THE MAIN PUBLIC SAFETY BUILDING**

PRESENTED BY: Jack Friedline, Interim Director, Public Works

This is a request for City Council to authorize the City Manager to enter into a professional services agreement with LSW Engineers Arizona, Incorporated (LSW Engineers) in an amount not to exceed \$51,660 for design and construction administrative services related to the replacement of Computer Room Air Conditioning (CRAC) units located inside the Main Public Safety Building.

**21. EXPENDITURE AUTHORIZATION FOR ANNUAL MEMBERSHIP FEE TO VALLEY METRO RAIL, INC.**

PRESENTED BY: Jack Friedline, Interim Director, Public Works

This is a request for City Council to approve expenditure authorization by the City Manager for the Fiscal Year 2014-15 annual membership fee for Valley Metro Rail, Inc., (METRO) in the amount of \$50,000.

**It was moved by Vice Mayor Knaack and seconded by Councilmember Sherwood, to approve the recommended actions on Consent Agenda Item Numbers 1 through 9, 11, 12 and 14 through 21, and to forward Special Event Liquor License Application for Our Lady of Perpetual Help and Liquor License Application No. 5-13840 for Glendale Mini Mart to the State of Arizona Department of Liquor Licenses and Control, with the recommendation for approval. The motion carried unanimously.**

**10. POSITION RECLASSIFICATIONS**

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

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

Mr. Brown stated positions could be reclassified either via a job study or a significant change in job functions and/or responsibilities. He continued that these reclassifications have been brought to Council under Ms. Fischer's direction.

Councilmember Alvarez asked about the request, whether these positions had already been reclassified

prior to coming to Council, and any costs associated. Mr. Brown stated that an analysis had been done prior to coming to Council; however, the reclassifications have not yet been done. They would be completed once Council has approved them. He continued that the costs would be absorbed within the existing Council approved budget if there were any changes in salary.

Councilmember Alvarez asked about the predominance of the positions being at lower classifications. Mr. Brown stated that the departments are looking at better ways to provide services. Mr. Brown also mentioned the Management Partner's reorganization required some changes to positions. Councilmember Alvarez asked about the attorney's office position. Mr. Brown spoke about not identifying the position just yet and after the recruitment for a Chief Deputy the position would be reclassified.

Mr. Bailey spoke about the position being reclassified and added the vacant position would be downgraded.

**It was moved by Vice Mayor Knaack to approve consent agenda 10, seconded by Councilmember Chavira. The motion carried unanimously.**

**13. AUTHORIZATION TO EXTEND AGREEMENT TERMS AND EXPENDITURE AUTHORIZATION FOR URBAN IRRIGATION SERVICES FROM SALT RIVER IRRIGATION**

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

This is a request for City Council to authorize the City Manager to extend the agreement terms and expenditure authorization for urban irrigation services with Salt River Irrigation in an amount not to exceed \$414,325.80 (\$138,108.60 annually for contract extension years 3-5) and authorize the City Manager or designee to renew the agreement at her discretion upon consent of both parties for an additional three years.

Mr. Johnson spoke about the services associated with the agreement.

Councilmember Alvarez commented that there are only 330 irrigation customers. Mr. Johnson agreed. He commented that the number has continuously dropped ever since the city became involved in the service delivery.

Councilmember Alvarez asked if irrigation is offered to everyone in that area. Mr. Johnson stated that up to 450 people that could request the service. Councilmember Alvarez asked if the city denied anyone. Mr. Johnson stated that if someone is in the service area then they are offered the service.

Councilmember Alvarez asked if in the original contract the city was responsible to provide the repairs to the infrastructure. Mr. Johnson commented that previously Council made the decision that as people left the program then they would no longer be provided the service.

Mr. Johnson said it was on a case by case basis. Councilmember Alvarez commented that if someone had the irrigation and sold the property the new owners would have irrigation. Mr. Johnson agreed.

Councilmember Alvarez asked why a property would not be eligible for irrigation service. She commented that it is an Ocotillo issue. Councilmember Alvarez asked what happened. She said 1600

people were getting irrigation and it was the city's responsibility to maintain the pipe. She asked if the city did maintain the pipes.

Mr. Johnson said that a lot of people discontinued the irrigation program and then the system became unmaintainable in the majority of the city. He continued that they were able to designate an area of about 450 people that had irrigation which was feasible to maintain.

Councilmember Alvarez asked if it wouldn't be beneficial for everyone to have irrigation.

Mr. Johnson commented on the study that stated it would cost over \$7 million to bring the system up to where it needed to be. He said this was presented to Council at that time. He continued that the program has been upside down for years.

Councilmember Alvarez asked what happened to the water rights.

Mr. Bailey commented that the Council is asking about the program which is outside the scope of the item up for discussion.

Councilmember Alvarez agreed and stated she wants to know this information. She said that she wants to hear where the water goes and that it appears to be a touchy subject that no one wants to talk about. She said they are having discussions with the commission and she has asked twice to get this information for the community, but she hasn't been given the information.

Robin Berryhill, an Ocotillo resident, commented that she was shocked that this item was on the agenda. She said that she and others as a citizens group have been asking for information since March or so. She said that verbiage in the contract is for up to 330 customers and for an as-needed basis. She said the contract should go out for bid. She said that the costs should be extended to those who opt to not have the irrigation. She stated that at one of the Water Commission meetings there were a lot of people that attended so the item was tabled. She commented she has some major issues with this item. She commented that the city pays for customers to get the water. She added how disappointed she was. She wants the item tabled and all the Council to support it. She would like public discussion. She said she was promised by the water department and added that you cannot extinguish water rights. She concluded that it was much bigger issue.

John Geurs, an Ocotillo resident, commented that in the 35 years that he has been getting irrigation he has never seen anything from the city encouraging anyone to sign up to get the irrigation. He added that the neighborhood would turn into an area that hasn't received enough water like Murphy Park. He asked that the city do advertising to ask people to join the irrigation system.

Councilmember Alvarez commented that she resents that every time she asks questions that she is told that she is going beyond the scope of the agenda. She said it has been happening since and felt she had the freedom to ask questions at the meetings that are asked of her by the community. She continued that she resents being embarrassed at every meeting or that she is wrong or needs to stop.

Ms. Fischer asked if Mr. Johnson could come back up to answer a few questions.

Mr. Johnson explained that the contract expired in June of this year and he is just asking for one year but

with the City Manager having the ability to extend the contract.

Councilmember Alvarez asked if it expired this year. She was under the impression that it didn't expire until 2016.

Mayor Weiers clarified that the outside service was providing service month by month. He asked how much of a problem would it be to extend the time and bring this back to another meeting.

Mr. Johnson said the commission would be meeting to discuss the issues in early September. He said at that time the citizens can bring their concerns forward. He continued that he would not have brought it forward if it wasn't close to expiring.

Councilmember Alvarez asked about the community meetings that were going to take place.

Mr. Johnson said that was part of the plan that the commission would be reviewing and then making a recommendation. He said the draft plan goes to the commission on September 3, 2014.

Councilmember Alvarez asked if the commission would be hearing the public comment in September. Mr. Johnson clarified the public comment would be in October.

Councilmember Alvarez asked if it wouldn't be better to had the public comment first and then take it to the advisory commission.

Mr. Johnson explained the communication plan that would be reviewed by the water commission.

Councilmember Alvarez commented the community needed to be involved sooner and direction should come from people who use that service.

Mr. Johnson advised the community is involved and they will have an opportunity to make comments during development of the plan.

Mayor Weiers commented that the citizen involvement should come before the commission reviews the plan. He said it appears they are approving a plan and then asking for citizen comments. He asked if this item should be tabled.

Councilmember Hugh asked if Councilmember Alvarez was interested in making a motion to table this item.

Councilmember Alvarez said she would like to make a motion.

Ms. Fischer clarified that the contract is to continue service as it exists today. This is to ensure the service continues to be provided while the program is reviewed.

Mayor Weiers read the Council item and said there was some confusion in the way this item read.

Mr. Johnson stated that there have been discussions to change the program, but at this time, it is just to continue the current service. He said discussions have been ongoing for the last four to five months.

They are working to provide answers to both the commission and the public.

Councilmember Martinez asked if the contract would increase the rates. Mr. Johnson said no. Councilmember Martinez said this isn't on the rates, but the service has to continue for those that are receiving the service. He said discussions are going to be coming up. He said he didn't see any threat that anyone is going to lose their service and there appears to be a plan to obtain input from the public. He said with the presentation, some questions have been asked and issues have been brought up. He said they should go ahead with this with the understanding there will be no increase in rates. He asked for those individuals that are property owners on this program, he asked if the city maintains the structure, even if it is on personal property.

Mr. Johnson said there are 23 miles of line and much of that is through private property. He said there have been minimum amounts of water overflowing into the street. He said there are 15 irrigation periods from April to October and it serves 330 people.

Councilmember Martinez asked how these rates equate to the city population with their water rates.

Mr. Johnson said they are looking at about 7 times more cost for potable water use than for irrigation.

Councilmember Martinez agreed it was a much lower rate for irrigation.

Mayor Weiers asked what the average house paid in irrigation fees. Mr. Johnson stated about \$162 per year. He added that the contract provides the patching on the system and turning the system on and off.

**Councilmember Martinez moved, seconded by Councilmember Sherwood, to approve the extension of the contract in item 13.**

Councilmember Hugh clarified that this is to just provide the service so it doesn't stop. Councilmember Alvarez stated that without knowing when the contract expires she doesn't see a need to rush this through.

**The motion carried with Councilmembers Hugh and Alvarez voting nay.**

## **CONSENT RESOLUTIONS**

Ms. Pamela Hanna, City Clerk, read consent agenda resolution item numbers 22 through 29 by number and title.

### **22. AUTHORIZATION TO ENTER INTO A GRANT AGREEMENT WITH THE FEDERAL AVIATION ADMINISTRATION FOR AIRPORT IMPROVEMENTS**

PRESENTED BY: Jack Friedline, Interim Director, Public Works

RESOLUTION: 4829

This is a request for City Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into a grant agreement with the Federal Aviation Administration (FAA) in the anticipated amount of approximately \$3,750,000 for asphalt apron and lighting improvements at Glendale Municipal Airport. Additionally, the city's Glendale Onboard (GO) fund and the Arizona

Department of Transportation (ADOT) will each provide \$184,081.50 in grant match funding.

Staff expects the FAA to offer the grant prior to September 30, 2014. However, because the FAA allows only a few days to formally accept the grant once the offer is made, staff is requesting Council's approval to accept the grant prior to receiving the new grant offer from the FAA.

**RESOLUTION NO. 4829 NEW SERIES WAS READ BY NUMBER AND TITLE ONLY, IT BEING A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE ENTERING INTO A GRANT AGREEMENT, AND AUTHORIZING THE ACCEPTANCE OF THE GRANT IF AWARDED, FROM THE U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, IN THE APPROXIMATE AMOUNT OF \$3,750,000 (THREE MILLION, SEVEN HUNDRED, FIFTY THOUSAND DOLLARS) FOR ASPHALT APRON AND LIGHTING IMPROVEMENTS AT THE GLENDALE MUNICIPAL AIRPORT; AND AUTHORIZING THE CITY MANAGER TO EXECUTE ANY AND ALL DOCUMENTS NECESSARY TO EFFECTUATE THE GRANT.**

**23. AUTHORIZATION OF THIRD AMENDMENT TO LICENSE AGREEMENT FOR VERIZON WIRELESS (VAW), LLC FOR THE OPERATION OF A WIRELESS COMMUNICATION SITE AT SAHUARO RANCH PARK**

PRESENTED BY: Jack Friedline, Interim Director, Public Works

RESOLUTION: 4830

This is a request for the City Council to waive reading beyond the title and adopt a resolution authorizing a third amendment to the license agreement between the City of Glendale and Verizon Wireless, LLC, dba Verizon Wireless, to allow city staff to invoice and receive the license fee payment on an annual basis for a wireless communication site within Sahuaro Ranch Park located at 9802 North 59<sup>th</sup> Avenue.

**RESOLUTION NO. 4830 NEW SERIES WAS READ BY NUMBER AND TITLE ONLY, IT BEING A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE CITY MANAGER TO EXECUTE A THIRD AMENDMENT TO LICENSE AGREEMENT FOR WIRELESS COMMUNICATIONS SITE IN SAHUARO RANCH PARK LOCATED AT 9802 NORTH 59<sup>TH</sup> AVENUE IN GLENDALE, ARIZONA WITH VERIZON WIRELESS.**

**24. AUTHORIZATION OF EIGHT LICENSE AGREEMENTS FOR VERIZON WIRELESS (VAW), LLC FOR THE INSTALLATION OF A DISTRIBUTED ANTENNA SYSTEM (SMALL CELL) ON EIGHT CITY STREETLIGHTS WITHIN PUBLIC RIGHT-OF-WAY**

PRESENTED BY: Jack Friedline, Interim Director, Public Works

RESOLUTION: 4831

This is a request for the City Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to execute eight license agreements between the City of Glendale and Verizon Wireless (VAW), L.L.C., dba Verizon Wireless, for the installation of a distributed antenna system (small cell) on eight city streetlights within public right-of-way located at: 11441 North 55<sup>th</sup> Avenue, 7392 West Missouri, 5895 West Peoria, 6655 West Bell Road, 5151 West Peoria, 9004 North 59<sup>th</sup> Avenue, 5115 West Olive, and 67<sup>th</sup> Avenue & West Royal Palm.

**RESOLUTION NO. 4831 NEW SERIES WAS READ BY NUMBER AND TITLE ONLY, IT BEING A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA,**

**AUTHORIZING THE CITY MANAGER TO EXECUTE EIGHT COMMUNICATIONS SITE LICENSE AGREEMENTS WITH VERIZON WIRELESS (VAW) LLC, DBA VERIZON WIRELESS FOR WIRELESS COMMUNICATIONS SITES LOCATED ON CITY STREETLIGHTS WITHIN PUBLIC RIGHTS-OF-WAY IN GLENDALE, ARIZONA.**

**25. AUTHORIZATION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH CITY OF PEORIA FOR RECYCLABLE PROCESSING SERVICES**

PRESENTED BY: Jack Friedline, Interim Director, Public Works

RESOLUTION: 4832

This is a request for City Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into an intergovernmental agreement (IGA) with the City of Peoria for Recyclable Processing Services, to begin upon signing of the agreement and shall continue thereafter until June 30, 2017; and to authorize the City Manager, at her discretion, to extend the IGA for one additional three-year period, upon mutual consent of both the City of Glendale and the City of Peoria.

**RESOLUTION NO. 4832 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 FOR RECYCLABLE PROCESSING SERVICES WITH THE CITY OF PEORIA.**

**26. AUTHORIZATION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT (IGA) WITH CITY OF AVONDALE FOR LANDFILL DISPOSAL SERVICES; AND RATIFICATION OF THE ADMINISTRATIVE ACTION TO EXTEND THE IGA**

PRESENTED BY: Jack Friedline, Interim Director, Public Works

RESOLUTION: 4833

This is a request for City Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into an intergovernmental agreement (IGA) with the City of Avondale for Landfill Disposal Services to begin upon signing of the IGA and shall continue thereafter until June 30, 2018; and to authorize the City Manager, at her discretion, to extend the IGA for one additional three year period, upon mutual consent of both the City of Glendale and the City of Avondale.

This is also a request for Council to ratify the administrative action to extend the terms and conditions of the previous IGA for landfill disposal services until the new IGA is approved by both Glendale and Avondale City Councils.

**RESOLUTION NO. 4833 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 FOR LANDFILL DISPOSAL SERVICES WITH THE CITY OF AVONDALE.**

**27. AUTHORIZATION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT (IGA) WITH CITY OF PEORIA FOR LANDFILL DISPOSAL SERVICES; AND RATIFICATION OF THE ADMINISTRATIVE ACTION TO EXTEND THE IGA**

PRESENTED BY: Jack Friedline, Interim Director, Public Works

RESOLUTION: 4834



This is a request for City Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into an intergovernmental agreement (IGA) with the City of Peoria for Landfill Disposal Services to begin upon signing of the IGA and shall continue thereafter until June 30, 2017; and to authorize the City Manager, at her discretion, to extend the IGA for one additional three year period, upon mutual consent of both the City of Glendale and the City of Peoria.

This is also a request for Council to ratify the administrative action to extend the terms and conditions of the previous IGA for landfill disposal services until the new IGA is approved by both Glendale and Peoria City Councils.

**RESOLUTION NO. 4834 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 FOR LANDFILL DISPOSAL SERVICES WITH THE CITY OF PEORIA.**

**28. AUTHORIZATION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH MARICOPA COUNTY FOR IMPROVEMENTS TO 99TH AVENUE FROM MISSOURI AVENUE TO BETHANY HOME ROAD**

PRESENTED BY: Jack Friedline, Interim Director, Public Works

RESOLUTION: 4835

This is a request for City Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into an intergovernmental agreement (IGA) with Maricopa County for improvements to 99<sup>th</sup> Avenue, from Missouri Avenue to Bethany Home Road, and installation of a traffic signal at the intersection of 99<sup>th</sup> and Montebello avenues.

**RESOLUTION NO. 4835 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 MARICOPA COUNTY FOR IMPROVEMENTS TO 99<sup>TH</sup> AVENUE FROM MISSOURI AVENUE TO BETHANY HOME ROAD AND INSTALLATION OF TRAFFIC SIGNALS AT THE INTERSECTION OF THE 99<sup>TH</sup> AVENUE AND MONTEBELLO AVENUE ALIGNMENT.**

**29. AUTHORIZATION TO ACCEPT A VICTIMS OF CRIME ACT GRANT FROM THE ARIZONA DEPARTMENT OF PUBLIC SAFETY AND ENTER INTO A SUB-GRANT AWARD AGREEMENT**

PRESENTED BY: Debora Black, Police Chief

RESOLUTION: 4836

This is a request for City Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to accept a Victims of Crime Act (VOCA) grant in the approximate amount of \$121,464 through the Arizona Department of Public Safety (DPS) for the Victim Assistance Program, and enter into a sub-grant award agreement.

**RESOLUTION NO. 4836 NEW SERIES WAS READ BY NUMBER AND TITLE ONLY, IT BEING A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, ACCEPTING A GRANT OFFER FROM THE ARIZONA DEPARTMENT OF PUBLIC SAFETY, VICTIMS OF**

**CRIME ACT (VOCA), AND APPROVING MATCHING FUNDS, FOR THE GLENDALE POLICE DEPARTMENT'S VICTIM ASSISTANCE GRANT PROGRAM.**

It was moved by Vice Mayor Knaack and seconded by Councilmember Chavira, to approve the recommended actions on Consent Agenda Item Numbers 22 through 29, including the approval and adoption of Resolution No. 4829 New Series, Resolution No. 4830 New Series, Resolution No. 4831 New Series, Resolution No. 4832 New Series, Resolution No. 4833 New Series, Resolution No. 4834 New Series, Resolution No. 4835 New Series, and Resolution No. 4836 New Series; The motion carried unanimously. (Councilmember Martinez left the room prior to the vote and returned at the beginning of the next item.)

**PUBLIC HEARING - LAND DEVELOPMENT ACTIONS**

**30. GENERAL PLAN AMENDMENT GPA14-02 (RESOLUTION) AND REZONING APPLICATION ZON14-03 (ORDINANCE) SKILLED NURSING FACILITY - 7201 WEST CAMINO SAN XAVIER (PUBLIC HEARING REQUIRED)**

PRESENTED BY: Jon M. Froke, AICP, Planning Director  
RESOLUTION: 4837  
ORDINANCE: 2900

This is a request by the Atwell Group representing Phoenix SNF Real Estate Group LLC, for City Council to approve a General Plan Amendment and Rezoning Application on 3.88 acres. The request is to amend the General Plan from Business Park (BP) to Institutional (INST), to amend the North Valley Specific Area Plan from Business Park (BP) to Institutional (INST), and to rezone the property from Planned Area Development (PAD) to Planned Area Development Amended (PAD Amended).

Staff is requesting Council conduct a public hearing, waive reading beyond the titles, and adopt a resolution for GPA14-02 and approve an ordinance for ZON14-03, subject to the stipulations recommended by the Planning Commission.

Mr. Froke said the site has been vacant and this project is an excellent fit for this location. He provided information about the site plan. He said the Planning Commission provided a recommendation for approval.

Mayor Weiers opened the public hearing. Having no requests to speak, the hearing was closed.

**RESOLUTION NO. 4837 NEW SERIES WAS READ BY NUMBER AND TITLE ONLY, IT BEING A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AMENDING THE GENERAL PLAN MAP OF THE CITY OF GLENDALE, ARIZONA, BY APPROVING GENERAL PLAN AMENDMENT GPA14-02 FOR PROPERTY LOCATED AT 7201 WEST CAMINO SAN XAVIER.**

It was moved by Councilmember Sherwood, and seconded by Vice Mayor Knaack, to pass, adopt and approve Resolution No. 4837 New Series. The motion carried unanimously.

Councilmember Sherwood commented this is a great infill project for the area.

**ORDINANCE NO. 2900 NEW SERIES, WAS READ BY NUMBER AND TITLE ONLY, IT BEING AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, REZONING PROPERTY LOCATED AT 7201 WEST CAMINO SAN XAVIER FROM PAD (PLANNED AREA DEVELOPMENT) TO PAD AMENDED (PLANNED AREA DEVELOPMENT AMENDED); AMENDING THE ZONING MAP; AND PROVIDING FOR AN EFFECTIVE DATE.**

It was moved by Councilmember Sherwood, and seconded by Councilmember Hugh, to approve Ordinance No. 2900 New Series. Motion carried on a roll call vote, with the following Councilmembers voting “aye”: Alvarez, Chavira, Hugh, Knaack, Martinez, Sherwood, and Weiers. Members voting “nay”: none.

#### **LAND DEVELOPMENT ACTIONS**

**31. PLAT APPLICATION FP14-01: ASPERA FINAL PLAT - 20250 NORTH 75TH AVENUE**  
PRESENTED BY: Jon M. Froke, AICP, Planning Director

This is a request by Cardon Development Group for City Council to approve the final plat for Aspera, a Planned Area Development, located at 20250 North 75<sup>th</sup> Avenue.

Mr. Froke said this action tonight would create 7 individual commercial and residential parcels.

Staff recommends approval of Final Plat Application FP14-01.

**It was moved by Councilmember Martinez, and seconded by Vice Mayor Knaack, to approve Plat Application FP14-01: Aspera Final Plat at 20250 North 75<sup>th</sup> Avenue. The motion carried unanimously.**

#### **ORDINANCES**

**32. ADOPT AN ORDINANCE AMENDING GLENDALE CITY CODE, CHAPTER 2, ADMINISTRATION, ARTICLE I**  
PRESENTED BY: Sam McAllen, Director, Development Services  
ORDINANCE: 2901

This is a request for City Council to waive reading beyond the title and adopt an ordinance amending Glendale City Code Chapter 2, Administration, Article I relating to the annual review and adjustment of the Community Development Fee Schedule, deleting the administrative portion of the city code related to fee payment types and deleting the current Appendix B of the City Code, Community Development Fee Schedule with an effective date of October 1, 2014.

Mr. McAllen said community development fees shall be adjusted on an annual basis in accordance with the consumer price index.

**ORDINANCE NO. 2901 NEW SERIES, WAS READ BY NUMBER AND TITLE ONLY, IT BEING, AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AMENDING GLENDALE CITY CODE CHAPTER 2 (ADMINISTRATION), ARTICLE I (IN GENERAL), SECTION 2-3 (COMMUNITY DEVELOPMENT FEES; ANNUAL REVIEW AND ADJUSTMENT; PAYMENT;**

**WAIVER); AND ESTABLISHING AN EFFECTIVE DATE.**

**It was moved by Councilmember Hugh, and seconded by Councilmember Chavira, to approve Ordinance No. 2901 New Series. Motion carried on a roll call vote, with the following Councilmembers voting “aye”: Alvarez, Chavira, Hugh, Knaack, Martinez, Sherwood, and Weiers. Members voting “nay”: none.**

**33. ADOPT AN ORDINANCE AMENDING GLENDALE CITY CODE, ARTICLE 1 (IN GENERAL), CHAPTER 3 (ALARM SYSTEMS), SECTION 3-5 (ALARM SUBSCRIBER’S DUTIES)**

**PRESENTED BY:** Debora Black, Police Chief

**ORDINANCE:** 2902

This is a request for City Council to waive reading beyond the title and adopt an ordinance amending Glendale City Code, Article 1 (In General), Chapter 3 (Alarm Systems), Section 3-5 (Alarm Subscriber Duties).

Chief Black explained that the annual fee is to generate some kind of cost recovery. She explained they researched other cities which provided alarm subscriber permits and Glendale was the only one that did not charge a fee. She explained that no public comments have been received.

Mayor Weiers stated what the actual cost was for the program. Chief Black stated that the cost for the program is \$82,000 and there are about 8,200 permits. Mayor Weiers clarified that the cost was covered with only \$10 for fees so the city was making \$10 per permit. Chief Black stated that there were other items not itemized in the \$82,000. Mayor Weiers asked if there were penalties and fees for false alarms. Chief Black said there were fees for false alarms and for not pulling a permit for an alarm. He asked if the penalty fees would cover the cost of the mailings and other additional costs. Mayor Weiers explained he didn’t have a problem charging what it actually costs to provide the service but he had a problem charging twice the amount. Chief Black stated that the research showed that the fee was designed to cover the costs now and in the future.

Councilmember Hugh asked that for those alarms that are not monitored and go off would the owner be charged for that. Chief Black stated there would be no fee.

**ORDINANCE NO. 2902 NEW SERIES, WAS READ BY NUMBER AND TITLE ONLY, IT BEING, AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AMENDING GLENDALE CITY CODE, ARTICLE 1 (IN GENERAL), CHAPTER 3 (ALARM SYSTEMS); AND ESTABLISHING AN EFFECTIVE DATE.**

**It was moved by Councilmember Chavira, and seconded by Councilmember Martinez, to approve Ordinance No. 2902 New Series. Motion carried on a roll call vote, with the following Councilmembers voting “aye”: Chavira, Knaack, Martinez, Sherwood. Members voting “nay”: Alvarez, Hugh, Weiers.**

Mayor Weiers said he could not support this since the fee is actually more than what is necessary.

**RESOLUTIONS**

**34. ADOPT A RESOLUTION ESTABLISHING THE FEE FOR RESIDENCE AND BUSINESS ALARM SUBSCRIBER PERMITS**

PRESENTED BY: Debora Black, Police Chief

RESOLUTION: 4838

This is a request for City Council to waive reading beyond the title and adopt a resolution establishing a \$20 fee for residence and business alarm subscriber permits in the City of Glendale.

**RESOLUTION NO. 4838 NEW SERIES WAS READ BY NUMBER AND TITLE ONLY, IT BEING A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, SETTING FORTH THE RESIDENCE AND BUSINESS ALARM SUBSCRIBER PERMIT FEES PURSUANT TO GLENDALE CITY CODE, ARTICLE 1, CHAPTER 3; AND ESTABLISHING AN EFFECTIVE DATE.**

**It was moved by Councilmember Sherwood, and seconded by Vice Mayor Knaack, to pass, adopt and approve Resolution No. 4838 New Series. The motion carried. Alvarez, Hugh and Weiers voted nay.**

**35. ADOPT A RESOLUTION AMENDING THE COMMUNITY DEVELOPMENT FEE SCHEDULE**

PRESENTED BY: Sam McAllen, Director, Development Services

RESOLUTION: 4839

This is a request for City Council to waive reading beyond the title and adopt a resolution amending Appendix B of the City Code, Community Development Fee Schedule, with an effective date of October 1, 2014.

**RESOLUTION NO. 4839 NEW SERIES WAS READ BY NUMBER AND TITLE ONLY, IT BEING A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, REPEALING THE CURRENT COMMUNITY DEVELOPMENT FEE SCHEDULE (APPENDIX B OF THE CITY CODE); ADOPTING A NEW SCHEDULE OF COMMUNITY DEVELOPMENT FEES (APPENDIX B OF THE CITY CODE); AND ESTABLISHING AN EFFECTIVE DATE.**

**It was moved by Councilmember Martinez, and seconded by Councilmember Hugh, to pass, adopt and approve Resolution No. 4839 New Series. The motion carried unanimously.**

**NEW BUSINESS**

**36. SETTLEMENT OF ALL CLAIMS AGAINST THE TOHONO O'ODHAM NATION RELATING TO PROPERTY LOCATED AT APPROXIMATELY 91ST AND NORTHERN AVENUES**

PRESENTED BY: Michael D. Bailey, City Attorney

This is a request for City Council to authorize and direct the City Manager to enter into a settlement agreement with the Tohono O'odham Nation and the Tohono O'odham Gaming Enterprise relating to any and all claims as it pertains to the creation of an Indian reservation on property at approximately 91<sup>st</sup> and Northern Avenues and within the Glendale Municipal Planning Area for the operation of a gaming facility.

Mr. Bailey reviewed elements of the agreement. He said it was a settlement agreement of all claims and

the city would be executing a stipulation with regard to the case currently pending in court. He said the agreement is very similar to the resolution. Mr. Bailey also went over the obligations required of the Tohono O'odham nation, including payments to be made by the TO nation to the city. He added that outside counsel, Gary Verburg, was here to answer any questions.

Vice Mayor Knaack asked about the water and wastewater and if there was any discussion about the ground water rights, namely if they were to dig a well that would impact our aquifer. Mr. Bailey stated there was nothing that would prohibit that. He said they tried to include and recognize that the city would be the wastewater provider. Vice Mayor Knaack expressed her concern with that with the continuing drought and the impact it has on the city. She continued asking if there were any protections about Luke Air Force Base or the Glendale Airport. Mr. Bailey said there was nothing specific in the agreement above and beyond what protections already exist for Luke Air Force Base. Mayor Weiers commented Luke Air Force Base is neutral on this issue. Councilmember Chavira commented he was told by Rusty Mitchell that Luke Air Force Base never had any issues with the Tohono O'odham Nation and they have always been a friend. Mayor Weiers said Luke Air Force Base is taking no position on the casino.

Vice Mayor asked about the waiver of sovereignty and asked if it was a legislative issue. Mr. Bailey said it was and he said with any type of waiver, there is always some risk.

Councilmember Martinez stated he provided several agreements that were done in other states. He realized that not every situation is the same and there are a lot of variables. He said in looking at the agreement that is before them this evening, and in looking at other agreements, he said what is being presented tonight is peanuts compared to what other cities have negotiated. He said he did not know how they can present this agreement in good faith to the citizens. He said in his view and in the view of many, it is not a good agreement.

Mayor Weiers opened the item to public comment.

John Bernal, Sahuaro district resident, stated he opposes the casino. He does not want a casino in his backyard. He did some research that statistics show and that within the first four years after a casino goes up, crime goes up 4% and then it goes up 10%. He said within a 50 mile radius, bankruptcies also go up. His main concerns are the addiction issues that are associated with casinos. He told a story about family member who experienced a gambling addiction. He stated he did not see any advantage to this. He agreed with Councilmember Martinez that the amount being given to the city is peanuts. He said he was totally opposed to this. He said he wished there was a way to undo this.

Robert Casares, an Ocotillo resident, stated that several Councilmembers have made a mistake in their positions against the nation. He commended Councilmembers Alvarez, Hugh and Chavira for supporting the nation. He stated the other nations have done a bombardment of negativity. He stated he welcomed the casino, but likes the idea of the resort more. He said he welcomed the ability to bring back the powwows. He said the other tribes need to support the Tohono O'odham. He said Glendale can be a bright star and this is a great opportunity to bring the different cultures together.

Gene Turiano, an employee of the Sun City homeowners association, said he was speaking his own view and not the views of his employer, who is neutral on this item. He said he is the assistant manager of the compliance department. He manages the financial assistance program, and through donations they assist people when they get into trouble. He said 20% of the residents of Sun City live under the poverty

level. He said they have to qualify for services and they go through a process and part of that is looking at the debt. He said that he sees a lot of debt brought on by the casino and having the casino in Glendale will only make it worse. He said the number of foreclosures in Sun City is unbelievable. He said it was his position that it was not a good thing.

Lauren Tolmachoff, a Cholla resident, stated Glendale had the designation of being one of the slowest recovering cities from the recession. She said many of the jobs lost in the recession have not been replaced. She said the people working at the casino would be spending money as well. She said the people who would be working there are not working right now. She did state that there are a lot of people with addictions like gambling and alcoholism which destroys families, but that is not what is under consideration right now. She said the city needs the jobs and she has had overwhelming support for the casino. She added when looking at the terms of the agreement, you shouldn't compare an agreement for a casino in Pennsylvania. The out of state casino might be hundreds of miles away from other casinos. She said that you have to consider factors such as how close the other casinos are. She said the terms of this agreement are good.

Michele Tennyson, Cholla resident, stated that whether you are for or against the casino, she feels the agreement has been rushed. She believes that the agreement does not address other issues and possible revenues from other uses of the property besides the casino. She commented on the availability of other casinos and said that gambling does not contribute to communities. She said that other communities that have casinos have issues with gambling addictions. She spoke about a client who had a gambling addiction and gambled away the kids' college money. She asked if this was the best agreement that can be done for the city. She continued that there isn't anything in the agreement about height restrictions that would protect the airport and Luke AFB. She asked that the city not rush through this and take its time.

Israel Torres, a Tempe resident, spoke on behalf of several unions, he requested the Council support the Tohono O'odham nation and the casino. He supports the many jobs and the millions of dollars in economic development the casino would bring to the area. He said it was time to put Glendale back to work and requested the Council's support.

Edward Pulido, an Ocotillo resident, spoke about the city getting a piece of the pie. He asked if the Council was protecting the residents. He shared a story about another person who had a credit card with over \$15,000 in charges from another casino in the valley. He asked what the casino was going to do about families who have members with gambling addiction. He asked what the Council was going to do for the people of the city. He asked the Council to gamble responsibly.

Walt Opaska, a Cholla resident, said he supports the agreement because the city will not have to pay a single dollar for this project and will actually get revenue, which starts immediately, from it. He said the resort will help increase the attractiveness of the area and will bring more visitors. This deal will help recoup the money spent on economic development projects the city needs and he wished the city would have come around sooner. He said the city should work together as hard as they can to make this the best deal possible.

Barbara Roberts, a Peoria resident, stated she was within 5 miles of the casino and they are already picking up needles up by her front gate. She is concerned about crime because she is a senior citizen. She said the city needs jobs, but they need to bring in jobs that grow the community in a good way. She

said hotels and casinos are great, but not across from a high school. She said she didn't want to drive by a casino where there would be drinking. She agreed with a lot of the things that were said by the first speaker.

John Mendibles, a Phoenix resident and the former Mayor of Superior, he commented there was a lot of talk. Mr. Mendibles said he would be moving to the Yucca district. He said there were three things that Council did not carry forward today. He said to gamble is an individual decision. He said that the air force base can take care of itself. He said as far as crime, Glendale is already 7<sup>th</sup> in the country. He said this is about recovery. He said Council represents all of the people. He said that the city is now a neighbor of the Tohono O'odham nation and they need to work together. He said that is the only premise here.

Randy Miller, a Barrel resident, cited a quote. He spoke about the Councilmember who wanted to inform the people and hear from the people before a vote is taken. He said, however, Council is willing to take a vote tonight on a contract that was just released on which citizens have had no input and asked that the Council table the item for 30 days so that the citizens could give their input.

Robert Lukacs left before speaking.

Bud Zomok, an Ocotillo resident, asked Council what was the rush to enter into the contract. It's too late to have the casino built in time for the Super Bowl or other upcoming major events. He stated that a search showed that it would take 24 to 48 months to build, so why rush into an agreement. He discussed an agreement in New York. He gave examples of what it would be to get a similar agreement. He stated that rush jobs don't usually end up well for the city. He used the agreement for the management deal with the Coyotes as an example.

Santos Chavez left before speaking.

Arthur Thruston, a Cactus resident, expressed concern about the meeting clock being calibrated. He stated settlement or apology. He stated that five years of dealing with this issue was not a rush. He commented about the millions of dollars that have been wasted. He continued that all the claims were false brought by the city against the Tohono O'odham nation, and the city should apologize.

Timothy Glass, a Goodyear resident, works at 83<sup>rd</sup> Avenue and Northern. He commented that some would say that adding one more casino to the area would be no big deal. He stated that a casino would introduce people to gambling and addictions. He commented that casinos only succeed on the backs of losers and addicts lose everything, sometimes even their lives. He commented about some research regarding addiction, the proximity and convenience encourage it. He stated Nevada has the highest gambling addiction. He proposed that the city and the Council could do better than a casino.

Ron Kolb, an Ocotillo resident, spoke about this being an historic event that would impact the west valley. The development this area will experience will be amazing. He stated he was pro-business and the further that government stays away from him the better. He said he was raised in and cares about Glendale. He asked who sat on the negotiating committee. He said he agreed with Councilmember Martinez and that there should be a bump in what the Tohono O'odham nation gives to the City. He said the tribe will be a good neighbor. He said don't let 2 or 3 people do it; do all the negotiations and don't make it a secret.



Jack Pope, an Ocotillo resident, attends church at 83<sup>rd</sup> Avenue and Northern. He said that it would be a great inconvenience to get out on Northern with all the traffic once the casino is built. He said he opposes the casino on moral grounds. He said if ratified in its current form that it would be selling the city short.

Reverend Jarrett Maupin, an Ocotillo resident, stated how much he admires the Tohono O'odham nation. He said this wasn't about morality and doing right by your neighbor. He stated the Tohono O'odham nation may have been last but have been winning steady victories. He said it is time to work with the TO. He said Council lost the war and they should be grateful for what they have coming. He commented he was a witness to some of the crimes occurring in Glendale. He said most of the crimes that occur are by the lobbyists in pin-striped suits. He said Glendale is second only to Detroit to being close to bankruptcy. He said people need to be put to work and he hoped the Council does the right thing.

Rita Franco, a Yucca resident, stated this was about money and politics and it was being rushed. She asked what the rush was. She said Councilmember Martinez was correct. She asked what the city was getting out of this. She said she looked at the Vee Quiva Casino, and that 85% of the 500 or so employees had low paying, low skilled jobs. She commented that she was insulted by some of the comments by others regarding addiction. She asked Council to look at similar agreements with other cities. She commented that the city was losing \$9 million a year. She commented that Councilmember Sherwood ran his election on opposing the casino and she asked why was that changed now. She has heard several things in the media about back room deals and asked that the Council be transparent.

Schuyler Rollison on behalf of Kim Howard, a Yucca resident, said when she found out about the casino she initially thought she would be moving out of the city where she had lived for over 35 years. She is not happy that the casino is within ½ mile of the school. She spoke about the installation of speed bumps on the street where she lives. She stated that the city has no money to improve the streets but has money to keep the Coyotes and now the casino. She said she attended one Council meeting. She said the person running the meeting did not allow people to speak. She said she did not want her tax dollars supporting a casino and asked what better ways tax dollars can be used.

Barbara Swee left before speaking.

Raymond Valentine, an Ocotillo resident, said he has lived in Glendale since the 1950's. He said he couldn't have been raised in a happier home. He commented he knew the chief of police and the councilmembers in the past. He said he is disappointed with the comments so far. He is concerned about the children and their safety. He said people say responsibility about gambling should be on the individual, however, he believes that the children are more important than the money. He said if we are concerned about the well-being of the children and the community, the Councilmembers should think about these things. He also said the love of money is the root of all evil.

Timothy Schwartz asked to be moved to item 37.

Paul Price, an Ocotillo resident, said he said he has lived in Glendale since the 1930's. He said he has a problem with those on the Council who promised they would do one thing and then voted the opposite way. He said he is not in favor of the casino. He believes there is no profit for the city and there is an issue with the school across the street. He doesn't see any good that it could do.

Dr. Ron Rockwell, lead pastor of Harvest Church at 83<sup>rd</sup> Avenue and Northern, commented that he was a resident of the Yucca District and lived in the west valley for 14 years. He stated that the church is close to the project site. He said he is not here to determine the truth and he said the truth might not ever be known. He said he didn't believe it was possible to get a Las Vegas style casino in Glendale and he feels betrayed, angered and disappointed. He said he supports development in the city, but he is opposed to a casino. He said gambling was one of the toughest addictions to overcome. He asked if the Council really believed that the casino was in the best interests and asked if the council cares about the moral and spiritual community of the city. He stated this was an historic moment tonight. He said he appealed to the Council to say no for the children and grandchildren.

Claudine Valentine said it had already been said.

Mayor Weiers closed public comment.

**It was moved by Councilmember Hugh, and seconded by Councilmember Chavira, to approve the settlement of all claims against the Tohono O'Odham nation relating to property located at 91<sup>st</sup> and Northern Avenues.**

Councilmember Alvarez commented that the casino is no different than buying a lottery ticket. She stated in 1986 the Tohono O'Odham nation lost land due to a dam being built and destroying the property and the government gave the nation permission to purchase additional property because of that loss. She said this has been going on for 5 years. She said the Tohono O'Odham has been doing everything to communicate with the city. She said the west side wants the casino. She stated the Cardinals and Coyotes will have more traffic. She said there are other things at the resort for kids. She said people in Glendale should practice self-control. She said she does not support sports where the city has to spend money to support the team. She said the city will not have to support the Tohono O'Odham. She said 80% of the people want the casino and the businesses want the casino. She said not everyone wants the cheap food and the cheap liquor. She said the Tohono O'Odham will have a beautiful facility in the city which will provide a service. She said if the citizens don't approve of gambling, they should be doing something about the gambling that already exists. If the public does not like the decisions the Council is making, they should be doing something about it.

Councilmember Martinez said he believes his position on opposing this project, the casino, and the reasons for it are well known, so he would not take the time to repeat all that. He said once the Council voted to enter into negotiations, which he was opposed to and voted against, he told his colleagues if that was the way it was going to be, so be it. He said he still didn't like it, but would do what he could to help to get the best deal possible that the city could get. He said sitting here tonight and he said this deal is not even close. He said he had given Mr. Bailey an index of various agreements in other states and this is not equitable.

Councilmember Martinez said this has been going on for four or five years and now people are saying Council is rushing into a decision. He said there were workshops and a lot of discussion on this before. He continued last Tuesday the decision was made to go ahead with this on the agenda and the announcement was made on Wednesday. He said that was only after much discussion because some of the Councilmembers felt they were rushing this. He said for the first time they had heard some hard figures as to what the income was going to be for the city and the benefits to the city. He said with that,

the Council finally agreed they would release the proposed agreement a little earlier, on Wednesday, because usually agendas are released on Fridays. He said there was a little time for residents to review, but very little time. He asked how many times have the Councilmembers sat there and heard about the lack of transparency and how they rush things. He said they have heard that tonight as well.

Councilmember Martinez stated the citizens had not had the time to digest what this all means and that this is not a good agreement. He stated that since this is an administrative act that citizens could not do a referendum. He said the preamble to the agreement said it is effective on the date it is signed and that would be it and the deal would be done. He said under section 2, definition of property, in the agreement, he said it appears to apply to all 135 acres that the Tohono O'Odham nation owns, not just the 54 acre parcel for the resort. He said this is way too much land for just a resort, so he asked what else is going on at this property. He said this could be unknown uses that the city is agreeing to, to support just about anything the Tohono O'Odham want to put up on that land, including electronic signs, a retail power center, all of which would compete with Westgate and drain city tax receipts. He said it could also possibly compromise the mission of Luke Air Force Base. He said under section 6.c, the language seems to provide that the Tohono O'Odham must pay the city the cost that the city incurs after the city has expended the funds. This means the city is funding the cost of these improvements up-front, he asked where was this money coming from. He said there is no provision specifying when the Tohono O'Odham must repay the city. If the city and the Tohono O'Odham cannot agree on the amount of the costs, the issue will be arbitrated, which could take years to complete. Councilmember Martinez said all the while, the city will have fronted these costs and receive no interest for that money and note that this type of property infrastructure, new high volume water and sewer lines, expended roads and so forth, this has to be spent at the front end of a project of this magnitude. Thus, the city is being asked to front these infrastructure costs with their own cash and run the risk that the Tohono O'Odham will not honor its commitment to repay these costs at some unspecified date, especially if the Tohono O'Odham cancels the project. He said it is highly unlikely that the Tohono O'Odham nation will pay for costs if the project is cancelled. The city will have to incur these expenses and will have to arbitrate with the Tohono O'Odham to attempt to recover these costs. He said he did not understand why the city is the one taking the significant upfront financial risk or even fronting these costs.

Councilmember Martinez continued that under Section 9, the annual payment that the Tohono O'Odham is obligated to make is very low. Compared to similar agreements that cities and counties in other states have made with Indian tribes, the amounts the Tohono O'Odham would be paying the city are way too low. He asked why should the Tohono O'Odham nation get such a below market rate. He said this is the last opportunity to drive a bargain and the city is settling on pennies on the dollar. He said the 2% annual escalator will almost certainly lag the inflation rate over the term of the agreement. Under section 9.b.2.c, why does the annual fee suddenly drop to \$900,000 in 2026. He said presumably 2026 is the date the current compact will expire, however section 10.b already has mechanisms that reduce Tohono O'Odham nation's fee if they amend or a new compact requires them to pay more revenue sharing to the state. The section 10.d reductions would be made to the already reduced \$900,000 amount. Tohono O'Odham is clearly double dipping on the fee reductions. Under section 10.c.4, Tohono O'Odham can terminate the agreement if the so-called poison pill in the compact is triggered. The poison pill provision provides that if state law is ever changed to allow a person or entity other than an Indian tribe to operate slot machines, any other form of class 3 gaming or poker, then the tribes may (1) operate an unlimited number of slot machines and any other form of gaming, and (2) the tribes may reduce their revenue sharing paid to the state to just \$7,500 from almost 8 percent. The poison pill is obviously beneficial to the Tohono O'Odham and will allow it to greatly expand its Glendale casino. Why should the

Tohono O'Odham also be allowed to terminate the agreement and deprive the city of its fees at the same time they are reaping an enormous windfall from the triggering of the poison pill.

Councilmember Martinez said Section 10.d, this section allows the Tohono O'Odham nation to reduce the amount of the fee payable to the city if the Tohono O'Odham nation's profits drop after amending its current contract or entering into a new compact with the state. It also allows Tohono O'Odham to reduce the amount of the fee payable to the city if such amended or new compact requires it pay increased revenue sharing to the state. Not only is this a double dip as described above, it has the potential to reduce the city's fee to almost nothing. Most parties anticipate that any new compact that the Arizona tribes negotiate in the future will require the tribes to pay the state higher revenue sharing.

Councilmember Martinez continued therefore, it is a virtual certainty that the provisions of section 10.d will be triggered and the city will receive far, far less than the annual fees mentioned in the agreement of \$1,400,000 to \$900,000. The numbers being quoted in the press, \$26 million over 20 years are completely inaccurate and highly unlikely to ever be achieved. The language in this section raises a number of questions about how and whether the city will be able to enforce the agreement. Section 11.d, refers to "any court having jurisdiction." However, this language begs the question of which court has such jurisdiction over the Tohono O'Odham nation. Most significant commercial contracts with Indian tribes specify by name which courts the tribe will agree to litigate in. In this case, the failure to so specify is only one more loophole the Tohono O'Odham can exploit to avoid its responsibilities. Section 12, this waiver of sovereign immunity does not allow the city to pursue claims against the Tohono O'Odham nation for fraud and misrepresentation. Given Tohono O'Odham nation's demonstrated track record of fraud and misrepresentation in connection with the project and its demonstrated willingness to hide behind its sovereign immunity, this waiver is insufficient to protect the city's interests. Section 13, given Tohono O'Odham nation history of deceit in this matter, the idea that it will abide by a duty of good faith and fair dealing is a joke. Section 20, why are these legal opinions limited to the enforceability of only section 11. Why can't Tohono O'Odham and its gaming enterprise's counsel give an opinion that the entire agreement is valid, binding and enforceable against it. This narrow enforceability opinion is highly unusual.

Councilmember Martinez said in the Arizona Republic opinion page on August 10<sup>th</sup>, there was an article that read no applause for this casino. He said it starts with a quote, "it is a shameful thing to practice deception and bad faith, especially when those being deceived include your tribal kin. Tribal Chairman Ed Norris Jr. is waiving \$26 million over 20 years under the city's nose, including a half a million within 10 days of signing an agreement. The lure of big money has a way of changing everything. That's a reality, but this is a reality too. In February 2002, then Governor Jane D. Hull announced an agreement on casino gaming with Arizona tribes, including the Tohono O'Odham, on terms of a compact deal pending voter ratification. A major point of agreement, according to Hull, was that there would be "no additional casinos allowed in the Phoenix metropolitan area." Two years before that agreement with Hull in 2000, the state's tribal leaders signed an agreement among themselves with each signatory vowing to "strive for a good faith cooperative relationship between and among them." Among the 16 tribes signing the declaration, was a representative of the Tohono O'Odham nation. At the same time, according to now-released court documents, a corporation chartered by the tribe was actively seeking land in the Phoenix area for the "possibility of doing a casino." That does not appear to fall under the category of good faith negotiations, however loosely defined it may be. Councilmember Martinez said he wanted to thank the citizens that have called and emailed him to let him know they are opposed to this and the common theme that came through was, as they have heard from some of them tonight, was why

the rush.

Councilmember Martinez said the Mayor and Council received a letter just yesterday from ex-Mayor Elaine Scruggs and he wanted to quote just from the introduction. Mayor, Vice Mayor and Councilmembers, I am writing in opposition to the two items above and to urge your denial of these items or, at the very least, your postponement of voting until these items and their associated relevant facts can be openly discussed and considered. Further, I am requesting that if a majority of the Council does not deny these items in their entirety, a postponement should be ordered which is structured to include input from elected representatives of the state of Arizona, representatives of Luke Air Force Base, representatives of the Glendale Airport Pilot's Association, and representatives of the Maricopa Association of Governments and Maricopa County Department of Transportation. Opposition to the two actions under consideration is based on many deficiencies. This letter will focus specifically on these few. Failure to protect the Glendale Airport's ability to continue operation, failure to protect the ability of Luke Air Force Base to continue its mission of training the United States of America's fighter jet pilots, failure to protect the west valley's assured water supply, failure to protect completion of the voter approved multi-jurisdictional Northern Parkway, failure to communicate and coordinate with the state of Arizona before advocating an action that ignores the state's authority and rights in this matter, and failure to discuss the two items in public session that gives the citizens of Glendale the opportunity to understand and comment on the proposed actions. Councilmember Martinez said there were some attachments that include a letter from Arizona Governor Janice Brewer to Interior secretary Ken Salazar in 2010 and a document dated in 2010 titled Glendale Airport Pilot's Association Opposes Tohono O'odham casino and resort proposal. Councilmember Martinez said with all that said, he can only repeat he has been opposed to this from day one, but said if this is the case, let's get the best possible deal they can. He did not believe this is the best possible deal the city can get.

Councilmember Alvarez said she appreciated Councilmember Martinez comments, but she wished he would have practiced this in the past. She said last year he approved giving \$225 million to the Coyotes and noted the money that he also voted to give the leagues. She would agree to table the item, but said everyone needs to be fair. She said many mistakes have been made, but she does not think this is one of them.

Vice Mayor Knaack moved, seconded by Councilmember Martinez to table the item.

Mr. Bailey said that the Vice Mayor had the floor when the motion to table was made. He stated a motion to table was not subject to discussion that the motion had to be voted on.

**The following members voted aye: Knaack, Martinez and Weiers; and the following members voted nay: Sherwood, Alvarez, Hugh and Chavira. The motion did not carry.**

Councilmember Martinez said he had several motions to amend the initial motion.

**Councilmember Martinez moved, seconded by Vice Mayor Knaack to amend the proposed settlement agreement to provide the annual payment by the nation to the city shall be greater of (1) \$20,000,000 or (2) three percent (3%) of the Class III net win from the project.**

Mr. Bailey clarified that the amendment could be debated and his recommendation is to take each amendment one at a time.

Councilmember Hugh commented that the money is enough. He said that the nation doesn't have to pay the city anything, the land is theirs and they do not have to pay the city a dime. He said they are willing to be good neighbors and are willing to make an offer to pay the city. He stated that the city is just following through on promises made by the federal government. He said this development will not affect the Luke Air Force Base or the city's airport. He said that all the claims the city has made have been proven false. He said it is time the city behaved like a good neighbor and moved forward. He is not in favor of these amendments.

Councilmember Chavira said he is not in favor of the amendment, and he will not be in favor of any other amendments. He said the city had the opportunity to annex this land years ago and chose not to. He said the property does not belong to the city. He said the development would be paid in full, including all infrastructures, by the nation. He spoke about the land being purchased by a straw corporation. He said the moment the land was taken into trust the nation didn't have to deal with the city at all. He called for the question.

Mayor Weiers said everyone would get a chance to speak.

Councilmember Alvarez said that Chairman Norris is a very fair man and he would clear up everything. She said there was a motion on the floor and they are violating parliamentary procedure. She said Councilmember Chavira can call for the question and that the Mayor does not have the power to control the motion being done. She said he did not have the power to not call for the question.

Mayor Weiers explained that regardless of the support or no support, that it has been about 6 days that Council has had the agreement for review or discussion. He said Councilmembers ran two years ago on a platform of transparency. He said that is not what is happening here today. He said this issue is being rushed through and he didn't understand why. He asked what was wrong with giving citizens the chance to talk about this. He said every Councilmember should have the opportunity to have meetings in their district to give the public the chance to talk about and fully understand this agreement. He added that six days is not enough time and this is being pushed through by four councilmembers.

Councilmember Alvarez stated that a year ago, an agreement for \$225 million was passed in three days.

Councilmember Alvarez and Mayor Weiers continued their discussion about what had occurred.

Councilmember Chavira said he was recognized for the motion and called the question, asked for advice from Mr. Bailey.

Mr. Bailey said with regard to the amendment, he recommended Council take a vote on the amendment.

**The motion did not carry with the following members voting aye: Knaack, Martinez and Weiers; and the following members voting nay: Sherwood, Alvarez, Hugh and Chavira.**

**Councilmember Martinez moved to amend the settlement agreement to provide that all costs for infrastructure improvements off the property must be paid to the city by the nation in advance of the city performing or constructing any such infrastructure improvements.**

Councilmember Alvarez called for the question. Vice Mayor Knaack seconded the motion.

Mayor Weiers asked what happens if there is no second for the motion.

Mr. Bailey said if there is no second, then the motion fails. Mr. Bailey said there is a motion for amendment on the floor.

Mayor Weiers said there was a motion regarding Councilmember Martinez's second amendment to the settlement agreement.

**The motion did not carry with the following members voting aye: Knaack, Martinez and Weiers; and the following members voting nay: Sherwood, Alvarez, Hugh and Chavira.**

**Councilmember Martinez moved, second by Vice Mayor Knaack to amend the settlement agreement to broaden the nation's waiver of sovereign immunity to include claims of fraud, misrepresentation or other bad acts by the nation that occurred in the negotiations leading to the settlement agreement.**

Councilmember Alvarez called for the question.

**The motion did not carry with the following members voting aye: Knaack, Martinez and Weiers; and the following members voting nay: Sherwood, Alvarez, Hugh and Chavira.**

**Councilmember Martinez moved seconded by Vice Mayor Knaack to amend the settlement agreement to provide that the duration for which the nation must make payments to the city is automatically extended for any period that Class III gaming continues to be operated on the project or on the property.**

**The motion did not carry with the following members voting aye: Knaack, Martinez and Weiers; and the following members voting nay: Sherwood, Alvarez, Hugh and Chavira.**

Mayor Weiers said they could now go back to the original motion. Call for the question on the original motion.

**The motion carried with the following members voting aye: Alvarez, Chavira, Hugh Sherwood; and the following members voting nay: Knaack, Martinez and Weiers.**

**37. CITY'S SUPPORT TO THE CREATION OF AN INDIAN RESERVATION AT APPROXIMATELY 91<sup>ST</sup> AND NORTHERN AVENUES**

PRESENTED BY: Michael D. Bailey, City Attorney  
RESOLUTION: 4840

This is a request for City Council to waive reading beyond the title and adopt a resolution supporting the creation of an Indian reservation by the Tohono O'odham Nation on property within the Glendale Municipal Planning Area at approximately 91<sup>st</sup> and Northern Avenues for the operation of a gaming facility.

Mayor Weiers opened the item to public comment.

Ward Simpson, a Phoenix resident, commented that he has employees in the west valley. He said he has been involved in several casino projects, but in every one he has seen a benefit when working with the nation. He asked Council to support this item.

Barbara Swee, a Yucca resident, had left the meeting before her name was called, but Mayor Weiers read the statement written on the back of her card, "I oppose (re agenda items 36 & 37) the proposed settlement of claims against the Tohono O'odham Nation and the creation of an Indian reservation at 91<sup>st</sup> Avenue and Northern. I oppose these measures because such a reservation, which is intended to house a gambling casino, would be detrimental to the health and welfare of my community. I am especially troubled by the location of this proposed casino because it is literally across the street from a high school and is near to elementary schools, as well."

David Jones, a Phoenix resident, said he was a former state representative in Indiana. He said leaders are brought forward to represent the people. He said the art of politics is the art of compromise and negotiation. He said you aren't going to please everyone, and that the bottom line is an economic opportunity for the community.

Claudine Valentine, a Glendale resident, wrote on the back of her card, and Mayor Weiers read it, "I have lived in Glendale for 67 years. I'm proud to live here, but I'm very much against this casino being built here. We do not need this undesirable element in our town. There is more to life than dollars. We have a moral obligation to instill good values in our children and leave something for them to be proud of. Not gambling such as this. Please do not approve this.

Robert Casares left before speaking.

Dr. Ron Rockwell, pastor of the church and a Yucca resident, said he was amazed by the behavior and integrity he has seen. He said a house divided cannot stand. He said that it seems that the Council doesn't have a problem with other kids having issues with gambling as long as it isn't their own kids. He said it was tragic and was sorry to be a part of this.

John Mendibles said pay me for living in your house. He said the land belongs to the nation and with this agreement, the nation is paying the city for living in its own house on its own land. He said whether it's a good deal or not, the nation doesn't have to pay the city anything. He said the courts have made their decision. He said people who don't want to go to a casino don't have to go.

Paul Price, an Ocotillo resident and Native American, said he is a member of a tribe and is still opposed to the casino.

Willard Thomas, a Cactus resident, said he moved here in 1973. He commented he was out of town for the month of July, and he was shocked when he heard about the support for HB 1410. He commented from a historical perspective about gold found in Georgia. He said the politicians passed a law to prohibit Indians from digging gold. He talked about Andrew Jackson and the Trail of Tears. He said action by President Jackson increased discrimination. He said that Senator McCain's and Senator Flake's support is really an issue about money. He said the Federal courts are better qualified to make this decision.



Reverend Jarrett Maupin, an Ocotillo resident, commented that two members of Council were not behaving well. He commended Councilmember Alvarez for her passion to do the right thing. He said Councilmember Sherwood had the courage of his convictions in trying to turn the city around financially. He commended Councilmember Hugh for standing up to his own constituents to do what was in the best economic interests of the city. He commended Councilmember Chavira for his passion in creating jobs for the city. He said the political games are not good for the city. He said there are prejudiced people on this Council. He commented about Councilmember Martinez and some of the remarks he has made about cowboys and Indians. He said it was time to let the nation do what they wanted to on their sovereign land. He said he would be praying for Council.

Ron Kolb, an Ocotillo resident, stated he had nothing additional to add.

Arthur Thruston, a Cactus resident, left before speaking.

Diana Strahl, a Barrel resident, left before speaking.

Tom Gettings, a Peoria resident, said he was in support of this project. He said the west valley cities are in support of this project because the dollar knows no boundaries. He said the casino doesn't need the city, the city needs the casino. He asked the Council to support this project.

Timothy Schwartz, a Cholla district resident and Chairman of legislative district 30, commented he just heard another speaker chastise the Council for standing up for fairness. He agreed that the agreement was being rushed and said that it was being done without making people aware of what was happening. He related an experience he had with the Governor and Obamacare and how the Governor changed her mind overnight. He explained she changed her mind all because of the money. He said that America was built on people being heard and having a voice. He said it was wrong for the Council to decide such a huge issue when there is money involved. He said this is corruption and the people will take notice.

Raymond Valentine left before speaking.

Councilmember Sherwood commented on Vice Mayor Knaack's comments about the aquifer under the Gila Bend land through placement act. He said the nation and the federal government are barred from asserting any and all claims to reserve water rights with respect to land acquired in trust for the nation. He said water rights would only become an issue if HR1410 is passed which would breach the nation's land and water settlement agreement and throw the entire state's water security into confusion and potential jeopardy. He discussed the agreement and said they don't need to give the city a dime. He said the land was taken into trust back on July 7<sup>th</sup>. At that point, they could have let the city go, but they haven't. The nation has dealt with the city in good faith. Councilmember Sherwood said they talk about the other agreements in other states. He said it is hard to come up with a state to state comparison because the gaming compacts are so different. He spoke about the agreement in New York where the city had to pay for the infrastructure. He said the compact was written well, but in that case a large percent went to municipality and state. He said our gaming compact requires 12 percent after net to go to community and that has happened since 2004. He said in addition to that 12 percent, over a billion dollars has gone into education and trauma services. He said the money the city is getting with this settlement agreement is over both of those figures. It is not the city's land.

Councilmember Sherwood said the city had an opportunity many years ago to annex that land. He said a

couple of large developers have come in and are now interested in Glendale land because of the casino. He said they will see economic development because of this. He said the city does not have anything to hold people in the city after the mega events. He commented on the crime increase. He said there is more crime when land is developed. He commented about the morality comments and said they cannot legislate morality. He continued that Vegas went family friendly. He said there were 7 casinos east of central and 1 west of central in the valley and now there will be one more on the west side. He said the population growth in the west valley will support the casino. He added that the gaming compact is not impacted by this per Judge Campbell. He commented about rushing the deal. He said this particular agreement is only 17 pages and is not the Camelback Ranch deal. He stated that the casino project poses no threat to the Glendale Airport or Luke Air Force Base. He added that the school district has remained neutral on this issue. He stated that he was opposed to the deal when he was elected. He said he'd had some private conversations with the nation to get some questions answered. He said they don't need to give the city any money. He added that when the Mayor testified at the Senate hearing for Indian gaming that the only reason that Glendale is getting the casino is because one councilmember switched his vote. He said staff began fact finding in late 2013. He stated that one vote matters. He said he believes the casino will inspire development. He said all the business leaders are for this project.

Vice Mayor Knaack said you have to learn to agree to disagree. She said that doesn't mean that you back down. She said her biggest opposition hasn't been the casino but dropping a sovereign nation in the middle of the city. She said they were trying to make the best deal they could for the city. She added that the other tribes that have been the city's friends for years deserve a voice as well. She went back to her initial thought from 2009 that it was never intended to have another casino in the Phoenix metropolitan area. She said it is absolutely about fairness and the compact was crafted to be fair to all the tribes. She said they deserved the land under the replacement act, but when that act was completed, they never anticipated that another casino would be dropped into the metropolitan area. She agreed that the nation does not need to give the city anything. She continued and that they city hurriedly voted to change their position. She said the citizens were rushed into this and she would have loved to have time to come into the meeting tonight better informed. She asked what happened to listening to the voters. She added that she never received any money from either tribe.

Councilmember Chavira commented that the things they have in common with the nation is that they want to provide for their communities. He thanked everyone for their participation today.

Councilmember Martinez commented that he was happy that some of the people who spoke heard what he said. He reiterated that he didn't agree with it, but he tried to get the best deal possible for the city. He said he spoke to Chairman Norris years ago and they both presented their viewpoint. He also told him that if this project did happen, the city would work with them to make it the best project possible.

Mayor Weiers said he is passionate about citizens having a voice and he felt this has been taken from the citizens. He said Council voted to take the month of July off and while he was on vacation out of the country, he said he was advised of a special meeting. He said the meeting was rushed through. He stated the Councilmembers have to support the citizens and they should have a voice and many projects in the past were rushed.

**RESOLUTION NO. 4840 NEW SERIES WAS READ BY NUMBER AND TITLE ONLY, IT BEING A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, EXPRESSING THE CITY'S SUPPORT OF THE CREATION OF AN INDIAN RESERVATION ON PROPERTY**

**WITHIN THE GLENDALE MUNICIPAL PLANNING AREA AND OPERATION OF A GAMING FACILITY ON SUCH PROPERTY AND DESIRE TO SETTLE OUTSTANDING ISSUES BETWEEN THE CITY OF GLENDALE AND THE TOHONO O'ODHAM NATION.**

**It was moved by Councilmember Chavira, and seconded by Councilmember Hugh, to pass, adopt and approve Resolution No. 4840 New Series. The motion carried. Aye: Alvarez, Chavira, Hugh and Sherwood. Nay: Knaack, Martinez and Weiers.**

**REQUEST FOR FUTURE WORKSHOP AND EXECUTIVE SESSION**

**It was moved by Vice Mayor Knaack, and seconded by Councilmember Hugh, to vacate the regularly scheduled City Council workshop on Tuesday, August 19, 2014 due to the League of Cities and Town Conference and to vacate the regularly scheduled City Council meeting on Tuesday, August 26, 2014 due to the City Election and hold the next regularly scheduled City Council Workshop at 1:30 p.m. in the Council Chambers, Room B-3 on Tuesday, September 2, 2014, to be followed by an Executive Session pursuant to A.R.S. § 38-431.03. The motion carried unanimously.**

**CITIZEN COMMENTS**

Arthur Thurston left before speaking.

Randy Miller, a Barrel resident, stated that he was appalled about the comments of earlier speakers. He commented about councilmembers sticking to their principles. He said he doesn't agree with the casino, but people can disagree and remain friends. He commended all seven for sticking to their guns.

Bonnie Steiger, a Sahuaro resident, commented about her disappointment, but she understood the reasoning. She said the name calling and fighting is uncalled for and is rude. She said this Council is also going to make mistakes and the Councilmembers should stop blaming former Councils for their actions.

Bob Gonzalo, a Barrel resident, said he reviewed the Council Code of Ethics and that every Councilmember has broken that code. He read excerpts from the Code of Ethics. He commented he was in the Mayor's office with about 30 other people after reading a letter from Councilmember Sherwood. He stated that it violated the Code of Ethics. He said their conduct reflects negatively on the city. He said Councilmembers should avoid impropriety. He addressed legislating morality and said everyone can legislate morality and ethics within themselves. He stated that two Councilmembers should resign, two should be censured and the Mayor should resign.

Kim Baker, an Avondale resident, talked about the Jerice Hunter trial being moved to January. He asked that the charges be dropped against Ms. Hunter. He commented about his meetings with police officials including Chief Black. He called this a malicious prosecution. He asked the Mayor for any influence he had to drop these charges. He said there was a reason the trial was moved from August 4<sup>th</sup> to January.

Stanley Allen, a Barrel resident, stated there was discrimination occurring including unfair application of the city codes. He asked for a follow up.

Robin Berryhill, an Ocotillo resident, commented that she didn't speak on the casino. She said the city

failed to secure the land to begin with so it's the city's fault. She asked that the Council not rush to judgment when irrigation comes before the Council. She said Councilmember Alvarez was ignored on her motion to table this issue. Ms. Berryhill made a citizens request per Article II, Section 18, and she read the section about making a citizen request and that the request should receive a response within 30 days. She also referenced Article III, Section 5, about the assistant city manager. She said she read an article about appointment of the two assistant city managers and thought they were job sharing. She again referenced Article III, Section 5 of the charter and read a portion of that section. She requested that the City Manager remove one of the Assistant City Managers as the charter only calls for one assistant city manager. She said that if there continued to be two that it needed to go before the voters to change the charter. She said she would like this done as soon as possible, within 30 days.

### **COUNCIL COMMENTS AND SUGGESTIONS**

Mayor Weiers asked that everyone to get over the hurt feelings. He said they weren't always going to agree.

### **ADJOURNMENT**

There being no further business, the meeting was adjourned at 10:43 p.m.



## Legislation Description

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**File #: 14-076, Version: 1**

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**PROCLAIM SEPTEMBER 15 - OCTOBER 15, 2014 AS HISPANIC HERITAGE MONTH**

Staff Contact: Office of the Mayor

Accepted By: Joe Quintana, Superintendent, Glendale Elementary School District

**Purpose and Recommended Action**

This is a request for City Council to proclaim September 15 - October 15 2014 as Hispanic Heritage Month. This month will be a time for Glendale citizens to celebrate, learn, and reflect on the innumerable contributions Hispanic Americans have made to our nation, our state, and our city.

Mr. Joe Quintana, Superintendent of the Glendale Elementary School District, will be accepting the proclamation for Hispanic Heritage Month.

**Background**

Americans whose ancestors came from Mexico, Spain, the Caribbean, Central America, and South America have played an integral role in the growth and development of our nation. From the founding of St. Augustine, the oldest continuously inhabited European-formed settlement in the United States, to the establishment of Tubac Presidio, the oldest continuously inhabited European-formed settlement in Arizona, the historic impact of Hispanic Americans on our nation and region has been a long lasting benefit.

In 1968, Hispanic Heritage Week was recognized by President Johnson and later expanded by President Reagan in 1988 to cover a 30-day period from September 15 - October 15. During this window of time, numerous Latin American countries celebrate their independence days.

**Community Benefit/Public Involvement**

Proclaiming September 15 - October 15 2014 as Hispanic Heritage Month benefits the city and the community as it demonstrates Glendale's commitment towards recognizing and celebrating the contributions, culture, and histories of all individuals who have helped develop and improve our nation and community.



## Legislation Description

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**File #: 14-108, Version: 1**

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### **PROCLAIM SEPTEMBER 2014 AS NATIONAL PREPAREDNESS MONTH**

Staff Contact: Mark Burdick, Fire Chief

Accepted By: Kelly Batton, Nikki Colleti and Virginia Meeker, volunteers with the Community Emergency Response Team (C.E.R.T.)

### **Purpose and Recommended Action**

This is a request for City Council to proclaim September 2014 as National Preparedness Month to encourage preparedness for disasters or emergencies in homes, businesses and the community. National Preparedness Month is sponsored by the Federal Emergency Management Agency's (FEMA) *Ready* Campaign. Kelly Batton, Nikki Colleti and Virginia Meeker, who volunteer with the city's Community Emergency Response Team (C.E.R.T.) and are Glendale residents, will be present to accept the proclamation.

### **Background**

History has shown us that government cannot do it alone when it comes to preparing for, responding to, and recovering from disasters. FEMA is only part of the nation's emergency management team, along with other federal partners, state and local governments, nonprofit and voluntary organizations, the private sector and most importantly, the public. National Preparedness Month was originally created by the FEMA *Ready* Campaign in response to the tragic events of 9/11, in order to educate the public on how to prepare for emergencies. September 2014 marks the 11<sup>th</sup> annual National Preparedness Month, and this year's campaign theme is, "Be Disaster Aware, Take Action to Prepare."

### **Previous Related Council Action**

Council annually proclaims September as National Preparedness Month.

### **Community Benefit/Public Involvement**

FEMA and the *Ready* Campaign urge communities around the country to take the pledge in order to be better prepared for disasters. Emergency preparedness is the responsibility of every citizen. It takes a team effort to ensure that we are ready for any disaster. The intent is to encourage individuals, families, organizations, and businesses within the community to make an emergency plan, put together an emergency supply kit, and join in local efforts to become a community preparedness partner. The goal this year is to transform awareness into action by encouraging citizens, organizations, and businesses to:

- *Stay Informed* - Information is available from federal, state, and local resources to learn what to do before, during, and after an emergency.
- *Make a Plan* - Discuss, agree on, and document an emergency plan with those in your care.

Work together with neighbors, colleagues, and others to build community resiliency.

- *Build a Kit* - Keep enough emergency supplies on hand for you and those in your care, such as; water, nonperishable food, first aid, prescriptions, flashlight, and battery powered radio on hand.
- *Get Involved* - There are many ways to get involved, especially before a disaster occurs. The whole community can participate in programs and activities to make their families, homes, and businesses safer from risks and threats. Community leaders agree that the formula for ensuring a safer homeland consists of volunteers, a trained and informed public, and increased support of emergency response agencies during disasters.



## Legislation Description

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**File #:** 14-024, **Version:** 1

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**APPROVE SPECIAL EVENT LIQUOR LICENSE, ST. LOUIS THE KING CHURCH**

Staff Contact: Susan Matousek, Revenue Administrator

**Purpose and Recommended Action**

This is a request for City Council to approve a special event liquor license for St. Louis the King Church, submitted by Gerald Barmasse. The event will be held at St. Louis the King Church located at 4331 West Maryland Avenue on Friday, October 3, from 5 p.m. to 11 p.m.; Saturday, October 4 from 11 a.m. to 11 p.m. and Sunday, October 5 from 11 a.m. to 10 p.m. The purpose of this special event liquor license is for a fundraiser at their Parish Festival.

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

**Background Summary**

St. Louis the King Church is zoned R1-6 (Single-Family Residential) and located in the Cactus District. If this application is approved, the total number of days expended by this applicant will be three of the allowed 12 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 Development Services, Police, and Fire Departments have reviewed the application and determined that it meets all technical requirements.



# ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

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

## APPLICATION FOR SPECIAL EVENT LICENSE

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

**NOTE: THIS DOCUMENT MUST BE FULLY COMPLETED OR IT WILL BE RETURNED.**  
PLEASE ALLOW 10 BUSINESS DAYS FOR PROCESSING.

**\*\*Application must be approved by local government before submission to Department of Liquor Licenses and Control. (Section #20)**

DLIC USE ONLY  
LICENSE #

1. Name of Organization: St. Louis the King Church
2. Non-Profit/I.R.S. Tax Exempt Number: [REDACTED]
3. The organization is a: (check one box only)

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

4. What is the purpose of this event? ☒ on-site consumption ☐ off-site consumption (auction) ☐ both
- Parish Festival - community building event

5. Location of the event: 4331 W. Maryland Glendale Maricopa 85301
- Address of physical location (Not P.O. Box) City County Zip

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

6. Applicant: BARMASSE GERALD
- Last First Middle Date of Birth

7. Applicant's Mailing Address: 4331 W. Maryland Ave Glendale Az 85301
- Street City State Zip

8. Phone Numbers: (623) 930 1127 (623) 930 1127 ( )
- Site Owner # Applicant's Business # Applicant's Home #

9. Date(s) & Hours of Event: (see A.R.S. 4-244(15) and (17) for legal hours of service)

	Date	Day of Week	Hours from A.M./P.M.	To A.M./P.M.
Day 1:	<u>OCT. 3 2014</u>	<u>Friday</u>	<u>5 P.M.</u>	<u>11 P.M.</u>
Day 2:	<u>OCT. 4 2014</u>	<u>Saturday</u>	<u>11 A.M.</u>	<u>11 P.M.</u>
Day 3:	<u>OCT. 5 2014</u>	<u>Sunday</u>	<u>11 A.M.</u>	<u>10 P.M.</u>
Day 4:				
Day 5:				
Day 6:				
Day 7:				
Day 8:				
Day 9:				
Day 10:				

\*Disabled individuals requiring special accommodations, please call (602) 542-9027

10. Has the applicant been convicted of a felony in the past five years, or had a liquor license revoked?  
☐ YES ☒ NO (attach explanation if yes)

11. This organization has been issued a special event license for 23 days this year, including this event  
(not to exceed 10 days per year).

12. Is the organization using the services of a promoter or other person to manage the event? ☐ YES ☒ NO  
If yes, attach a copy of the agreement.

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

Name St. Louis The King Parish 100%  
Percentage

Address 4331 W. Maryland Ave. Glendale AZ. 85301

Name \_\_\_\_\_  
Percentage

Address \_\_\_\_\_  
(Attach additional sheet if necessary)

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

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

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

\_\_\_\_ # Police ☒ Fencing  
☒ # Security personnel ☒ Barriers

Private Security

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

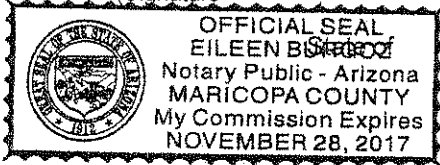
\_\_\_\_\_  
Name of Business ( ) Phone Number

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

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

18. I GERALD BARMASSE 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 Gerald Barmasse (Signature) Parochial Vicar (Title/Position) 07/24/2014 (Date) (623) 930-1127 (Phone #)



ARIZONA County of MARICOPA

The foregoing instrument was acknowledged before me this

24 Day 07 Month 2014 Year

My Commission expires on: Nov 28 2017 (Date)

Eileen Bismarck (Signature of NOTARY PUBLIC)

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

19. I \_\_\_\_\_ 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 \_\_\_\_\_ State of \_\_\_\_\_ County of \_\_\_\_\_  
(Signature) The foregoing instrument was acknowledged before me this

\_\_\_\_\_  
Day Month Year

My commission expires on: \_\_\_\_\_ (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, \_\_\_\_\_ (Government Official) \_\_\_\_\_ (Title) hereby recommend this special event application

on behalf of \_\_\_\_\_ (City, Town or County) \_\_\_\_\_ (Signature of OFFICIAL) \_\_\_\_\_ (Date)

**FOR DLLC DEPARTMENT USE ONLY**

Department Comment Section:

\_\_\_\_\_  
(Employee) \_\_\_\_\_ (Date)

☐ APPROVED ☐ DISAPPROVED BY: \_\_\_\_\_

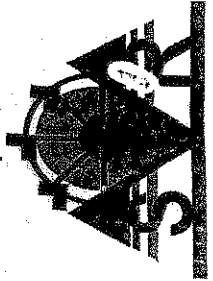
\_\_\_\_\_  
(Title) \_\_\_\_\_ (Date)

## Producer

St. Louis The King  
Catholic Church  
St. Louis the King Fall Festival Com.  
4331 West Maryland Road  
Glendale, AZ 85301  
623-930-1127 Ext. 133

## Carnival

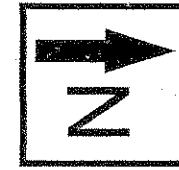
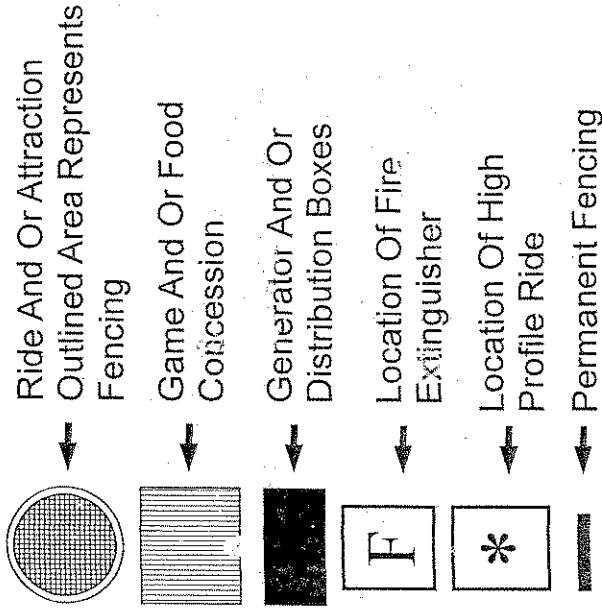
Sun Valley Rides, Ltd.  
12523 North 79th Drive  
Peoria, AZ 85381  
623-412-8371  
Steve's Cell Phone  
602-363-2677



Oct. 3 - 2014  
Oct. 4 - 2014  
Oct. 5 - 2014

**SITE ADDRESS**  
4331 W. Maryland Road

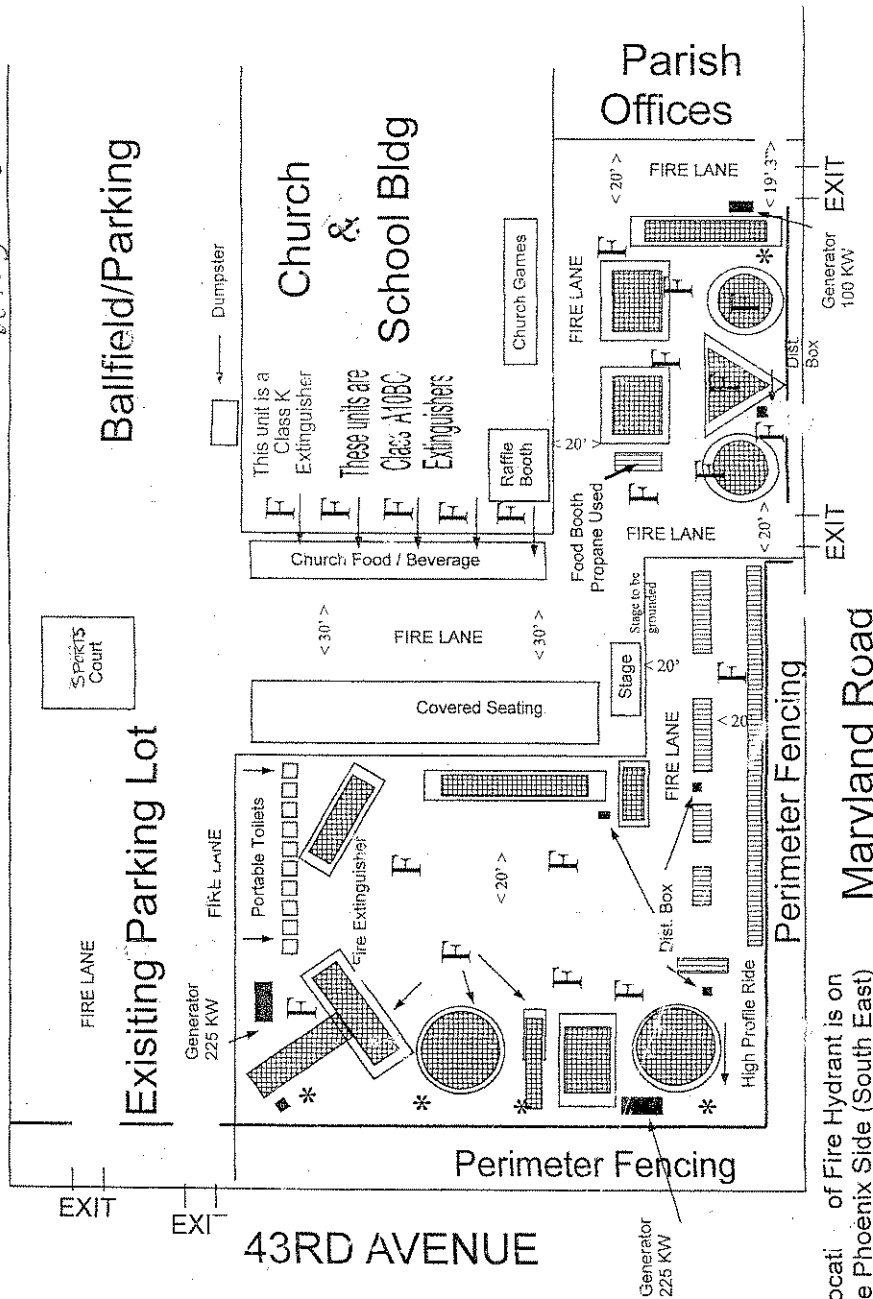
## LEGEND



14 Rides  
1 Food Booth  
12 Games

All Fire lanes are 20' or wider.  
All electrical mel., The 2005 NEC  
Carnival/Circuses Code.

Color indicates which generator feeds specific rides, games & distribution boxes.  
Only those rides and games will be operated by our generators.  
All junction boxes are 200 amps supplied by 2/0, 5 wire system.



Location of Fire Hydrant is on  
the Phoenix Side (South East)  
Corner of 43rd Ave.  
& Maryland Road

14-111

# GLENDALE POLICE DEPARTMENT

## Liquor Application Worksheet

Date: **08-01-14**

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

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

Application Type: **New License**

Definition: New License

Business Name: **St. Louis the King Church**

Business Address: **4331 W. Maryland Ave**

### Applicant/s Information

Name: **Barmasse, Gerald**

Name:

Name:

Name:

### Background investigation of applicant/s completed.

Calls for Service History:

	Call history for location beginning: 8/1/2013	Other Suites	New ownership call history beginning:
Liquor Related			
Vice Related			
Drug Related			
Fights / Assaults			
Robberies			
Burglary / Theft	4		
911 calls	1		
Trespassing			
Accidents	1		
Fraud / Forgery			
Threats			
Criminal damage			
Other non-criminal*	2		
Other criminal	1		
Total calls for service	9	N/A	N/A

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

# GLENDALE POLICE DEPARTMENT

## Liquor Application Worksheet

Page 2 of 2

### Applicant Background Synopsis:

All proceeds from this event go to the St. Louis the King Church.

Event is scheduled for 10-03-14 (Fri) 10-04-14 (Sat) 10-05-14 (Sun) (Parish Festival).

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

### Current License Holder:

N/A

### Location History:

No significant Calls for Service history at this location.

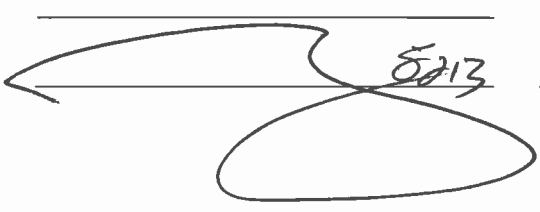
### Special Concerns:

None found

### Background investigation complete:

Police Department recommendation has No Cause for Denial.

		Date
Investigating Officer – M. Ervin	<u>M. ERVIN</u>	<u>8-1-14</u>
CID Lieutenant or Commander	<u></u>	<u></u>
Deputy City Attorney	<u></u>	<u></u>
Chief of Police or designee	<u>8213</u>	<u>8/5/2014</u>





## Legislation Description

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**File #: 14-020, Version: 1**

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**APPROVE LIQUOR LICENSE NO. 5-14234, EL TATAKI SUSHI & MEXICAN GRILL**

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 El Tataki Sushi & Mexican Grill located at 6922 North 95<sup>th</sup> Avenue, Suite 100. The Arizona Department of Liquor Licenses and Control application (No. 12079962) was submitted by Manuel De Jesus Herrera Jr.

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 Yucca District. The property is zoned PAD (Planned Area Development). The population density within a one-mile radius is 3,234 . This series 12 is a new license, therefore, the approval of this license will increase the number of liquor licenses in the area by one. The current number of liquor licenses within a one-mile radius is as listed below.

Series	Type/Quantity
03	Domestic Microbrewery - 1
06	Bar - All Liquor - 7
07	Bar - Beer and Wine - 3
10	Liquor Store - Beer and Wine - 2
11	Hotel/Motel - 1
12	Restaurant - 9
	Total - 23

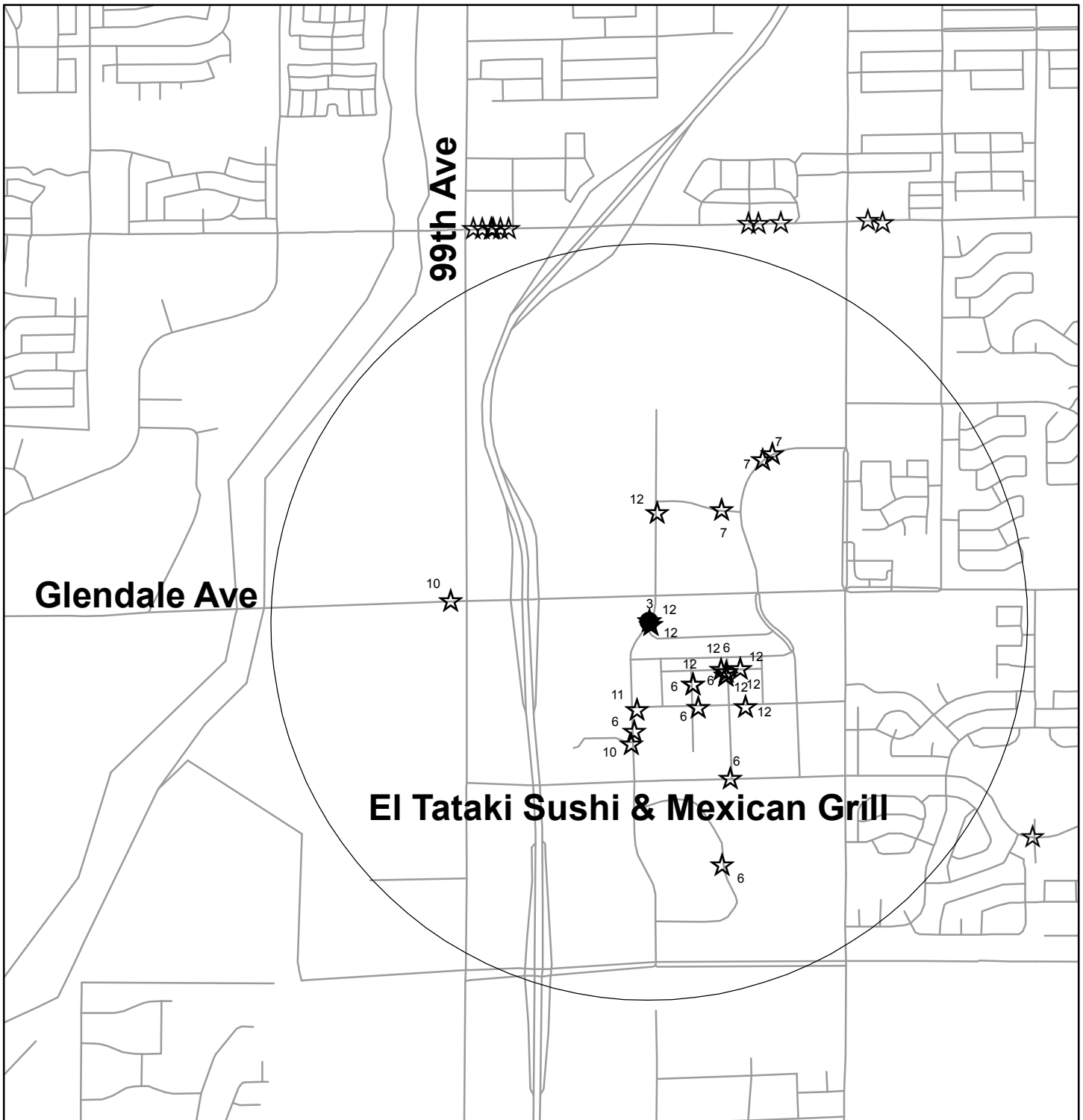
In accordance with A.R.S. § 4-201(G), except for a location that has been licensed within the last two years, the applicant bears the burden of showing City Council that the public convenience requires and that the best interest of the community will be substantially served by the issuance of a license.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

The City of Glendale Development Services, 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, July 23 through August 12, 2014.



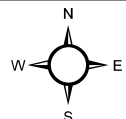


**BUSINESS NAME:** El Tataki Sushi & Mexican Grill

**LOCATION:** 6922 N. 95th Avenue, Suite 100      **ZONING:** PAD

**APPLICANT:** Manuel De Jesus Herrera Jr      **APPLICATION NO:** 5-14234

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



14-108

# **GLENDALE POLICE DEPARTMENT**

## Liquor Application Worksheet

Date: **08-08-14**

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:       **El Tataki Sushi & Mexican Grill**

Business Address:   **6922 N. 95<sup>th</sup> Ave #100**

### **Applicant/s Information**

Name: **Herrera, Manuel De Jesus Jr.**

Name: **Marquez, Agustin Armando**

Name:

Name:

### **Background investigation of applicant/s completed.**

Calls for Service History:	Call history for location beginning: 8/8/2009	Other Suites	New ownership call history beginning:
Liquor Related	1	1	
Vice Related			
Drug Related			
Fights / Assaults	2	3	
Robberies			
Burglary / Theft	1	1	
911 calls			
Trespassing	1		
Accidents		4	
Fraud / Forgery			
Threats	1		
Criminal damage	1	1	
Other non-criminal*	3	2	
Other criminal	1		
<b>Total calls for service</b>	<b>11</b>	<b>12</b>	<b>N/A</b>

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

# GLENDALE POLICE DEPARTMENT

## Liquor Application Worksheet

Page 2 of 2

### Applicant Background Synopsis:

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

### Current License Holder:

N/A

### Location History:

No significant Calls for Service history at this location.

### Special Concerns:

None found

### Background investigation complete:

Police Department recommendation has No Cause for Denial.

		Date
Investigating Officer – M. Ervin	<u>M. ERVIN</u>	<u>8-8-14</u>
CID Lieutenant or Commander	<u></u>	<u></u>
Deputy City Attorney	<u></u>	<u></u>
Chief of Police or designee	<u>P. S. Jones</u>	<u>8-11-14</u>



## Legislation Description

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**File #: 14-021, Version: 1**

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**APPROVE LIQUOR LICENSE NO. 5-14090, EASTWIND SUSHI & GRILL**

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 Eastwind Sushi & Grill located at 18555 North 59<sup>th</sup> Avenue, Suite 124. The Arizona Department of Liquor Licenses and Control application (No. 12079967) was submitted by James Chaebung Chung.

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

**Background Summary**

The location of the establishment is in the Cholla District. The property is zoned SC (Shopping Center). The population density within a one-mile radius is 11,455. Eastwind Sushi & 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.

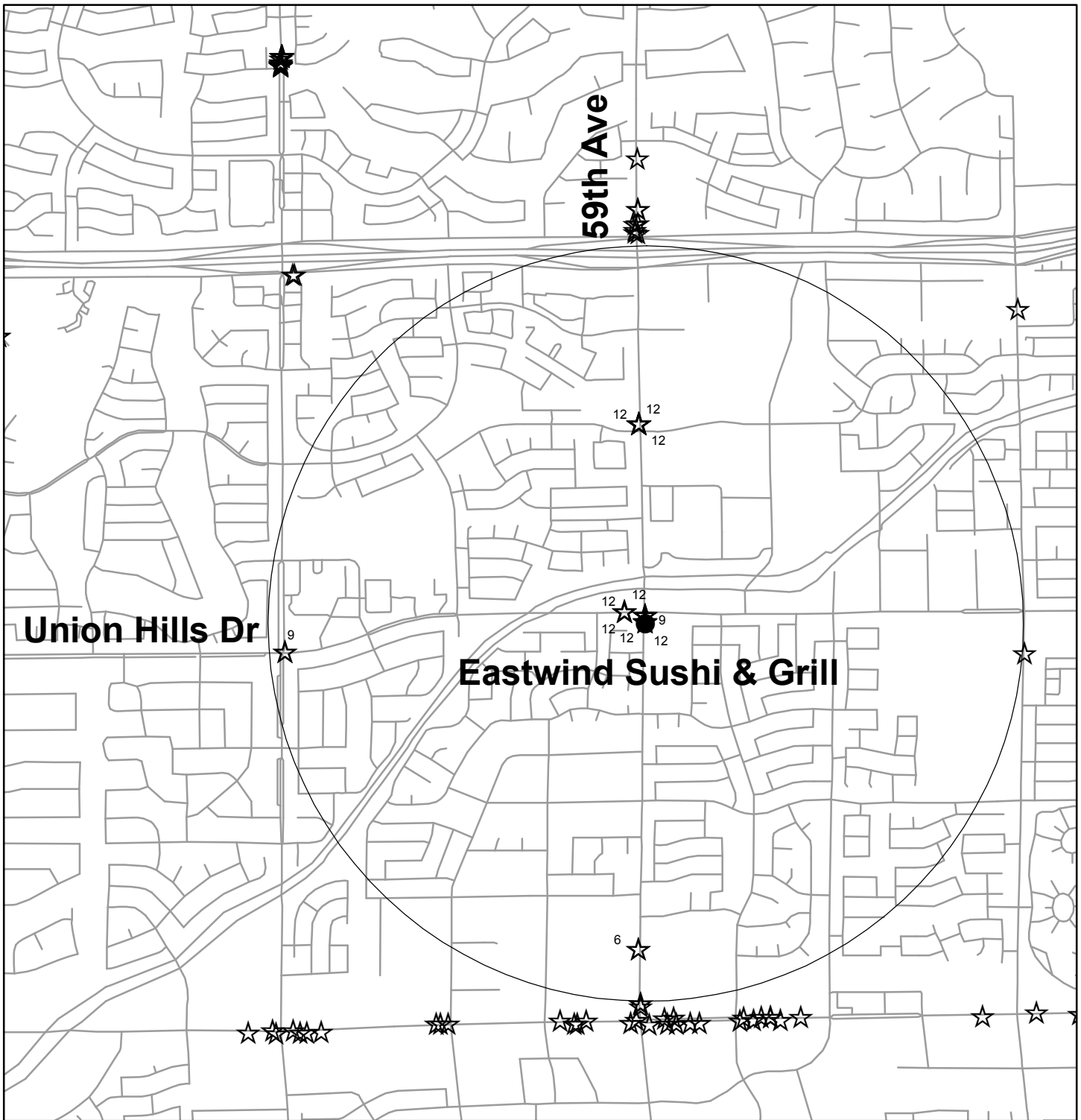
Series	Type	Quantity
06	Bar - All Liquor	1
09	Liquor Store - All Liquor	2
12	Restaurant	8
	<b>Total</b>	<b>11</b>

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

The City of Glendale Development Services, 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, July 28 through August 17, 2014.



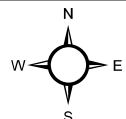
**BUSINESS NAME:** Eastwind Sushi & Grill

**LOCATION:** 18555 N. 59th Avenue, Suite 124 **ZONING:** SC

**APPLICANT:** James Chaebung Chung

**APPLICATION NO:** 5-14090

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



14-110

**GLENDALE POLICE DEPARTMENT****Liquor Application Worksheet**Date: **08-08-14**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: **Eastwind Sushi & Grill**Business Address: **18555 N. 59<sup>th</sup> Ave #124****Applicant/s Information**Name: **Chung, James Chaebung**

Name:

Name:

Name:

**Background investigation of applicant/s completed.**

Calls for Service History:

	Call history for location beginning: 8/8/2009	Other Suites	New ownership call history beginning: 7/21/2014
Liquor Related			
Vice Related			
Drug Related		1	
Fights / Assaults		1	
Robberies			
Burglary / Theft	2	6	
911 calls		3	
Trespassing		8	
Accidents			
Fraud / Forgery		1	
Threats		1	
Criminal damage		1	
Other non-criminal*	5	15	
Other criminal			
Total calls for service	7	37	N/A

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

# GLENDALE POLICE DEPARTMENT

## Liquor Application Worksheet

Page 2 of 2

### Applicant Background Synopsis:

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

### Current License Holder:

N/A

### Location History:

No significant Calls for Service history at this location.

### Special Concerns:

None found

### Background investigation complete:

Police Department recommendation has No Cause for Denial.

		Date
Investigating Officer – M. Ervin	<u>M. ERVIN</u>	<u>8-8-14</u>
CID Lieutenant or Commander	<u></u>	<u></u>
Deputy City Attorney	<u></u>	<u></u>
Chief of Police or designee	<u>[Signature]</u>	<u>8-11-14</u>



## Legislation Description

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**File #:** 14-023, **Version:** 1

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**APPROVE LIQUOR LICENSE NO. 5-10968, RICARDO'S MEXICAN FOOD**

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 Ricardo's Mexican Food located at 20020 North 59<sup>th</sup> Avenue, Suite 103. The Arizona Department of Liquor Licenses and Control application (No. 12079965) was submitted by Ricardo Islas.

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

**Background Summary**

The location of the establishment is in the Cholla District. The property is zoned C-2 (General Commercial). The population density within a one-mile radius is 11,041. 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
09	Liquor Store - All Liquor	3
10	Liquor Store - Beer and Wine	1
12	Restaurant	15
	<b>Total</b>	<b>19</b>

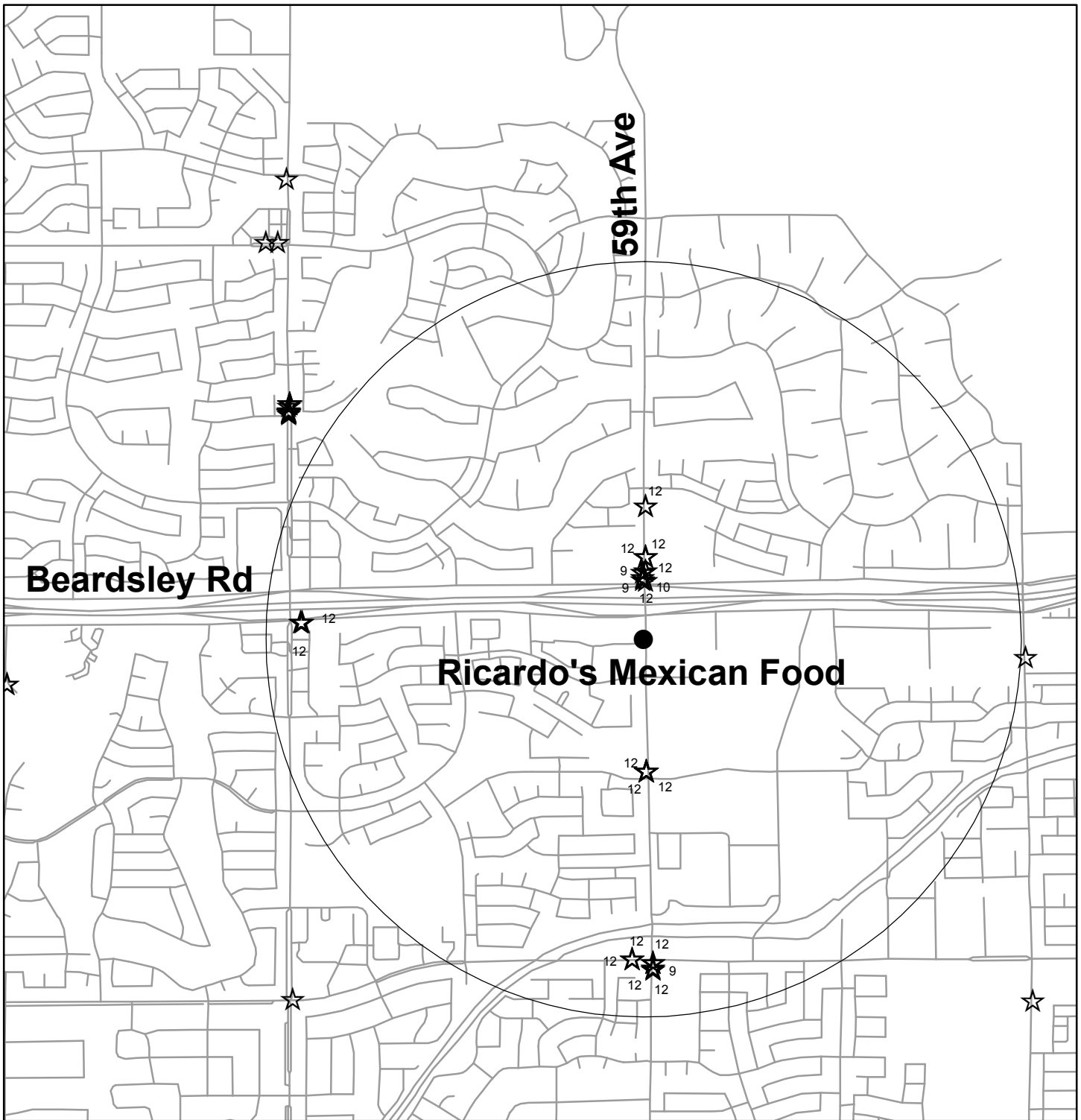
In accordance with A.R.S. § 4-201(G), except for a location that has been licensed within the last two years, the applicant bears the burden of showing City Council that the public convenience requires and that the best interest of the community will be substantially served by the issuance of a license.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

The City of Glendale Development Services, 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, July 28 through August 17, 2014.



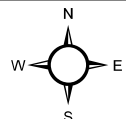
**BUSINESS NAME:** Ricardo's Mexican Food

**LOCATION:** 20020 N. 59th Avenue, Suite 103    **ZONING:** C-2

**APPLICANT:** Ricardo Islas

**APPLICATION NO:** 5-10968

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



14-108

# GLENDALE POLICE DEPARTMENT

## Liquor Application Worksheet

Date: 08-01-14

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: **Ricardo's Mexican Grill**

Business Address: **20020 N. 59<sup>th</sup> Ave Ste-103**

### Applicant/s Information

Name: **Islas, Ricardo**

Name: **Islas, Blanca**

Name:

Name:

### Background investigation of applicant/s completed.

Calls for Service History:	Call history for location beginning: 8/1/2009	Other Suites	New ownership call history beginning:
Liquor Related			
Vice Related			
Drug Related		1	
Fights / Assaults		2	
Robberies		1	
Burglary / Theft		2	
911 calls		1	
Trespassing	1	1	
Accidents		1	
Fraud / Forgery	1		
Threats		1	
Criminal damage		1	
Other non-criminal*		11	
Other criminal		1	
Total calls for service	2	23	N/A

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

# GLENDALE POLICE DEPARTMENT

## Liquor Application Worksheet

Page 2 of 2

### Applicant Background Synopsis:

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

### Current License Holder:

N/A

### Location History:

No significant Calls for Service history at this location.

### Special Concerns:

None found

### Background investigation complete:

Police Department recommendation has No Cause for Denial.

		Date
Investigating Officer – M. Ervin	<u>M. ERVIN</u>	<u>8-8-14</u>
CID Lieutenant or Commander	<u></u>	<u></u>
Deputy City Attorney	<u></u>	<u></u>
Chief of Police or designee	<u>15. S. Jones</u>	<u>8-11-14</u>



## Legislation Description

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**File #: 14-031, Version: 1**

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**EXPENDITURE AUTHORIZATION FOR COOPERATIVE PURCHASE OF A FRONTLOAD TRUCK FROM TRUCKS WEST OF PHOENIX, INC. FOR COMMERCIAL SANITATION COLLECTION**

Staff Contact: Jack Friedline, Interim Director, Public Works

**Purpose and Recommended Action**

This is a request for City Council to authorize the cooperative purchase of one frontload refuse truck from Trucks West of Phoenix, Inc., in an amount not to exceed \$256,500 for commercial sanitation collection in the City of Glendale.

**Background**

The commercial sanitation division services over 1,000 commercial customers each month. The truck to be replaced has been in service for over 10 years and has reached the end of its serviceable life. A new replacement frontload truck is necessary for the commercial sanitation division to maintain operations and deliver a high level of service to their business customers.

Trucks West of Phoenix, Inc. was awarded Contract T13-006-01 through a competitive bid process by the City of Tempe utilizing the cooperative purchase with Strategic Alliance for Volume Expenditures (SAVE). SAVE is a consortium of local municipalities, in which Glendale is a member.

Cooperative purchasing allows counties, municipalities, schools, colleges and universities in Arizona to use a contract that was competitively procured by another governmental entity or purchasing cooperative. Such purchasing helps reduce the cost of procurement, allows access to a multitude of competitively bid contracts, and provides the opportunity to take advantage of volume pricing. The Glendale City Code authorizes cooperative purchases when the solicitation process utilized complies with the intent of Glendale's procurement processes. This cooperative purchase is compliant with Chapter 2, Article V, Division 2, Section 2-149 of the Glendale City Code, per review by Materials Management.

**Analysis**

Staff considered an alternative option of refurbishing the frontload truck in lieu of replacing the vehicle, and based on age and extensive wear on all components of the truck (engine, chassis and hydraulics) rebuilding the truck is not an option. Staff determined it is more financially and operationally prudent to replace the truck. It is also financially advantageous to purchase and order the frontload truck immediately upon Council approval because the vendor will be increasing prices in October 2014. Once the order is placed, it will take approximately six months for delivery of the vehicle.

Staff recommends the cooperative purchase from Trucks West of Phoenix, Inc. in an amount not to exceed

\$256,500 for the frontload truck.

**Previous Related Council Action**

On November 13, 2012, Council approved the purchase of a frontload refuse truck for commercial sanitation collection.

On July 13, 1999, Council adopted Resolution No. 3303 New Series authorizing the entering into of an intergovernmental Cooperative Purchasing Agreement with public agencies, consisting of city, county and state governmental agencies, school districts, and higher education institutions.

**Community Benefit/Public Involvement**

Approval of this request will allow a seamless transition of vehicles without interruption to commercial sanitation customers.

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

**Budget and Financial Impacts**

Funds for this purchase are available in the fiscal year 2014-15 capital improvement plan (CIP) budget of the Sanitation Enterprise Fund.

Cost	Fund-Department-Account
\$256,500	2480-78002-551400, CIP Sanitation-Front Loader Truck

Capital Expense? Yes

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from?



## Legislation Description

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**File #:** 14-030, **Version:** 1

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### **AUTHORIZATION TO ENTER INTO A CONSTRUCTION AGREEMENT WITH TALIS CONSTRUCTION CORPORATION FOR STREET RECONSTRUCTIVE PAVING PROJECT**

Staff Contact: Jack Friedline, Interim Director, Public Works

#### **Purpose and Recommended Action**

This is a request for City Council to authorize the City Manager to enter into a construction agreement with Talis Construction Corporation in an amount not to exceed \$376,209 for street reconstructive paving using Community Development Block Grant (CDBG) funds and City of Glendale Pavement Management capital improvement (CIP) funds.

#### **Background**

This project is for reconstructive paving of deteriorated streets within the defined area (Bethany Home Frontage Road, from 61<sup>st</sup> Avenue to 6600 West Bethany Home Road; and 67<sup>th</sup> Avenue Frontage Road, from Keim Drive to Peck Drive), for reconstructive paving of older streets in CDBG eligible areas of the city. The project includes removing and replacing existing asphalt pavement, minor repairs to existing curb and sidewalk, replacing sidewalk ramps with new Americans with Disabilities Act (ADA) sidewalk ramps, and installing new ADA sidewalk ramps where none currently exist.

#### **Analysis**

The Engineering Department received three bids for this project, with Talis Construction Company submitting the lowest responsive bid.

#### **Previous Related Council Action**

On March 19, 2013, Council authorized the submission of the FY 2013-14 CDBG recommendations and Annual Action Plan to the U.S. Department of Housing and Urban Development (HUD).

#### **Community Benefit/Public Involvement**

Well maintained infrastructure is an important element of strong neighborhoods.

The reconstructive paving project includes a communication plan and residents in the impacted area will be notified prior to work beginning in their neighborhood.

#### **Budget and Financial Impacts**

The proposed construction agreement is in an amount not to exceed \$376,209 for the street reconstructive

paving project. Funds in the amount of \$250,000 are available in the FY 2014-15 CDBG program, and funds in the amount of \$126,209 are available in the Pavement Management CIP budget. This is a one-time expenditure and there are no additional operating costs associated with this project.

<b>Cost</b>	<b>Fund-Department-Account</b>
<b>\$250,000.00</b>	<b>1320-31111-518200, COG-Field Operations 13/14</b>
<b>\$126,209.00</b>	<b>2210-65089-550800, Pavement Management</b>

Capital Expense? Yes

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from?



## CONSTRUCTION AGREEMENT

This Construction Agreement ("Agreement") is entered into and effective between the CITY OF GLENDALE, an Arizona municipal corporation ("City"), and Talis Construction Corporation, an Arizona corporation ("Contractor") as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

### RECITALS

- A. City intends to undertake a project for the benefit of the public and with public funds that is more fully set forth in the **Notice to Contractors** and the attached **Exhibit A** ("Project");
- B. City desires to retain the services of Contractor to perform those specific duties and produce the specific work as set forth in the Project, the plans and specifications, the **Information for Bidders**, and the **Maricopa Association of Governments ("MAG") General and Supplemental Conditions and Provisions**;
- C. City and Contractor desire to memorialize their agreement with this document.

### AGREEMENT

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

#### 1. Project.

- 1.1 **Scope.** Contractor will provide all services and material necessary to assure the Project is completed timely and efficiently consistent with Project requirements, including, but not limited to, working in close interaction and interfacing with City and its designated employees, and working closely with others, including other contractors, providers or consultants retained by City.

- 1.2 **Documents.** The following documents are, by this reference, entirely incorporated into this Agreement and attached Exhibits as though fully set forth herein:

- (A) Notice to Contractors;
- (B) Information for Bidders;
- (C) MAG General Conditions, Supplemental General Conditions, Special and Technical Provisions;
- (D) Proposal;
- (E) Bid Bond;
- (F) Payment Bond;
- (G) Performance Bond;
- (H) Certificate of Insurance;
- (I) Appendix; and
- (J) Plans and Addenda thereto.

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

#### 1.3 Project Team.

- (A) Project Manager. Contractor will designate an employee as Project Manager with sufficient training, knowledge, and experience to, in the City's opinion, to complete the project and handle all aspects of the Project such that the work produced by Contractor is consistent with applicable standards as detailed in this Agreement.

- (B) Project Team.

- (1) The Project manager and all other employees assigned to the project by Contractor will comprise the "Project Team."
- (2) Project Manager will have responsibility for and will supervise all other employees assigned to the project by Contractor.

(C) Sub-contractors.

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

2. **Schedule and Term.** The Project will be undertaken in a manner that ensures it is completed in a timely and efficient manner. As provided in in **Exhibit A**, the Project shall be completed by no later than within seventy (70) consecutive calendar days from the effective date of this agreement. This agreement shall terminate on the one-year anniversary of its effective date and shall not be extended or renewed, unless such term is amended in a written agreement signed by both parties.

3. **Contractor's Work.**

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

3.2 **Licensing.** Contractor warrants that:

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

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

3.4 **Coordination; Interaction.**

- (A) If the City determines that the Project requires the coordination of professional services or other providers, Contractor will work in close consultation with City to proactively interact with any other contractors retained by City on the Project ("Coordinating Entities").
- (B) Subject to any limitations expressly stated in the budget, Contractor will meet to review the Project, schedules, budget, and in-progress work with Coordinating Entities and the City as often and for durations as City reasonably considers necessary in order to ensure the timely work delivery and Project completion.
- (C) If the Project does not involve Coordinating Entities, Contractor will proactively interact with any other contractors when directed by City to obtain or disseminate timely information for the proper execution of the Project.

## Project 131416

- 3.5 Hazardous Substances.** Contractor is responsible for the appropriate handling, disposal of, and if necessary, any remediation and all losses and damages to the City, associated with the use or release of hazardous substances by Contractor in connection with completion of the Project.
- 3.6 Warranties.** At any time within two years after completion of the Project, Contractor must, at Contractor's sole expense and within 20 days of written notice from the City, uncover, correct and remedy all defects in Contractor's work. City will accept a manufacturer's warranty on approved equipment as satisfaction of the Contractor's warranty under this subsection.
- 3.7. Bonds.** Upon execution of this Agreement, and if applicable, Contractor must furnish Payment and Performance bonds as required under A.R.S. § 34-608.

### 4. Compensation for the Project.

- 4.1 Compensation.** Contractor's compensation for the Project, including those furnished by its Sub-contractors will not exceed \$376,209.00, as specifically detailed in the Contractor's bid and set forth in **Exhibit B** ("Compensation").
- 4.2 Change in Scope of Project.** The Compensation may be equitably adjusted if the originally contemplated scope of services as outlined in the Project is significantly modified by the City.
- (A) Adjustments to the Scope or Compensation require a written amendment to this Agreement and may require City Council approval.
  - (B) Additional services which are outside the scope of the Project and not contained in this Agreement may not be performed by the Contractor without prior written authorization from the City.

### 5. Billings and Payment.

#### 5.1 Applications.

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

#### 5.2 Payment.

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

#### 5.3 Review and Withholding.

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

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

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

**6. Termination.**

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

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

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

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

**7. Insurance.**

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

- (A) Contractor and Sub-contractors. Contractor, and each Sub-contractor performing work or providing materials related to this Agreement must procure and maintain the insurance coverages described below (collectively, "Contractor's Policies"), until each Parties' obligations under this Agreement are completed.
- (B) General Liability.
  - (1) Contractor must at all times relevant hereto carry a commercial general liability policy with a combined single limit of at least \$2,000,000 per occurrence and \$5,000,000 annual aggregate.
  - (2) Sub-contractors must at all times relevant hereto carry a general commercial liability policy with a combined single limit of at least \$1,000,000 per occurrence.
  - (3) This commercial general liability insurance must include independent contractors' liability, contractual liability, broad form property coverage, products and completed operations, XCU hazards if requested by the City, and a separation of insurance provision.
  - (4) These limits may be met through a combination of primary and excess liability coverage.
- (C) Auto. A business auto policy providing a liability limit of at least \$1,000,000 per accident for Contractor and 1,000,000 per accident for Sub-contractors and covering owned, non-owned and hired automobiles.
- (D) Workers' Compensation and Employer's Liability. A workers' compensation and employer's liability policy providing at least the minimum benefits required by Arizona law.

- (E) Equipment Insurance. Contractor must secure, pay for, and maintain all-risk insurance as necessary to protect the City against loss of owned, non-owned, rented or leased capital equipment and tools, equipment and scaffolding, staging, towers and forms owned or rented by Contractor or its Sub-contractors.
- (F) Notice of Changes. Contractor's Policies must provide for not less than 30 days' advance written notice to City Representative of:
  - (1) Cancellation or termination of Contractor or Sub-contractor's Policies;
  - (2) Reduction of the coverage limits of any of Contractor or and Sub-contractor's Policies; and
  - (3) Any other material modification of Contractor or Sub-contractor's Policies related to this Agreement.
- (G) Certificates of Insurance.
  - (1) Within 10 business days after the execution of the Agreement, Contractor must deliver to City Representative certificates of insurance for each of Contractor and Sub-contractor's Policies, which will confirm the existence or issuance of Contractor and Sub-contractor's Policies in accordance with the provisions of this section, and copies of the endorsements of Contractor and Sub-contractor's Policies in accordance with the provisions of this section.
  - (2) City is and will be under no obligation either to ascertain or confirm the existence or issuance of Contractor and Sub-contractor's Policies, or to examine Contractor and Sub-contractor's Policies, or to inform Contractor or Sub-contractor in the event that any coverage does not comply with the requirements of this section.
  - (3) Contractor's failure to secure and maintain Contractor Policies and to assure Sub-contractor policies as required will constitute a material default under this Agreement.
- (H) Other Contractors or Vendors.
  - (1) Other contractors or vendors that may be contracted by Contractor with in connection with the Project must procure and maintain insurance coverage as is appropriate to their particular agreement.
  - (2) This insurance coverage must comply with the requirements set forth above for Contractor's Policies (e.g., the requirements pertaining to endorsements to name the parties as additional insured parties and certificates of insurance).
- (I) Policies. Except with respect to workers' compensation and employer's liability coverages, the City must be named and properly endorsed as additional insureds on all liability policies required by this section.
  - (1) The coverage extended to additional insureds must be primary and must not contribute with any insurance or self insurance policies or programs maintained by the additional insureds.
  - (2) All insurance policies obtained pursuant to this section must be with companies legally authorized to do business in the State of Arizona and acceptable to all parties.

**7.2 Sub-contractors.**

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

**7.3 Indemnification.**

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

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

**8. Immigration Law Compliance.**

- 8.1 Contractor, and on behalf any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.
- 8.2 Any breach of warranty under subsection 8.1 above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
- 8.3 City retains the legal right to inspect the papers of any Contractor or subcontractor employee who performs work under this Agreement to ensure that the Contractor or any subcontractor is compliant with the warranty under subsection 8.1 above.
- 8.4 City may conduct random inspections, and upon request of City, Contractor shall provide copies of papers and records of Contractor demonstrating continued compliance with the warranty under subsection 8.1 above. Contractor agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this section 8.
- 8.5 Contractor agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon Contractor and expressly accrue those obligations directly to the benefit of the City. Contractor also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.
- 8.6 Contractor's warranty and obligations under this section to the City is continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.
- 8.7 The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

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

**10. Non-Discrimination Policies.** Contractor must not discriminate against any employee or applicant for employment on

the basis of race, religion, color sex or national origin. Contractor must develop, implement and maintain non-discrimination policies and post the policies in conspicuous places visible to employees and applicants for employment. Contractor will require any Sub-contractor to be bound to the same requirements as stated within this section.

**11. Notices.**

11.1 A notice, request or other communication that is required or permitted under this Agreement (each a "Notice") will be effective only if:

- (A) The Notice is in writing, and
- (B) Delivered in person or by private express overnight delivery service (delivery charges prepaid), certified or registered mail (return receipt requested).
- (C) Notice will be deemed to have been delivered to the person to whom it is addressed as of the date of receipt, if:
  - (1) Received on a business day, or before 5:00 p.m., at the address for Notices identified for the Party in this Agreement by U.S. Mail, hand delivery, or overnight courier on or before 5:00 p.m.; or
  - (2) As of the next business day after receipt, if received after 5:00 p.m.
- (D) The burden of proof of the place and time of delivery is upon the Party giving the Notice.
- (E) Digitalized signatures and copies of signatures will have the same effect as original signatures.

**11.2 Representatives.**

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

Talis Construction Corporation  
Attn: Manuel Lopez  
2342 South McClintock Drive  
Tempe, Arizona 85282

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

City of Glendale  
Attn: Jim McMains  
5850 West Glendale Avenue  
Glendale, Arizona 85301

With required copies to:

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

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

- (C) Concurrent Notices.

- (1) All notices to City's representative must be given concurrently to City Manager and City Attorney.
- (2) A notice will not be considered to have been received by City's representative until the time that it has also been received by City Manager and City Attorney.
- (3) City may appoint one or more designees for the purpose of receiving notice by delivery of a

## Project 131416

written notice to Contractor identifying the designee(s) and their respective addresses for notices.

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

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

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

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

- (A) Neither Party has made any representations, warranties or agreements as to any matters concerning the Agreement's subject matter.
- (B) Representations, statements, conditions, or warranties not contained in this Agreement will not be binding on the parties.
- (C) Any solicitation, addendums and responses submitted by the Contractor are incorporated fully into this Agreement as Exhibit A. Any inconsistency between Exhibit A and this Agreement will be resolved by the terms and conditions stated in this Agreement.

13.2 **Interpretation.**

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

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

13.4 **Amendment.** No amendment to this Agreement will be binding unless in writing and executed by the parties. Any amendment may be subject to City Council approval.

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

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

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

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

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

Exhibit A	Project
Exhibit B	Compensation
Exhibit C	Dispute Resolution



Project 131416

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

City of Glendale,  
an Arizona municipal corporation

\_\_\_\_\_  
By: Brenda S. Fischer  
Its: City Manager

ATTEST:

\_\_\_\_\_  
City Clerk (SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

Talis Construction Corporation  
an Arizona corporation

\_\_\_\_\_  
By: Manuel Lopez  
Its: Vice-President

WOMEN-OWNED/MINORITY BUSINESS ☐ YES ☐ NO

CITY OF GLENDALE TRANSACTION PRIVILEGE TAX NO. \_\_\_\_\_

FEDERAL TAXPAYER IDENTIFICATION NO. \_\_\_\_\_

Project 131416

**EXHIBIT A  
CONSTRUCTION AGREEMENT**

**PROJECT**

Project includes milling of existing asphalt or full removal of existing asphalt and approximately 2,000 tons of asphalt replacement at the Bethany Home (North) Frontage Road from 61<sup>st</sup> Avenue to 6600 West and 67<sup>th</sup> Avenue (East) Frontage Road from Keim Drive to Peck Drive. Also included are ADA sidewalk, ramps, sidewalk and curb repairs, new valley gutters and aprons.

Project 131416

**EXHIBIT B  
CONSTRUCTION AGREEMENT**

**COMPENSATION**

**METHOD AND AMOUNT OF COMPENSATION**

By bid, including all services, materials and costs.

**NOT-TO-EXCEED AMOUNT**

The total amount of compensation paid to Contractor for full completion of all work required by the Project during the entire term of the Project must not exceed \$376,209.00.

**DETAILED PROJECT COMPENSATION**

As shown on Page 8 of the Bid Schedule.

**EXHIBIT C  
CONSTRUCTION AGREEMENT**

**DISPUTE RESOLUTION**

**1. Disputes.**

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

**2. Arbitration.**

- 2.1 Rules. If the parties are unable to resolve the Dispute by negotiation within 30 days from the Dispute notice, and unless otherwise informal discussions are extended by the mutual agreement, the Dispute will be decided by binding arbitration in accordance with Construction Industry Rules of the AAA, as amended herein. Although the arbitration will be conducted in accordance with AAA Rules, it will not be administered by the AAA, but will be heard independently.
  - (A) The parties will exercise best efforts to select an arbitrator within 5 business days after agreement for arbitration. If the parties have not agreed upon an arbitrator within this period, the parties will submit the selection of the arbitrator to one of the principals of the mediation firm of Scott & Skelly, LLC, who will then select the arbitrator. The parties will equally share the fees and costs incurred in the selection of the arbitrator.
  - (B) The arbitrator selected must be an attorney with at least 15 years experience with commercial construction legal matters in Maricopa County, Arizona, be independent, impartial, and not have engaged in any business for or adverse to either Party for at least 10 years.
- 2.2 Discovery. The extent and the time set for discovery will be as determined by the arbitrator. Each Party must, however, within ten (10) days of selection of an arbitrator deliver to the other Party copies of all documents in the delivering party's possession that are relevant to the dispute.
- 2.3 Hearing. The arbitration hearing will be held within 90 days of the appointment of the arbitrator. The arbitration hearing, all proceedings, and all discovery will be conducted in Glendale, Arizona unless otherwise agreed by the parties or required as a result of witness location. Telephonic hearings and other reasonable arrangements may be used to minimize costs.
- 2.4 Award. At the arbitration hearing, each Party will submit its position to the arbitrator, evidence to support that position, and the exact award sought in this matter with specificity. The arbitrator must select the award sought

## Project 131416

by one of the parties as the final judgment and may not independently alter or modify the awards sought by the parties, fashion any remedy, or make any equitable order. The arbitrator has no authority to consider or award punitive damages.

2.5 Final Decision. The Arbitrator's decision should be rendered within 15 days after the arbitration hearing is concluded. This decision will be final and binding on the Parties.

2.6 Costs. The prevailing party may enter the arbitration in any court having jurisdiction in order to convert it to a judgment. The non-prevailing party shall pay all of the prevailing party's arbitration costs and expenses, including reasonable attorney's fees and costs.

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

#### 4. **Exceptions.**

4.1 Third Party Claims. City and Contractor are not required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defense of a third-party who is not obligated by contract to arbitrate disputes with City and Contractor.

4.2 Liens. City or Contractor may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice, but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Arizona Law, including, without limitation, an action under A.R.S. § 33-420, without the necessity of initiating or exhausting the procedures of this Exhibit.

4.3 Governmental Actions. This Exhibit does not apply to, and must not be construed to require arbitration of, any claims, actions or other process filed or issued by City of Glendale Building Safety Department or any other agency of City acting in its governmental permitting or other regulatory capacity.

**BID TABULATION**

**PROJECT#131416 - CDBG STREET IMPROVEMENTS**

OPENED AT THE CITY OF GLENDALE, ENGINEERING DEPARTMENT  
5850 W. GLENDALE AVENUE, 3RD FLOOR

DATE: JULY 22 - 2:00PM

	CONTRACTOR	ACKNOWLEDGE ADDENDUM	BID BOND/ CHECK	TOTAL BID
1	Talis Construction	Yes	Bid Bond	\$376,209.00
2	Tricom Corp.	Yes	Bid Bond	\$411,745.96
3	Swaine Asphalt Corp.	Yes	Bid Bond	Non-Responsive

Engineers Estimate: \$510,000.00



## Legislation Description

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**File #: 14-002, Version: 1**

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### **EXPENDITURE AUTHORIZATION FOR THE PURCHASE OF GRANULAR ACTIVATED CARBON FROM CALGON CARBON CORPORATION**

Staff Contact: Craig Johnson, P.E., Director, Water Services

#### **Purpose and Recommended Action**

This is a request for City Council to approve expenditure authorization by the City Manager for the purchase of granular activated carbon from Calgon Carbon Corporation in an amount not to exceed \$800,000 for fiscal year (FY) 2014-15. This authorization is for the second year of the ten year agreement originally approved by Council on September 24, 2013.

#### **Background**

The Water Services Department operates two surface water treatment facilities which employ the use of Granular Activated Carbon (GAC) as an essential part of the water treatment process. Both Cholla and Oasis Water Treatment Plants use GAC to absorb organic material in the water treatment process to meet federal drinking water standards and regulations. Once the GAC material has exceeded its ability to optimally treat water, the "spent" GAC is removed and replaced with reactivated GAC. As material is lost due to the reactivation process it is replaced with new GAC.

Since June 2013, the city has been purchasing local GAC service at a significantly reduced price of \$0.651 per pound, and virgin GAC at \$1.233 per pound from Calgon's new regeneration facility in Gila Bend, Arizona. Beginning this fiscal year, the price for local GAC service increased to \$0.716 per pound, and virgin GAC reduced to \$1.205 per pound. This priority customer pricing for local and virgin GAC, provides Glendale significant savings. The agreement also provides the supply, placement, removal, and thermal reactivation of GAC. The initial agreement term is for ten years through September 23, 2023, with an option to extend the agreement for an additional five years. The City Manager or designee may extend the agreement in accordance with the original terms. The agreement provides for annual price adjustments.

#### **Analysis**

GAC costs are on-going expenses associated with the daily production of drinking water, and approval of this request allows Water Services to continue the daily production of drinking water.

#### **Previous Related Council Action**

On September 24, 2013, Council authorized the City Manager to enter into a purchase agreement with Calgon Carbon Corporation for an initial term of ten years to purchase granular activated carbon in an amount not exceed \$1,480,000 annually.

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

**Budget and Financial Impacts**

Funding is available in the FY 2014-15 Water Services operating budget as follows:

<b>Cost</b>	<b>Fund-Department-Account</b>
<b>\$450,000</b>	<b>2400-17260-524605, Cholla Treatment Plant</b>
<b>\$350,000</b>	<b>2400-17310-524605, Oasis Surface WTP</b>

Capital Expense? No

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from?



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

THIS CONTRACT is entered into this 24 day of Sept., 2013, by and between the City of Glendale, an Arizona Municipal Corporation (the "City") and Calgon Carbon Corporation, a Delaware corporation, and authorized to do business in the State of Arizona (the "Company" or the "Contractor").

**RECITALS**

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

**AGREEMENT**

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

**1.0 DESCRIPTION, ACCEPTANCE, DOCUMENTATION**

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

**1.1 SERVICE DESCRIPTION**

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

**1.2 ACCEPTANCE AND DOCUMENTATION**

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

**2.0 BILLING RECORDS, AUDIT**

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

## **2.1 FEE SCHEDULE**

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

- 2.1.1 Unit Pricing for Local GAC Services. As of the Contract Date, and as further set forth in subsection 4.1(B) of Exhibit A, the unit price for the performance of the Local GAC Services (the "Local Service Price") is **\$0.651** per pound of reactivated GAC.
- 2.1.2 Unit Pricing for Non-Local GAC Services. As of the Contract Date, and as further set forth in subsection 4.1(C) of Exhibit A, the unit price for the performance of non-local GAC Services (the "Non-Local Service Price") is **\$1.02** per pound of reactivated GAC.
- 2.1.3 Fuel Surcharge Applicable to Non-Local GAC Services. As further set forth in subsection 4.1(D) of Exhibit A, and to the extent the Non-Local Service Price is applicable pursuant to subsection (C) of this Section, if the cost of diesel fuel is equal to or greater than \$4.00 per gallon, according to the U.S. National Average On-Highway Diesel Price, the Company shall be entitled to a surcharge on non-local GAC Services ("Non-Local Fuel Surcharge") in accordance with Exhibit B, Appendix 5, Price Adjustments.
- 2.1.4 Virgin GAC Required for City Operational GAC Losses. As of the Contract Date, and as further set forth in subsection 4.1(E) of Exhibit A, the unit price for the Virgin GAC required to make up for City Operational GAC Losses is \$1.233 per pound of Virgin GAC (the "Additional GAC Price"). The Company acknowledges and agrees that, except with respect to City Operational GAC Losses and as otherwise directed by the City pursuant to subsection 3.1(E) of Exhibit A, the Local Service Price and the Non-Local Service Price include all compensation to the Company with respect to the Company's obligation to provide makeup Virgin GAC. The Company shall be entitled to additional compensation associated with Virgin GAC on a unit price basis solely to the extent such Virgin GAC is required in order to make up for City Operational GAC Losses or as otherwise directed by the City, as determined in accordance with subsection 3.1(E) of Exhibit A. The Additional Virgin GAC Price shall be subject to adjustment annually from the Contract Date in accordance with subsection 4.1(F) of Exhibit A.

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

## **2.2 INVOICING AND PAYMENT APPROVAL**

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

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

### **2.3 PRICE ADJUSTMENT**

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

### **3.0 TERM AND EXTENSION**

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

### **3.1     **TERMINATION****

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

### **3.2     **COMPANY DEFAULT****

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

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

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

### **3.3 FUNDS APPROPRIATION**

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

### 3.4 ***FORCE MAJEURE***

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

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

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

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

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

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

3.4.2.1 Change in Applicable Law;

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

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

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

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

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

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

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

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

### **3.5 REMEDIES FOR BREACH**

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



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

### **3.6 ATTORNEYS' FEES**

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

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

#### **4.0 ENTIRE AGREEMENT**

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

#### **4.1 ARIZONA LAW**

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

#### **4.2 MODIFICATIONS**

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

#### **4.3 ASSIGNMENT**

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

#### **4.4 SUCCESSORS AND ASSIGNS**

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

#### **4.5 CONTRACT ADMINISTRATION**

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

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

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

#### **4.6 RECORDS AND AUDIT RIGHTS**

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

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

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

#### **4.7 CONFIDENTIALITY AND DATA SECURITY**

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

#### **4.8 CONTRACTOR WARRANTIES**

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

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

#### **4.9 INDEPENDENT CONTRACTOR**

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

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

#### **4.10 CONFLICT OF INTEREST**

The City may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City's departments or agencies is, at any time while the contract or any extension of the contract is in effect, an employee of any other party to the contract in any capacity or a Contractor to any other party to the contract with respect to the subject matter of the contract. The cancellation will be effective when written notice from the City is received by all other parties to the contract, unless the notice specifies a later time (A.R.S. § 38-511).

#### **4.11 NOTICES**

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

In the case of Company:

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

In the case of City:

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

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

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

#### **4.12 TAXES**

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

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

#### **4.13 ADVERTISING**

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

#### **4.14 COUNTERPARTS**

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

#### **4.15 CAPTIONS**

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

#### **4.16 SUBCONTRACTORS**

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

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

#### **4.17 COMPLIANCE WITH FEDERAL AND STATE LAWS**

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

#### **4.18 IMMIGRATION LAW COMPLIANCE**

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

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

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

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

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

#### **4.19 *LAWFUL PRESENCE IN THE UNITED STATES FOR PERSONS***

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

#### **4.20 *NO PREFERENTIAL TREATMENT OR DISCRIMINATION***

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

#### **4.21 *INDEMNIFICATION***

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

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

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

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

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

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

#### **4.22 CONTRACTOR ON SITE SAFETY REPORTING REQUIREMENTS**

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

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

#### **5.0 INSURANCE**

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

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

#### **5.1 INSURANCE REPRESENTATIONS AND REQUIREMENTS**

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

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

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



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

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

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

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

## **5.2 Required Coverage**

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

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

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

## **6.0 *SEVERABILITY***

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

## **6.1 *AUTHORITY***

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

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

Upon request, the Contractor shall provide the required I.R.S. W-9 Form which is available from the IRS website at [www.irs.gov](http://www.irs.gov) under their forms section.

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

**CITY OF GLENDALE**, an Arizona  
municipal corporation ("City")



Brenda S. Fischer  
City Manager

ATTEST:



Pamela Hanna (SEAL)  
City Clerk

APPROVED AS TO FORM:



Michael D. Bailey  
City Attorney

**CALGON CARBON CORPORATION**,  
a Delaware corporation

By: 

Its: Ex. Vice President & C.O.O.

Date: September 16, 2013

**EXHIBIT A**

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

## TABLE OF CONTENTS

Page

### **SECTION 1 DEFINITIONS**

SUBSECTION 1.1	DEFINITIONS.....	23
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### **SECTION 2 THERMAL GAC REACTIVATION FACILITY**

SUBSECTION 2.1	THERMAL GAC REACTIVATION FACILITY OPERATIONS. ....	26
	(A) Operations and Maintenance Generally .....	26
	(B) Compliance with Applicable Law .....	26
	(C) NSF Certification .....	26
	(D) City Access Rights.....	26
SUBSECTION 2.2	PRIORITY CUSTOMERS OF THERMAL GAC REACTIVATION FACILITY.....	26
	(A) Priority Customer. ....	26
	(B) Most Favored Customer Status .....	26
	(C) Uncommitted Capacity/Right of First Refusal .....	26
SUBSECTION 2.3	THERMAL GAC REACTIVATION FACILITY EXPANSIONS. ....	27
	(A) Expansions Generally.....	27
	(B) Consultations with the City .....	27
	(C) Expansions Dictated by Increase in Demand .....	27

### **SECTION 3 PERFORMANCE OF THE GAC SERVICES**

SUBSECTION 3.1	COMPANY OBLIGATIONS GENERALLY. ....	28
	(A) Performance Standards .....	28
	(B) Affidavits and Chain of Custody .....	28
	(C) Commencement of Work; Turn-Around Time .....	28
	(D) GAC Reactivation Demand and Local Capacity.....	29
	(E) Virgin GAC.....	29
	(F) Spills .....	29
	(G) Title and Risk of Loss.....	29
	(H) Damage to City Property and Private Property .....	29

SUBSECTION 3.2	CITY GAC TESTING RIGHTS.....	30
SUBSECTION 3.3	CITY OBLIGATIONS GENERALLY .....	30
	(A) General City Obligations .....	30
	(B) Exclusivity.....	30
	(C) Scheduling of GAC Filter Exchanges.....	31
	(D) Demand Forecasting.....	31
SUBSECTION 3.4	DEMAND MANAGEMENT. ....	31
	(A) Commitment Volume.....	31
	(B) Volume Forecast .....	31
	(C) Long-Term Planning Forecast .....	32
	(D) Reconciling Actual Demand with Demand Forecast.....	32
SUBSECTION 3.5	SERVICE COORDINATION AND CONTRACT ADMINISTRATION.....	33
	(A) Company's Service Manager.....	33
	(B) Company's Senior Corporate Representatives .....	33
	(C) City Representative .....	33
	(D) Communications and Meetings .....	33
SUBSECTION 3.6	PERSONNEL.....	34
	(A) Account Staffing.....	34
	(B) Background Screening.....	34
	(C) Water Treatment Facilities Access Requirements.....	34
SUBSECTION 3.7	SUBCONTRACTORS.....	34
	(A) Use Restricted.....	34
	(B) Limited City Review and Approval of Permitted Subcontractors .....	34
	(C) Subcontract Terms and Subcontractor Actions .....	34
	(D) Payments to Subcontractors.....	35

## SECTION 4

### PAYMENT FOR GAC SERVICES

SUBSECTION 4.1	UNIT PRICING.....	35
	(A) Generally.....	35
	(B) Unit Pricing for Local GAC Services.....	35
	(C) Unit Pricing for Non-local GAC Services .....	35
	(D) Fuel Surcharge Applicable to Non-local GAC Services .....	36
	(E) Virgin GAC Required for City Operational GAC Losses.....	36
	(F) Annual Adjustments to Unit Prices .....	36

## ***SECTION 1***

### ***DEFINITIONS***

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

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

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

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

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

“City” means the City of Glendale, Arizona.

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

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

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

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

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

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

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

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

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

“GAC” means granular activated carbon.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

“WTP” means water treatment plant.

## SECTION 2

### ***THERMAL GAC REACTIVATION FACILITY***

#### ***2.1 THERMAL GAC REACTIVATION FACILITY OPERATIONS***

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

#### ***2.2 PRIORITY CUSTOMERS OF THERMAL GAC REACTIVATION FACILITY***

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

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

### **2.3 THERMAL GAC REACTIVATION FACILITY EXPANSIONS**

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

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

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

### SECTION 3

#### *PERFORMANCE OF THE GAC SERVICES*

##### **3.1 COMPANY OBLIGATIONS GENERALLY**

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

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

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

### **3.2 CITY GAC TESTING RIGHTS**

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

### **3.3 CITY OBLIGATIONS GENERALLY**

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

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

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

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

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

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

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

### **3.4 DEMAND MANAGEMENT**

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

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

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



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

### **3.5 SERVICE COORDINATION AND CONTRACT ADMINISTRATION**

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

### **3.6 PERSONNEL**

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

### **3.7 SUBCONTRACTORS**

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

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

## SECTION 4

### *PAYMENT FOR GAC SERVICES*

#### **4.1 UNIT PRICING**

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

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

- (E) Virgin GAC Required for City Operational GAC Losses. The Company acknowledges and agrees that, except with respect to City Operational GAC Losses and as otherwise directed by the City pursuant to this subsection (E), the Interim Service Price, the Local Service Price and the Non-Local Service Price include all compensation to the Company with respect to the Company's obligation to provide makeup Virgin GAC in accordance with this subsection (E). The Company shall be entitled to additional compensation associated with Virgin GAC on a unit price basis in accordance with this subsection solely to the extent such Virgin GAC is required in order to make up for City Operational GAC Losses or as otherwise directed by the City, as determined in accordance with this subsection (E). As of the Contract Date, the unit price for the Virgin GAC required to make up for City Operational GAC Losses is \$1.233 per pound of Virgin GAC (the "Additional GAC Price"). The Additional Virgin GAC Price shall be subject to adjustment annually from the Contract Date in accordance with subsection (F) of this Section.
- (F) Annual Adjustments to Unit Prices. The Local Service Price, the Non-Local Service Price and the Additional Virgin GAC Price shall each be subject to annual adjustment in accordance with Exhibit B, Appendix 5. In no event shall any such annual adjustment increase such prices by more than ten percent (10%) or decrease such prices by more than five percent (5%). Any increase or reduction that is not made as a result of the limitations established by the preceding sentence shall carry forward and be applied to the next Contract Year's adjustment, subject to the same percentage limitations. The Interim Service Price shall not be subject to annual adjustment.

**EXHIBIT B**

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

## **APPENDIX 1**

### **PERFORMANCE STANDARDS**

18

## ***PERFORMANCE STANDARDS***

### ***1.1     APPLICABILITY, STRINGENCY AND CONSISTENCY***

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

### ***1.2     FILTER PREPARATION***

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

### ***1.3     THERMALLY REGENERATED GAC REPLACEMENT***

#### ***1.3.1   Placing GAC***

Placing of GAC, as applicable, shall conform to:

AWWA B604-05: Virgin Granular Activated Carbon

AWWA B605-07: Reactivation of Granular Activated Carbon

AWWA B100-09: Granular Filter Media

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

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

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

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

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

### **1.3.2 Properties of Thermally Reactivated Carbon**

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

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

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

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

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

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

The molasses number shall be no less than 170.

### **1.3.3 GAC Media Washing**

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

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

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

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

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

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

## **1.4 REFERENCE STANDARDS**

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

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



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

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

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

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

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

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

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

AWWA B100-09 Filtering Material, including any addenda.

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

Food Chemical Codex: Third Edition.

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

## **1.5 VIRGIN GAC**

### **1.5.1 Quality**

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

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

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

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

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

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

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

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

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

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

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

Possess a unique product identifier.

The molasses number shall be no less than 170.

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

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

Effective size between: 0.55 and 0.75mm.

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

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

Abrasion Number: Minimum of seventy five (75).

Fines: Less than one percent (1%).

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

## **APPENDIX 2**

### **INFORMATION CONCERNING WATER TREATMENT FACILITIES**

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

## ***INFORMATION CONCERNING WATER TREATMENT FACILITIES***

### ***WATER TREATMENT FACILITIES IDENTIFIED***

The Water Treatment Facilities include the following:

- Cholla WTP
- Oasis WTP

### ***ESTIMATED THERMAL GAC REACTIVATION QUANTITIES***

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

**Table 2-1**

**Potential GAC Volume Needs Summary**

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

## **APPENDIX 3**

### **EMPLOYEE BACKGROUND SCREENING**

## ***EMPLOYEE BACKGROUND SCREENING***

### ***COMPANY AND SUBCONTRACTOR WORKER BACKGROUND SCREENING***

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

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

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

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

### ***MATERIALITY OF SECURITY INQUIRIES PROVISIONS***

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

### ***DOCUMENT/INFORMATION RELEASE***

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

**APPENDIX 4**

**WATER TREATMENT FACILITIES**

**ACCESS CONTROLS**



## ***WATER TREATMENT FACILITIES ACCESS CONTROLS***

### ***COMPANY/ CONTRACTOR EMPLOYEE ACCESS***

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

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

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

### ***COMPANY'S DEFAULT; LIQUIDATED DAMAGES; RESERVATION OF REMEDIES FOR MATERIAL BREACH***

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

## **APPENDIX 5**

### **PRICE ADJUSTMENTS**

## ***PRICE ADJUSTMENTS***

### ***LOCAL SERVICE PRICE ADJUSTMENTS***

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

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

Where,

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

$$\text{NGAF}_n = \text{Natural Gas Adjustment Factor applicable for Contract Year "n"}$$

$$\text{CPIAF}_n = \text{CPI Adjustment Factor applicable for Contract Year "n"}$$

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

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

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

Where,

$$\text{NGAF}_n = \text{The Natural Gas Adjustment Factor for Contract Year "n"}$$

$$\text{NGP}_{n-1} = \text{Natural gas price based upon the Platt's Gas Market Report inside FERC First of the Month Index El Paso Natural Gas Permian Basins Index for Contract Year}$$

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

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

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

Where,

$$\text{CPIAF}_n = \text{The CPI Adjustment Factor for Contract Year "n"}$$

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

$$\text{CPI}_{n-2} = \text{The average of the 12-month CPI values occurring in the Contract}$$

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

### ***ANNUAL ADJUSTMENT TO NON-LOCAL SERVICE PRICE***

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

### ***ADDITIONAL VIRGIN GAC PRICE ADJUSTMENTS***

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

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

Where

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

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

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

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

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

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

Where,

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

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

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

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

$$OCIAF_n = OCI_{n-1} \div OCI_{n-2}$$

Where,

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

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

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

## **INDICES**

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

## **NON-LOCAL FUEL SURCHARGE**

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

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

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

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

TABLE 5-1

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



## Legislation Description

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**File #: 14-012, Version: 1**

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**AUTHORIZATION OF FOUR LICENSE AGREEMENTS FOR VERIZON WIRELESS (VAW), LLC. FOR THE  
INSTALLATION OF A DISTRIBUTED ANTENNA SYSTEM (SMALL CELL) ON FOUR CITY STREETLIGHTS WITHIN  
PUBLIC RIGHT-OF-WAY**

Staff Contact: Jack Friedline, Interim Director, Public Works

### **Purpose and Recommended Action**

This is a request for the City Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to execute four license agreements between the City of Glendale and Verizon Wireless (VAW), L.L.C., dba Verizon Wireless, for the installation of a distributed antenna system (small cell) on four city streetlights within public right-of-way located at: 19503 North 59<sup>th</sup> Avenue, 20432 North 59<sup>th</sup> Avenue, 19800 North 75<sup>th</sup> Avenue and 5655 North 67<sup>th</sup> Avenue.

### **Background**

Verizon Wireless contacted the city to request permission to expand its existing network facilities in Glendale. These licenses will allow Verizon Wireless to install small cell antennas on existing city streetlights within Glendale right-of-way. The existing streetlight poles at these four sites are direct bury poles, and it will be necessary for Verizon to acquire and install new poles with a concrete base to support the additional equipment. This will result in structurally enhancing the city's existing infrastructure. Verizon Wireless's infrastructure investment in the West Valley allows them to meet their current and future clients' connection needs and the growing demand for cellular service.

Staff has developed guidelines to standardize the fees charged for distributed antenna system (small cell) license agreements moving forward as shown in the attached document. These guidelines will be followed in negotiating new licenses and renewing licenses as they expire. The fees are consistent for each site and are based upon industry standard, geographical location and comparable rates being charged to competitive wireless carriers by other local municipalities such as Phoenix, Tempe and Scottsdale. Each site will have an antenna base fee, plus a ground equipment fee (if applicable) for the cubic feet of equipment in the right-of-way.

### **Analysis**

- There will be additional construction needed as a result of this action.
- There are no costs incurred by the city as a result of this action.
- These new license agreements fall within Category 1 of the guidelines, with a footprint of less than 50 cubic feet, and are being charged accordingly.
- These four license agreements are for a 10-year term, with a bilateral option to extend the license agreements for an additional three, five-year extension periods.

**Community Benefit/Public Involvement**

Verizon Wireless's infrastructure investment in Glendale allows Verizon to meet the cellular service needs of Glendale residents.

**Budget and Financial Impacts**

The revenue generated from these agreements during the first 10-years of the associated licenses, including the 3% annual increase is projected at \$160,000. All revenue shall be deposited into the General Fund.



RESOLUTION NO. 4841 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE CITY MANAGER TO EXECUTE FOUR COMMUNICATIONS SITE LICENSE AGREEMENTS WITH VERIZON WIRELESS (VAW) LLC, DBA VERIZON WIRELESS FOR WIRELESS COMMUNICATIONS SITES LOCATED ON CITY STREETLIGHTS WITHIN PUBLIC RIGHTS-OF-WAY IN GLENDALE, ARIZONA.

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

SECTION 1. That the City Manager or her designee is hereby authorized to execute and deliver four Communications Site License Agreements with Verizon Wireless (VAW) LLC, dba Verizon Wireless for Wireless Communications Sites at the following locations in Glendale, Arizona for installation of distributed antenna systems (small cell) on four city streetlights within public rights-of-way. Said license agreements are on file with the City Clerk.

1. 19503 North 59<sup>th</sup> Avenue, Glendale AZ
2. 5655 North 67<sup>th</sup> Avenue, Glendale AZ
3. 20432 North 59<sup>th</sup> Avenue, Glendale AZ
4. 19800 North 75<sup>th</sup> Avenue, Glendale AZ

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

\_\_\_\_\_  
M A Y O R

ATTEST:

\_\_\_\_\_  
City Clerk (SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

REVIEWED BY:

\_\_\_\_\_  
City Manager

l\_verizon\_small cell

**STANDARDIZED FEES FOR DISTRIBUTED ANTENNA SYSTEM (SMALL CELL) LICENSE  
AGREEMENTS**

Category 1-DAS with antenna(s) mounted on an existing vertical element or pole.			
Cubic feet/ground equipment	Antenna base fee	Equipment base fee	Total annual fee
1-50	Included	Included	\$3,368
51-200	\$3,368	\$6,271	\$9,639
201-300	\$3,368	\$9,390	\$12,758
301-400	\$3,368	\$12,493	\$15,861
401 or more	\$3,368	\$15,649	\$19,017
Category 2-DAS with antenna(s) mounted on a new vertical element that is stealth or utilizes alternate concealment when existing vertical elements are not available.			
Cubic feet/ground equipment	Antenna base fee	Equipment base fee	Total annual fee
1-50	Included	Included	\$3,564
51-200	\$3,564	\$6,271	\$9,835
201-300	\$3,564	\$9,390	\$12,954
301-400	\$3,564	\$12,493	\$16,057
401 or more	\$3,564	\$15,649	\$19,213
Category 3-DAS with antenna(s) mounted on a new vertical element that is not stealth or concealed in appearance.			
Cubic feet/ground equipment	Antenna base fee	Equipment base fee	Total annual fee
1-50	Included	Included	\$4,810
51-200	\$4,810	\$6,271	\$11,081
201-300	\$4,810	\$9,390	\$14,200
301-400	\$4,810	\$12,493	\$17,303
401 or more	\$4,810	\$15,649	\$20,459

**COMMUNICATIONS SITE LICENSE AGREEMENT FOR  
VERIZON WIRELESS (VAW) LLC, dba VERIZON WIRELESS,  
IN CITY OF GLENDALE RIGHT-OF-WAY**

This Communications Site License Agreement for Verizon Wireless (VAW) LLC, dba Verizon Wireless, in City of Glendale Right-of-Way ("Agreement") is executed to be effective this \_\_\_\_ day of \_\_\_\_\_, 2014 ("Effective Date"), between the City of Glendale, an Arizona municipal corporation ("City"), and Verizon Wireless (VAW) LLC, a Delaware limited liability company, dba Verizon Wireless ("Licensee").

**RECITALS**

- A. The City is the owner of certain right-of-way located in the City ("Licensed Area"), as more particularly described in the attached Exhibit A.
- B. Licensee desires to install, maintain and operate a "small cell" wireless communications facility ("Small Cell") in the City's right-of-way. The equipment includes, but is not limited to communications equipment, antennas, radio amplifiers, radio frequency and optical signal converters, power suppliers and meters, monitoring devices, fiber optic and other cabling, connectors and equipment necessary to serve Licensee's Small Cell facilities as shown in Exhibit A (collectively, the "Facilities").
- C. The City is willing to grant the Licensee a license to use the Licensed Area for the operation of the Facilities under the terms of this Agreement, subject to the approval of the Glendale City Council in connection with the public hearing requirements of A.R.S. § 9-551 *et seq.*, and all as implemented by the City's Project Manager, whose approvals shall not be unreasonably withheld.

**AGREEMENT**

In consideration of the following mutual covenants, terms and conditions, the Parties agree as follows:

1. **LICENSED AREA.**

The Licensed Area includes and is limited to the following areas depicted in Exhibit A: i) The area on which the Facilities are located at 19503 North 59<sup>th</sup> Avenue, or an alternative area in the right-of-way, as approved by the City; and ii) Reasonable access to the Facilities through the public right-of-way.

2. **CITY'S REPRESENTATIONS AND WARRANTIES.**

- A. The City represents and warrants to the Licensee that: i) the City, and its duly authorized signatory, have full right, power, and authority to execute this Agreement on behalf of the City; ii) the City has good and unencumbered title to

the Licensed Area free and clear of any liens or mortgages, except those disclosed to the Licensee that will not interfere with Licensee's right to use the Licensed Area; and iii) the City's execution and performance of this Agreement will not violate any laws, ordinances, covenants, mortgages, licenses or other agreements binding on the City.

- B. The Licensee has studied and inspected the Licensed Area and accepts the same "AS IS" without any express or implied warranties of any kind, other than those warranties contained in Subsection (2)(A) immediately above, including any warranties or representations by the City as to its condition or fitness for any particular use. The Licensee has inspected the Licensed Area and obtained information and professional advice as the Licensee has determined to be necessary related to this Agreement.

3. GRANT OF LICENSE; TERM.

- A. Nothing in this Agreement will be construed as granting the Licensee the authority to use any property that is owned by any person or entity other than the City.
- B. The initial term of this License Agreement shall be for a period of ten (10) years (the "Initial Term"), commencing on the Commencement Date (as defined in paragraph 4.C below) and ending at 11:59 p.m. on the day immediately preceding the tenth (10<sup>th</sup>) anniversary thereof, unless sooner terminated as stated herein. This Agreement shall be automatically renewed for no more than three successive five-year Renewal Terms, unless Licensor or Licensee notifies the other party in writing of such party's intent not to renew this Agreement at least one hundred eighty (180) days prior to the expiration of the Initial Term or any Renewal Term, as applicable.
- C. If Licensee continues to occupy the Licensed Area after the expiration or termination of this Agreement, holding over will not be considered to operate as a renewal or extension of this Agreement, but shall be a month-to-month license and the Licensee must pay the City fees in an amount that is double the amount of normal license fee that would otherwise be due under Section 4.
- D. Notwithstanding any provision in this Agreement to the contrary or any negotiation, correspondence, course of performance or dealing, or any other statements or acts by or between the parties, Licensee's rights in the Licensed Area are limited to the rights created by this Agreement. Licensee's rights are subject to all covenants, restrictions, easements, agreements, reservations and encumbrances upon, and all other conditions of title to, the Licensed Area. Licensee's rights under this Agreement are further subject to all present and future building restrictions, regulations, zoning laws, ordinances, resolutions and orders of any local, state or federal agency, now or later having jurisdiction over, the Licensed Area or the Licensee's use of the Licensed Area.

4. LICENSE FEES; COSTS; TAXES.

- A. As of the Commencement Date, Licensee shall pay, without notice and free from all claims, deductions and setoffs against the City, an annual license fee in the amount of \$3,368.00 for one (1) street light attachment, including ground equipment with a “footprint” of up to fifty (50) cubic feet, for Licensee’s Facilities and associated equipment within the Licensed Area, plus all appropriate taxes (see Section 23 below) and on each subsequent anniversary of the Commencement Date during the term of this Agreement, up to and including the expiration or earlier termination thereof (“Pole Attachment Fee”).
- B. The Pole Attachment Fee will increase by three percent (3%) annually on each anniversary of the Commencement Date.
- C. The “Commencement Date” shall be defined as the first day of the month immediately following the Effective Date of this Agreement. Licensee shall pay all fees due for the current year in advance on the first business day of each month. If the Effective Date is not on the first day of a month, the Licensee’s fees will be prorated accordingly. The first installment of the annual license fee shall be paid within forty-five (45) days following the Commencement Date, and all subsequent annual installments paid on or before the first day of the applicable month.
- D. If the Licensee fails to pay any fee in full within ten (10) business days after receipt of written notice of delinquency, the Licensee is responsible for interest on the unpaid principal balance at the rate of 18% per annum from the due date until payment is made in full.
- E. Upon submission of plans in connection with the approval of this Agreement, Licensee shall pay the City a dry utility permit fee in accordance with the City’s Community Development Fee Schedule.
- F. Licensee shall pay the City actual costs for inspections, materials testing and other costs incurred by the City as a direct result of the construction, repair, alteration or relocation of the Facilities. All costs shall be paid in full within thirty (30) days of invoice.

5. UTILITIES.

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

6. USE RESTRICTIONS.

- A. Subject to the interference provisions set forth below, Licensee shall at all times use reasonable efforts to minimize any impact that its use of the Licensed Area will have on other users of the Licensed Area.

- B. Licensee shall not remove, damage or alter in any way any improvements or personal property of the City upon the Licensed Area without the City's prior written approval. Licensee shall repair any damage or alteration to the City's property caused by Licensee's use of the Licensed Area to the same condition that existed before the damage or alteration, reasonable wear and tear excepted.
- C. Whenever the Licensee performs construction activities within the Licensed Area, the Licensee shall obtain all necessary construction permits and promptly, upon completion of construction, restore the remaining Licensed Area to the condition existing before construction to the satisfaction of the City's Project Manager. If the Licensee fails to restore the Licensed Area as required, the City may take all reasonable actions necessary to restore the Licensed Area, and the Licensee, within thirty (30) days of demand and receipt of an invoice, together with reasonable supporting documentation, will pay all of the City's reasonable costs of restoration.
- D. Licensee shall use the Licensed Area solely for constructing, installing, operating, maintaining, repairing, modifying and removing the Facilities. The Facilities are limited to the equipment and facilities listed on Exhibit A and other items as may be approved by the City, in its sole discretion, in writing.
- E. Licensee shall have a non-exclusive right for ingress and egress, seven (7) days a week, twenty-four (24) hours a day, for the construction, installation, operation, maintenance, modification and removal of the Facilities. In no event shall the City's use of the Licensed Area be unreasonably interrupted by the Licensee's work. Prior to entering upon the Licensed Area for activities that disrupt vehicular and/or pedestrian traffic, the Licensee shall give the Project Manager or designee at least forty-eight (48) hours advance notice in the manner provided in Section 21 of this Agreement or, in the event of emergency repairs, any prior notice as is practical.
- F. Licensee shall at all times have on call and at the City's access, an active, qualified, and experienced representative to supervise the Facilities, and who is authorized to act for the Licensee in matters pertaining to all emergencies and the day-to-day operation of the Facilities. The Licensee shall provide the Project Manager or designee with the names, addresses and 24-hour telephone numbers of designated persons in writing.
- G. In the vicinity of any above-ground facilities Licensee may have in the Licensed Area, Licensee shall keep the Licensed Area maintained, orderly and clean at all times.
- H. Licensee acknowledges that: i) the Licensee's use of the Licensed Area is subject and subordinate to, and shall not adversely affect, the City's use of the Licensed Area; and ii) the City reserves the right to further develop, maintain, repair, or improve the Licensed Area, provided that City shall reasonably

cooperate with Licensee to ensure that Licensee's use and operation of the Distributed Antenna System (DAS) Facilities is not interfered with or interrupted.

- I. Licensee shall not install any signs in the Licensed Area other than required safety or warning signs or other signs necessary for the use of the Licensed Area as requested or approved by the City. Licensee bears all costs pertaining to the erection, installation, maintenance and removal of all of its signs.

## 7. HAZARDOUS WASTE.

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

## 8. LICENSEE'S IMPROVEMENTS; GENERAL REQUIREMENTS.

- A. The following provisions govern all improvements, repairs, installation and other construction, removal, demolition or similar work of any description by the Licensee related to the Facilities or the Licensed Area (collectively referred to as the "Licensee's Improvements"):
  - i) In no event, including termination of this Agreement for any reason, is the City obligated to compensate the Licensee in any manner for any of Licensee's Improvements or other work provided by the Licensee during or related to this Agreement. The Licensee shall timely pay for all labor, materials and work and all professional and other services related to Licensee's Improvements and defend, indemnify and hold harmless the City against the same;

- ii) Licensee shall perform all work in a good, workmanlike manner, and shall diligently complete the work in conformance with all building codes and similar requirements. Licensee's Improvements shall be commensurate with high quality industry standards as approved by the City, which approval shall not be unreasonably withheld, conditioned or delayed;
- iii) Licensee acknowledges that as of the Effective Date of this Agreement, the City has not approved or promised to approve any plans for the Licensee's Improvements, except for those improvements already in place or to the extent expressly stated in this Agreement;
- iv) Licensee shall make no structural or grading alterations, or similar structural modifications or additions or other significant construction work to the Licensed Area without having first received the written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. Review shall include all improvements, equipment, fixtures, paint and other construction work of any description as described in all plans delivered by the Licensee to the City. All such plans and construction are subject to inspection and final approval by the City as to materials, design, function and appearance;
- v) Licensee shall keep as-built records of the Licensee's Improvements and furnish copies of records to the City, at no cost to the City, upon completion of improvements and any changes to the same. Licensee shall participate as a member of the Blue Stake Center under A.R.S. § 40-360.21 *et seq.*, regarding underground facilities, and submit proof of participation to the Property Manager upon request;
- vi) All changes to utility facilities shall be limited to the Licensed Area and shall be undertaken by the Licensee only with the written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed;
- vii) All of the Licensee's Improvements shall, be designed so as to present uniformity of design, function, appearance and quality throughout and consistency with other improvements located in the Licensed Area; and
- viii) Licensee shall properly mark and sign all excavations and maintain barriers and traffic control in accordance with applicable laws, regulations and best management practices.

B. The following procedure governs the Licensee's submission to the City of all plans for the Licensed Area and the Licensee's Improvements, including any proposed changes by the Licensee of previously approved plans:



- i) Licensee shall coordinate with the City as necessary on significant design issues prior to submission of plans;
- ii) Upon execution of this Agreement, the City and the Licensee shall each designate a project manager to coordinate the parties' participation in designing and constructing Licensee's Improvements. Each project manager shall devote time and efforts to the project as may be necessary for timely, good faith and convenient coordination among all persons involved with the project and compliance with this Agreement. The City's Project Manager will not be exclusively assigned to this Agreement or to the Licensee's Improvements;
- iii) No plans are considered finally submitted until the Licensee delivers to the City a formal certification by an engineer licensed in Arizona, acceptable to the Project Manager, to the effect that all of the Licensee's Improvements are properly designed to be safe and functional as designed and as required by this Agreement. The certification shall be accompanied by and refer to any backup information and analysis as the Project Manager may reasonably require;
- iv) No plans are considered approved until stamped "APPROVED" and dated by the City's Project Manager;
- v) Licensee acknowledges that the Project Manager's authority with respect to the Licensed Area is limited to the administration of the requirements of this Agreement. Licensee is responsible to secure all zoning approvals, design revisions or other governmental approvals and to satisfy all governmental requirements pertaining to the project and may not rely on the City or Project Manager to initiate or suggest any particular process or course of action;
- vi) The City's issuance of building permits shall not be considered valid unless the plans have been approved as stated in subsection (iv) above. The City's Project Manager shall be reasonably available to coordinate and assist the Licensee in working through issues that may arise in connection with such plan approvals and requirements;
- vii) The Licensee shall, in the submittal of all plans, allow adequate time for all communications and plan revisions necessary to obtain approvals and shall schedule its performances and revise its plans as necessary to timely obtain all approvals and make payment of all applicable fees;
- viii) Any delay in City's review of or marking Licensee's plans with changes necessary to approve the plans, or approve the revised plans in accordance with the City's normal plan-review procedures, will not be considered approval of the plans but may operate to extend Licensee's construction deadlines. The City agrees to use reasonable efforts to

review, mark or approve Licensee's plans in a prompt and timely manner and in conformance with established policies and procedures;

- ix) The Licensee shall provide the City with two (2) complete sets of detailed plans and specifications of the work as completed;
- x) The parties shall use reasonable efforts to resolve any design and construction issues to their mutual satisfaction but, in the event of an impasse for any reason, final decision authority regarding all design and construction issues shall rest with the City in its discretion; and
- xi) Before any construction begins on the Licensed Area, the Licensee shall provide the City with performance bonds, and if considered necessary by the City, payment bonds, in amounts equal to the full amount of the written construction contract pursuant to which such construction is to be done. The payment bond shall be solely for the protection of claimants supplying labor or materials for the required construction work and the performance bond shall be solely for the protection of the City, conditioned upon the faithful performance of the required construction work. Bonds shall be executed by a surety company duly authorized to do business in Arizona, and acceptable to the City and shall be kept in place for the duration of the work.

9. LICENSEE'S INITIAL CONSTRUCTION.

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

10. MAINTENANCE.

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

11. CO-LOCATION.

- A. Subject to subsection (B) below, the Licensee shall, at all times, use reasonable efforts to cooperate with the City or any third parties with regard to the possible co-location of additional equipment, facilities or structures in and around the Licensed Area ("Co-location"). If a Co-location is feasible, the City

may, in its sole discretion, negotiate a Co-location license agreement with any third party on terms as the City considers appropriate, not inconsistent with the rights and obligations of the parties under this Agreement. Licensee's consent in connection with the final determination of Co-location of a third party is not required, provided that Licensee's operations are not interfered with or interrupted. Any fees or charges paid by an additional Co-locator belong solely to the City.

- B. Prior to permitting the installation of a Co-location by any third party in or around the Licensed Area which may interfere with the Licensee's operations, the City shall give the Licensee forty-five (45) days' notice of the proposed Co-location so that the Licensee can determine if the Co-location will interfere with the Facilities. If the Licensee determines that interference is likely, the Licensee shall, within the notice period, give the City a detailed written explanation of the anticipated interference, including supporting documentation as may be reasonably necessary for the City to evaluate the Licensee's position. The City and the Licensee shall promptly use reasonable efforts to resolve any interference problems before the City permits a Co-location to the third party. If a subsequent licensee is permitted to operate near the Licensed Area, and the subsequent licensee's operations materially interfere with Licensee's Facilities, then the City shall direct the subsequent licensee to remedy the interference within seventy-two (72) hours. If the interference is not resolved within this period, then the City will direct the subsequent licensee to cease its operation until the interference is resolved. These same procedures apply to any interference caused by Licensee with respect to any Co-location existing and as configured prior to the installation of Licensee's Facilities.

## 12. ASSIGNMENT.

- A. Licensee may assign this Agreement, upon thirty (30) days' written notice to the City, to any person or entity controlling, controlled by or under common ownership with the Licensee or Licensee's parent company, or to any person or entity that, acquires the Licensee's business and assumes all obligations of the Licensee under this Agreement. Other assignments require City approval. For assignments requiring City approval, the City may, as a condition of approval, postpone the effective date of the assignment and require that any potential transferee submit reasonable evidence of its financial ability to fully perform under the terms of this Agreement to the City at least thirty (30) days prior to any transfer of the Licensee's interest, in no event will the City unreasonably withhold, condition, or delay its approval to a proposed assignment.
- B. The Licensee may, upon notice to the City, mortgage or grant a security interest in this Agreement and the Facilities, and may assign this Agreement and the Facilities to any mortgagees, deed of trust beneficiaries or holders of security interests, including their successors or assigns ("Mortgagees"), so long as the Mortgagees agree to be bound by the terms of this Agreement. If so, the City

shall execute consent to leasehold or other financing as may be reasonably required by Mortgagees. In no event will Licensee grant or attempt to grant a security interest in any of the real property underlying the Licensed Area.

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

13. SECURITY DEPOSIT.

- A. Amount of Security Deposit. Within forty five (45) days of the full execution of this Agreement, Licensee agrees to deliver to City a security deposit in the amount of Two Thousand and No/100 Dollars (\$2,000.00). City shall hold the Security Deposit as security for the performance of the Licensee's obligations under this Agreement.
- B. Use of Security Deposit. City may (but is not required to) without prejudice to any other remedy City has, apply all or part of the Security Deposit to:
  - i) Any Rent, including Base Rent, or other sum in default;
  - ii) Any amount that City may spend or become obligated to spend in exercising City's unconditional rights pursuant to Facilities Removal, Restoration or to remove any and all portions of the Facilities that remain on the Licensed Area by the earlier of thirty (30) days following cessation of Licensee's operations at the Licensed Area, or the Expiration Date of this Agreement; and
  - iii) Any expense, loss, or damage that City may suffer because of Licensee's default.
- C. Refund of Security Deposit. Licensee must remove, to City's satisfaction, all elements of the Facilities and all associated improvements of every kind and nature constructed, erected or placed by Licensee on the Licensed Area by the earlier of the thirty (30) days following cessation of Licensee's operations at the Licensed Area, or expiration date of this Agreement in order to secure refund of any portion of its Security Deposit.

14. REGULATORY AGENCIES, SERVICES, FINANCIALS AND BANKRUPTCY.

- A. The Licensee shall upon request provide to the City:
  - i) All non-proprietary and relevant petitions, applications, communications and reports submitted by the Licensee to the Arizona Corporation Commission, inclusive of any requirements under A.R.S. § 40-441 *et seq.*, or other state or federal authority having jurisdiction that directly relates to Licensee's operations in the Licensed Area;

- ii) Non-proprietary licensing documentation concerning all services of whatever nature being offered or provided by the Licensee over facilities in the Licensed Area. Non-proprietary copies of responses from regulatory agencies to the Licensee shall be available to the City upon request. To the extent permitted by Arizona's Public Records Law, A.R.S. § 39-121 *et seq.*, the City will treat all documentation and information obtained pursuant to this Section 14 as proprietary and confidential.
- B. The Licensee shall upon request provide the City copies of any petition, application, communications, or other documents related to any filing by the Licensee of bankruptcy, receivership, or trusteeship.

15. DEFAULT; TERMINATION BY CITY.

- A. The City may terminate this Agreement for any of the following reasons upon thirty (30) days' written notice to Licensee:
  - i) Failure of Licensee to perform any obligation under this Agreement, after Licensee fails to cure default within the notice and cure period. However, if cure cannot reasonably be implemented within the notice period, Licensee must commence and diligently pursue to cure within ninety (90) days of the City's notice.
  - ii) The taking of possession for a period of ten (10) days or more of substantially all of Licensee's personal property in the Licensed Area by or pursuant to lawful authority of any legislative act, resolution, rule, order or decree or any act, resolution, rule, order or decree of any court or governmental board, agency, officer, receiver, trustee or liquidator.
  - iii) The filing of any lien against the Licensed Area, or against the City's underlying real property, due to any act or omission of the Licensee that is not discharged or fully bonded within thirty (30) days of receipt of actual notice by the Licensee.
- B. The City may place the Licensee in default of this Agreement by giving the Licensee fifteen (15) days written notice of the Licensee's failure to timely pay the rent required under this Agreement or any other charges required to be paid by the Licensee pursuant to this Agreement. If Licensee does not cure the default within the notice period the City may terminate this Agreement or exercise any other remedy allowed by law or equity.
- C. If the Licensee, through any fault of its own, at any time fails to maintain all insurance coverage required by this Agreement, the City may, upon written notice to the Licensee, immediately terminate this Agreement or secure the required insurance at Licensee's expense.

- D. Failure by a party to take any authorized action upon default by the other party does not constitute a waiver of the default nor of any subsequent default by the other party. City's acceptance of the License Fee or any other fees or charges for any period after a default by the Licensee is not considered a waiver or estoppel of the City's right to terminate this Agreement for any subsequent failure by the Licensee to comply with its obligations.
- E. Upon the termination of this Agreement for any reason, all rights of the Licensee terminate, including all rights of the Licensee's creditors, trustees and assigns and all others similarly situated as to the Licensed Area.

16. TERMINATION.

- A. This Agreement may be terminated for any of the following reasons:
  - i) By either party upon issuance by a court of competent jurisdiction of an injunction in any way preventing or restraining the Licensee's use of any portion of the Licensed Area and remaining in force for a period of thirty (30) consecutive days.
  - ii) By either party upon the inability of the Licensee to use any substantial portion of the Licensed Area for a period of thirty (30) consecutive days due to the enactment or enforcement of any law or regulation or because of fire, earthquake or similar casualty, or Acts of God or the public enemy.
  - iii) By either party upon ninety (90) days' written notice, if the Licensee is unable to obtain or maintain any license, permit or governmental approval necessary for the construction, installation or operation of the Facilities or the Licensee's business.
  - iv) Provided Licensee is current in all of its financial obligations to the City, by Licensee, for any reason with sixty (60) days' written notice to the City.
- B. In order to exercise the termination provisions above, the party exercising termination must not itself be in default under the terms of this Agreement beyond any applicable grace or cure period and, if not otherwise stated above, provide reasonable written notice to the other party.

17. INDEMNIFICATION.

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

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

18. INSURANCE.

- A. The Licensee shall procure and at all times maintain the following types and amounts of insurance for its operations in the Licensed Area:
  - i) Commercial general liability insurance in the minimum amount of \$2,000,000 combined single limit per occurrence for bodily injury and property damage, \$5,000,000 aggregate.
  - ii) Any other insurance, as the City’s Project Manager may determine, to be necessary for the Licensee’s operations and is commercially reasonable.
- B. Insurance shall:
  - i) Be from a company rated at least A- by AM Best;
  - ii) Name the City as an additional insured on the insurance policy and maintain coverage through the term of the Agreement;
  - iii) Include contractual liability coverage, subject to standard policy provisions and exclusions; and
  - iv) Be primary and non-contributory with respect to all other available sources, as relates to Licensee’s negligence.
- C. Licensee shall provide appropriate certificates of insurance to the City for all insurance policies required by this Section. Absence of City request for proof of initial or renewal coverage does not waive any insurance requirements under this paragraph.

19. DAMAGE OR DESTRUCTION / REPLACEMENT POLES.

- A. The City has no obligation to reimburse the Licensee for the loss of or damage to fixtures, equipment or other personal property of the Licensee, except for loss or damage caused by the negligence or fault of the City or its officers, employees or agents. The Licensee may insure such fixtures, equipment or other personal property for its own protection if it so desires.
- B. Replacement Pole. If the City approves a Licensee proposal to install Antennas on a City-owned pole, then in addition to the other requirements of this Agreement the following shall apply:
  - i) Licensee shall provide and deliver to the City a replacement pole (excluding mast arm); so that a replacement is immediately available to City in case the original pole is damaged.
  - ii) If the City uses a replacement pole, then Licensee shall provide another replacement pole.
  - iii) All performance under this paragraph shall be at Licensee's expense. City owns the original pole and all replacement poles.
  - iv) Licensee will provide City with a total of five (5) replacement light poles. Annually, the City may reasonably request additional stock directly in proportion to the number of light pole attachments added by Licensee, but in no event greater than 10% of the total number of Licensee-provided light poles then in City's possession.
  - v) This paragraph does not diminish the plans approval or any other requirement of this Agreement.

20. SURRENDER OF POSSESSION.

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



21. NOTICE.

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

TO THE CITY: City of Glendale  
5850 West Glendale Avenue  
Glendale, Arizona 85301  
Attention: Project Manager

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

TO THE LICENSEE: Verizon Wireless (VAW) LLC,  
dba Verizon Wireless  
180 Washington Valley Road  
Bedminster, New Jersey 07921  
Attn: Network Real Estate

Emergency Contact Phone Numbers:

Licensee NOCC - 800-264-6620

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

22. SEVERABILITY.

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

23. TAXES AND LICENSES.

- A. The Licensee shall pay any leasehold tax, possessory-interest tax, sales tax, personal property tax, transaction privilege tax, use tax or other exaction assessed or assessable as a direct result of its occupancy of the Licensed Area

under authority of this Agreement, including any tax assessable on the City. If laws or judicial decisions result in the imposition of a real property tax on the interest of the City as a direct result of Licensee's occupancy of the Licensed Area, the tax shall also be paid by the Licensee on a proportional basis for the period this Agreement is in effect.

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

24. GOVERNING LAW.

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

25. RULES AND REGULATIONS.

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

26. RIGHT OF ENTRY RESERVED.

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

27. RELOCATION.

- A. The City shall not bear any cost of relocation of existing facilities, irrespective of the function served, where the City facilities or other facilities occupying the Licensed Area or right-of-way in close proximity to the Licensed Area, are already located and the conflict between the Licensee's potential Facilities and existing facilities can only be resolved expeditiously, as determined by the City, by the movement of the existing City or other permitted facilities.
- B. The City shall not bear any cost of relocation of Licensee's Facilities, where in the City's discretion, relocation is reasonable and necessary in connection with City right-of-way repairs, improvements or other capital projects affecting the Licensed Area. City shall provide Licensee no less than one hundred forty-five (145) days advance notice of a requirement to relocate. If the City becomes aware of a potential delay involving the Licensee's relocation, the City shall notify the Licensee within thirty (30) days of becoming aware of the potential delay. The Licensee may object in writing to the determination of relocation to the City's Project Manager within thirty (30) days of receipt of the notice to relocate. The Project Manager shall consider the objection and respond in writing to Licensee within thirty (30) days of receipt of the objection. The Project Manager's determination is final. Notwithstanding the foregoing, if the City issues a permit to a private developer, subsequent to the effective date of this Agreement that requires the relocation, or otherwise disturbs Licensee's Facilities, those costs will be borne by the developer.
- C. If Licensee's relocation effort delays construction of a public project causing the City to be liable for delay or other damages, the Licensee shall reimburse the City for those damages attributable to the delay created by the Licensee. If Licensee disputes the amount of damages attributable to the Licensee, the matter shall be referred to the Dispute Resolution Board as defined below. The Dispute Resolution Board shall consist of one member selected by the City, one member selected by the Licensee, and a third member agreed upon by both parties. The member agreed upon by both parties shall be chairperson of the Dispute Resolution Board. Expenses for the Dispute Resolution Board shall be shared equally by the City and the Licensee. The Board will hear the dispute promptly, and render an opinion as soon as possible, but in no case later than sixty (60) days after notification by the City of Licensee's allocated share of damages suffered by the City. All decisions of the Dispute Resolution Board are non-binding on the City and Licensee; however the findings of the Dispute Resolution Board shall be admissible in any legal action. The City and the Licensee shall accept or reject findings of the Dispute Resolution Board within thirty (30) days after receipt of the findings. If damages are assessed by the Dispute Resolution Board, and accepted by the City and the Licensee, the Licensee shall pay the City within thirty (30) days. If the Licensee fails to pay the damages in full within thirty (30) days the Licensee is responsible for interest on the unpaid balance at the rate of 18% per annum from that date until payment is made in full. Nothing

herein prevents a mutual agreement between the City and the Licensee to use alternative dispute resolution for disputes related to other Agreement provisions.

28. CONFLICTS OF INTEREST.

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

29. MISCELLANEOUS.

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

*[Signatures on the following pages.]*

EXECUTED to be effective as of the date shown above.

CITY OF GLENDALE, an Arizona  
municipal corporation

\_\_\_\_\_  
Brenda S. Fischer  
City Manager

ATTEST:

\_\_\_\_\_  
Pamela Hanna (SEAL)  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael D. Bailey  
City Attorney

Verizon Wireless (VAW) LLC,  
dba Verizon Wireless

By: \_\_\_\_\_  
Brian Mecum  
Its: Area Vice President Network  
Date: \_\_\_\_\_

EXHIBIT A

*(see attached)*

**PHO\_N59th-Ave\_SC**  
 19503- 19551 N. 59TH AVENUE  
 GLENDALE, AZ 85308

LOOKING EAST

EXISTING VIEW -



PHOTOGRAPHIC SIMULATION -



PROPOSED INSTALLATION OF LESSEE ANTENNA ARRAY AND MICROWAVE DISH MOUNTED TO 36' REPLACEMENT UTILITY POLE. ADDITION OF SUNWEST EQUIPMENT CABINET SURROUNDED BY A PARTIAL 2' CMU RETAINING WALL.





**young design corp**  
 architecture project management  
 YOUNG DESIGN CORP. - 10245 E. VIA LINDA, STE. 211  
 SCOTTSDALE, AZ 85258 - (480) 451-9609

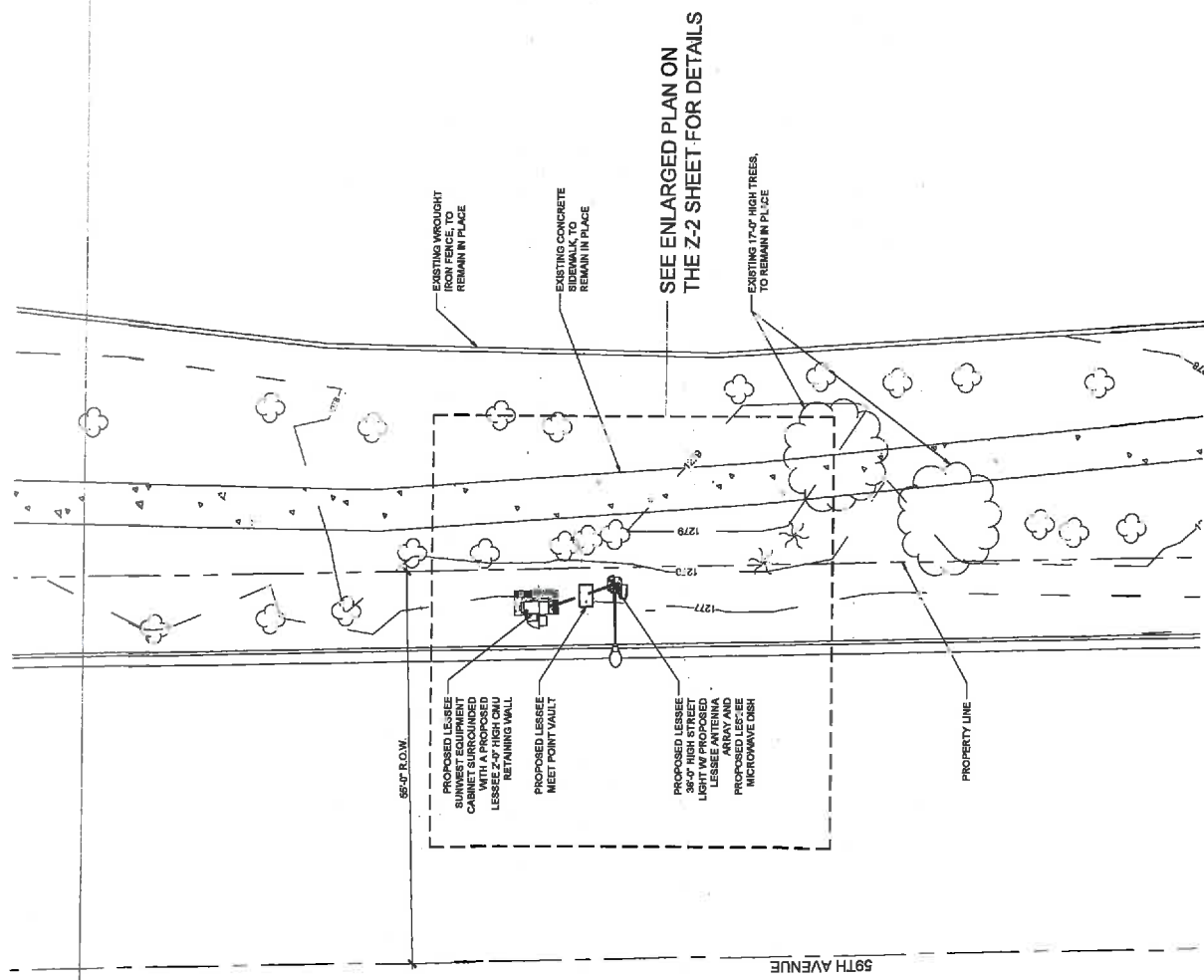






44007  
RYAN L.  
FEDLER

 <b>verizon wireless</b> 126 W. GEMINI DR. TEMPE, AZ 85283		<b>leong design corp</b> architecture / project management 10245 E. 1/4 Loop, Scottsdale, AZ 85258 PH: 480 451 8608 FAX: 480 451 9808 corpcontact@leongdesign.com		 RONALD C. YOUNG PROFESSIONAL ENGINEER STATE OF ARIZONA NO. 12345 EXPIRATION DATE: 12/31/2014 THIS SEALING IS REQUIRED FOR THE PROVISION OF PROFESSIONAL ENGINEERING SERVICES. ANY VIOLATION OF THE PROFESSIONAL ENGINEERING ACT OR RULES OF THE BOARD OF PROFESSIONAL ENGINEERS MAY BE CAUSE FOR REVOCATION OF THIS SEALING.	
CLIENT: _____ DATE: _____		PROJECT INFORMATION: PROJECT NO.: YDC-6980 PROJECT TITLE: PHO_N59TH-AVE_SC SMALL CELL 1800S-1905S N 59TH AVE GLENDALE, AZ 85308		SHEET TITLE: SITE PLAN JURISDICTION APPROVAL: _____	
MATERIAL REVIEW: _____ CONSTRUCTION SIGNATURE: _____ RF SIGNATURE: _____ FACILITIES SIGNATURE: _____ REAL ESTATE SIGNATURE: _____ PLANNING PREPARED BY: _____		WHO: DATE: DESCRIPTION: 1 8/14/2014 SUBMITTAL			



CLIENT

126 W. GEMINI DR.  
TEMPE, AZ 85283

INTERNAL REVIEW

DATE

CONSTRUCTION SIGNATURE

OFF SIGNATURE

FACILITIES SIGNATURE

REAL ESTATE SIGNATURE

PLANS PREPARED BY

young & design corp

architects / project management

10345 E. Via Linda, Scottsdale, AZ 85258

ph: 480 451 8808 fax: 480 461 9808

corporate@younganddesign.com

RONALD C. YOUNG

REGISTERED PROFESSIONAL ENGINEER

STATE OF ARIZONA

NO. 10345 E. VIA LINDA, SCOTTSDALE, AZ 85258

PH: 480 451 8808 FAX: 480 461 9808

ron.young@younganddesign.com

PROJECT NO.

YDC-5950

PROJECT INFORMATION

PHO\_N59TH-AVE\_SC

SMALL CELL

19035-19851 N 59TH AVE

GLENDALE, AZ 85308

SHEET TITLE

ENLARGED SITE PLAN

DATE

5/18/2014

DESIGNER

YOUNG

DATE

5/18/2014

DESIGNER

YOUNG

ARCHITECTS JOB NO.

YDC-5950

PROJECT INFORMATION

PHO\_N59TH-AVE\_SC

SMALL CELL

19035-19851 N 59TH AVE

GLENDALE, AZ 85308

SHEET TITLE

ENLARGED SITE PLAN

DATE

5/18/2014

DESIGNER

YOUNG

DATE

5/18/2014

DESIGNER

YOUNG

PROPERTY LINE / R.O.W. LINE

PROPOSED LESSEE SUNSHINE EQUIPMENT CABINET

PROPOSED LESSEE 2'-0" HIGH CMU RETAINING WALL

EXISTING VEGETATION TO REMAIN IN PLACE, TYP.

PROPOSED MEET POINT/GROUND ROD WALL

PROPOSED LESSEE UNDERGROUND COAX ROUTE

EXISTING SIDEWALK

EXISTING 17'-0" HIGH TREE, TO REMAIN IN PLACE, TYP.

EXISTING GRAVEL

PROPOSED LESSEE ANTENNA ARRAY MOUNTED TO PROPOSED LESSEE 28'-0" HIGH REPLACEMENT LIGHT POLE

EXISTING GUTTER & CONCRETE CURB

PROPOSED LESSEE LIGHT FIXTURE MOUNTED TO PROPOSED LESSEE 28'-0" HIGH REPLACEMENT LIGHT POLE

SCALE: 3/8" = 1'-0"

NORTH

FRONT

SIDE

TOP

ANDREW SBHH-1D65A

PROPOSED ANTENNA DETAIL

COAXIAL CABLE TABLE

SECTION	ASSEMBLY	LENGTH	SIZE	TYPE
ALPHA	6'-0"	3'-0"	2	1/2"
BETA	1'-0"	3'-0"	2	1/2"
WV	1'-0"	3'-0"	2	1/2"

COAX CABLE INFORMATION

PROPOSED LESSEE ANTENNA ARRAY MOUNTED TO PROPOSED REPLACEMENT STREET LIGHT POLE

PROPOSED LESSEE MICROWAVE DIRECTIONAL ANTENNA MOUNTED TO PROPOSED REPLACEMENT STREET LIGHT POLE

NEW ANTENNA CONFIGURATION - 21' CL

CLIENT



126 W. GEMINI DR.  
TEMPE, AZ 85283

INTERNAL REVIEW

CONSTRUCTION SIGNATURE

RF SIGNATURE

FACILITIES SIGNATURE

LEGAL SIGNATURE

PLANS PREPARED BY



architecture / project management  
10245 E. Via Linda, Scottsdale, AZ 85258  
PH: 480 451 9608 FAX: 480 451 9608  
www.designcorp.com

DESIGN CORP. is a registered professional engineering firm in the State of Arizona. The design of this project was prepared by a duly licensed professional engineer in the State of Arizona. The design of this project was prepared by a duly licensed professional engineer in the State of Arizona. The design of this project was prepared by a duly licensed professional engineer in the State of Arizona.



THESE PLANS WERE PREPARED BY A LICENSED PROFESSIONAL ENGINEER IN THE STATE OF ARIZONA. THE ENGINEER'S NAME AND LICENSE NUMBER ARE: RONALD C. YOUNG, LICENSE NO. 12345. THE ENGINEER'S FIRM IS: DESIGN CORP., 10245 E. VIA LINDA, SCOTTSDALE, AZ 85258. THE ENGINEER'S PHONE NUMBER IS: 480 451 9608. THE ENGINEER'S FAX NUMBER IS: 480 451 9608. THE ENGINEER'S E-MAIL ADDRESS IS: RYOUNG@DESIGNCORP.COM.

DATE: 6/18/2014

REVISION

DESCRIPTION

1 6/18/2014

SUBMITTAL

ARCHITECTS: MOB NO.

YOC-5890

PROJECT INFORMATION

PHO\_N59TH-AVE\_SC

SMALL CELL

15005-15051 N 59TH AVE

GLENDALE, AZ 85308

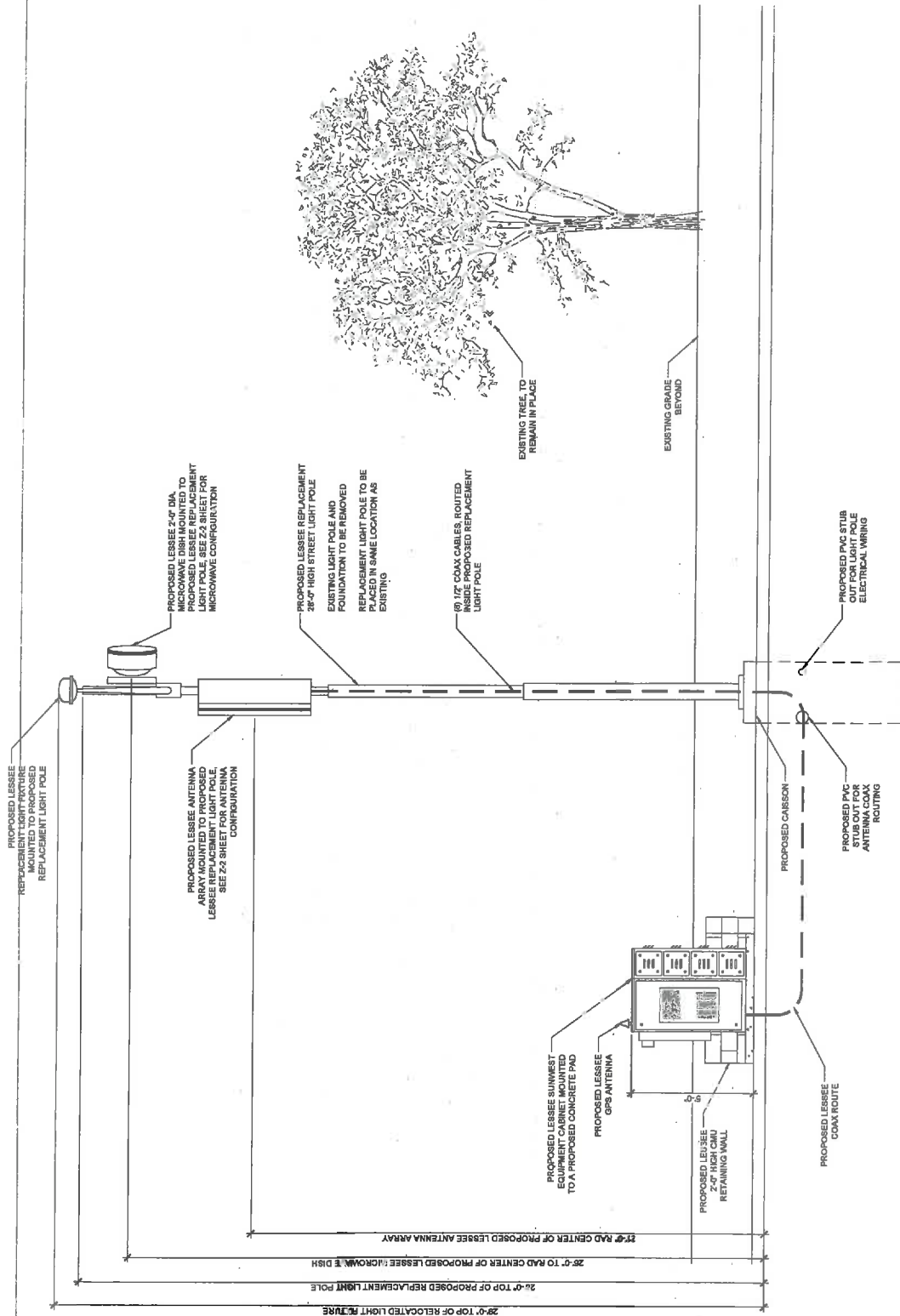
SHEET TITLE

WEST ELEVATION

UNIFICATION APPROVAL

SHEET NUMBER

Z-3





**COMMUNICATIONS SITE LICENSE AGREEMENT FOR  
VERIZON WIRELESS (VAW) LLC, dba VERIZON WIRELESS,  
IN CITY OF GLENDALE RIGHT-OF-WAY**

This Communications Site License Agreement for Verizon Wireless (VAW) LLC, dba Verizon Wireless, in City of Glendale Right-of-Way ("Agreement") is executed to be effective this \_\_\_\_ day of \_\_\_\_\_, 2014 ("Effective Date"), between the City of Glendale, an Arizona municipal corporation ("City"), and Verizon Wireless (VAW) LLC, a Delaware limited liability company, dba Verizon Wireless ("Licensee").

**RECITALS**

- A. The City is the owner of certain right-of-way located in the City ("Licensed Area"), as more particularly described in the attached Exhibit A.
- B. Licensee desires to install, maintain and operate a "small cell" wireless communications facility ("Small Cell") in the City's right-of-way. The equipment includes, but is not limited to communications equipment, antennas, radio amplifiers, radio frequency and optical signal converters, power suppliers and meters, monitoring devices, fiber optic and other cabling, connectors and equipment necessary to serve Licensee's Small Cell facilities as shown in Exhibit A (collectively, the "Facilities").
- C. The City is willing to grant the Licensee a license to use the Licensed Area for the operation of the Facilities under the terms of this Agreement, subject to the approval of the Glendale City Council in connection with the public hearing requirements of A.R.S. § 9-551 *et seq.*, and all as implemented by the City's Project Manager, whose approvals shall not be unreasonably withheld.

**AGREEMENT**

In consideration of the following mutual covenants, terms and conditions, the Parties agree as follows:

1. LICENSED AREA.

The Licensed Area includes and is limited to the following areas depicted in Exhibit A: i) The area on which the Facilities are located at 20432 North 59<sup>th</sup> Avenue, or an alternative area in the right-of-way, as approved by the City; and ii) Reasonable access to the Facilities through the public right-of-way.

2. CITY'S REPRESENTATIONS AND WARRANTIES.

- A. The City represents and warrants to the Licensee that: i) the City, and its duly authorized signatory, have full right, power, and authority to execute this Agreement on behalf of the City; ii) the City has good and unencumbered title to

the Licensed Area free and clear of any liens or mortgages, except those disclosed to the Licensee that will not interfere with Licensee's right to use the Licensed Area; and iii) the City's execution and performance of this Agreement will not violate any laws, ordinances, covenants, mortgages, licenses or other agreements binding on the City.

- B. The Licensee has studied and inspected the Licensed Area and accepts the same "AS IS" without any express or implied warranties of any kind, other than those warranties contained in Subsection (2)(A) immediately above, including any warranties or representations by the City as to its condition or fitness for any particular use. The Licensee has inspected the Licensed Area and obtained information and professional advice as the Licensee has determined to be necessary related to this Agreement.

3. GRANT OF LICENSE; TERM.

- A. Nothing in this Agreement will be construed as granting the Licensee the authority to use any property that is owned by any person or entity other than the City.
- B. The initial term of this License Agreement shall be for a period of ten (10) years (the "Initial Term"), commencing on the Commencement Date (as defined in paragraph 4.C below) and ending at 11:59 p.m. on the day immediately preceding the tenth (10<sup>th</sup>) anniversary thereof, unless sooner terminated as stated herein. This Agreement shall be automatically renewed for no more than three successive five-year Renewal Terms, unless Licensor or Licensee notifies the other party in writing of such party's intent not to renew this Agreement at least one hundred eighty (180) days prior to the expiration of the Initial Term or any Renewal Term, as applicable.
- C. If Licensee continues to occupy the Licensed Area after the expiration or termination of this Agreement, holding over will not be considered to operate as a renewal or extension of this Agreement, but shall be a month-to-month license and the Licensee must pay the City fees in an amount that is double the amount of normal license fee that would otherwise be due under Section 4.
- D. Notwithstanding any provision in this Agreement to the contrary or any negotiation, correspondence, course of performance or dealing, or any other statements or acts by or between the parties, Licensee's rights in the Licensed Area are limited to the rights created by this Agreement. Licensee's rights are subject to all covenants, restrictions, easements, agreements, reservations and encumbrances upon, and all other conditions of title to, the Licensed Area. Licensee's rights under this Agreement are further subject to all present and future building restrictions, regulations, zoning laws, ordinances, resolutions and orders of any local, state or federal agency, now or later having jurisdiction over, the Licensed Area or the Licensee's use of the Licensed Area.

4. LICENSE FEES; COSTS; TAXES.

- A. As of the Commencement Date, Licensee shall pay, without notice and free from all claims, deductions and setoffs against the City, an annual license fee in the amount of \$3,368.00 for one (1) street light attachment, including ground equipment with a “footprint” of up to fifty (50) cubic feet, for Licensee’s Facilities and associated equipment within the Licensed Area, plus all appropriate taxes (see Section 23 below) and on each subsequent anniversary of the Commencement Date during the term of this Agreement, up to and including the expiration or earlier termination thereof (“Pole Attachment Fee”).
- B. The Pole Attachment Fee will increase by three percent (3%) annually on each anniversary of the Commencement Date.
- C. The “Commencement Date” shall be defined as the first day of the month immediately following the Effective Date of this Agreement. Licensee shall pay all fees due for the current year in advance on the first business day of each month. If the Effective Date is not on the first day of a month, the Licensee’s fees will be prorated accordingly. The first installment of the annual license fee shall be paid within forty-five (45) days following the Commencement Date, and all subsequent annual installments paid on or before the first day of the applicable month.
- D. If the Licensee fails to pay any fee in full within ten (10) business days after receipt of written notice of delinquency, the Licensee is responsible for interest on the unpaid principal balance at the rate of 18% per annum from the due date until payment is made in full.
- E. Upon submission of plans in connection with the approval of this Agreement, Licensee shall pay the City a dry utility permit fee in accordance with the City’s Community Development Fee Schedule.
- F. Licensee shall pay the City actual costs for inspections, materials testing and other costs incurred by the City as a direct result of the construction, repair, alteration or relocation of the Facilities. All costs shall be paid in full within thirty (30) days of invoice.

5. UTILITIES.

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

6. USE RESTRICTIONS.

- A. Subject to the interference provisions set forth below, Licensee shall at all times use reasonable efforts to minimize any impact that its use of the Licensed Area will have on other users of the Licensed Area.



- B. Licensee shall not remove, damage or alter in any way any improvements or personal property of the City upon the Licensed Area without the City's prior written approval. Licensee shall repair any damage or alteration to the City's property caused by Licensee's use of the Licensed Area to the same condition that existed before the damage or alteration, reasonable wear and tear excepted.
- C. Whenever the Licensee performs construction activities within the Licensed Area, the Licensee shall obtain all necessary construction permits and promptly, upon completion of construction, restore the remaining Licensed Area to the condition existing before construction to the satisfaction of the City's Project Manager. If the Licensee fails to restore the Licensed Area as required, the City may take all reasonable actions necessary to restore the Licensed Area, and the Licensee, within thirty (30) days of demand and receipt of an invoice, together with reasonable supporting documentation, will pay all of the City's reasonable costs of restoration.
- D. Licensee shall use the Licensed Area solely for constructing, installing, operating, maintaining, repairing, modifying and removing the Facilities. The Facilities are limited to the equipment and facilities listed on Exhibit A and other items as may be approved by the City, in its sole discretion, in writing.
- E. Licensee shall have a non-exclusive right for ingress and egress, seven (7) days a week, twenty-four (24) hours a day, for the construction, installation, operation, maintenance, modification and removal of the Facilities. In no event shall the City's use of the Licensed Area be unreasonably interrupted by the Licensee's work. Prior to entering upon the Licensed Area for activities that disrupt vehicular and/or pedestrian traffic, the Licensee shall give the Project Manager or designee at least forty-eight (48) hours advance notice in the manner provided in Section 21 of this Agreement or, in the event of emergency repairs, any prior notice as is practical.
- F. Licensee shall at all times have on call and at the City's access, an active, qualified, and experienced representative to supervise the Facilities, and who is authorized to act for the Licensee in matters pertaining to all emergencies and the day-to-day operation of the Facilities. The Licensee shall provide the Project Manager or designee with the names, addresses and 24-hour telephone numbers of designated persons in writing.
- G. In the vicinity of any above-ground facilities Licensee may have in the Licensed Area, Licensee shall keep the Licensed Area maintained, orderly and clean at all times.
- H. Licensee acknowledges that: i) the Licensee's use of the Licensed Area is subject and subordinate to, and shall not adversely affect, the City's use of the Licensed Area; and ii) the City reserves the right to further develop, maintain, repair, or improve the Licensed Area, provided that City shall reasonably

cooperate with Licensee to ensure that Licensee's use and operation of the Distributed Antenna System (DAS) Facilities is not interfered with or interrupted.

- I. Licensee shall not install any signs in the Licensed Area other than required safety or warning signs or other signs necessary for the use of the Licensed Area as requested or approved by the City. Licensee bears all costs pertaining to the erection, installation, maintenance and removal of all of its signs.

## 7. HAZARDOUS WASTE.

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

## 8. LICENSEE'S IMPROVEMENTS; GENERAL REQUIREMENTS.

- A. The following provisions govern all improvements, repairs, installation and other construction, removal, demolition or similar work of any description by the Licensee related to the Facilities or the Licensed Area (collectively referred to as the "Licensee's Improvements"):
  - i) In no event, including termination of this Agreement for any reason, is the City obligated to compensate the Licensee in any manner for any of Licensee's Improvements or other work provided by the Licensee during or related to this Agreement. The Licensee shall timely pay for all labor, materials and work and all professional and other services related to Licensee's Improvements and defend, indemnify and hold harmless the City against the same;

- ii) Licensee shall perform all work in a good, workmanlike manner, and shall diligently complete the work in conformance with all building codes and similar requirements. Licensee's Improvements shall be commensurate with high quality industry standards as approved by the City, which approval shall not be unreasonably withheld, conditioned or delayed;
- iii) Licensee acknowledges that as of the Effective Date of this Agreement, the City has not approved or promised to approve any plans for the Licensee's Improvements, except for those improvements already in place or to the extent expressly stated in this Agreement;
- iv) Licensee shall make no structural or grading alterations, or similar structural modifications or additions or other significant construction work to the Licensed Area without having first received the written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. Review shall include all improvements, equipment, fixtures, paint and other construction work of any description as described in all plans delivered by the Licensee to the City. All such plans and construction are subject to inspection and final approval by the City as to materials, design, function and appearance;
- v) Licensee shall keep as-built records of the Licensee's Improvements and furnish copies of records to the City, at no cost to the City, upon completion of improvements and any changes to the same. Licensee shall participate as a member of the Blue Stake Center under A.R.S. § 40-360.21 *et seq.*, regarding underground facilities, and submit proof of participation to the Property Manager upon request;
- vi) All changes to utility facilities shall be limited to the Licensed Area and shall be undertaken by the Licensee only with the written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed;
- vii) All of the Licensee's Improvements shall, be designed so as to present uniformity of design, function, appearance and quality throughout and consistency with other improvements located in the Licensed Area; and
- viii) Licensee shall properly mark and sign all excavations and maintain barriers and traffic control in accordance with applicable laws, regulations and best management practices.

B. The following procedure governs the Licensee's submission to the City of all plans for the Licensed Area and the Licensee's Improvements, including any proposed changes by the Licensee of previously approved plans:

- i) Licensee shall coordinate with the City as necessary on significant design issues prior to submission of plans;
- ii) Upon execution of this Agreement, the City and the Licensee shall each designate a project manager to coordinate the parties' participation in designing and constructing Licensee's Improvements. Each project manager shall devote time and efforts to the project as may be necessary for timely, good faith and convenient coordination among all persons involved with the project and compliance with this Agreement. The City's Project Manager will not be exclusively assigned to this Agreement or to the Licensee's Improvements;
- iii) No plans are considered finally submitted until the Licensee delivers to the City a formal certification by an engineer licensed in Arizona, acceptable to the Project Manager, to the effect that all of the Licensee's Improvements are properly designed to be safe and functional as designed and as required by this Agreement. The certification shall be accompanied by and refer to any backup information and analysis as the Project Manager may reasonably require;
- iv) No plans are considered approved until stamped "APPROVED" and dated by the City's Project Manager;
- v) Licensee acknowledges that the Project Manager's authority with respect to the Licensed Area is limited to the administration of the requirements of this Agreement. Licensee is responsible to secure all zoning approvals, design revisions or other governmental approvals and to satisfy all governmental requirements pertaining to the project and may not rely on the City or Project Manager to initiate or suggest any particular process or course of action;
- vi) The City's issuance of building permits shall not be considered valid unless the plans have been approved as stated in subsection (iv) above. The City's Project Manager shall be reasonably available to coordinate and assist the Licensee in working through issues that may arise in connection with such plan approvals and requirements;
- vii) The Licensee shall, in the submittal of all plans, allow adequate time for all communications and plan revisions necessary to obtain approvals and shall schedule its performances and revise its plans as necessary to timely obtain all approvals and make payment of all applicable fees;
- viii) Any delay in City's review of or marking Licensee's plans with changes necessary to approve the plans, or approve the revised plans in accordance with the City's normal plan-review procedures, will not be considered approval of the plans but may operate to extend Licensee's construction deadlines. The City agrees to use reasonable efforts to

review, mark or approve Licensee's plans in a prompt and timely manner and in conformance with established policies and procedures;

- ix) The Licensee shall provide the City with two (2) complete sets of detailed plans and specifications of the work as completed;
- x) The parties shall use reasonable efforts to resolve any design and construction issues to their mutual satisfaction but, in the event of an impasse for any reason, final decision authority regarding all design and construction issues shall rest with the City in its discretion; and
- xi) Before any construction begins on the Licensed Area, the Licensee shall provide the City with performance bonds, and if considered necessary by the City, payment bonds, in amounts equal to the full amount of the written construction contract pursuant to which such construction is to be done. The payment bond shall be solely for the protection of claimants supplying labor or materials for the required construction work and the performance bond shall be solely for the protection of the City, conditioned upon the faithful performance of the required construction work. Bonds shall be executed by a surety company duly authorized to do business in Arizona, and acceptable to the City and shall be kept in place for the duration of the work.

9. LICENSEE'S INITIAL CONSTRUCTION.

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

10. MAINTENANCE.

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

11. CO-LOCATION.

- A. Subject to subsection (B) below, the Licensee shall, at all times, use reasonable efforts to cooperate with the City or any third parties with regard to the possible co-location of additional equipment, facilities or structures in and around the Licensed Area ("Co-location"). If a Co-location is feasible, the City

may, in its sole discretion, negotiate a Co-location license agreement with any third party on terms as the City considers appropriate, not inconsistent with the rights and obligations of the parties under this Agreement. Licensee's consent in connection with the final determination of Co-location of a third party is not required, provided that Licensee's operations are not interfered with or interrupted. Any fees or charges paid by an additional Co-locator belong solely to the City.

- B. Prior to permitting the installation of a Co-location by any third party in or around the Licensed Area which may interfere with the Licensee's operations, the City shall give the Licensee forty-five (45) days' notice of the proposed Co-location so that the Licensee can determine if the Co-location will interfere with the Facilities. If the Licensee determines that interference is likely, the Licensee shall, within the notice period, give the City a detailed written explanation of the anticipated interference, including supporting documentation as may be reasonably necessary for the City to evaluate the Licensee's position. The City and the Licensee shall promptly use reasonable efforts to resolve any interference problems before the City permits a Co-location to the third party. If a subsequent licensee is permitted to operate near the Licensed Area, and the subsequent licensee's operations materially interfere with Licensee's Facilities, then the City shall direct the subsequent licensee to remedy the interference within seventy-two (72) hours. If the interference is not resolved within this period, then the City will direct the subsequent licensee to cease its operation until the interference is resolved. These same procedures apply to any interference caused by Licensee with respect to any Co-location existing and as configured prior to the installation of Licensee's Facilities.

## 12. ASSIGNMENT.

- A. Licensee may assign this Agreement, upon thirty (30) days' written notice to the City, to any person or entity controlling, controlled by or under common ownership with the Licensee or Licensee's parent company, or to any person or entity that, acquires the Licensee's business and assumes all obligations of the Licensee under this Agreement. Other assignments require City approval. For assignments requiring City approval, the City may, as a condition of approval, postpone the effective date of the assignment and require that any potential transferee submit reasonable evidence of its financial ability to fully perform under the terms of this Agreement to the City at least thirty (30) days prior to any transfer of the Licensee's interest, in no event will the City unreasonably withhold, condition, or delay its approval to a proposed assignment.
- B. The Licensee may, upon notice to the City, mortgage or grant a security interest in this Agreement and the Facilities, and may assign this Agreement and the Facilities to any mortgagees, deed of trust beneficiaries or holders of security interests, including their successors or assigns ("Mortgagees"), so long as the Mortgagees agree to be bound by the terms of this Agreement. If so, the City

shall execute consent to leasehold or other financing as may be reasonably required by Mortgagees. In no event will Licensee grant or attempt to grant a security interest in any of the real property underlying the Licensed Area.

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

13. SECURITY DEPOSIT.

- A. Amount of Security Deposit. Within forty five (45) days of the full execution of this Agreement, Licensee agrees to deliver to City a security deposit in the amount of Two Thousand and No/100 Dollars (\$2,000.00). City shall hold the Security Deposit as security for the performance of the Licensee's obligations under this Agreement.
- B. Use of Security Deposit. City may (but is not required to) without prejudice to any other remedy City has, apply all or part of the Security Deposit to:
  - i) Any Rent, including Base Rent, or other sum in default;
  - ii) Any amount that City may spend or become obligated to spend in exercising City's unconditional rights pursuant to Facilities Removal, Restoration or to remove any and all portions of the Facilities that remain on the Licensed Area by the earlier of thirty (30) days following cessation of Licensee's operations at the Licensed Area, or the Expiration Date of this Agreement; and
  - iii) Any expense, loss, or damage that City may suffer because of Licensee's default.
- C. Refund of Security Deposit. Licensee must remove, to City's satisfaction, all elements of the Facilities and all associated improvements of every kind and nature constructed, erected or placed by Licensee on the Licensed Area by the earlier of the thirty (30) days following cessation of Licensee's operations at the Licensed Area, or expiration date of this Agreement in order to secure refund of any portion of its Security Deposit.

14. REGULATORY AGENCIES, SERVICES, FINANCIALS AND BANKRUPTCY.

- A. The Licensee shall upon request provide to the City:
  - i) All non-proprietary and relevant petitions, applications, communications and reports submitted by the Licensee to the Arizona Corporation Commission, inclusive of any requirements under A.R.S. § 40-441 *et seq.*, or other state or federal authority having jurisdiction that directly relates to Licensee's operations in the Licensed Area;

- ii) Non-proprietary licensing documentation concerning all services of whatever nature being offered or provided by the Licensee over facilities in the Licensed Area. Non-proprietary copies of responses from regulatory agencies to the Licensee shall be available to the City upon request. To the extent permitted by Arizona's Public Records Law, A.R.S. § 39-121 *et seq.*, the City will treat all documentation and information obtained pursuant to this Section 14 as proprietary and confidential.
- B. The Licensee shall upon request provide the City copies of any petition, application, communications, or other documents related to any filing by the Licensee of bankruptcy, receivership, or trusteeship.

15. DEFAULT; TERMINATION BY CITY.

- A. The City may terminate this Agreement for any of the following reasons upon thirty (30) days' written notice to Licensee:
  - i) Failure of Licensee to perform any obligation under this Agreement, after Licensee fails to cure default within the notice and cure period. However, if cure cannot reasonably be implemented within the notice period, Licensee must commence and diligently pursue to cure within ninety (90) days of the City's notice.
  - ii) The taking of possession for a period of ten (10) days or more of substantially all of Licensee's personal property in the Licensed Area by or pursuant to lawful authority of any legislative act, resolution, rule, order or decree or any act, resolution, rule, order or decree of any court or governmental board, agency, officer, receiver, trustee or liquidator.
  - iii) The filing of any lien against the Licensed Area, or against the City's underlying real property, due to any act or omission of the Licensee that is not discharged or fully bonded within thirty (30) days of receipt of actual notice by the Licensee.
- B. The City may place the Licensee in default of this Agreement by giving the Licensee fifteen (15) days written notice of the Licensee's failure to timely pay the rent required under this Agreement or any other charges required to be paid by the Licensee pursuant to this Agreement. If Licensee does not cure the default within the notice period the City may terminate this Agreement or exercise any other remedy allowed by law or equity.
- C. If the Licensee, through any fault of its own, at any time fails to maintain all insurance coverage required by this Agreement, the City may, upon written notice to the Licensee, immediately terminate this Agreement or secure the required insurance at Licensee's expense.



- D. Failure by a party to take any authorized action upon default by the other party does not constitute a waiver of the default nor of any subsequent default by the other party. City's acceptance of the License Fee or any other fees or charges for any period after a default by the Licensee is not considered a waiver or estoppel of the City's right to terminate this Agreement for any subsequent failure by the Licensee to comply with its obligations.
- E. Upon the termination of this Agreement for any reason, all rights of the Licensee terminate, including all rights of the Licensee's creditors, trustees and assigns and all others similarly situated as to the Licensed Area.

16. TERMINATION.

- A. This Agreement may be terminated for any of the following reasons:
  - i) By either party upon issuance by a court of competent jurisdiction of an injunction in any way preventing or restraining the Licensee's use of any portion of the Licensed Area and remaining in force for a period of thirty (30) consecutive days.
  - ii) By either party upon the inability of the Licensee to use any substantial portion of the Licensed Area for a period of thirty (30) consecutive days due to the enactment or enforcement of any law or regulation or because of fire, earthquake or similar casualty, or Acts of God or the public enemy.
  - iii) By either party upon ninety (90) days' written notice, if the Licensee is unable to obtain or maintain any license, permit or governmental approval necessary for the construction, installation or operation of the Facilities or the Licensee's business.
  - iv) Provided Licensee is current in all of its financial obligations to the City, by Licensee, for any reason with sixty (60) days' written notice to the City.
- B. In order to exercise the termination provisions above, the party exercising termination must not itself be in default under the terms of this Agreement beyond any applicable grace or cure period and, if not otherwise stated above, provide reasonable written notice to the other party.

17. INDEMNIFICATION.

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

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

18. INSURANCE.

- A. The Licensee shall procure and at all times maintain the following types and amounts of insurance for its operations in the Licensed Area:
  - i) Commercial general liability insurance in the minimum amount of \$2,000,000 combined single limit per occurrence for bodily injury and property damage, \$5,000,000 aggregate.
  - ii) Any other insurance, as the City’s Project Manager may determine, to be necessary for the Licensee’s operations and is commercially reasonable.
- B. Insurance shall:
  - i) Be from a company rated at least A- by AM Best;
  - ii) Name the City as an additional insured on the insurance policy and maintain coverage through the term of the Agreement;
  - iii) Include contractual liability coverage, subject to standard policy provisions and exclusions; and
  - iv) Be primary and non-contributory with respect to all other available sources, as relates to Licensee’s negligence.
- C. Licensee shall provide appropriate certificates of insurance to the City for all insurance policies required by this Section. Absence of City request for proof of initial or renewal coverage does not waive any insurance requirements under this paragraph.

19. DAMAGE OR DESTRUCTION / REPLACEMENT POLES.

- A. The City has no obligation to reimburse the Licensee for the loss of or damage to fixtures, equipment or other personal property of the Licensee, except for loss or damage caused by the negligence or fault of the City or its officers, employees or agents. The Licensee may insure such fixtures, equipment or other personal property for its own protection if it so desires.
- B. Replacement Pole. If the City approves a Licensee proposal to install Antennas on a City-owned pole, then in addition to the other requirements of this Agreement the following shall apply:
  - i) Licensee shall provide and deliver to the City a replacement pole (excluding mast arm); so that a replacement is immediately available to City in case the original pole is damaged.
  - ii) If the City uses a replacement pole, then Licensee shall provide another replacement pole.
  - iii) All performance under this paragraph shall be at Licensee's expense. City owns the original pole and all replacement poles.
  - iv) Licensee will provide City with a total of five (5) replacement light poles. Annually, the City may reasonably request additional stock directly in proportion to the number of light pole attachments added by Licensee, but in no event greater than 10% of the total number of Licensee-provided light poles then in City's possession.
  - v) This paragraph does not diminish the plans approval or any other requirement of this Agreement.

20. SURRENDER OF POSSESSION.

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

21. NOTICE.

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

TO THE CITY: City of Glendale  
5850 West Glendale Avenue  
Glendale, Arizona 85301  
Attention: Project Manager

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

TO THE LICENSEE: Verizon Wireless (VAW) LLC,  
dba Verizon Wireless  
180 Washington Valley Road  
Bedminster, New Jersey 07921  
Attn: Network Real Estate

Emergency Contact Phone Numbers:

Licensee NOCC - 800-264-6620

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

22. SEVERABILITY.

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

23. TAXES AND LICENSES.

- A. The Licensee shall pay any leasehold tax, possessory-interest tax, sales tax, personal property tax, transaction privilege tax, use tax or other exaction assessed or assessable as a direct result of its occupancy of the Licensed Area

under authority of this Agreement, including any tax assessable on the City. If laws or judicial decisions result in the imposition of a real property tax on the interest of the City as a direct result of Licensee's occupancy of the Licensed Area, the tax shall also be paid by the Licensee on a proportional basis for the period this Agreement is in effect.

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

#### 24. GOVERNING LAW.

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

#### 25. RULES AND REGULATIONS.

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

#### 26. RIGHT OF ENTRY RESERVED.

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

27. RELOCATION.

- A. The City shall not bear any cost of relocation of existing facilities, irrespective of the function served, where the City facilities or other facilities occupying the Licensed Area or right-of-way in close proximity to the Licensed Area, are already located and the conflict between the Licensee's potential Facilities and existing facilities can only be resolved expeditiously, as determined by the City, by the movement of the existing City or other permitted facilities.
- B. The City shall not bear any cost of relocation of Licensee's Facilities, where in the City's discretion, relocation is reasonable and necessary in connection with City right-of-way repairs, improvements or other capital projects affecting the Licensed Area. City shall provide Licensee no less than one hundred forty-five (145) days advance notice of a requirement to relocate. If the City becomes aware of a potential delay involving the Licensee's relocation, the City shall notify the Licensee within thirty (30) days of becoming aware of the potential delay. The Licensee may object in writing to the determination of relocation to the City's Project Manager within thirty (30) days of receipt of the notice to relocate. The Project Manager shall consider the objection and respond in writing to Licensee within thirty (30) days of receipt of the objection. The Project Manager's determination is final. Notwithstanding the foregoing, if the City issues a permit to a private developer, subsequent to the effective date of this Agreement that requires the relocation, or otherwise disturbs Licensee's Facilities, those costs will be borne by the developer.
- C. If Licensee's relocation effort delays construction of a public project causing the City to be liable for delay or other damages, the Licensee shall reimburse the City for those damages attributable to the delay created by the Licensee. If Licensee disputes the amount of damages attributable to the Licensee, the matter shall be referred to the Dispute Resolution Board as defined below. The Dispute Resolution Board shall consist of one member selected by the City, one member selected by the Licensee, and a third member agreed upon by both parties. The member agreed upon by both parties shall be chairperson of the Dispute Resolution Board. Expenses for the Dispute Resolution Board shall be shared equally by the City and the Licensee. The Board will hear the dispute promptly, and render an opinion as soon as possible, but in no case later than sixty (60) days after notification by the City of Licensee's allocated share of damages suffered by the City. All decisions of the Dispute Resolution Board are non-binding on the City and Licensee; however the findings of the Dispute Resolution Board shall be admissible in any legal action. The City and the Licensee shall accept or reject findings of the Dispute Resolution Board within thirty (30) days after receipt of the findings. If damages are assessed by the Dispute Resolution Board, and accepted by the City and the Licensee, the Licensee shall pay the City within thirty (30) days. If the Licensee fails to pay the damages in full within thirty (30) days the Licensee is responsible for interest on the unpaid balance at the rate of 18% per annum from that date until payment is made in full. Nothing

herein prevents a mutual agreement between the City and the Licensee to use alternative dispute resolution for disputes related to other Agreement provisions.

28. CONFLICTS OF INTEREST.

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

29. MISCELLANEOUS.

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

[Signatures on the following pages.]

EXECUTED to be effective as of the date shown above.

CITY OF GLENDALE, an Arizona  
municipal corporation

\_\_\_\_\_  
Brenda S. Fischer  
City Manager

ATTEST:

\_\_\_\_\_  
Pamela Hanna (SEAL)  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael D. Bailey  
City Attorney

Verizon Wireless (VAW) LLC,  
dba Verizon Wireless

By: \_\_\_\_\_  
Brian Mecum  
Its: Area Vice President Network  
Date: \_\_\_\_\_



EXHIBIT A

*(see attached)*

**PHO\_N59th-Ave\_2\_SC**  
20432-20598 N. 59TH AVENUE  
GLENDALE, AZ 85308

LOOKING NORTHEAST

EXISTING VIEW -



PHOTOGRAPHIC SIMULATION -



PROPOSED INSTALLATION OF LESSEE ANTENNA ARRAY AND MICROWAVE DISH MOUNTED TO 27' REPLACEMENT UTILITY POLE. ADDITION OF SUNWEST EQUIPMENT CABINET AND MEET VAULT.



YOUNG DESIGN CORP. - 10245 E. VIA LINDA, STE. 211  
SCOTTSDALE, AZ 85258 - (480) 451-9609



SHEET INDEX	
1-1	PROJECT INFORMATION AND DATA
1-2	1-1 SURVEY
2-1	2-1 SITE PLAN
2-2	2-2 ENLARGED SITE PLAN
2-3	2-3 HIGHEST ELEVATION
2-4	2-4 SOUTH ELEVATION

**CLIENT**  
VERIZON WIRELESS  
170 W. GEMINI DR.  
TEMPE, ARIZONA, 85283  
CONTACT: TERRY SKULLA

PROJECT DATA	LEASEE	VERIZON WIRELESS 138 W. GEMINI DR. TEMPE, ARIZONA 85283 R.D.#1 (PART OF N7Y)
	ZONING	

**PROJECT DESCRIPTION**

THE PROJECT CONSISTS OF THE INSTALLATION OF 62 ANTENNAS & (1) MICROPROCESSOR ON A REPLACEMENT STREET LIGHT POLE AND THE INSTALLATION OF A GROUND MOUNTED EQUIPMENT CABINET ON A PRE-CAST CONCRETE SLAB. FACILITY IS UNLICENSED AND NOT FOR HUMAN HABITATION

CITY OF GLENDALE  
5651 W. GLENDALE AVE  
GLENDALE, AZ 86111  
CONTACT: MARK GILSON  
PHONE (602) 930-2240

BUILDING C - D.F.A.  
2012 L.F.C.  
2011 N.E.C.  
2012 L.F.C.  
2012 L.F.C.

21° 48' W 11° N  
152° 11' 11.744" W

CONTACT: RICHARD SHAW  
1234 W. CAVEDALE DRIVE  
PHOENIX, AZ 85045  
TEL: 602/555-1234

**SITE DIRECTIONS**

FROM VERIZON SITE IN TEMPE, HEAD WEST ON GEMINI DR TOWARD  
 ASH AVE. TURN LEFT ON GEMINI AVE. TURN RIGHT ON TIA  
 GALLUP RD. TAKE THE 1ST RIGHT TOWARD KODANE RD. TURN LEFT

ARCHITECT  
YOUNG DESIGN CORP.  
10245 E. VIA LINDA, SUITE 211

[illegible]

PHONE: (480) 451-8808  
FAX: (480) 451-9653

30

3235 E. 8TH STREET, SUITE 24  
TEMPE, ARIZONA 85281  
CONTACT: PAUL FIDLER  
PHONE: (408) 45-9188

1



2007 JUNE

CLIENT

**verizon** wireless

INTERNAL REVIEW	DATE
CONSTRUCTION SIGNATURE	

	FACILITIES SIGNATURE
--	----------------------



PLANS PREPARED BY

architectural / project management  
10245 E. Via Linda, Scottsdale, AZ 85258  
ph: 480 451 9613 fax: 480 431 9608  
e mail: corporate@dydcoffice.com

18-22 10  
RONALD C.  
OFFICIAL RECORDS SECTION  
JUL 11 1962

THIS DOCUMENT CONTAINS AN ELLIPTIC  
SCALE PERMANENT TO A.P. 411 AND  
TILE 41 IS A VARIATION FOR ANY POSSIBLE  
UNLESS LAUNCH INC. OBJECT SUPERVISION OF

NO.	DATE	DESCRIPTION
1	8/18/2014	SUBMITAL

ARCHITECTS INC AND				
--------------------	--	--	--	--

PROJECT INFORMATION:  
PHO N59TH-AVE 2 SC

**SMALL CELL**  
20432 - 20598 N 59TH AVE  
GLENDALE, AZ 85306

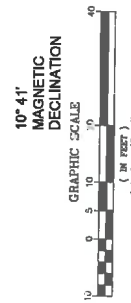
TITLE SHEET

Page 1 of 1

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SHEET NUMBER **T-1**

13	
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[illegible]

### **SURVIVOR NOTES**

1. A TITLE REPORT WAS NOT PROVIDED AT THE TIME OF THE SURVEY.
2. SURVEYOR HAS NOT PERFORMED A SEARCH OF PUBLIC RECORDS TO DETERMINE IF ANY DEED IN TITLE.
3. THE BOUNDARY SURVEY HEREIN IS EXCLUDED FROM RECORD INFORMATION AND DOES NOT CONSTITUTE AN ADJUDICATORY SURVEY OF THE PROPERTY.
4. SURVEYORS DO NOT GUARANTEE THAT ALL UTILITIES ARE SHOWN OR THEIR EXISTENCE IS THE RESPONSIBILITY OF THE CONTRACTOR AND THE USER OF THE SURVEY. THE SURVEYOR HAS NOT BEEN ADVISED TO LOCATE ALL UTILITIES PRIOR TO CONSTRUCTION. READING, RELOCATION AND/OR REPERCUSSION IS THE RESPONSIBILITY OF THE USER.



**POSITION OF GEODETIC COORDINATES**  
 LATITUDE 32° 40' 15" N NORTH (NAD83)  
 LONGITUDE 112° 11' 11" 744" WEST (NAD83)  
 ELEVATION 1000' GROUND= 121.1' (NAD83)

- [illegible]



126 W. GEMINI DR.  
TEMPE, AZ 85283

INTERNAL REVIEW

DATE

CONSTRUCTION SIGNATURE

IF SIGNATURE

FACILITIES SIGNATURE

REAL ESTATE SIGNATURE

PLANS REVIEWED BY

young design corp

architects / project management

10245 E. Via Linda, Scottsdale, AZ 85258

PH: 480 451 9808 Fax: 480 451 9808

corporate@youngdesigncorp.com

SEALED

This drawing is prepared and the property of Young Design Corporation. It is to be used for the project and site only and no reproduction or use of this drawing and/or information herein is permitted without the written permission of Young Design Corporation.

NOTED: THE POWER COMPANY HAS EXISTING POLES ALONG THE STREET. THE PROPOSED ANTENNA SHALL BE MOUNTED TO A NEW STREET LIGHT POLE. SEE THIS SHEET FOR CONFIGURATION.

NO DATE DESCRIPTION

1 8/18/2014 INITIAL

ARCHITECTS JOB NO. YDC-5852

PROJECT INFORMATION

PHO\_N59TH-AVE\_2\_SC

SMALL CELL

20432 - 20508 N 59TH AVE  
GLENDALE, AZ 85306

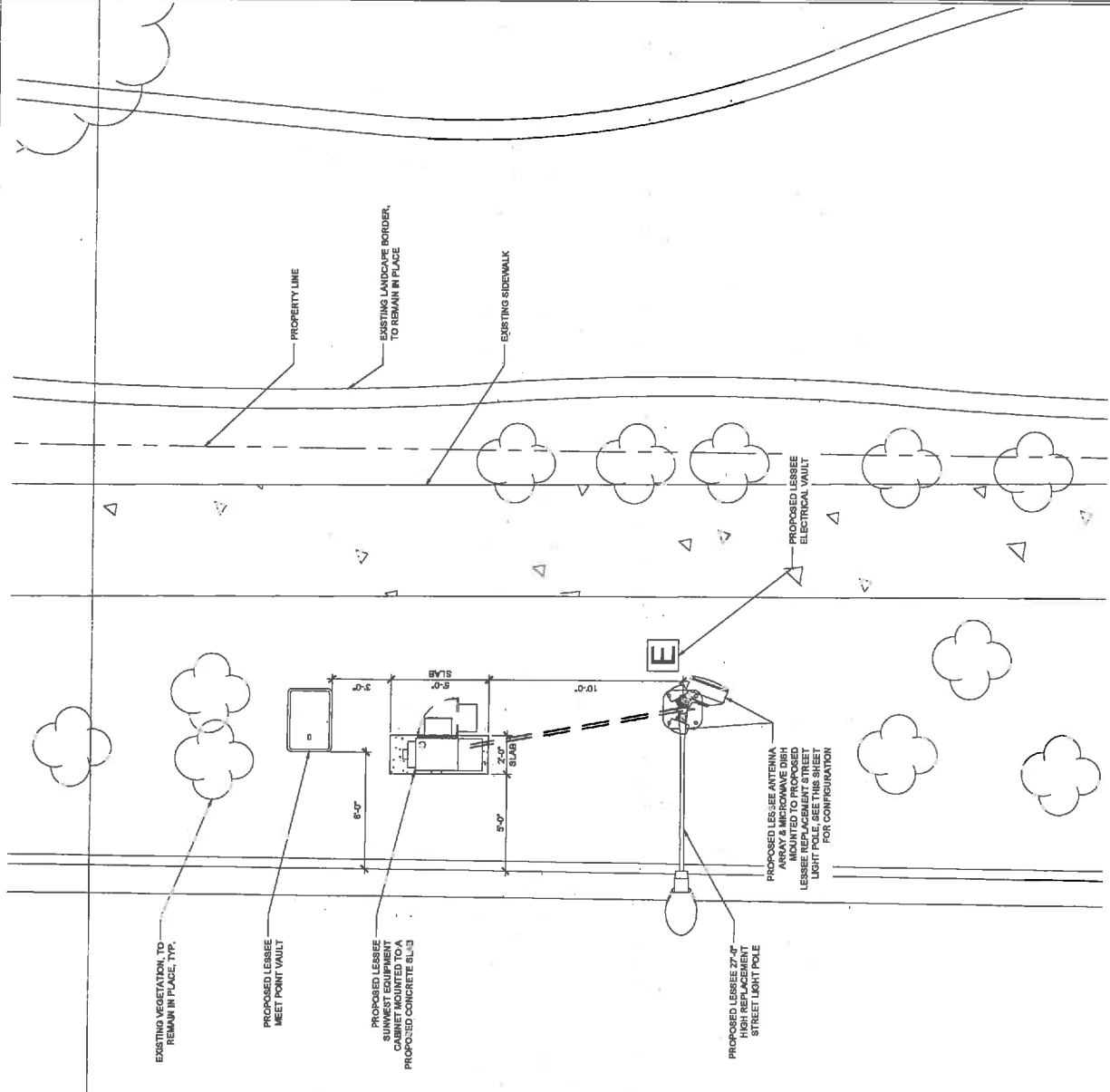
SHEET TITLE

ENLARGED SITE PLAN

UP SECTION APPROVAL

SHEET NUMBER

7-2



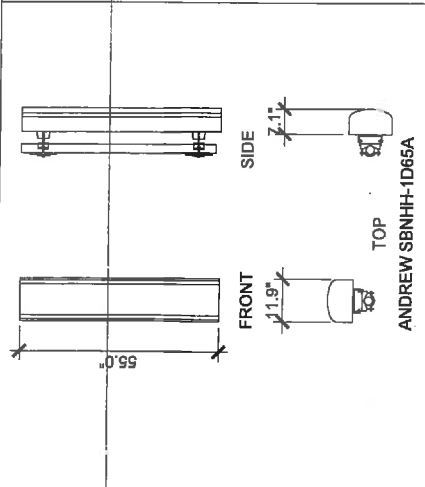
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ENLARGED SITE PLAN

SCALE 3/8" = 1'-0"

0 1' 2' 3' 4' 5' 6'

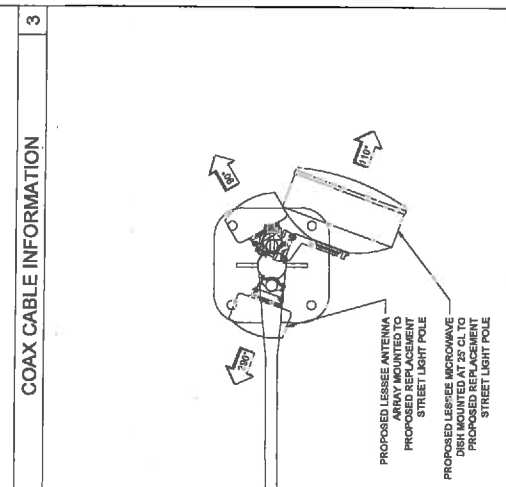
SCALE 3/8" = 1'-0"



4

PROPOSED ANTENNA DETAIL

SECTION	ANTENNA	LENGTH	NO.	SIZE	TYPE
ALPHA	6"	3.5'-0"	3	1/2"	T.B.D.
BETA	20"	8.25'-0"	2	1/2"	T.B.D.
MIN	110"	9.25'-0"	2	1/2"	ETS



2

NEW ANTENNA CONFIGURATION - 21' CL





CLIENT



126 W. GEMINI DR.  
TEMPE, AZ 85283

DATE	
CONSTRUCTION SIGNATURE	
E. SIGNATURE	
FACILITIES SIGNATURE	
REAL ESTATE SIGNATURE	
PLANS PREPARED BY	



architecture / project management  
10241 E. Via Linda, Scottsdale, AZ 85258  
ph. 480 451 9608 fax 480 451 9608  
www.pdsdesigncorp.com

SCALE  
This drawing is prepared and the property of Young & Rubicam. It is to be used for the project and site only. No reproduction or use of this drawing and/or information contained herein is permitted without written permission by Young & Rubicam Corporation.



ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE AIA, ASCE, AND IEEE STANDARDS. THE USER SHALL BE RESPONSIBLE FOR THE PROPER USE OF THIS DRAWING.

NO.	DATE	DESCRIPTION
1	9/12/2014	SUBMITAL

ARCHITECT'S JOB NO.  
YDC-6982

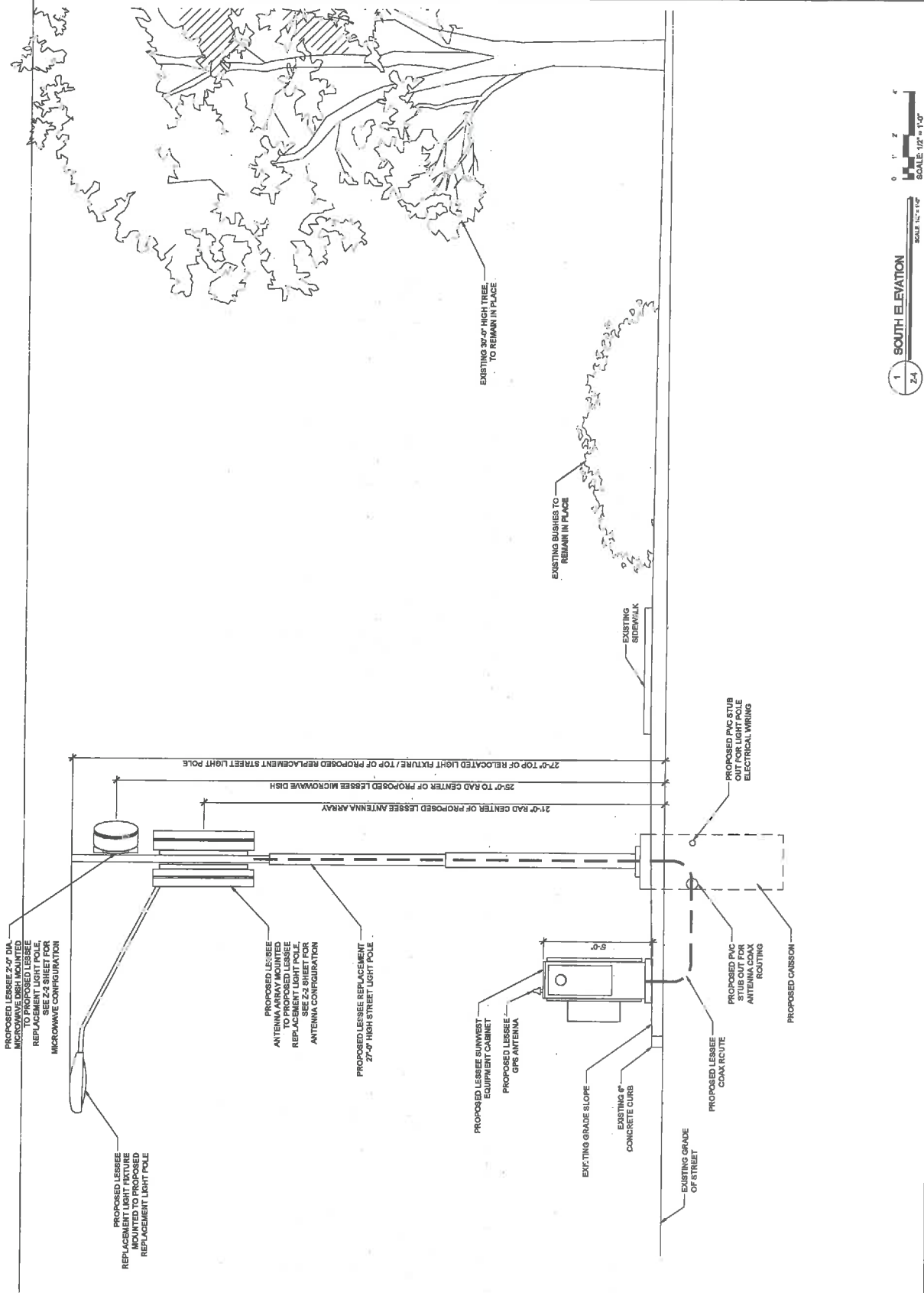
PROJECT INFORMATION  
PHO\_N59TH-AVE\_2\_SC  
SMALL CELL

20422 + 20508 N 60TH AVE  
GLENDALE, AZ 85306

SHEET TITLE  
SOUTH ELEVATION

JOB SECTION / APPROVAL

SHEET NUMBER  
Z-4



0 1' 2' 4'  
SCALE 1/2" = 1'-0"

1 SOUTH ELEVATION  
24



**COMMUNICATIONS SITE LICENSE AGREEMENT FOR  
VERIZON WIRELESS (VAW) LLC, dba VERIZON WIRELESS,  
IN CITY OF GLENDALE RIGHT-OF-WAY**

This Communications Site License Agreement for Verizon Wireless (VAW) LLC, dba Verizon Wireless, in City of Glendale Right-of-Way ("Agreement") is executed to be effective this \_\_\_\_ day of \_\_\_\_\_, 2014 ("Effective Date"), between the City of Glendale, an Arizona municipal corporation ("City"), and Verizon Wireless (VAW) LLC, a Delaware limited liability company, dba Verizon Wireless ("Licensee").

**RECITALS**

- A. The City is the owner of certain right-of-way located in the City ("Licensed Area"), as more particularly described in the attached Exhibit A.
- B. Licensee desires to install, maintain and operate a "small cell" wireless communications facility ("Small Cell") in the City's right-of-way. The equipment includes, but is not limited to communications equipment, antennas, radio amplifiers, radio frequency and optical signal converters, power suppliers and meters, monitoring devices, fiber optic and other cabling, connectors and equipment necessary to serve Licensee's Small Cell facilities as shown in Exhibit A (collectively, the "Facilities").
- C. The City is willing to grant the Licensee a license to use the Licensed Area for the operation of the Facilities under the terms of this Agreement, subject to the approval of the Glendale City Council in connection with the public hearing requirements of A.R.S. § 9-551 *et seq.*, and all as implemented by the City's Project Manager, whose approvals shall not be unreasonably withheld.

**AGREEMENT**

In consideration of the following mutual covenants, terms and conditions, the Parties agree as follows:

1. LICENSED AREA.

The Licensed Area includes and is limited to the following areas depicted in Exhibit A: i) The area on which the Facilities are located at 19800 North 75<sup>th</sup> Avenue, or an alternative area in the right-of-way, as approved by the City; and ii) Reasonable access to the Facilities through the public right-of-way.

2. CITY'S REPRESENTATIONS AND WARRANTIES.

- A. The City represents and warrants to the Licensee that: i) the City, and its duly authorized signatory, have full right, power, and authority to execute this Agreement on behalf of the City; ii) the City has good and unencumbered title to

the Licensed Area free and clear of any liens or mortgages, except those disclosed to the Licensee that will not interfere with Licensee's right to use the Licensed Area; and iii) the City's execution and performance of this Agreement will not violate any laws, ordinances, covenants, mortgages, licenses or other agreements binding on the City.

- B. The Licensee has studied and inspected the Licensed Area and accepts the same "AS IS" without any express or implied warranties of any kind, other than those warranties contained in Subsection (2)(A) immediately above, including any warranties or representations by the City as to its condition or fitness for any particular use. The Licensee has inspected the Licensed Area and obtained information and professional advice as the Licensee has determined to be necessary related to this Agreement.

3. GRANT OF LICENSE; TERM.

- A. Nothing in this Agreement will be construed as granting the Licensee the authority to use any property that is owned by any person or entity other than the City.
- B. The initial term of this License Agreement shall be for a period of ten (10) years (the "Initial Term"), commencing on the Commencement Date (as defined in paragraph 4.C below) and ending at 11:59 p.m. on the day immediately preceding the tenth (10<sup>th</sup>) anniversary thereof, unless sooner terminated as stated herein. This Agreement shall be automatically renewed for no more than three successive five-year Renewal Terms, unless Licensor or Licensee notifies the other party in writing of such party's intent not to renew this Agreement at least one hundred eighty (180) days prior to the expiration of the Initial Term or any Renewal Term, as applicable.
- C. If Licensee continues to occupy the Licensed Area after the expiration or termination of this Agreement, holding over will not be considered to operate as a renewal or extension of this Agreement, but shall be a month-to-month license and the Licensee must pay the City fees in an amount that is double the amount of normal license fee that would otherwise be due under Section 4.
- D. Notwithstanding any provision in this Agreement to the contrary or any negotiation, correspondence, course of performance or dealing, or any other statements or acts by or between the parties, Licensee's rights in the Licensed Area are limited to the rights created by this Agreement. Licensee's rights are subject to all covenants, restrictions, easements, agreements, reservations and encumbrances upon, and all other conditions of title to, the Licensed Area. Licensee's rights under this Agreement are further subject to all present and future building restrictions, regulations, zoning laws, ordinances, resolutions and orders of any local, state or federal agency, now or later having jurisdiction over, the Licensed Area or the Licensee's use of the Licensed Area.

4. LICENSE FEES; COSTS; TAXES.

- A. As of the Commencement Date, Licensee shall pay, without notice and free from all claims, deductions and setoffs against the City, an annual license fee in the amount of \$3,368.00 for one (1) street light attachment, including ground equipment with a “footprint” of up to fifty (50) cubic feet, for Licensee’s Facilities and associated equipment within the Licensed Area, plus all appropriate taxes (see Section 23 below) and on each subsequent anniversary of the Commencement Date during the term of this Agreement, up to and including the expiration or earlier termination thereof (“Pole Attachment Fee”).
- B. The Pole Attachment Fee will increase by three percent (3%) annually on each anniversary of the Commencement Date.
- C. The “Commencement Date” shall be defined as the first day of the month immediately following the Effective Date of this Agreement. Licensee shall pay all fees due for the current year in advance on the first business day of each month. If the Effective Date is not on the first day of a month, the Licensee’s fees will be prorated accordingly. The first installment of the annual license fee shall be paid within forty-five (45) days following the Commencement Date, and all subsequent annual installments paid on or before the first day of the applicable month.
- D. If the Licensee fails to pay any fee in full within ten (10) business days after receipt of written notice of delinquency, the Licensee is responsible for interest on the unpaid principal balance at the rate of 18% per annum from the due date until payment is made in full.
- E. Upon submission of plans in connection with the approval of this Agreement, Licensee shall pay the City a dry utility permit fee in accordance with the City’s Community Development Fee Schedule.
- F. Licensee shall pay the City actual costs for inspections, materials testing and other costs incurred by the City as a direct result of the construction, repair, alteration or relocation of the Facilities. All costs shall be paid in full within thirty (30) days of invoice.

5. UTILITIES.

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

6. USE RESTRICTIONS.

- A. Subject to the interference provisions set forth below, Licensee shall at all times use reasonable efforts to minimize any impact that its use of the Licensed Area will have on other users of the Licensed Area.

- B. Licensee shall not remove, damage or alter in any way any improvements or personal property of the City upon the Licensed Area without the City's prior written approval. Licensee shall repair any damage or alteration to the City's property caused by Licensee's use of the Licensed Area to the same condition that existed before the damage or alteration, reasonable wear and tear excepted.
- C. Whenever the Licensee performs construction activities within the Licensed Area, the Licensee shall obtain all necessary construction permits and promptly, upon completion of construction, restore the remaining Licensed Area to the condition existing before construction to the satisfaction of the City's Project Manager. If the Licensee fails to restore the Licensed Area as required, the City may take all reasonable actions necessary to restore the Licensed Area, and the Licensee, within thirty (30) days of demand and receipt of an invoice, together with reasonable supporting documentation, will pay all of the City's reasonable costs of restoration.
- D. Licensee shall use the Licensed Area solely for constructing, installing, operating, maintaining, repairing, modifying and removing the Facilities. The Facilities are limited to the equipment and facilities listed on Exhibit A and other items as may be approved by the City, in its sole discretion, in writing.
- E. Licensee shall have a non-exclusive right for ingress and egress, seven (7) days a week, twenty-four (24) hours a day, for the construction, installation, operation, maintenance, modification and removal of the Facilities. In no event shall the City's use of the Licensed Area be unreasonably interrupted by the Licensee's work. Prior to entering upon the Licensed Area for activities that disrupt vehicular and/or pedestrian traffic, the Licensee shall give the Project Manager or designee at least forty-eight (48) hours advance notice in the manner provided in Section 21 of this Agreement or, in the event of emergency repairs, any prior notice as is practical.
- F. Licensee shall at all times have on call and at the City's access, an active, qualified, and experienced representative to supervise the Facilities, and who is authorized to act for the Licensee in matters pertaining to all emergencies and the day-to-day operation of the Facilities. The Licensee shall provide the Project Manager or designee with the names, addresses and 24-hour telephone numbers of designated persons in writing.
- G. In the vicinity of any above-ground facilities Licensee may have in the Licensed Area, Licensee shall keep the Licensed Area maintained, orderly and clean at all times.
- H. Licensee acknowledges that: i) the Licensee's use of the Licensed Area is subject and subordinate to, and shall not adversely affect, the City's use of the Licensed Area; and ii) the City reserves the right to further develop, maintain, repair, or improve the Licensed Area, provided that City shall reasonably

cooperate with Licensee to ensure that Licensee's use and operation of the Distributed Antenna System (DAS) Facilities is not interfered with or interrupted.

- I. Licensee shall not install any signs in the Licensed Area other than required safety or warning signs or other signs necessary for the use of the Licensed Area as requested or approved by the City. Licensee bears all costs pertaining to the erection, installation, maintenance and removal of all of its signs.

## 7. HAZARDOUS WASTE.

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

## 8. LICENSEE'S IMPROVEMENTS; GENERAL REQUIREMENTS.

- A. The following provisions govern all improvements, repairs, installation and other construction, removal, demolition or similar work of any description by the Licensee related to the Facilities or the Licensed Area (collectively referred to as the "Licensee's Improvements"):
  - i) In no event, including termination of this Agreement for any reason, is the City obligated to compensate the Licensee in any manner for any of Licensee's Improvements or other work provided by the Licensee during or related to this Agreement. The Licensee shall timely pay for all labor, materials and work and all professional and other services related to Licensee's Improvements and defend, indemnify and hold harmless the City against the same;

- ii) Licensee shall perform all work in a good, workmanlike manner, and shall diligently complete the work in conformance with all building codes and similar requirements. Licensee's Improvements shall be commensurate with high quality industry standards as approved by the City, which approval shall not be unreasonably withheld, conditioned or delayed;
- iii) Licensee acknowledges that as of the Effective Date of this Agreement, the City has not approved or promised to approve any plans for the Licensee's Improvements, except for those improvements already in place or to the extent expressly stated in this Agreement;
- iv) Licensee shall make no structural or grading alterations, or similar structural modifications or additions or other significant construction work to the Licensed Area without having first received the written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. Review shall include all improvements, equipment, fixtures, paint and other construction work of any description as described in all plans delivered by the Licensee to the City. All such plans and construction are subject to inspection and final approval by the City as to materials, design, function and appearance;
- v) Licensee shall keep as-built records of the Licensee's Improvements and furnish copies of records to the City, at no cost to the City, upon completion of improvements and any changes to the same. Licensee shall participate as a member of the Blue Stake Center under A.R.S. § 40-360.21 *et seq.*, regarding underground facilities, and submit proof of participation to the Property Manager upon request;
- vi) All changes to utility facilities shall be limited to the Licensed Area and shall be undertaken by the Licensee only with the written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed;
- vii) All of the Licensee's Improvements shall, be designed so as to present uniformity of design, function, appearance and quality throughout and consistency with other improvements located in the Licensed Area; and
- viii) Licensee shall properly mark and sign all excavations and maintain barriers and traffic control in accordance with applicable laws, regulations and best management practices.

B. The following procedure governs the Licensee's submission to the City of all plans for the Licensed Area and the Licensee's Improvements, including any proposed changes by the Licensee of previously approved plans:

- i) Licensee shall coordinate with the City as necessary on significant design issues prior to submission of plans;
- ii) Upon execution of this Agreement, the City and the Licensee shall each designate a project manager to coordinate the parties' participation in designing and constructing Licensee's Improvements. Each project manager shall devote time and efforts to the project as may be necessary for timely, good faith and convenient coordination among all persons involved with the project and compliance with this Agreement. The City's Project Manager will not be exclusively assigned to this Agreement or to the Licensee's Improvements;
- iii) No plans are considered finally submitted until the Licensee delivers to the City a formal certification by an engineer licensed in Arizona, acceptable to the Project Manager, to the effect that all of the Licensee's Improvements are properly designed to be safe and functional as designed and as required by this Agreement. The certification shall be accompanied by and refer to any backup information and analysis as the Project Manager may reasonably require;
- iv) No plans are considered approved until stamped "APPROVED" and dated by the City's Project Manager;
- v) Licensee acknowledges that the Project Manager's authority with respect to the Licensed Area is limited to the administration of the requirements of this Agreement. Licensee is responsible to secure all zoning approvals, design revisions or other governmental approvals and to satisfy all governmental requirements pertaining to the project and may not rely on the City or Project Manager to initiate or suggest any particular process or course of action;
- vi) The City's issuance of building permits shall not be considered valid unless the plans have been approved as stated in subsection (iv) above. The City's Project Manager shall be reasonably available to coordinate and assist the Licensee in working through issues that may arise in connection with such plan approvals and requirements;
- vii) The Licensee shall, in the submittal of all plans, allow adequate time for all communications and plan revisions necessary to obtain approvals and shall schedule its performances and revise its plans as necessary to timely obtain all approvals and make payment of all applicable fees;
- viii) Any delay in City's review of or marking Licensee's plans with changes necessary to approve the plans, or approve the revised plans in accordance with the City's normal plan-review procedures, will not be considered approval of the plans but may operate to extend Licensee's construction deadlines. The City agrees to use reasonable efforts to

review, mark or approve Licensee's plans in a prompt and timely manner and in conformance with established policies and procedures;

- ix) The Licensee shall provide the City with two (2) complete sets of detailed plans and specifications of the work as completed;
- x) The parties shall use reasonable efforts to resolve any design and construction issues to their mutual satisfaction but, in the event of an impasse for any reason, final decision authority regarding all design and construction issues shall rest with the City in its discretion; and
- xi) Before any construction begins on the Licensed Area, the Licensee shall provide the City with performance bonds, and if considered necessary by the City, payment bonds, in amounts equal to the full amount of the written construction contract pursuant to which such construction is to be done. The payment bond shall be solely for the protection of claimants supplying labor or materials for the required construction work and the performance bond shall be solely for the protection of the City, conditioned upon the faithful performance of the required construction work. Bonds shall be executed by a surety company duly authorized to do business in Arizona, and acceptable to the City and shall be kept in place for the duration of the work.

9. LICENSEE'S INITIAL CONSTRUCTION.

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

10. MAINTENANCE.

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

11. CO-LOCATION.

- A. Subject to subsection (B) below, the Licensee shall, at all times, use reasonable efforts to cooperate with the City or any third parties with regard to the possible co-location of additional equipment, facilities or structures in and around the Licensed Area ("Co-location"). If a Co-location is feasible, the City



may, in its sole discretion, negotiate a Co-location license agreement with any third party on terms as the City considers appropriate, not inconsistent with the rights and obligations of the parties under this Agreement. Licensee's consent in connection with the final determination of Co-location of a third party is not required, provided that Licensee's operations are not interfered with or interrupted. Any fees or charges paid by an additional Co-locator belong solely to the City.

- B. Prior to permitting the installation of a Co-location by any third party in or around the Licensed Area which may interfere with the Licensee's operations, the City shall give the Licensee forty-five (45) days' notice of the proposed Co-location so that the Licensee can determine if the Co-location will interfere with the Facilities. If the Licensee determines that interference is likely, the Licensee shall, within the notice period, give the City a detailed written explanation of the anticipated interference, including supporting documentation as may be reasonably necessary for the City to evaluate the Licensee's position. The City and the Licensee shall promptly use reasonable efforts to resolve any interference problems before the City permits a Co-location to the third party. If a subsequent licensee is permitted to operate near the Licensed Area, and the subsequent licensee's operations materially interfere with Licensee's Facilities, then the City shall direct the subsequent licensee to remedy the interference within seventy-two (72) hours. If the interference is not resolved within this period, then the City will direct the subsequent licensee to cease its operation until the interference is resolved. These same procedures apply to any interference caused by Licensee with respect to any Co-location existing and as configured prior to the installation of Licensee's Facilities.

## 12. ASSIGNMENT.

- A. Licensee may assign this Agreement, upon thirty (30) days' written notice to the City, to any person or entity controlling, controlled by or under common ownership with the Licensee or Licensee's parent company, or to any person or entity that, acquires the Licensee's business and assumes all obligations of the Licensee under this Agreement. Other assignments require City approval. For assignments requiring City approval, the City may, as a condition of approval, postpone the effective date of the assignment and require that any potential transferee submit reasonable evidence of its financial ability to fully perform under the terms of this Agreement to the City at least thirty (30) days prior to any transfer of the Licensee's interest, in no event will the City unreasonably withhold, condition, or delay its approval to a proposed assignment.
- B. The Licensee may, upon notice to the City, mortgage or grant a security interest in this Agreement and the Facilities, and may assign this Agreement and the Facilities to any mortgagees, deed of trust beneficiaries or holders of security interests, including their successors or assigns ("Mortgagees"), so long as the Mortgagees agree to be bound by the terms of this Agreement. If so, the City

shall execute consent to leasehold or other financing as may be reasonably required by Mortgagees. In no event will Licensee grant or attempt to grant a security interest in any of the real property underlying the Licensed Area.

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

13. SECURITY DEPOSIT.

- A. Amount of Security Deposit. Within forty five (45) days of the full execution of this Agreement, Licensee agrees to deliver to City a security deposit in the amount of Two Thousand and No/100 Dollars (\$2,000.00). City shall hold the Security Deposit as security for the performance of the Licensee's obligations under this Agreement.
- B. Use of Security Deposit. City may (but is not required to) without prejudice to any other remedy City has, apply all or part of the Security Deposit to:
  - i) Any Rent, including Base Rent, or other sum in default;
  - ii) Any amount that City may spend or become obligated to spend in exercising City's unconditional rights pursuant to Facilities Removal, Restoration or to remove any and all portions of the Facilities that remain on the Licensed Area by the earlier of thirty (30) days following cessation of Licensee's operations at the Licensed Area, or the Expiration Date of this Agreement; and
  - iii) Any expense, loss, or damage that City may suffer because of Licensee's default.
- C. Refund of Security Deposit. Licensee must remove, to City's satisfaction, all elements of the Facilities and all associated improvements of every kind and nature constructed, erected or placed by Licensee on the Licensed Area by the earlier of the thirty (30) days following cessation of Licensee's operations at the Licensed Area, or expiration date of this Agreement in order to secure refund of any portion of its Security Deposit.

14. REGULATORY AGENCIES, SERVICES, FINANCIALS AND BANKRUPTCY.

- A. The Licensee shall upon request provide to the City:
  - i) All non-proprietary and relevant petitions, applications, communications and reports submitted by the Licensee to the Arizona Corporation Commission, inclusive of any requirements under A.R.S. § 40-441 *et seq.*, or other state or federal authority having jurisdiction that directly relates to Licensee's operations in the Licensed Area;

- ii) Non-proprietary licensing documentation concerning all services of whatever nature being offered or provided by the Licensee over facilities in the Licensed Area. Non-proprietary copies of responses from regulatory agencies to the Licensee shall be available to the City upon request. To the extent permitted by Arizona's Public Records Law, A.R.S. § 39-121 *et seq.*, the City will treat all documentation and information obtained pursuant to this Section 14 as proprietary and confidential.
- B. The Licensee shall upon request provide the City copies of any petition, application, communications, or other documents related to any filing by the Licensee of bankruptcy, receivership, or trusteeship.

15. DEFAULT; TERMINATION BY CITY.

- A. The City may terminate this Agreement for any of the following reasons upon thirty (30) days' written notice to Licensee:
  - i) Failure of Licensee to perform any obligation under this Agreement, after Licensee fails to cure default within the notice and cure period. However, if cure cannot reasonably be implemented within the notice period, Licensee must commence and diligently pursue to cure within ninety (90) days of the City's notice.
  - ii) The taking of possession for a period of ten (10) days or more of substantially all of Licensee's personal property in the Licensed Area by or pursuant to lawful authority of any legislative act, resolution, rule, order or decree or any act, resolution, rule, order or decree of any court or governmental board, agency, officer, receiver, trustee or liquidator.
  - iii) The filing of any lien against the Licensed Area, or against the City's underlying real property, due to any act or omission of the Licensee that is not discharged or fully bonded within thirty (30) days of receipt of actual notice by the Licensee.
- B. The City may place the Licensee in default of this Agreement by giving the Licensee fifteen (15) days written notice of the Licensee's failure to timely pay the rent required under this Agreement or any other charges required to be paid by the Licensee pursuant to this Agreement. If Licensee does not cure the default within the notice period the City may terminate this Agreement or exercise any other remedy allowed by law or equity.
- C. If the Licensee, through any fault of its own, at any time fails to maintain all insurance coverage required by this Agreement, the City may, upon written notice to the Licensee, immediately terminate this Agreement or secure the required insurance at Licensee's expense.

- D. Failure by a party to take any authorized action upon default by the other party does not constitute a waiver of the default nor of any subsequent default by the other party. City's acceptance of the License Fee or any other fees or charges for any period after a default by the Licensee is not considered a waiver or estoppel of the City's right to terminate this Agreement for any subsequent failure by the Licensee to comply with its obligations.
- E. Upon the termination of this Agreement for any reason, all rights of the Licensee terminate, including all rights of the Licensee's creditors, trustees and assigns and all others similarly situated as to the Licensed Area.

16. TERMINATION.

- A. This Agreement may be terminated for any of the following reasons:
  - i) By either party upon issuance by a court of competent jurisdiction of an injunction in any way preventing or restraining the Licensee's use of any portion of the Licensed Area and remaining in force for a period of thirty (30) consecutive days.
  - ii) By either party upon the inability of the Licensee to use any substantial portion of the Licensed Area for a period of thirty (30) consecutive days due to the enactment or enforcement of any law or regulation or because of fire, earthquake or similar casualty, or Acts of God or the public enemy.
  - iii) By either party upon ninety (90) days' written notice, if the Licensee is unable to obtain or maintain any license, permit or governmental approval necessary for the construction, installation or operation of the Facilities or the Licensee's business.
  - iv) Provided Licensee is current in all of its financial obligations to the City, by Licensee, for any reason with sixty (60) days' written notice to the City.
- B. In order to exercise the termination provisions above, the party exercising termination must not itself be in default under the terms of this Agreement beyond any applicable grace or cure period and, if not otherwise stated above, provide reasonable written notice to the other party.

17. INDEMNIFICATION.

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

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

18. INSURANCE.

- A. The Licensee shall procure and at all times maintain the following types and amounts of insurance for its operations in the Licensed Area:
  - i) Commercial general liability insurance in the minimum amount of \$2,000,000 combined single limit per occurrence for bodily injury and property damage, \$5,000,000 aggregate.
  - ii) Any other insurance, as the City’s Project Manager may determine, to be necessary for the Licensee’s operations and is commercially reasonable.
- B. Insurance shall:
  - i) Be from a company rated at least A- by AM Best;
  - ii) Name the City as an additional insured on the insurance policy and maintain coverage through the term of the Agreement;
  - iii) Include contractual liability coverage, subject to standard policy provisions and exclusions; and
  - iv) Be primary and non-contributory with respect to all other available sources, as relates to Licensee’s negligence.
- C. Licensee shall provide appropriate certificates of insurance to the City for all insurance policies required by this Section. Absence of City request for proof of initial or renewal coverage does not waive any insurance requirements under this paragraph.

19. DAMAGE OR DESTRUCTION / REPLACEMENT POLES.

- A. The City has no obligation to reimburse the Licensee for the loss of or damage to fixtures, equipment or other personal property of the Licensee, except for loss or damage caused by the negligence or fault of the City or its officers, employees or agents. The Licensee may insure such fixtures, equipment or other personal property for its own protection if it so desires.
- B. Replacement Pole. If the City approves a Licensee proposal to install Antennas on a City-owned pole, then in addition to the other requirements of this Agreement the following shall apply:
  - i) Licensee shall provide and deliver to the City a replacement pole (excluding mast arm); so that a replacement is immediately available to City in case the original pole is damaged.
  - ii) If the City uses a replacement pole, then Licensee shall provide another replacement pole.
  - iii) All performance under this paragraph shall be at Licensee's expense. City owns the original pole and all replacement poles.
  - iv) Licensee will provide City with a total of five (5) replacement light poles. Annually, the City may reasonably request additional stock directly in proportion to the number of light pole attachments added by Licensee, but in no event greater than 10% of the total number of Licensee-provided light poles then in City's possession.
  - v) This paragraph does not diminish the plans approval or any other requirement of this Agreement.

20. SURRENDER OF POSSESSION.

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

21. NOTICE.

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

TO THE CITY: City of Glendale  
5850 West Glendale Avenue  
Glendale, Arizona 85301  
Attention: Project Manager

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

TO THE LICENSEE: Verizon Wireless (VAW) LLC,  
dba Verizon Wireless  
180 Washington Valley Road  
Bedminster, New Jersey 07921  
Attn: Network Real Estate

Emergency Contact Phone Numbers:

Licensee NOCC - 800-264-6620

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

22. SEVERABILITY.

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

23. TAXES AND LICENSES.

- A. The Licensee shall pay any leasehold tax, possessory-interest tax, sales tax, personal property tax, transaction privilege tax, use tax or other exaction assessed or assessable as a direct result of its occupancy of the Licensed Area

under authority of this Agreement, including any tax assessable on the City. If laws or judicial decisions result in the imposition of a real property tax on the interest of the City as a direct result of Licensee's occupancy of the Licensed Area, the tax shall also be paid by the Licensee on a proportional basis for the period this Agreement is in effect.

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

#### 24. GOVERNING LAW.

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

#### 25. RULES AND REGULATIONS.

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

#### 26. RIGHT OF ENTRY RESERVED.

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



27. RELOCATION.

- A. The City shall not bear any cost of relocation of existing facilities, irrespective of the function served, where the City facilities or other facilities occupying the Licensed Area or right-of-way in close proximity to the Licensed Area, are already located and the conflict between the Licensee's potential Facilities and existing facilities can only be resolved expeditiously, as determined by the City, by the movement of the existing City or other permitted facilities.
- B. The City shall not bear any cost of relocation of Licensee's Facilities, where in the City's discretion, relocation is reasonable and necessary in connection with City right-of-way repairs, improvements or other capital projects affecting the Licensed Area. City shall provide Licensee no less than one hundred forty-five (145) days advance notice of a requirement to relocate. If the City becomes aware of a potential delay involving the Licensee's relocation, the City shall notify the Licensee within thirty (30) days of becoming aware of the potential delay. The Licensee may object in writing to the determination of relocation to the City's Project Manager within thirty (30) days of receipt of the notice to relocate. The Project Manager shall consider the objection and respond in writing to Licensee within thirty (30) days of receipt of the objection. The Project Manager's determination is final. Notwithstanding the foregoing, if the City issues a permit to a private developer, subsequent to the effective date of this Agreement that requires the relocation, or otherwise disturbs Licensee's Facilities, those costs will be borne by the developer.
- C. If Licensee's relocation effort delays construction of a public project causing the City to be liable for delay or other damages, the Licensee shall reimburse the City for those damages attributable to the delay created by the Licensee. If Licensee disputes the amount of damages attributable to the Licensee, the matter shall be referred to the Dispute Resolution Board as defined below. The Dispute Resolution Board shall consist of one member selected by the City, one member selected by the Licensee, and a third member agreed upon by both parties. The member agreed upon by both parties shall be chairperson of the Dispute Resolution Board. Expenses for the Dispute Resolution Board shall be shared equally by the City and the Licensee. The Board will hear the dispute promptly, and render an opinion as soon as possible, but in no case later than sixty (60) days after notification by the City of Licensee's allocated share of damages suffered by the City. All decisions of the Dispute Resolution Board are non-binding on the City and Licensee; however the findings of the Dispute Resolution Board shall be admissible in any legal action. The City and the Licensee shall accept or reject findings of the Dispute Resolution Board within thirty (30) days after receipt of the findings. If damages are assessed by the Dispute Resolution Board, and accepted by the City and the Licensee, the Licensee shall pay the City within thirty (30) days. If the Licensee fails to pay the damages in full within thirty (30) days the Licensee is responsible for interest on the unpaid balance at the rate of 18% per annum from that date until payment is made in full. Nothing

herein prevents a mutual agreement between the City and the Licensee to use alternative dispute resolution for disputes related to other Agreement provisions.

28. CONFLICTS OF INTEREST.

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

29. MISCELLANEOUS.

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

[Signatures on the following pages.]

EXECUTED to be effective as of the date shown above.

CITY OF GLENDALE, an Arizona  
municipal corporation

\_\_\_\_\_  
Brenda S. Fischer  
City Manager

ATTEST:

\_\_\_\_\_  
Pamela Hanna (SEAL)  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael D. Bailey  
City Attorney

Verizon Wireless (VAW) LLC,  
dba Verizon Wireless

By: \_\_\_\_\_  
Brian Mecum  
Its: Area Vice President Network  
Date: \_\_\_\_\_

EXHIBIT A

*(see attached)*



Looking south from North 75<sup>th</sup> Avenue.  
Proposed equipment will be visible from this location.

*Distance from the photographic location to the proposed site is 480'±*

**TECTONIC**

Practical Solutions, Exceptional Service

**P-1**

19800 N75TH-AVE





Looking south from North 75<sup>th</sup> Avenue.  
Proposed equipment is visible from this location.

*Distance from the photographic location to the proposed site is 480'±*

**TECTONIC**

Practical Solutions, Exceptional Service

**S-1**

19800 N75TH-AVE





Looking north from North 75<sup>th</sup> Avenue.  
Proposed equipment will be visible from this location.

*Distance from the photographic location to the proposed site is 480'±*

**TECTONIC**

Practical Solutions, Exceptional Service

**P-2**

19800 N75TH-AVE



Looking north from North 75<sup>th</sup> Avenue.  
Proposed equipment is visible from this location.

*Distance from the photographic location to the proposed site is 480'±*

**TECTONIC**

Practical Solutions, Exceptional Service

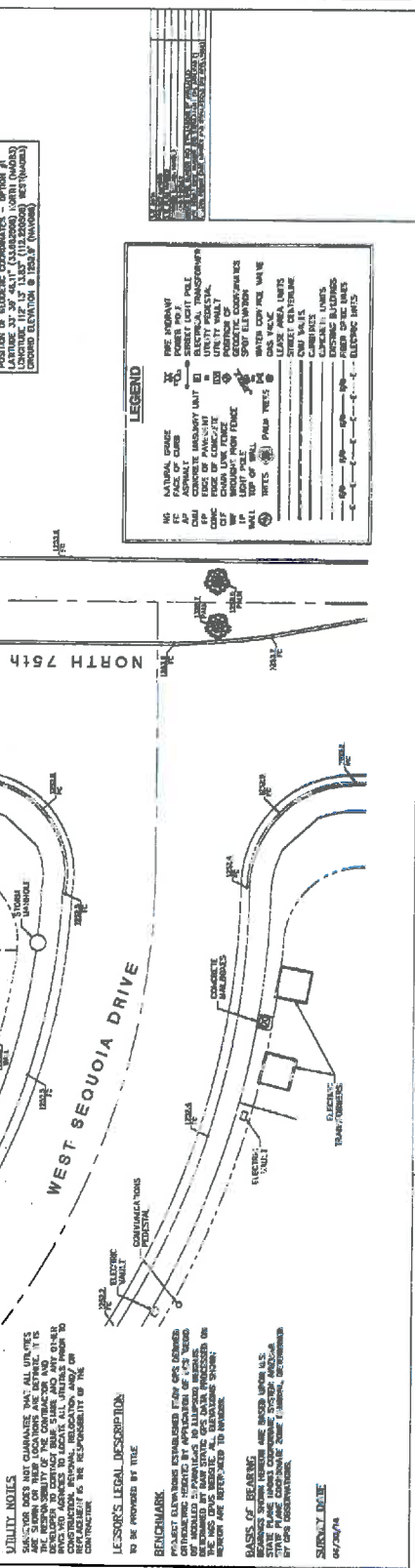
**S-2**

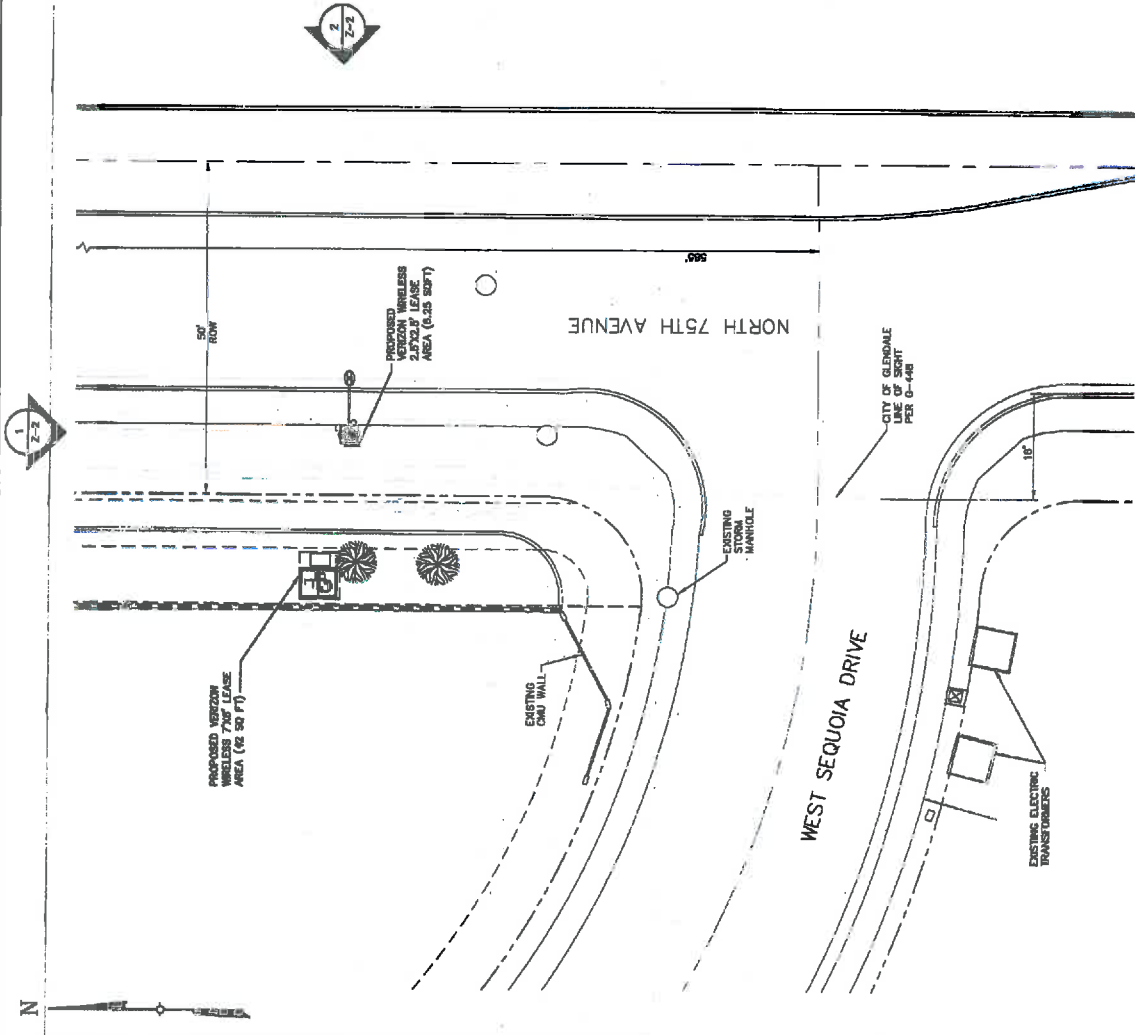
19800 N75TH-AVE





LS-1





1  
SP-1

**verizon wireless**  
 1201 N. GARDEN ST.  
 SUITE 200  
 PHOENIX, AZ 85002  
 (602) 495-1234  
 FAX: (602) 495-1235  
 www.verizonwireless.com

REV.	DATE	ISSUE
0	9/13/14	PRELIMINARY 20%
1	9/14/14	CADDEN/ANTENNAS
2	9/24/14	ADDRESS PER CITY
3	7/8/14	PER COMMENTS

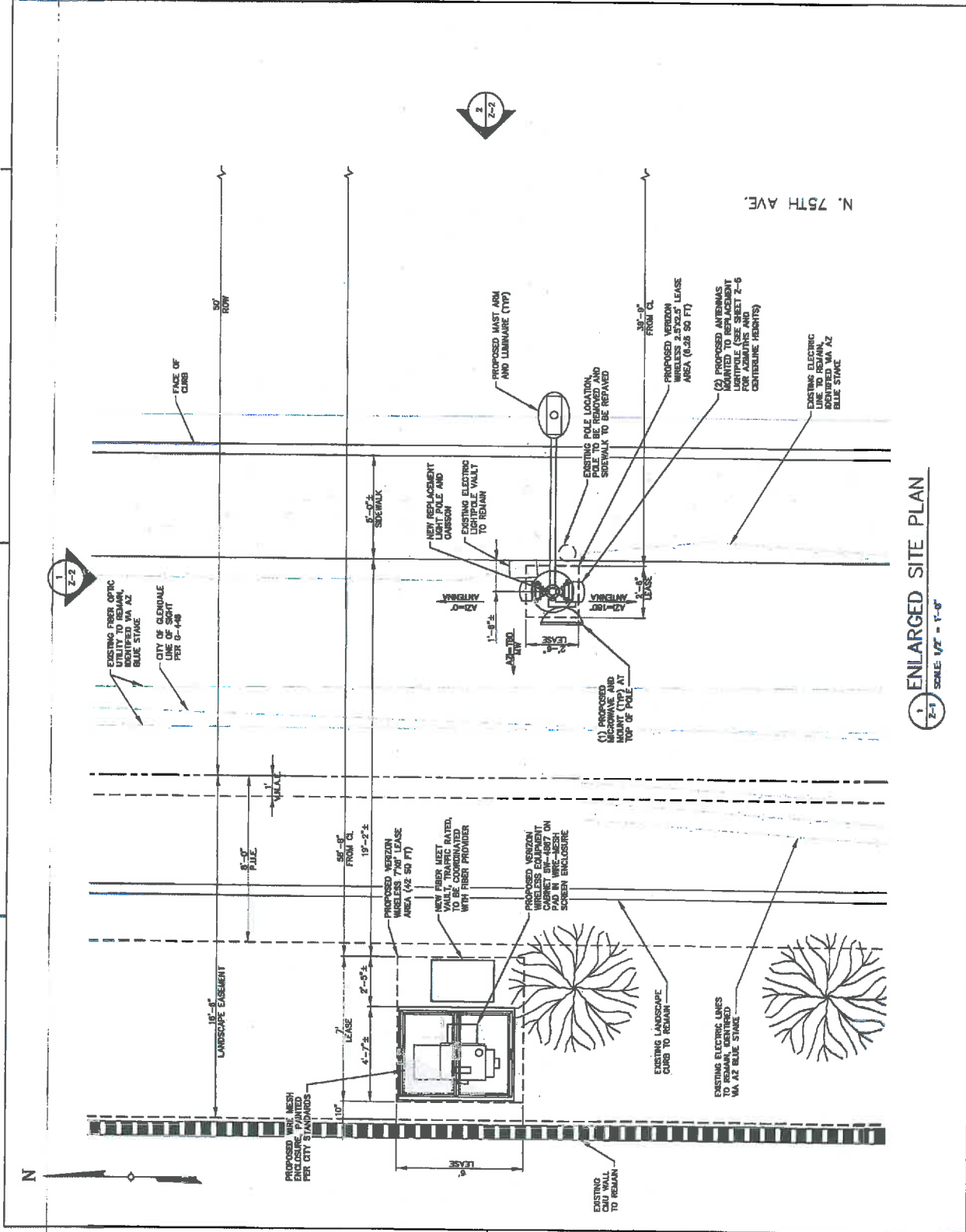
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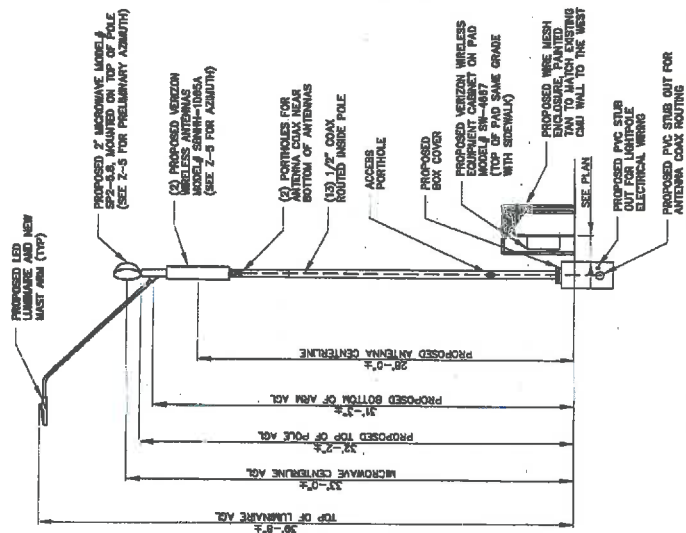
**SITE INFORMATION**  
 PHO-N75TH-AVE SC  
 19800 N 75TH AVE  
 CITY OF GLENDALE  
 GLENDALE, AZ 85308  
 VZN PROJ# 20141033782

**PROPOSED SITE PLAN**


**SHEET NUMBER**  
 Z-1



**ENLARGED SITE PLAN**  
 SCALE: 1/2" = 1'-0"







VERIZON WIRELESS  
19800 N 75TH AVE  
GLENDALE, AZ 85308  
TEL: 480-393-7822  
FAX: 480-393-7823  
WWW.VERIZONWIRELESS.COM

WORK ORDER NUMBER: 20141033782  
DRAWN BY: NBD  
CHECKED BY: NBD

NO.	DATE	ISSUE
0	8/13/14	PRELIMINARY 20%
1	8/14/14	CAISSON/ANTENNAS
2	8/24/14	ADDRESS PER CITY
3	7/9/14	PER COMMENTS

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SIZE INFORMATION

PHO-N75TH-AVE SC  
19800 N 75TH AVE  
CITY OF GLENDALE  
GLENDALE, AZ 85308

VZN PROJ# 20141033782

SHEET TITLE

CAISSON DETAIL

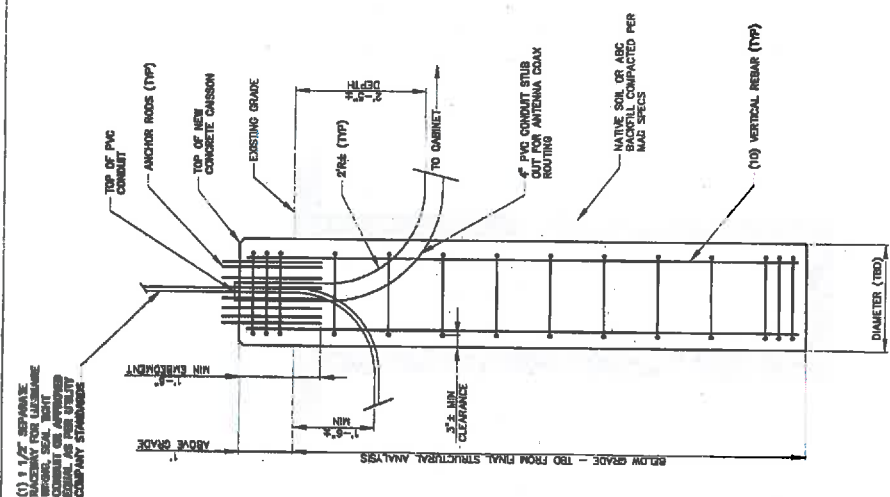
SHEET NUMBER

Z-3


- PRELIMINARY STRUCTURAL NOTES**
- THE POLE SHAFT SHALL HAVE AN OVERALL ANKLE GRADE HEIGHT OF APPROXIMATELY 30'-0" AND CONSISTS OF ONE SECTION.
  - REINFORCED PORT HOLES (4" WIDE X 8" TALL) SHALL ALSO BE PRIMED 1'-0" MINIMUM ABOVE THE BASE AND (2) AT 20'-0" O.C. ABOVE THE BASE.
  - THE BASE OF THE POLE SHALL BE WELDED TO THE BASEPLATE WITH 1/4" COMPLETE JOINT PENETRATION WELD.
  - THE CAISSON SHALL BE A 24" DIAMETER X 10'-8" DEEP (1'-0" ABOVE GRADE 9'-8" BELOW GRADE) CONCRETE SHAFT WITH 4# REBAR AT 12" ON CENTER (3" ON CENTER FOR 9" AT TOP AND BOTTOM) USING TYPE V-3000 PER NATIONAL REBAR (NRS P-01) CONCRETE. (TWO FROM STRUCTURAL).
  - THE LUMINAIRE SHALL BE OBTAINED BY THE CONTRACTOR AND SHALL BE USED TO MEET CRITERIA.

**NOTE**

PLANS FOR PRELIMINARY DESIGN PURPOSES ONLY. FINAL STRUCTURAL DESIGN SUBJECT TO CHANGE BASED ON FINAL LOGGING AND GEOTECHNICAL INVESTIGATION.



1 CAISSON DETAIL  
2-3 SCALE 1" = 1'-0"



1700 N. 75TH AVE  
GLENDALE, AZ 85308

Customer:  
City of Glendale  
19800 N 75th Ave  
Glendale, AZ 85308  
Phone: (623) 837-2343  
Fax: (623) 837-4571

WORK ORDER NUMBER: 0633375TH-AVE  
DESIGNED BY: AED  
DATE: 5/13/14  
ISSUE: PRELIMINARY 20's

NO.	DATE	ISSUE
0	5/13/14	PRELIMINARY 20's
1	6/4/14	ADDITION/ ANTENNAS
2	6/24/14	ADDRESS PER CITY
3	7/9/14	PER COMMENTS

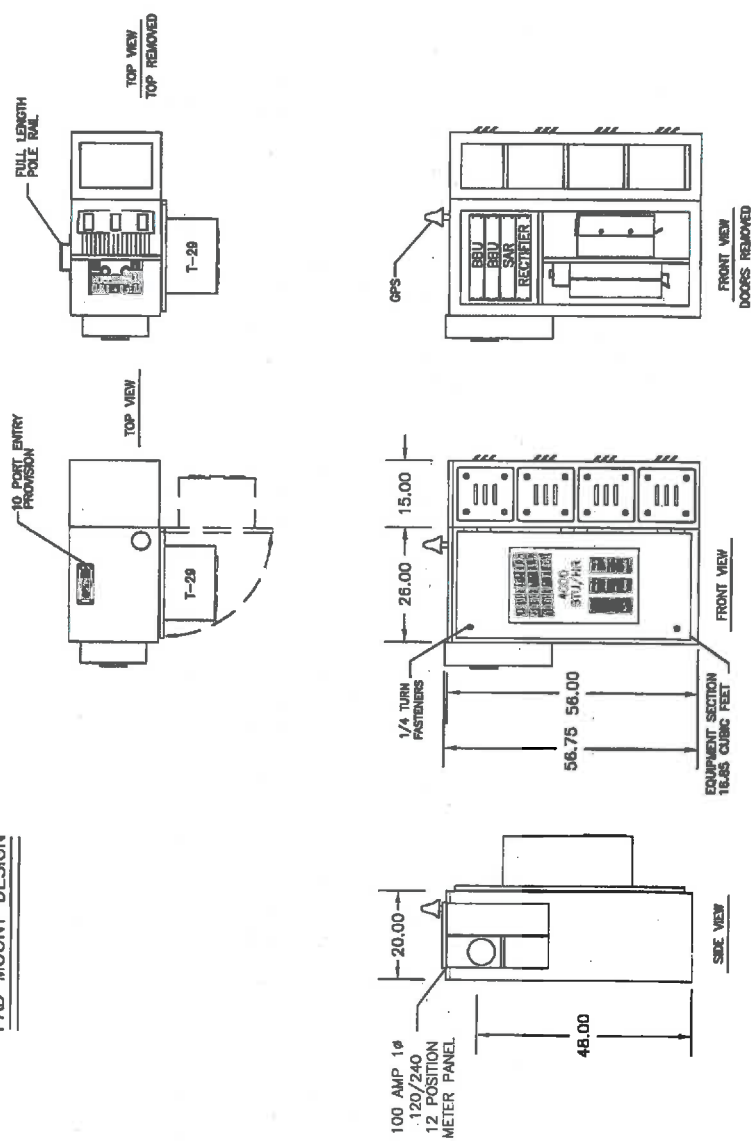
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SITE INFORMATION  
PHO\_N75TH-AVE SC  
19800 N 75TH AVE  
CITY OF GLENDALE  
GLENDALE, AZ 85308  
WZN PROJ# 20141033782

0 1 2 3  
CHECKED SIZE IN INCHES  
SHEET TITLE  
EQUIPMENT CABINET SECTIONS & DETAILS  
SHEET NUMBER  
Z-4

PAD MOUNT DESIGN



NOTES:

CABINET BUILT OF .125 THK ALUMINUM TO NEMA 3R SPECS. WITH WHITE POWDER COAT FINISH

PROPRIETARY PROPOSAL

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SUN WEST ENGINEERING, INC.  
1700 N. 75TH AVE, SUITE 200  
GLENDALE, AZ 85308  
PHONE: (623) 837-2343  
FAX: (623) 837-4571  
WWW.SUNWESTENGINEERING.COM

DATE: 5/13/14  
DRAWN BY: JWP  
CHECKED BY: JWP  
DATE: 5/13/14  
SHEET: 1 OF 1  
PROJECT: PHO\_N75TH-AVE\_SC

**verizon wireless**  
100 N. GAVIN DR  
MESA, AZ 85205  
www.verizonwireless.com

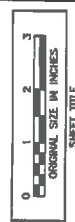
WORK ORDER NUMBER: 20141033782  
DOWN BY: 10/30/14

NO.	DATE	ISSUE
0	5/13/14	PRELIMINARY 2D'S
1	6/4/14	CHANGES/ ANTENNAS
2	6/24/14	ADDRESS PER CITY
3	7/6/14	PER COMMENTS

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**SITE INFORMATION**  
PHO, N75TH-AVE, SC  
19800 N 75TH AVE  
CITY OF GLENDALE  
GLENDALE, AZ 85308  
VZN PROJ# 20141033782



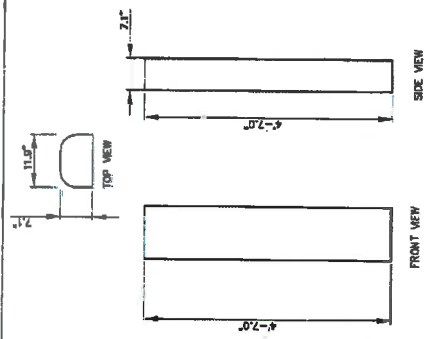
**ANTENNA DETAIL**  
SHEET NUMBER

**Z-5**

ANTENNA & COAX CABLE SCHEDULE INFORMATION						
SECTOR	ANTENNA POSITION	EXISTING/ PROPOSED	RAIL CENTER	COMPOSITE	ANTENNA MAKE/MODEL	ANTENNA QUANTITY
ALPHA	1	PROPOSED	25'-0"	0"	COMSCOPE	1
BETA	1	PROPOSED	25'-0"	0"	COMSCOPE	1
MY	1	PROPOSED	33'-0"	0"	SPC-5.0	1

COAX LABELS	COAX CABLE	COAX CABLE
QUANTITY	TYPE	DIAMETER
6	COLOR-X	(3) 1/2"
6	COLOR-X	(3) 1/2"
6	COLOR-X	(3) 1/2"
6	COLOR-X	(3) 1/2"
6	COLOR-X	(3) 1/2"
6	COLOR-X	(3) 1/2"

\* COLOR COORDS TO BE DETERMINED BY CUSTOMER.



**1 ANTENNA DETAIL**  
SCALE: 1" = 1'-0"

**Product Specifications**  
COMMScope  
SMA-H-1000A

**Technical Specifications**  
Frequency Range: 1.92 - 1.98 GHz  
Power: 100W  
Gain: 12 dBi  
Beamwidth: 120°

**Physical Specifications**  
Weight: 1.5 lbs  
Dimensions: 10" x 10" x 10"

**3 ANTENNA SPECIFICATIONS**  
SCALE: NTS

**RADIOWAVES**  
3725-3800 MHz  
Passive Microwave Antenna

**Features**  
• 100W Power  
• 12 dBi Gain  
• 120° Beamwidth  
• 1.5 lbs Weight

**Technical Specifications**  
Frequency Range: 3725 - 3800 MHz  
Power: 100W  
Gain: 12 dBi  
Beamwidth: 120°

**2 MICROWAVE SPECIFICATIONS**  
SCALE: NTS



**COMMUNICATIONS SITE LICENSE AGREEMENT FOR  
VERIZON WIRELESS (VAW) LLC, dba VERIZON WIRELESS,  
IN CITY OF GLENDALE RIGHT-OF-WAY**

This Communications Site License Agreement for Verizon Wireless (VAW) LLC, dba Verizon Wireless, in City of Glendale Right-of-Way ("Agreement") is executed to be effective this \_\_\_\_ day of \_\_\_\_\_, 2014 ("Effective Date"), between the City of Glendale, an Arizona municipal corporation ("City"), and Verizon Wireless (VAW) LLC, a Delaware limited liability company, dba Verizon Wireless ("Licensee").

**RECITALS**

- A. The City is the owner of certain right-of-way located in the City ("Licensed Area"), as more particularly described in the attached Exhibit A.
- B. Licensee desires to install, maintain and operate a "small cell" wireless communications facility ("Small Cell") in the City's right-of-way. The equipment includes, but is not limited to communications equipment, antennas, radio amplifiers, radio frequency and optical signal converters, power suppliers and meters, monitoring devices, fiber optic and other cabling, connectors and equipment necessary to serve Licensee's Small Cell facilities as shown in Exhibit A (collectively, the "Facilities").
- C. The City is willing to grant the Licensee a license to use the Licensed Area for the operation of the Facilities under the terms of this Agreement, subject to the approval of the Glendale City Council in connection with the public hearing requirements of A.R.S. § 9-551 *et seq.*, and all as implemented by the City's Project Manager, whose approvals shall not be unreasonably withheld.

**AGREEMENT**

In consideration of the following mutual covenants, terms and conditions, the Parties agree as follows:

1. LICENSED AREA.

The Licensed Area includes and is limited to the following areas depicted in Exhibit A: i) The area on which the Facilities are located at 5655 North 67<sup>th</sup> Avenue, or an alternative area in the right-of-way, as approved by the City; and ii) Reasonable access to the Facilities through the public right-of-way.

2. CITY'S REPRESENTATIONS AND WARRANTIES.

- A. The City represents and warrants to the Licensee that: i) the City, and its duly authorized signatory, have full right, power, and authority to execute this Agreement on behalf of the City; ii) the City has good and unencumbered title to

the Licensed Area free and clear of any liens or mortgages, except those disclosed to the Licensee that will not interfere with Licensee's right to use the Licensed Area; and iii) the City's execution and performance of this Agreement will not violate any laws, ordinances, covenants, mortgages, licenses or other agreements binding on the City.

- B. The Licensee has studied and inspected the Licensed Area and accepts the same "AS IS" without any express or implied warranties of any kind, other than those warranties contained in Subsection (2)(A) immediately above, including any warranties or representations by the City as to its condition or fitness for any particular use. The Licensee has inspected the Licensed Area and obtained information and professional advice as the Licensee has determined to be necessary related to this Agreement.

3. GRANT OF LICENSE; TERM.

- A. Nothing in this Agreement will be construed as granting the Licensee the authority to use any property that is owned by any person or entity other than the City.
- B. The initial term of this License Agreement shall be for a period of ten (10) years (the "Initial Term"), commencing on the Commencement Date (as defined in paragraph 4.C below) and ending at 11:59 p.m. on the day immediately preceding the tenth (10<sup>th</sup>) anniversary thereof, unless sooner terminated as stated herein. This Agreement shall be automatically renewed for no more than three successive five-year Renewal Terms, unless Licensor or Licensee notifies the other party in writing of such party's intent not to renew this Agreement at least one hundred eighty (180) days prior to the expiration of the Initial Term or any Renewal Term, as applicable.
- C. If Licensee continues to occupy the Licensed Area after the expiration or termination of this Agreement, holding over will not be considered to operate as a renewal or extension of this Agreement, but shall be a month-to-month license and the Licensee must pay the City fees in an amount that is double the amount of normal license fee that would otherwise be due under Section 4.
- D. Notwithstanding any provision in this Agreement to the contrary or any negotiation, correspondence, course of performance or dealing, or any other statements or acts by or between the parties, Licensee's rights in the Licensed Area are limited to the rights created by this Agreement. Licensee's rights are subject to all covenants, restrictions, easements, agreements, reservations and encumbrances upon, and all other conditions of title to, the Licensed Area. Licensee's rights under this Agreement are further subject to all present and future building restrictions, regulations, zoning laws, ordinances, resolutions and orders of any local, state or federal agency, now or later having jurisdiction over, the Licensed Area or the Licensee's use of the Licensed Area.

4. LICENSE FEES; COSTS; TAXES.

- A. As of the Commencement Date, Licensee shall pay, without notice and free from all claims, deductions and setoffs against the City, an annual license fee in the amount of \$3,368.00 for one (1) street light attachment, including ground equipment with a “footprint” of up to fifty (50) cubic feet, for Licensee’s Facilities and associated equipment within the Licensed Area, plus all appropriate taxes (see Section 23 below) and on each subsequent anniversary of the Commencement Date during the term of this Agreement, up to and including the expiration or earlier termination thereof (“Pole Attachment Fee”).
- B. The Pole Attachment Fee will increase by three percent (3%) annually on each anniversary of the Commencement Date.
- C. The “Commencement Date” shall be defined as the first day of the month immediately following the Effective Date of this Agreement. Licensee shall pay all fees due for the current year in advance on the first business day of each month. If the Effective Date is not on the first day of a month, the Licensee’s fees will be prorated accordingly. The first installment of the annual license fee shall be paid within forty-five (45) days following the Commencement Date, and all subsequent annual installments paid on or before the first day of the applicable month.
- D. If the Licensee fails to pay any fee in full within ten (10) business days after receipt of written notice of delinquency, the Licensee is responsible for interest on the unpaid principal balance at the rate of 18% per annum from the due date until payment is made in full.
- E. Upon submission of plans in connection with the approval of this Agreement, Licensee shall pay the City a dry utility permit fee in accordance with the City’s Community Development Fee Schedule.
- F. Licensee shall pay the City actual costs for inspections, materials testing and other costs incurred by the City as a direct result of the construction, repair, alteration or relocation of the Facilities. All costs shall be paid in full within thirty (30) days of invoice.

5. UTILITIES.

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

6. USE RESTRICTIONS.

- A. Subject to the interference provisions set forth below, Licensee shall at all times use reasonable efforts to minimize any impact that its use of the Licensed Area will have on other users of the Licensed Area.

- B. Licensee shall not remove, damage or alter in any way any improvements or personal property of the City upon the Licensed Area without the City's prior written approval. Licensee shall repair any damage or alteration to the City's property caused by Licensee's use of the Licensed Area to the same condition that existed before the damage or alteration, reasonable wear and tear excepted.
- C. Whenever the Licensee performs construction activities within the Licensed Area, the Licensee shall obtain all necessary construction permits and promptly, upon completion of construction, restore the remaining Licensed Area to the condition existing before construction to the satisfaction of the City's Project Manager. If the Licensee fails to restore the Licensed Area as required, the City may take all reasonable actions necessary to restore the Licensed Area, and the Licensee, within thirty (30) days of demand and receipt of an invoice, together with reasonable supporting documentation, will pay all of the City's reasonable costs of restoration.
- D. Licensee shall use the Licensed Area solely for constructing, installing, operating, maintaining, repairing, modifying and removing the Facilities. The Facilities are limited to the equipment and facilities listed on Exhibit A and other items as may be approved by the City, in its sole discretion, in writing.
- E. Licensee shall have a non-exclusive right for ingress and egress, seven (7) days a week, twenty-four (24) hours a day, for the construction, installation, operation, maintenance, modification and removal of the Facilities. In no event shall the City's use of the Licensed Area be unreasonably interrupted by the Licensee's work. Prior to entering upon the Licensed Area for activities that disrupt vehicular and/or pedestrian traffic, the Licensee shall give the Project Manager or designee at least forty-eight (48) hours advance notice in the manner provided in Section 21 of this Agreement or, in the event of emergency repairs, any prior notice as is practical.
- F. Licensee shall at all times have on call and at the City's access, an active, qualified, and experienced representative to supervise the Facilities, and who is authorized to act for the Licensee in matters pertaining to all emergencies and the day-to-day operation of the Facilities. The Licensee shall provide the Project Manager or designee with the names, addresses and 24-hour telephone numbers of designated persons in writing.
- G. In the vicinity of any above-ground facilities Licensee may have in the Licensed Area, Licensee shall keep the Licensed Area maintained, orderly and clean at all times.
- H. Licensee acknowledges that: i) the Licensee's use of the Licensed Area is subject and subordinate to, and shall not adversely affect, the City's use of the Licensed Area; and ii) the City reserves the right to further develop, maintain, repair, or improve the Licensed Area, provided that City shall reasonably

cooperate with Licensee to ensure that Licensee's use and operation of the Distributed Antenna System (DAS) Facilities is not interfered with or interrupted.

- I. Licensee shall not install any signs in the Licensed Area other than required safety or warning signs or other signs necessary for the use of the Licensed Area as requested or approved by the City. Licensee bears all costs pertaining to the erection, installation, maintenance and removal of all of its signs.

## 7. HAZARDOUS WASTE.

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

## 8. LICENSEE'S IMPROVEMENTS; GENERAL REQUIREMENTS.

- A. The following provisions govern all improvements, repairs, installation and other construction, removal, demolition or similar work of any description by the Licensee related to the Facilities or the Licensed Area (collectively referred to as the "Licensee's Improvements"):
  - i) In no event, including termination of this Agreement for any reason, is the City obligated to compensate the Licensee in any manner for any of Licensee's Improvements or other work provided by the Licensee during or related to this Agreement. The Licensee shall timely pay for all labor, materials and work and all professional and other services related to Licensee's Improvements and defend, indemnify and hold harmless the City against the same;

- ii) Licensee shall perform all work in a good, workmanlike manner, and shall diligently complete the work in conformance with all building codes and similar requirements. Licensee's Improvements shall be commensurate with high quality industry standards as approved by the City, which approval shall not be unreasonably withheld, conditioned or delayed;
- iii) Licensee acknowledges that as of the Effective Date of this Agreement, the City has not approved or promised to approve any plans for the Licensee's Improvements, except for those improvements already in place or to the extent expressly stated in this Agreement;
- iv) Licensee shall make no structural or grading alterations, or similar structural modifications or additions or other significant construction work to the Licensed Area without having first received the written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. Review shall include all improvements, equipment, fixtures, paint and other construction work of any description as described in all plans delivered by the Licensee to the City. All such plans and construction are subject to inspection and final approval by the City as to materials, design, function and appearance;
- v) Licensee shall keep as-built records of the Licensee's Improvements and furnish copies of records to the City, at no cost to the City, upon completion of improvements and any changes to the same. Licensee shall participate as a member of the Blue Stake Center under A.R.S. § 40-360.21 *et seq.*, regarding underground facilities, and submit proof of participation to the Property Manager upon request;
- vi) All changes to utility facilities shall be limited to the Licensed Area and shall be undertaken by the Licensee only with the written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed;
- vii) All of the Licensee's Improvements shall, be designed so as to present uniformity of design, function, appearance and quality throughout and consistency with other improvements located in the Licensed Area; and
- viii) Licensee shall properly mark and sign all excavations and maintain barriers and traffic control in accordance with applicable laws, regulations and best management practices.

B. The following procedure governs the Licensee's submission to the City of all plans for the Licensed Area and the Licensee's Improvements, including any proposed changes by the Licensee of previously approved plans:

- i) Licensee shall coordinate with the City as necessary on significant design issues prior to submission of plans;
- ii) Upon execution of this Agreement, the City and the Licensee shall each designate a project manager to coordinate the parties' participation in designing and constructing Licensee's Improvements. Each project manager shall devote time and efforts to the project as may be necessary for timely, good faith and convenient coordination among all persons involved with the project and compliance with this Agreement. The City's Project Manager will not be exclusively assigned to this Agreement or to the Licensee's Improvements;
- iii) No plans are considered finally submitted until the Licensee delivers to the City a formal certification by an engineer licensed in Arizona, acceptable to the Project Manager, to the effect that all of the Licensee's Improvements are properly designed to be safe and functional as designed and as required by this Agreement. The certification shall be accompanied by and refer to any backup information and analysis as the Project Manager may reasonably require;
- iv) No plans are considered approved until stamped "APPROVED" and dated by the City's Project Manager;
- v) Licensee acknowledges that the Project Manager's authority with respect to the Licensed Area is limited to the administration of the requirements of this Agreement. Licensee is responsible to secure all zoning approvals, design revisions or other governmental approvals and to satisfy all governmental requirements pertaining to the project and may not rely on the City or Project Manager to initiate or suggest any particular process or course of action;
- vi) The City's issuance of building permits shall not be considered valid unless the plans have been approved as stated in subsection (iv) above. The City's Project Manager shall be reasonably available to coordinate and assist the Licensee in working through issues that may arise in connection with such plan approvals and requirements;
- vii) The Licensee shall, in the submittal of all plans, allow adequate time for all communications and plan revisions necessary to obtain approvals and shall schedule its performances and revise its plans as necessary to timely obtain all approvals and make payment of all applicable fees;
- viii) Any delay in City's review of or marking Licensee's plans with changes necessary to approve the plans, or approve the revised plans in accordance with the City's normal plan-review procedures, will not be considered approval of the plans but may operate to extend Licensee's construction deadlines. The City agrees to use reasonable efforts to

review, mark or approve Licensee's plans in a prompt and timely manner and in conformance with established policies and procedures;

- ix) The Licensee shall provide the City with two (2) complete sets of detailed plans and specifications of the work as completed;
- x) The parties shall use reasonable efforts to resolve any design and construction issues to their mutual satisfaction but, in the event of an impasse for any reason, final decision authority regarding all design and construction issues shall rest with the City in its discretion; and
- xi) Before any construction begins on the Licensed Area, the Licensee shall provide the City with performance bonds, and if considered necessary by the City, payment bonds, in amounts equal to the full amount of the written construction contract pursuant to which such construction is to be done. The payment bond shall be solely for the protection of claimants supplying labor or materials for the required construction work and the performance bond shall be solely for the protection of the City, conditioned upon the faithful performance of the required construction work. Bonds shall be executed by a surety company duly authorized to do business in Arizona, and acceptable to the City and shall be kept in place for the duration of the work.

9. LICENSEE'S INITIAL CONSTRUCTION.

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

10. MAINTENANCE.

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

11. CO-LOCATION.

- A. Subject to subsection (B) below, the Licensee shall, at all times, use reasonable efforts to cooperate with the City or any third parties with regard to the possible co-location of additional equipment, facilities or structures in and around the Licensed Area ("Co-location"). If a Co-location is feasible, the City



may, in its sole discretion, negotiate a Co-location license agreement with any third party on terms as the City considers appropriate, not inconsistent with the rights and obligations of the parties under this Agreement. Licensee's consent in connection with the final determination of Co-location of a third party is not required, provided that Licensee's operations are not interfered with or interrupted. Any fees or charges paid by an additional Co-locator belong solely to the City.

- B. Prior to permitting the installation of a Co-location by any third party in or around the Licensed Area which may interfere with the Licensee's operations, the City shall give the Licensee forty-five (45) days' notice of the proposed Co-location so that the Licensee can determine if the Co-location will interfere with the Facilities. If the Licensee determines that interference is likely, the Licensee shall, within the notice period, give the City a detailed written explanation of the anticipated interference, including supporting documentation as may be reasonably necessary for the City to evaluate the Licensee's position. The City and the Licensee shall promptly use reasonable efforts to resolve any interference problems before the City permits a Co-location to the third party. If a subsequent licensee is permitted to operate near the Licensed Area, and the subsequent licensee's operations materially interfere with Licensee's Facilities, then the City shall direct the subsequent licensee to remedy the interference within seventy-two (72) hours. If the interference is not resolved within this period, then the City will direct the subsequent licensee to cease its operation until the interference is resolved. These same procedures apply to any interference caused by Licensee with respect to any Co-location existing and as configured prior to the installation of Licensee's Facilities.

## 12. ASSIGNMENT.

- A. Licensee may assign this Agreement, upon thirty (30) days' written notice to the City, to any person or entity controlling, controlled by or under common ownership with the Licensee or Licensee's parent company, or to any person or entity that, acquires the Licensee's business and assumes all obligations of the Licensee under this Agreement. Other assignments require City approval. For assignments requiring City approval, the City may, as a condition of approval, postpone the effective date of the assignment and require that any potential transferee submit reasonable evidence of its financial ability to fully perform under the terms of this Agreement to the City at least thirty (30) days prior to any transfer of the Licensee's interest, in no event will the City unreasonably withhold, condition, or delay its approval to a proposed assignment.
- B. The Licensee may, upon notice to the City, mortgage or grant a security interest in this Agreement and the Facilities, and may assign this Agreement and the Facilities to any mortgagees, deed of trust beneficiaries or holders of security interests, including their successors or assigns ("Mortgagees"), so long as the Mortgagees agree to be bound by the terms of this Agreement. If so, the City

shall execute consent to leasehold or other financing as may be reasonably required by Mortgagees. In no event will Licensee grant or attempt to grant a security interest in any of the real property underlying the Licensed Area.

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

### 13. SECURITY DEPOSIT.

- A. Amount of Security Deposit. Within forty five (45) days of the full execution of this Agreement, Licensee agrees to deliver to City a security deposit in the amount of Two Thousand and No/100 Dollars (\$2,000.00). City shall hold the Security Deposit as security for the performance of the Licensee's obligations under this Agreement.
- B. Use of Security Deposit. City may (but is not required to) without prejudice to any other remedy City has, apply all or part of the Security Deposit to:
  - i) Any Rent, including Base Rent, or other sum in default;
  - ii) Any amount that City may spend or become obligated to spend in exercising City's unconditional rights pursuant to Facilities Removal, Restoration or to remove any and all portions of the Facilities that remain on the Licensed Area by the earlier of thirty (30) days following cessation of Licensee's operations at the Licensed Area, or the Expiration Date of this Agreement; and
  - iii) Any expense, loss, or damage that City may suffer because of Licensee's default.
- C. Refund of Security Deposit. Licensee must remove, to City's satisfaction, all elements of the Facilities and all associated improvements of every kind and nature constructed, erected or placed by Licensee on the Licensed Area by the earlier of the thirty (30) days following cessation of Licensee's operations at the Licensed Area, or expiration date of this Agreement in order to secure refund of any portion of its Security Deposit.

### 14. REGULATORY AGENCIES, SERVICES, FINANCIALS AND BANKRUPTCY.

- A. The Licensee shall upon request provide to the City:
  - i) All non-proprietary and relevant petitions, applications, communications and reports submitted by the Licensee to the Arizona Corporation Commission, inclusive of any requirements under A.R.S. § 40-441 *et seq.*, or other state or federal authority having jurisdiction that directly relates to Licensee's operations in the Licensed Area;

- ii) Non-proprietary licensing documentation concerning all services of whatever nature being offered or provided by the Licensee over facilities in the Licensed Area. Non-proprietary copies of responses from regulatory agencies to the Licensee shall be available to the City upon request. To the extent permitted by Arizona's Public Records Law, A.R.S. § 39-121 *et seq.*, the City will treat all documentation and information obtained pursuant to this Section 14 as proprietary and confidential.
- B. The Licensee shall upon request provide the City copies of any petition, application, communications, or other documents related to any filing by the Licensee of bankruptcy, receivership, or trusteeship.

15. DEFAULT; TERMINATION BY CITY.

- A. The City may terminate this Agreement for any of the following reasons upon thirty (30) days' written notice to Licensee:
  - i) Failure of Licensee to perform any obligation under this Agreement, after Licensee fails to cure default within the notice and cure period. However, if cure cannot reasonably be implemented within the notice period, Licensee must commence and diligently pursue to cure within ninety (90) days of the City's notice.
  - ii) The taking of possession for a period of ten (10) days or more of substantially all of Licensee's personal property in the Licensed Area by or pursuant to lawful authority of any legislative act, resolution, rule, order or decree or any act, resolution, rule, order or decree of any court or governmental board, agency, officer, receiver, trustee or liquidator.
  - iii) The filing of any lien against the Licensed Area, or against the City's underlying real property, due to any act or omission of the Licensee that is not discharged or fully bonded within thirty (30) days of receipt of actual notice by the Licensee.
- B. The City may place the Licensee in default of this Agreement by giving the Licensee fifteen (15) days written notice of the Licensee's failure to timely pay the rent required under this Agreement or any other charges required to be paid by the Licensee pursuant to this Agreement. If Licensee does not cure the default within the notice period the City may terminate this Agreement or exercise any other remedy allowed by law or equity.
- C. If the Licensee, through any fault of its own, at any time fails to maintain all insurance coverage required by this Agreement, the City may, upon written notice to the Licensee, immediately terminate this Agreement or secure the required insurance at Licensee's expense.

- D. Failure by a party to take any authorized action upon default by the other party does not constitute a waiver of the default nor of any subsequent default by the other party. City's acceptance of the License Fee or any other fees or charges for any period after a default by the Licensee is not considered a waiver or estoppel of the City's right to terminate this Agreement for any subsequent failure by the Licensee to comply with its obligations.
- E. Upon the termination of this Agreement for any reason, all rights of the Licensee terminate, including all rights of the Licensee's creditors, trustees and assigns and all others similarly situated as to the Licensed Area.

16. TERMINATION.

- A. This Agreement may be terminated for any of the following reasons:
  - i) By either party upon issuance by a court of competent jurisdiction of an injunction in any way preventing or restraining the Licensee's use of any portion of the Licensed Area and remaining in force for a period of thirty (30) consecutive days.
  - ii) By either party upon the inability of the Licensee to use any substantial portion of the Licensed Area for a period of thirty (30) consecutive days due to the enactment or enforcement of any law or regulation or because of fire, earthquake or similar casualty, or Acts of God or the public enemy.
  - iii) By either party upon ninety (90) days' written notice, if the Licensee is unable to obtain or maintain any license, permit or governmental approval necessary for the construction, installation or operation of the Facilities or the Licensee's business.
  - iv) Provided Licensee is current in all of its financial obligations to the City, by Licensee, for any reason with sixty (60) days' written notice to the City.
- B. In order to exercise the termination provisions above, the party exercising termination must not itself be in default under the terms of this Agreement beyond any applicable grace or cure period and, if not otherwise stated above, provide reasonable written notice to the other party.

17. INDEMNIFICATION.

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

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

18. INSURANCE.

- A. The Licensee shall procure and at all times maintain the following types and amounts of insurance for its operations in the Licensed Area:
  - i) Commercial general liability insurance in the minimum amount of \$2,000,000 combined single limit per occurrence for bodily injury and property damage, \$5,000,000 aggregate.
  - ii) Any other insurance, as the City’s Project Manager may determine, to be necessary for the Licensee’s operations and is commercially reasonable.
- B. Insurance shall:
  - i) Be from a company rated at least A- by AM Best;
  - ii) Name the City as an additional insured on the insurance policy and maintain coverage through the term of the Agreement;
  - iii) Include contractual liability coverage, subject to standard policy provisions and exclusions; and
  - iv) Be primary and non-contributory with respect to all other available sources, as relates to Licensee’s negligence.
- C. Licensee shall provide appropriate certificates of insurance to the City for all insurance policies required by this Section. Absence of City request for proof of initial or renewal coverage does not waive any insurance requirements under this paragraph.

19. DAMAGE OR DESTRUCTION / REPLACEMENT POLES.

- A. The City has no obligation to reimburse the Licensee for the loss of or damage to fixtures, equipment or other personal property of the Licensee, except for loss or damage caused by the negligence or fault of the City or its officers, employees or agents. The Licensee may insure such fixtures, equipment or other personal property for its own protection if it so desires.
- B. Replacement Pole. If the City approves a Licensee proposal to install Antennas on a City-owned pole, then in addition to the other requirements of this Agreement the following shall apply:
  - i) Licensee shall provide and deliver to the City a replacement pole (excluding mast arm); so that a replacement is immediately available to City in case the original pole is damaged.
  - ii) If the City uses a replacement pole, then Licensee shall provide another replacement pole.
  - iii) All performance under this paragraph shall be at Licensee's expense. City owns the original pole and all replacement poles.
  - iv) Licensee will provide City with a total of five (5) replacement light poles. Annually, the City may reasonably request additional stock directly in proportion to the number of light pole attachments added by Licensee, but in no event greater than 10% of the total number of Licensee-provided light poles then in City's possession.
  - v) This paragraph does not diminish the plans approval or any other requirement of this Agreement.

20. SURRENDER OF POSSESSION.

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

21. NOTICE.

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

TO THE CITY: City of Glendale  
5850 West Glendale Avenue  
Glendale, Arizona 85301  
Attention: Project Manager

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

TO THE LICENSEE: Verizon Wireless (VAW) LLC,  
dba Verizon Wireless  
180 Washington Valley Road  
Bedminster, New Jersey 07921  
Attn: Network Real Estate

Emergency Contact Phone Numbers:

Licensee NOCC - 800-264-6620

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

22. SEVERABILITY.

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

23. TAXES AND LICENSES.

- A. The Licensee shall pay any leasehold tax, possessory-interest tax, sales tax, personal property tax, transaction privilege tax, use tax or other exaction assessed or assessable as a direct result of its occupancy of the Licensed Area

under authority of this Agreement, including any tax assessable on the City. If laws or judicial decisions result in the imposition of a real property tax on the interest of the City as a direct result of Licensee's occupancy of the Licensed Area, the tax shall also be paid by the Licensee on a proportional basis for the period this Agreement is in effect.

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

24. GOVERNING LAW.

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

25. RULES AND REGULATIONS.

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

26. RIGHT OF ENTRY RESERVED.

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



27. RELOCATION.

- A. The City shall not bear any cost of relocation of existing facilities, irrespective of the function served, where the City facilities or other facilities occupying the Licensed Area or right-of-way in close proximity to the Licensed Area, are already located and the conflict between the Licensee's potential Facilities and existing facilities can only be resolved expeditiously, as determined by the City, by the movement of the existing City or other permitted facilities.
- B. The City shall not bear any cost of relocation of Licensee's Facilities, where in the City's discretion, relocation is reasonable and necessary in connection with City right-of-way repairs, improvements or other capital projects affecting the Licensed Area. City shall provide Licensee no less than one hundred forty-five (145) days advance notice of a requirement to relocate. If the City becomes aware of a potential delay involving the Licensee's relocation, the City shall notify the Licensee within thirty (30) days of becoming aware of the potential delay. The Licensee may object in writing to the determination of relocation to the City's Project Manager within thirty (30) days of receipt of the notice to relocate. The Project Manager shall consider the objection and respond in writing to Licensee within thirty (30) days of receipt of the objection. The Project Manager's determination is final. Notwithstanding the foregoing, if the City issues a permit to a private developer, subsequent to the effective date of this Agreement that requires the relocation, or otherwise disturbs Licensee's Facilities, those costs will be borne by the developer.
- C. If Licensee's relocation effort delays construction of a public project causing the City to be liable for delay or other damages, the Licensee shall reimburse the City for those damages attributable to the delay created by the Licensee. If Licensee disputes the amount of damages attributable to the Licensee, the matter shall be referred to the Dispute Resolution Board as defined below. The Dispute Resolution Board shall consist of one member selected by the City, one member selected by the Licensee, and a third member agreed upon by both parties. The member agreed upon by both parties shall be chairperson of the Dispute Resolution Board. Expenses for the Dispute Resolution Board shall be shared equally by the City and the Licensee. The Board will hear the dispute promptly, and render an opinion as soon as possible, but in no case later than sixty (60) days after notification by the City of Licensee's allocated share of damages suffered by the City. All decisions of the Dispute Resolution Board are non-binding on the City and Licensee; however the findings of the Dispute Resolution Board shall be admissible in any legal action. The City and the Licensee shall accept or reject findings of the Dispute Resolution Board within thirty (30) days after receipt of the findings. If damages are assessed by the Dispute Resolution Board, and accepted by the City and the Licensee, the Licensee shall pay the City within thirty (30) days. If the Licensee fails to pay the damages in full within thirty (30) days the Licensee is responsible for interest on the unpaid balance at the rate of 18% per annum from that date until payment is made in full. Nothing

herein prevents a mutual agreement between the City and the Licensee to use alternative dispute resolution for disputes related to other Agreement provisions.

28. CONFLICTS OF INTEREST.

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

29. MISCELLANEOUS.

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

*[Signatures on the following pages.]*

EXECUTED to be effective as of the date shown above.

CITY OF GLENDALE, an Arizona  
municipal corporation

\_\_\_\_\_  
Brenda S. Fischer  
City Manager

ATTEST:

\_\_\_\_\_  
Pamela Hanna (SEAL)  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael D. Bailey  
City Attorney

Verizon Wireless (VAW) LLC,  
dba Verizon Wireless

By: \_\_\_\_\_  
Brian Mecum  
Its: Area Vice President Network  
Date: \_\_\_\_\_

EXHIBIT A

*(see attached)*

**PHO\_BICENTENNIAL-NORTH\_2\_SC**

5655 N. 67TH AVE

GLENDALE, AZ 85301

LOOKING NORTHEAST

EXISTING VIEW -



PHOTOGRAPHIC SIMULATION -



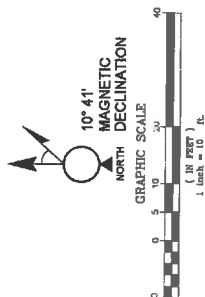
PROPOSED INSTALLATION OF LESSEE ANTENNA ARRAY AND MICROWAVE DISH, MOUNTED TO 29' REPLACEMENT UTILITY POLE. ADDITION OF SUNWEST EQUIPMENT CABINET AND MEET VAULT.



YOUNG DESIGN CORP. - 10245 E. VIA LINDA, STE. 211  
SCOTTSDALE, AZ 85258 - (480) 451-9609



SHEET NO. 5-1 REVISION:

[illegible]





PROPERTY LINE

PROPOSED LESSEE FIBER MEET POINT VAULT

PROPOSED LESSEE CABINET MOUNTED TO A PROPOSED CONCRETE SLAB

PROPOSED LESSEE UNDERGROUND COAX ROUTE

PROPOSED LESSEE GROUND/COAX COLLECTION VAULT

EXISTING VAULT TO REMAIN IN PLACE

EXISTING GUY WIRE TO REMAIN

EXISTING 30' CONCRETE CURB TO REMAIN IN PLACE

PROPOSED LESSEE REPLACEMENT 28'4" CURB TO REMAIN IN PLACE

PROPOSED LESSEE ANTENNA ARRAY & MICROWAVE DISH. SEE THIS SHEET FOR CONFIGURATION

3'-0"

5'-0"

3'-0"

2'-0"

7'-4"

6'-0"

7'-0"

1" = 10'-0"

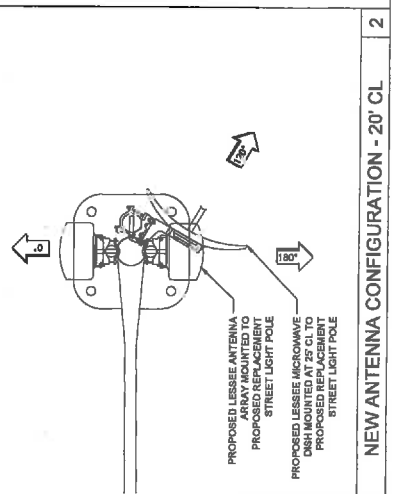
NORTH

ENLARGED SITE PLAN

1 23

0 1'-0" 2'-0" 3'-0" 4'-0" 5'-0" 6'-0" 7'-0" 8'-0" 9'-0" 10'-0"

SCALE: 1" = 10'-0"





CLIENT



128 W. GEMINI DR.  
TEMPE, AZ 85283

INTERNAL REVIEW

CONSTRUCTION SIGNATURE

FF SIGNATURE

FACILITIES SIGNATURE

LEGAL SIGNATURE

PLANS PREPARED BY

DESIGNED BY

CHECKED BY

DATE



architecture / project management  
10245 E Via Linda, Scottsdale, AZ 85258  
PH: 480.451.9808 FAX: 480.451.9808  
www.youngdesigncorp.com

Seal  
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EX-151701  
THIS DOCUMENT CONTAINS A PLAN OF THE  
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NO. DATE DESCRIPTION  
1 4/24/14 SUBMITTAL

ARCHITECT JK'S NO. YDC-5963

PROJECT INFORMATION

PHO\_BICENTENNIAL-NORTH\_2\_SC

SMALL CELL

9633 N 87TH AVE  
GLENDALE, AZ 85301

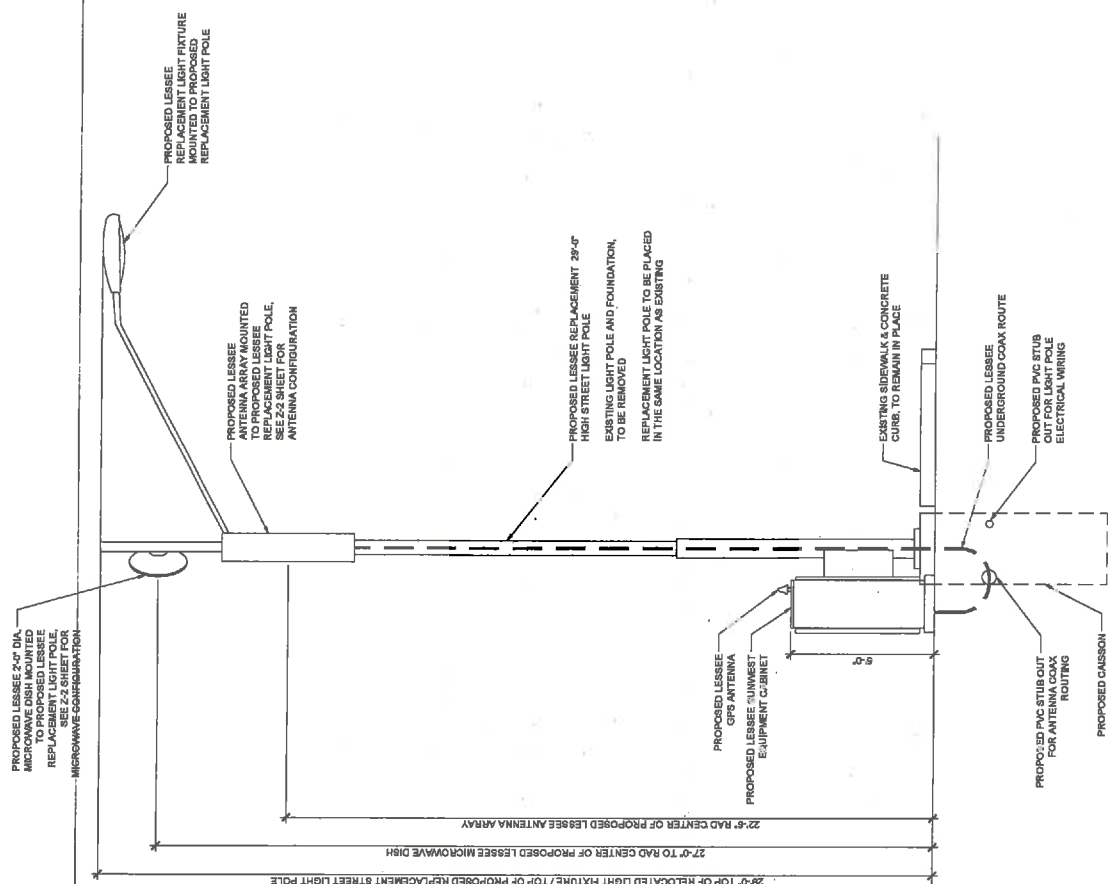
SHEET TITLE

NORTH ELEVATION

DESCRIPTION APPROVAL

SHEET NUMBER

Z-4



1 NORTH ELEVATION  
SCALE 1/2" = 1'-0"  
24



## Legislation Description

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**File #:** 14-032, **Version:** 1

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**RENEWAL OF A LICENSE AGREEMENT FOR QWEST BROADBAND SERVICES,  
INC. DBA CENTURY LINK, INC. TO OPERATE A CABLE AND FIBER-BASED COMMUNICATIONS NETWORK  
WITHIN PUBLIC RIGHT-OF-WAY**

Staff Contact: Jack Friedline, Interim Director, Public Works

### **Purpose and Recommended Action**

This is a request for the City Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to execute a license agreement between the City of Glendale and Qwest Broadband Service, Inc., dba Century Link, Inc. (Qwest) to operate a cable and fiber-based communication network within public right-of-way and provide service throughout the community.

### **Background**

Qwest contacted the city to request permission to maintain and continue the expansion of its existing network facilities within Glendale. The city entered into a 15-year license agreement with Qwest in July 1999, which has expired, and Qwest has been paying month-to-month since that time.

### **Analysis**

- There will be additional construction needed as a result of this action.
- There are no costs incurred as a result of this action.
- The license agreement is for a 15 year term.

### **Previous Related Council Action**

On July 1, 1999, the city entered into a 15-year license agreement with Qwest Broadband Service, Inc., dba Century Link, Inc. to construct and operate a cable and fiber-based communication network within public right-of-way.

### **Community Benefit/Public Involvement**

Qwest's infrastructure investment in the West Valley allows them to meet their current and future clients' connection needs for cable television - related services to City of Glendale residents.

### **Budget and Financial Impacts**

Qwest will continue to pay a license fee of 5% percent of its gross revenues as defined in the license. However, Qwest is entitled to reductions in payments of license fees as provided by Title 9 of Arizona Revised Statutes which includes permit and inspection fees. All revenue generated from this license agreement will

be deposited into the General Fund.

RESOLUTION NO. 4842 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE ENTERING INTO OF A CABLE TELEVISION LICENSE AGREEMENT WITH QWEST BROADBAND SERVICES, INC., D/B/A CENTURYLINK, INC.

WHEREAS, the City is authorized to grant licenses for the use of the rights-of-way to construct and operate telecommunications systems and to otherwise regulate telecommunications systems within the City's boundaries, pursuant to Arizona Revised Statutes Secs. 9-581 et seq.; and

WHEREAS, the City finds that it would serve the public interest to grant the license to Qwest Broadband Services, Inc., d/b/a CenturyLink, Inc. on the terms and conditions set forth in the Cable Television License Agreement now on file with the City Clerk.

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

SECTION 1. That the City of Glendale hereby grants the Cable Television License Agreement to Qwest Broadband Services, Inc., d/b/a CenturyLink, Inc. in the annexed areas within the City of Glendale

SECTION 2. That the City Manager or her designee is hereby authorized to execute the Cable Television License Agreement with Qwest Broadband Services, Inc. d/b/a CenturyLink.

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

\_\_\_\_\_  
M A Y O R

ATTEST:

\_\_\_\_\_  
City Clerk (SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

REVIEWED BY:

\_\_\_\_\_  
City Manager  
l\_qwest broadband 2014

QWEST BROADBAND SERVICES, INC. D/B/A CENTURYLINK, INC.

CITY OF GLENDALE

CABLE TELEVISION LICENSE AGREEMENT

Effective July 1, 2014

## **TABLE OF CONTENTS [pagination not revised]**

### **Page**

1. Definitions .....	
2. Grant of Authority; Term .....	
3. License Fees .....	
4. City Channels .....	
5. Services to the City .....	
6. Required Service; System Design and Capacity .....	
7. Changes in Cable Technology .....	
8. Line Extension .....	
9. Service Drops .....	
10. Construction Requirements and Technical Standards .....	
11. Emergency Service .....	
12. Use of Streets and Public Ways .....	
13. Service Provisions .....	
14. Inspection of Records .....	
15. Insurance .....	
16. Letter of Credit .....	
17. Liquidated Damages .....	
18. Notice of Violation; Right to Cure or Respond .....	
19. Public Hearing .....	
20. [intentionally omitted] .....	



21. [intentionally omitted]	.....
22. Effect of Expiration, Revocation or Termination of License	.....
23. Transfers	.....
24. Controlling Authorities	.....
25. Licensee's Representations and Warranties	.....
26. Fees and Costs	.....
27. Confidentiality	.....
28. Conflict of Interest	.....
29. General Provisions	.....

## **CABLE TELEVISION LICENSE AGREEMENT**

This Cable Television License Agreement (the "Agreement" or "License") is made and entered into effective as of midnight the, by and between the City of Glendale (the "City") and Qwest Broadband Services, Inc. d/b/a CenturyLink, a Delaware corporation ("Licensee").

### **RECITALS**

- A. The City is authorized to grant, renew, deny, and terminate licenses for the installation, operation, and maintenance of Cable Systems and otherwise regulate Cable Services within the City boundaries by virtue of federal and state statutes, by the City's police powers, by its authority over its public rights-of-way, and by other City powers and authority.
- B. The City issued the Existing License to Qwest Broadband Services, Inc., which was effective at midnight on July 1, 1999, Licensee and the City desire to enter into a new license to provide Cable Services within the City to take effect upon the expiration of the Existing License.
- C. The City finds that it would serve the public interest to grant a license on the terms and conditions hereinafter set forth, and Licensee agrees to obtain a license under these conditions.

### **AGREEMENT**

In consideration of the foregoing recitals, which are incorporated herein by reference, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows.

1. **Definitions.** The definitions set forth in Chapter 10 of the Glendale City Code and/or any future amended section thereof, are applicable to this Agreement; provided that such amendments enacted or modified after the effective date of this Agreement shall be reasonable and not materially modify the terms of this Agreement. In addition, in this Agreement the following terms, phrases, words, abbreviations, and their derivations have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory, not merely directory. Words not defined herein shall be given their common and ordinary meaning. All references to days are to calendar days, unless otherwise specified.

1.1 "**Affiliate**" means any Person who owns or controls, is owned by or controlled by, or is under common ownership or control with Licensee.

1.2 "**Basic Service Tier**" has the meaning prescribed in A.R.S. § 9-506 meaning the cable service tier that includes (i) the transmission of local television broadcast channels and (ii) PEG channels required to be carried in the basic tier.

1.3. "Cable Act" means the Cable Communications Policy Act of 1984, as amended, including the Telecommunications Act of 1996.

1.4. "Cable Service" means the transmission to Subscribers of video programming or other programming services and Subscriber interaction, if any, that is required for the selection or use of the video programming or other programming services.

1.5. "Cable System" means a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Services, that includes video programming, and that is provided to multiple Subscribers within City, but such term does not include (a) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (b) a facility that serves Subscribers without using any public right-of-way; (c) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, except that such facility shall be considered a Cable System to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (d) an open video system that complies with 47 U.S.C. § 653; or (e) any facility of an electric utility used solely for operating its electric utility systems. Any reference to Licensee's Cable System refers to the Cable System as a whole or any part thereof. As used above, "interactive on-demand services" means a service providing video programming to Subscribers over switched networks on an on-demand, point-to-point basis, but does not include services providing video programming prescheduled by the programming provider.

1.6. "City Building" means a building that is both (a) occupied or owned by City and (b) used for municipal purposes.

1.7. "City Council" means the present governing body of City or any future body constituting the legislative body of City.

1.8. "City Manager" means the City Manager or the City Manager's designee.

1.9. "Competitor" means any Person entering into the Streets and Public Ways for the purpose of constructing or operating a Cable System, or for the purpose of providing Cable Service or video programming service to any part of the License Area, including by means of an "open video system" (as such term is defined in the Cable Act).

1.10. "Confidential Information" means any and all technical data, materials, reports, and other information owned by or developed by, or on behalf of Licensee and/or its Affiliates, any information that relates to the Cable System, and any and all financial data and information relating to Licensee's business, that Licensee discloses in writing, orally, visually, or through some other media, or that City learns or obtains through observation, analysis, compilation, or other study of such information, data, or knowledge, except any portion thereof that (a) is known to City at the time of the disclosure, as evidenced by its written records and was not acquired by City on a confidential basis; (b) is disclosed to City by a third party having a right to make such disclosure; (c) becomes published, or otherwise publicly known

through no fault of City; or (d) is independently developed by or for City without use of Confidential Information disclosed hereunder as evidenced by its written records.

1.11. "Effective Date" means midnight July 1, 2014.

1.12. "Existing License" means the Cable Television License Agreement dated July 1, 1999, by and between Qwest Broadband Services, Inc. and the City.

1.13. "FCC" means the Federal Communications Commission or its designated representative.

1.14. "Gross Revenues" means gross revenue as defined by Arizona law, A.R.S. § 9-505(6).

1.15. "License Area" means the current incorporated boundaries of City and any future annexed area.

1.16. "License Fee" means the fee set forth in Section 3 of this License.

1.17. "Living Unit" means a distinct address in the Qwest Corporation d/b/a CenturyLink network inventory. This includes, but is not limited to, single family homes, multi-dwelling units, and business locations.

1.18. "MDU" means any adjacent building(s) such as apartments under common ownership containing more than four dwelling units used as living quarters.

1.19. "Normal Business Hours" means those hours during which most similar businesses in the community are open to serve Subscribers.

1.20. "Normal Operating Conditions" means those service conditions that are within Licensee's control including, but not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System. Those conditions that are not within Licensee's control include, but are not limited to, natural disasters, civil disturbances, utility company power outages, telephone network outages, work stoppages and severe or unusual weather conditions.

1.21. "Person" means an individual, partnership, association, joint stock company, trust, corporation, limited liability company, or governmental entity.

1.22. "Remote Terminal" means a Digital Subscriber Line Access Multiplexer (DSLAM) capable of offering Cable Services to Subscribers.

1.23. "Street and Public Way" means only a street, road, highway, freeway, lane, alley, sidewalk, parkway, right-of-way, or drive that is owned by a public entity in fee or as to which a public easement has been dedicated for street purposes, and with respect to which, and to the extent that, City has a right to grant the use of the surface of, and space above and below in

connection with this License for the Cable System, or other compatible uses; provided, however, a requirement that Licensee also obtain a permit from another government agency or entity to use of street, road, highway, freeway, lane, alley, sidewalk, parkway, right-of-way, or drive does not mean that such street, road, highway, freeway, lane, alley, sidewalk, parkway, right-of-way, or drive is not a Street and Public Way.

1.24. "Standard Drop" means a facility of not more than four thousand (4,000) cable fee between a Subscriber's premises and a Remote Terminal . A Standard Drop involves only one outlet and standard materials. A Standard Drop does not include the following (the cost of which may be assessed directly to the Subscriber): (a) a wall fish; (b) custom installation work, including specific Subscriber-requested work that requires non-standard materials or cable routing that requires construction methods exceeding reasonable underground or aerial work; or (c) the cost of any equipment or construction modifications necessary to provide an adequate signal over the Standard Drop to the Subscriber's residence.

1.25. "Subscriber" means any Person lawfully receiving the Cable Services of Licensee's Cable System.

1.26. "Subscriber Complaint" means any written or oral complaint by a Subscriber to City that the Subscriber did not receive the Cable Service that the Subscriber requested consistent with the requirements of this License.

## **2. Grant of Authority; Term.**

2.1. The City hereby grants to a Licensee with (or including), the nonexclusive right and authority to operate a Cable System in the City and for that purpose to erect, install, solicit, construct, repair, replace, rebuild, reconstruct, maintain, and retain in, on, over, upon, across, and along any Streets and Public Ways such poles, wires, cable fiber optics, conductors, ducts, conduit, vaults, manholes, pedestals, amplifiers, appliances, attachments, power supplies, network reliability units, and other property or equipment as may be necessary or appurtenant to the Cable System; and, in addition, so to use, operate, and provide similar facilities or properties rented or leased from other Persons, including but not limited to any public utility or other entity licensed or permitted to do business in the City.

2.2. Licensee promises and guarantees, as a condition of exercising the privileges granted by this License, that any Affiliate of the Licensee directly involved in the offering of Cable Service in the City or directly involved in the management or operation of the Cable System in the City, will also comply with the obligations of this License. However, the parties acknowledge that Qwest Corporation ("QC"), an affiliate of Licensee, will pull permits and be primarily responsible for the construction and installation of the facilities in the public right of way, which will be utilized by Licensee to provide Cable Services and QC will own, operate and maintain all such facilities. Although QC must comply with all applicable federal, state, and local laws, regulations, codes, and construction standards, so long as QC does not provide Cable Service to Subscribers in the City, QC will not be subject to the terms and conditions contained in this License. QC's installation and maintenance of Facilities in the public right of way are

governed by applicable law. To the extent Licensee constructs and installs facilities in the public right of way, such installation will be subject to the terms and conditions of this License.

2.3. This License is subject to the provisions of Chapter 10 of the Glendale City Code. Licensee is required to comply with all of the provisions, Cable Television and Related Services and other applicable provisions of Chapter 10 and Chapter 32.5 of the Glendale City Code. Nothing in this Agreement requires Licensee to obtain a Fiber Optic License in connection with Facilities of its Cable System.

#### 2.4. Competitive Parity.

2.4.1. Licensee's right to use and occupy the Streets and Public Ways in the City for the purpose herein provided is not exclusive. However, the City agrees not to allow any person to enter into the Streets and Public Ways for the purpose of constructing or operating a Cable System, or for the purpose of providing Cable Service or video programming service to any part of the License Area, including by means of an "open video system" (as such term is defined in the Cable Act), without first obtaining a permit, license, authorization, or other agreement from the City or such other governmental entity then entitled to grant such permit, license, authorization, or other agreement.

2.4.2. The material provisions of the agreement under which any competitor is authorized to enter the Streets and Public Ways shall be reasonably comparable to those contained herein.

2.5. Prior Occupancy. Any privilege claimed under this License by Licensee in any Street and Public Way or other public property is subordinate to any (a) prior or subsequent lawful occupancy or use thereof by the City or any other governmental entity, (b) prior lawful occupancy or use thereof by any other Person, and (c) prior easements therein; provided, however, that nothing herein extinguishes or otherwise interferes with property rights established independently of this License.

2.6. Term. The grant of authority in this Agreement is for a term of fifteen (15) years, effective as of midnight on July 1, 2014, and ending at 11:59 p.m. on June 30, 2029. The Existing License, as extended, is superseded as of the Effective Date.

### 3. License Fees.

3.1. License Fee. Licensee shall pay to the City License Fees in an amount equal to five percent (5%) of Licensee's Gross Revenues during the term of this License. If after the Effective Date, Licensee enters into a cable license with any other city in Arizona that provides for a higher percentage of Licensee's revenues as license fees than five percent (5%) or includes more categories of revenues than set forth in this Agreement, Licensee shall notify City of such higher percentage or expanded revenue base. City, at its sole discretion, has the option to, as applicable: (i) increase the License Fee to a higher percentage rate; or (ii) include other revenue categories set forth in the agreement Licensee has with other entity located in the State of Arizona.

Licensee agrees to promptly, after council action, pay as its new license fee the higher percentage or include the additional revenue categories.

3.2. Reductions/Offsets/Credits. Licensee is entitled to reductions in payments of License Fees, including by retention of License Fees collected from Subscribers, as provided in Section 12.6 of this Agreement and Title 9 of Arizona Revised Statutes. These include:

3.2.1. Other than License Fees on Gross Revenues authorized pursuant to Title 9 of Arizona Revised Statutes and this Agreement, any amounts Licensee paid to the City during the prior quarter for rental, application, construction, permit, inspection, inconvenience and other fees and charges related to Licensee's use of the Streets and Public Ways.

3.2.2. As provided in A.R.S. § 9-506(E), Licensee is authorized to retain License Fees from its Subscribers as and in the amount set forth from time to time in agreement(s) between the City and Licensee for in-kind cable service or payments.

3.3. Payment of License Fees. The payment of License Fees shall be made pursuant to the provisions of Chapter 10 of the Glendale City Code.

3.4. License Fees Audit and Underpayment/Overpayment.

3.4.1. The City is authorized to inspect and audit the records of Licensee pursuant to Chapter 10 of the Glendale City Code. If a City audit shows overpayments, City shall pay Licensee the overpaid amount as provided in Article VI of the Glendale City Code. If Licensee determines in an internal audit that it overpaid License Fees, Licensee may not take any offset for such overpayment(s) against License Fees without notifying the City and proposing a commensurate schedule for recoupment from subsequent quarterly payments of License Fees, without interest. If a City audit or an internal audit shows any underpayment, Licensee shall pay any underpayment within thirty (30) days and interest shall apply at one and one half percent (1.5%) per month from the date the amount was due.

3.4.2. Within fifteen (15) days after notice from Licensee that it contests an audit determination of License Fees under this Section, the City shall schedule an administrative hearing before an individual then serving as a hearing officer pursuant to Article VI of the Glendale City Code. For purposes of this Agreement, the term "taxpayer" in Article VI is replaced with the word "Licensee." The Licensee may be heard in person or by its authorized representative at such hearing. Hearings shall be conducted informally as to the order of proceeding and presentation of evidence. The hearing officer shall admit evidence over hearsay objections where the offered evidence has substantial probative value and reliability. Further, copies of records and documents prepared in the ordinary course of business may be admitted, without objection as to foundation, but subject to argument as to weight, admissibility, and authenticity. Summary accounting records may be admitted subject to satisfactory proof of the reliability of the summaries. In all cases, the decision of the hearing officer shall be made solely upon substantial and reliable evidence. All expenses incurred in the hearing shall be paid by the party incurring the same. Within fifteen (15) days after the conclusion of such hearing, the City shall issue a determination. The determination is subject to all review and appeal provided by

applicable law. If there is no person designated or serving as a hearing officer pursuant to Article VI of the Glendale City Code, then the process established pursuant to Chapter 10 of the Glendale City Code will be used.

#### 4. City Channels.

4.1. City Channels. Licensee will provide the City the channel capacity for two (2) channels of educational or governmental access programming as required by federal and state law in the Basic Service Tier of the Cable System and two (2) channels of noncommercial governmental programming in the digital programming tier of the Cable System.

4.2. Government Channel. Licensee shall continue to make available in the Basic Service Tier at no charge to the City one (1) channel on the Cable System designated as a Government Channel to be used by City government officials and agencies. The Government Channel is for use by the City for non-commercial, informational programming regarding government activities and programs. If requested, Licensee shall make available the option for additional channels pursuant to Section 4.1 of this Agreement.

4.3. Education Channel. Licensee shall continue to make available in the Basic Service Tier at no cost to the City one (1) channel on the Cable System designated as an Education Channel. The Education Channel shall be used by the City for non-commercial, informational programming regarding educational activities and programs. If requested, Licensee shall make available the option for additional channels pursuant to Section 4.1 of this Agreement.

4.3.1. The operation of the Educational Access channel shall be the responsibility of the Educational Access Governing Board ("EAGB") or educational institution designated by the City to act as the EAGB which shall represent all elementary and secondary school districts, all colleges, and all private non-profit school systems as established by the Licensor. EAGB sets general policy on use of the educational access channel.

4.3.2. The executive committee, consistent with the rules and policies adopted by the EAGB, may arrange to utilize the facilities, equipment and personnel available for community programming to produce and program the educational access channel. These facilities, equipment and personnel shall be provided at cost to users approved by the EAGB or the executive committee.

#### 4.4. Digital Channels.

4.4.1. Public Safety Channel. Licensee shall continue to make available in the digital programming tier at no cost to the City one (1) Public Safety Channel for downstream use by the City fire/police departments. At no cost to the City, Licensee shall secure the audio and video portions of the signal delivered over the Public Safety Channel so that the signal may only be received by specially-equipped converters. If requested, Licensee shall make available the option for an additional channel pursuant to Section 4.1 of this Agreement.



4.4.2. Additional Digital Channel. Within one hundred twenty (120) days of written request by the City, Licensee shall make available in the digital programming tier at no cost to the City one (1) channel to be designated as a secured Government, Public Service or Education Channel for use by the City for non-commercial, informational programming regarding government or educational activities and programs. Until the City has given notice to Licensee pursuant to this Subsection, the provisions of Section 4.9 do not apply to this channel.

4.4.3. Converters. Any additional specially-equipped converters or additional secured transmission equipment that Licensee elects to provide for the existing secured Public Safety Channel or for any additional secured Government or Public Safety Channel shall be provided for at the expense of the City in a separate agreement between the City and Licensee for in-kind cable service or payments.

4.5. Point of Origin. The City Channels shall each originate from a studio designated by the City within the corporate limits of the City. Licensee shall establish the connection to the Cable System necessary for each of the City Channels to originate from this location at no cost to the City. Upon a change in location of a studio, City shall pay Licensee its reasonable costs of labor and materials to establish a new connection from the cable system to the studio. Licensee shall incur costs and expenses to provide, maintain and operate facilities and equipment of the cable television system, including facilities and equipment for signal carriage, processing, reformatting and interconnection:

a: To connect the cable television system, as it may be relocated from time to time, to transmit programming to and from existing locations of public, educational or governmental access facilities and to allow monitoring of access programming at the facilities; and

b: To transmit public, educational and governmental access channels to subscribers with the same prevailing quality, functionality and identification as other channels.

4.6. Maintenance of Equipment. Licensee shall provide at no charge to the City prompt and regular periodic maintenance and replacement of any cables, amplifiers, and other distribution equipment owned by Licensee and used for the City Channels. The City shall provide and operate and maintain at its expense all other equipment and facilities necessary for operation of the City Channels.

4.7. Downstream Programming from Another City or Town. If the City elects to receive downstream programming from another city or town above and beyond that they have in place at the execution of this License, the City shall pay all costs incurred by Licensee in providing for the City to receive such programming. The City must obtain the necessary consents from the city or town that originated the programming before Licensee takes any steps to provide the City with such programming.

4.8. Location of Channels. Licensee may, in its sole discretion, determine the tier and channel location of the City Channels and the method for delivering these channels over the Cable System; provided that any decision that changes the locations of City Channels locations will be made in consultation with the City, and Licensee will use its best efforts to give a

reasonable period of notice not less than ninety (90) days. Licensee will provide at no charge to the City notice of the changed location channel in its printed or online materials as designated in the Subscriber Service Standards in Chapter 10 of the Glendale City Code within the time periods specified for notice to Subscribers.

4.9. Unused Capacity. Licensee may utilize unused capacity on the City Channels for any purpose under rules and procedures that the City shall establish. Licensee and the City will annually review the use of the City Channels and, upon mutual agreement between Licensee and the City, the City may relinquish one or more of the City Channels to Licensee for use as Licensee sees fit.

4.10. Mosaic. Licensee, at its sole discretion, may elect to utilize a mosaic, a collection of channels displayed on a single TV screen, to display Access Channels.

4.10. On Demand Content. City and Licensee have reached an understanding that Licensee and the City agree to work in good faith to attempt to reach agreement on additional in-kind services as permitted by A.R.S. § 9-506(E) on an arrangement in which Licensee will place reasonable amounts of educational or governmental content (as determined by Licensee) on Licensee's network in the form of "on demand" programming. The City and Licensee agree that the agreement between them that may ensue is neither part of, nor entered into as a condition of City issuing or Licensee being issued, this License.

## 5. Services to the City.

5.1. Services to City. If and when any of the City facilities are within 4,000 feet of an activated Remote Terminal capable of providing Cable Service, Licensee shall provide at its own expense and subject to offset against the License Fee, full Basic Digital Cable Service to any existing or future building and/or facility.

Upon request by the City Manager, Licensee shall provide full Basic Digital Service at no monthly charge to the City offices and buildings of the City and public schools provided that no other provider will also be providing Cable Service to that location and that the office or building is within 4,000 feet of an activated Remote Terminal capable of providing Cable Service. Upon written request from the City Manager, at no charge to the City, Licensee shall provide the full Basic Digital Service tier to future City offices, buildings and public schools, provided that no other provider will also be providing Cable Service to those locations and that the office or building or school is within 4,000 feet of an activated Remote Terminal capable of providing Cable Service, with the exception of providing these services for monitoring the quality of the Cities Government Channels These services shall continue to be provided at no cost to the City and installed in a timely manner.

Absent a showing by Licensee to City Manager of unusual circumstances, which may include street crossing or plant extensions, any service to City offices or buildings shall be accomplished within ten (10) days of the written request for service or, if later in the case of a City office of building not owned or leased by the City, after owner's execution of any necessary easement or lease documents.

6. **Required Service; System Design and Capacity.**

6.1. **System Design.** Licensee's Cable Service is delivered over fiber and/or copper facilities and is an Ethernet-based, switched digital service.

6.2. **System Capacity.** The channel capacity of the Cable System is expandable as future needs arise. At a minimum, system capacity of 750 MHz must be available for signal transmission on the Cable System.

7. **Changes in Cable Technology.**

7.1. **Periodic Meetings.** The City and Licensee will meet periodically but at least every three (3) years or upon the written request of either to discuss changes in cable television laws, regulations, technology, competing services, the needs of the community, and other factors impacting cable television. As a result of these discussions, this License may be modified by mutual agreement of the City and Licensee to respond to a change in laws, regulations, technology, competing services, the needs of the community, or other factors affecting cable television.

7.2. **Certain Conditions.** If any of the following conditions occur, and upon written request of either Licensee or the City, the City Manager and Licensee will meet and discuss in good faith the terms of a mutually agreeable amendment to this License:

7.2.1. Cable Service similar to the Cable Service offered by Licensee is provided by any Competitor that is not subject to similar licensing requirements of the City; or

7.2.2. Any other significant event occurs, including but not limited to changes of federal or state law or a final non-appealable order or judgment by a court of competent jurisdiction, which either the City or Licensee believes may affect the current terms and conditions of this License.

7.3. **Purpose.** The purpose of the meetings set forth in this Section is to use best efforts to reach mutually acceptable agreement for recommendation to the City Council for proposed action on amendments to this License to relieve the City or Licensee from any commercial impracticability that arises during the term of this License. This Section 7 is intended to facilitate a process whereby the parties may reach a mutually acceptable agreement to amend this License, but does not require that this License be amended.

8. **Line Extension.**

8.1. Whenever Licensee receives a request for service from a potential Subscriber within the City and where there are at least 250 Living Units located within four thousand (4000) cable feet of a potential Remote Terminal site, Licensee shall extend its Cable System to such potential Subscriber(s) at no cost to said potential Subscriber(s); provided that the provisions of this section 8 shall only apply after the first date by which Licensee is providing Cable Service to more than fifty percent (50%) of all Subscribers receiving cable service within the City.

8.2. When the Licensee meets the threshold in Section 8.1 above, the parties will negotiate a reasonable timeframe to complete construction to all Subscribers, provided that in no event shall such construction schedule exceed five (5) years.

9. **Service Drops.**

9.1. **Standard Drop.** Licensee shall make Cable Service available to any single family residence or any commercial establishment within the City at the standard connection charge if the connection requires a Standard Drop.

9.2. **Bulk Billing.** Licensee may offer bulk billing service, but may not require a bulk billing agreement as a condition of providing service, when the Person requesting service pays to Licensee the applicable amount(s) set forth in Section 9.2 above.

10. **Construction Requirements and Technical Standards.** Licensee shall construct, install, operate, and maintain its system in a manner such that it operates at all times consistent with all laws, the construction standards of the City, and the FCC Rules and Regulations, Part 76 SubPart K (Technical Standards), as amended from time to time. In addition, the City may at any time conduct independent measurements of the Cable System.

11. **Emergency Service.** In accordance with the provisions of FCC Rules and Regulations Part 11, SubPart D, Section 11.51(h)(I), as they may from time to time be amended, Licensee shall install and maintain an Emergency Alert System and shall transmit all Emergency Act Notifications and Emergency Act Terminations relating to local and state-wide situations as may be designated to be an emergency by the Local Primary, the State Primary and/or the State Emergency Operations Center, as those authorities are identified and defined within FCC Rules and Regulations, Part 11.

12. **Use of Streets and Public Ways.**

12.1. **Location of Licensee's Property.** Any poles, wires, cable lines, conduits, or other properties of Licensee to be constructed or installed in Streets and Public Ways shall be so constructed or installed only at such locations and in such manner approved by the City consistent with the City's technical and permitting regulations. Licensee or its authorized contractors will obtain any required permits before any physical work is done in the City's rights of- way or on City-owned property.

12.2. **City Authority to Regulate Construction.** City has the authority to regulate the time or location of construction to assure and preserve effective traffic flow, prevent hazardous road conditions, and to minimize notice impacts or any other public purpose.

12.3. **Undergrounding.**

12.3.1. Licensee shall be required to place all of its new Facilities underground. Licensee may not move any underground Facilities to poles. Licensee may not install any poles. If installation underground makes it not commercially feasible for Licensee to comply with its line

extension obligations under Section 8, Licensee is to that extent relieved of its obligations under Section 8.

12.3.2. Subject to later undergrounding as required in this Section 12.3, Licensee may replace existing aerial Facilities with Facilities that are no larger in cross-section than the existing aerial Facilities and for which Licensee shall obtain all applicable necessary construction permits. Nothing contained in this Section 12.3 requires Licensee to construct, operate, and maintain underground any ground-mounted appurtenances such as Subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, stand-by and other power supplies, network reliability units, pedestals, or other related equipment.

12.3.2.1. Where aerial Facilities of other utilities in the same span are placed underground, Licensee shall concurrently (or earlier) place its existing aerial Facilities underground.

12.3.2.2. Such undergrounding shall be at Licensee's own expense, except to the extent that (i) public funds are designated specifically to compensate Licensee therefor or (ii) third-party (such as but not limited to a developer) funds are made available to compensate Licensee therefor. That one or more other utilities with prior existing rights to the Streets and Public Ways are eligible for and granted public funds because they hold prior rights does not entitle Licensee to specific designation of public funds for changes required by undergrounding.

12.3.3. All new underground wires or cable placed by Licensee after the Effective Date shall be placed in conduit per Glendale city code 32.9, except for Standard Drops (and any extensions thereof). A Standard Drop emplaced under a previously paved street shall be installed in conduit.

12.4. Changes Required by Public Improvements. Licensee shall comply with Chapter 10 of the Glendale City Code. Any removal or relocation made thereunder shall be paid for by Licensee, except to the extent that (i) public funds are designated specifically to compensate Licensee therefor or (ii) third-party (such as but not limited to a developer) funds are made available to compensate Licensee therefor. That one or more other utilities with prior existing rights to the Streets and Public Ways are eligible for and granted public funds because they hold prior rights does not entitle Licensee to specific designation of public funds for changes required by public improvements.

12.5. Street Repair. If Licensee causes damage to pavement, sidewalks, driveways, landscaping, or other property during construction, installation, or repair of its Facilities, Licensee or its authorized agent shall replace and restore such places in compliance with Glendale City Code Chapter 10 and/or any future amended section thereof.

12.6. Offset or Credit. If the City imposes requirements for repairing and restoring damage to pavement, sidewalks, driveways, landscaping or other property caused by Licensee that Licensee believes exceed the standard specified in Section 12.5, Licensee may assert an offset or credit with respect to License Fees for the increased cost of repair or restoration that is attributable to the excessive standard only if:

a: Licensee has given the City written notice identifying the specific requirement that exceeds the standard specified in Section 12.5 for which it asserts an offset or credit and any excess cost for which Licensee asserts an offset or credit was incurred no more than one hundred eighty (180) days before Licensee gave the City written notice identifying the specific requirement that exceeds the standard specified in Section 12.5;  
and

b: Licensee has given the City written notice identifying the specific requirement that exceeds the standard specified in Section 12.5 no later than the first time Licensee submits an itemized report to the City under Chapter 10 of the Glendale City Code identifying an offset associated with that specific requirement.

#### 12.7. Permitting.

12.7.1. For all permits applied for by Licensee, the City agrees to act timely and in any event in accordance with any timelines established by the City for permit issuance. Where changes are identified by Licensee after the issuance of a permit and during the construction phase, Licensee shall apply for a permit revision if required by the City.

12.7.2. On application, the City shall grant Licensee an Annual Maintenance Permit ("AMP"). The AMP shall authorize Licensee access to its existing Facilities and shall be on parity with permits granted to other utilities and shall be negotiated on an annual basis between Licensee and the City consistent with the City of Glendale Utility Manual.

12.7.3. On application, the City shall grant Licensee an Annual Emergency Permit ("AEP"). The AEP shall authorize Licensee emergency access to its existing Facilities and shall be on parity with permits issued to other utilities and shall be negotiated on an annual basis between Licensee and the City consistent with the City of Glendale Utility Permit Manual.

#### 13. Service Provisions.

13.1. Service Standards. Licensee shall at all times satisfy FCC customer service standards, as amended from time to time by the FCC, and comply with Chapter 10 of the Glendale City Code. In accepting this License, Licensee accepts all customer service provisions in Chapter 10 of the Glendale City Code in effect at the time this License is granted and as subsequently amended by the City pursuant to its governmental powers, police powers and taxing authority.

13.2. Complaint Procedures. Licensee shall comply with the following Subscriber Complaint procedures.

13.2.1. Licensee shall ensure that all Subscribers and general citizens have recourse to a satisfactory process to submit complaints. Licensee shall respond to all Subscriber Complaints within a reasonable time. Licensee shall follow a written internal appeal procedure for disputes over Subscriber Complaints.

13.2.2. Licensee shall establish and maintain a written log listing all Subscriber Complaints. The written log shall include the name and telephone number, if given, of the Person making the complaint and Licensee's action on the complaint. The log shall be maintained by Licensee for three (3) years and, to the extent permitted by federal law, shall be available to the City Manager and the public for inspection upon request during Licensee's Normal Business Hours.

13.2.3. Licensee shall provide, in writing, upon request of the City Manager, details from its written log relating to any Subscriber Complaint.

13.2.4. Licensee shall timely reply to the City about any general citizen complaint that the City refers to Licensee.

### 13.3. Subscriber Solicitation Procedures.

13.3.1. All Licensee personnel, agents, and representatives, including subcontractors, shall wear a cable uniform or clearly display a photo-identification badge when acting on behalf of Licensee in the City.

13.3.2. Licensee shall afford each Subscriber of the Cable System a three (3)-day right of rescission for ordering installation of Cable Service from the Cable System provided that such right of rescission will end when physical installation of Cable System equipment on such Subscriber's premises begins.

13.4. Rights of Individuals. Licensee may not deny Cable Service, deny access, or otherwise discriminate against Subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, sex, age, or disability; provided, however, that Licensee may not be required to provide Cable Services to any Person who does not pay the applicable line extension connection fee, fees for drops in excess of Standard Drops, and/or Cable Service charge(s). Licensee shall comply at all times with all other applicable federal, state, and local laws and regulations, as amended from time to time, relating to nondiscrimination.

## 14. Inspection of Records.

14.1. Inspection of Records. At all reasonable times and places, as related to determination of License compliance, Licensee shall permit any duly authorized representative of the City to examine any and all financial records kept or maintained by Licensee or under its control that reasonably relate to Licensee's accurate payment of License Fees.

14.2. Scope of Information. Unless otherwise specified, all of Licensee's recordkeeping and disclosure obligations include and are limited to information that reasonably relate to Licensee's accurate payment of License Fees. This does not include personally identifiable Subscriber information without the Subscriber's consent in violation of Section 631 of the Cable Communications Policy Act of 1984, as amended, 47 U.S.C. § 551.

14.3. **Maps.** Licensee shall at all times make and keep full and complete plans and records showing the exact location of all Cable System equipment installed or in use in Streets and Public Ways, and other places in the City and make them available to the City for review upon request. Upon request, Licensee shall provide the City Manager route maps or sets of maps drawn to scale, showing the location of Licensee's underground and above ground Facilities. Upon request, the City and Licensee shall provide the other with route maps or sets of maps drawn to scale, showing the location of their respective underground and above ground Facilities.

15. **Insurance.** Licensee shall maintain in full force and effect, at no cost and expense to the City, during the term of this License, commercial general liability insurance in the amount of five million dollars (\$5,000,000) combined single limit for bodily injury and property damage. The City shall be designated as an additional insured. Such insurance will not be cancelable except upon thirty (30) days prior written notice to the City. Upon written request, Licensee shall provide a certificate of insurance showing evidence of the coverage required by this Section. Licensee may self-insure the above-described policy coverages if Licensee or its parent is of sufficient financial standing to provide such insurance.

16. **Letter of Credit.**

16.1. **Amount; Purpose.** Within thirty (30) days after the effective date of this License, Licensee shall deposit with the City an irrevocable letter of credit in an amount not to exceed forty thousand dollars (\$40,000) (replenishable as specified in Section 16.3 below) issued by a federally insured commercial lending institution. The form and substance of said letter of credit will be used to assure (a) the faithful performance by Licensee of all provisions of this License; (b) compliance with all orders, permits, and directions of any Department of the City having jurisdiction over Licensee's acts or defaults under this License; and (c) Licensee's payment of any penalties, liquidated damages, claims, liens, and taxes due to the City that arise by reason of the construction, operation, or maintenance of the Cable System, including cost of removal or abandonment of any of Licensee's property.

16.2. **Drawing on Letter of Credit.** The letter of credit may be drawn upon by the City by presentation of a draft at sight on the lending institution, accompanied by a written certificate signed by the City Manager certifying that Licensee has been found, under Sections 19 through 22 below, to have failed to comply with this License, stating the nature of noncompliance, and stating the amount being drawn. The rights reserved to the City with respect to the letter of credit are in addition to all other rights of the City, whether reserved by this License or authorized by law, and no action proceeding against a letter of credit will affect any other right the City may have.

16.3. **Replenishing.** The letter of credit shall be structured in such a manner so that if the City at any time draws upon the letter of credit, upon notice to Licensee by the issuing lending institution, Licensee shall immediately increase the amount of available credit by the amount necessary to replenish that portion of the available credit exhausted by the honoring of the City's draft; provided, however the maximum amount available to be drawn on this letter of credit for anyone event shall not exceed forty thousand dollars (\$40,000). The intent of this Section is to



make available to the City at all times a letter of credit in the amount of forty thousand dollars (\$40,000).

17. **Liquidated Damages.** In accordance with Section 10-92 of the Glendale City Code, Licensee agrees to the liquidated damages set forth below and chargeable to the letter of credit for the following:

1. Failure to provide a cable connection in a line extension area within the time(s) set forth in this License - fifty dollars (\$50) a day;

2. Failure to properly restore the Streets and Public Ways or to correct related violations of specifications, code, or standards after having been notified to correct such defects - six hundred dollars (\$600) a day;

3. Failure to comply with Subscriber service standards as required by this License - one hundred fifty dollars (\$100) a day;

4. Failure to test and report on the performance of the Cable System as required by this License - one hundred fifty dollars (\$100) a day; and

5. Failure to cure any other violation of this License, following notice and an opportunity to cure - one hundred fifty dollars (\$150) per occurrence.

18. **Notice of Violation; Right to Cure or Respond.** In the event that the City believes that Licensee has not complied with the terms of this License, the City shall informally discuss the matter with Licensee. If these discussions do not lead to resolution of the issue, the City shall notify Licensee in writing of the exact nature of the alleged noncompliance. Licensee shall have thirty (30) days from receipt of the notice of violation: (a) to respond to the City, contesting the assertion of noncompliance; (b) to cure such default; or (c) if, by the nature of default, such default cannot be cured within the thirty (30)-day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.

19. **Public Hearing.** If Licensee fails to respond to the notice described in Section 18 pursuant to the procedures set forth therein, or if the alleged default is not cured within thirty (30) days after the date projected pursuant to Section 18(c) above, if the City intends to continue its assertion of, and investigation into, the alleged default, then the City shall schedule an informal public hearing to investigate the default and thereafter to proceed under the respective terms and conditions of Glendale City Code Sections 10-91 (revocation), 10-92 (liquidated damages) or 10-93 (underpayment of license fees). The City shall provide Licensee at least ten (10) days' prior written notice of such informal hearing, which notice shall specify the time, place and purpose of such hearing. At any subsequent hearing that the City elects to pursue under Sections 10-91 through 10-93, Licensee shall be afforded full due process, including without limitation, an opportunity to be heard, to present evidence, to require the production of evidence, to question witnesses, and to obtain a transcript of the proceeding.

20 & 21 [intentionally omitted]

**22. Effect of Expiration, Revocation or Termination of License.**

22.1. Continuity of Service. It is the right of all Subscribers to continue receiving Cable Service as long as their financial and other obligations to Licensee are honored. If this License expires or terminates, Licensee shall cooperate with the City to ensure continuity of Cable Service to all Subscribers for a period not to exceed ninety (90) days. Said period may be extended by written agreement between the City and Licensee. During such period, Licensee shall be entitled to the revenues for operating the Cable System.

22.2. Other Services. Upon expiration, revocation, or termination of this License for any reason, Licensee shall have one hundred eighty (180) days from the date of expiration, revocation, or termination to enter into good faith negotiations with the City or other governmental authority to obtain a license, permit, or other approval or agreement that may then lawfully be required in order to allow Licensee to continue using Licensee's Facilities in the Streets and Public Ways for any lawful service other than Cable Service that Licensee may then provide over its Facilities in the License Area.

22.3. Holding Over. In any circumstance whereby Licensee would continue to occupy the Streets and Public Ways after the expiration of this Agreement, such holding over shall be deemed to operate as a renewal or extension of this Agreement on a month-to-month basis that may be terminated at any time by the City upon sixty (60) days' written notice to Licensee, or by Licensee upon sixty (60) days' written notice to the City.

**23. Transfers.**

23.1. Prior Consent. Except as otherwise provided in Chapter 10 of the Glendale City Code and as set forth in Section 23.2, Licensee's right, title, or interest in this License may not be sold, transferred, assigned, or otherwise encumbered. Notwithstanding Chapter 10, no consent of the City is required for a (a) transfer to an Affiliate of Licensee or (b) transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of Licensee in the License or Cable System in order to secure indebtedness.

23.2. Notice. Within thirty (30) days after receiving a request for consent to a transfer for which City consent is required, City shall notify Licensee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If City has not taken action on Licensee's request for transfer within one hundred twenty days after receiving such request, consent by City will be deemed given.

23.3 Grant, Rent, or Lease. As long as a grant, rent, or lease of all or a portion of the Cable System does not amount to a transfer, Licensee in the normal course of providing Cable Services or other telecommunication services may grant, rent, or lease use of the Cable System to other Persons. Nonetheless, City shall not be prevented from imposing on such Persons additional conditions authorized by applicable law, including additional compensation and conditions for use of the Streets and Public Ways for purposes other than providing Cable

Services. Any such use shall be restricted to and consistent with such uses as Licensee is authorized in this License or under other applicable law. Any such use shall be in compliance with applicable federal and state law. No such grant, lease, or rent by Licensee will, however, relieve Licensee of any requirement or obligation under this License as to its use of the Streets and Public Ways.

24. **Controlling Authorities.** Licensee agrees to comply with the terms of any lawfully adopted generally applicable City ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits to or expanding the obligations placed upon Licensee that are contained in this License. In the event of a conflict between any ordinance or Glendale City Code provision and this License, this License shall control.

25. **Licensee's Representations and Warranties.**

25.1. **Authority.** Licensee represents and warrants that it has the power and authority to enter into this License by and through the representative who has signed this License on its behalf, and that it has the power and ability to do all the acts required of it by this License.

25.2. **Misrepresentation.** Licensee has not misrepresented or omitted material facts, has not accepted this License with intent to act contrary to the provisions herein, and represents and warrants that, as long as it operates the Cable System, it will be bound by the terms and conditions of this License or a subsequently issued license.

25.3. **Attorneys.** Licensee further acknowledges that it was represented throughout the negotiations of this License by its own attorneys and had opportunity to consult with its own attorneys about its rights and obligations regarding this License.

26. **Fees and Costs.** Except as otherwise agreed by the parties, the prevailing party in any adjudicated dispute relating to this Agreement is entitled to an award of reasonable attorney's fees, expert witness fees and costs including, as applicable, arbitrator fees.

27. **Confidentiality.** This Agreement and any information obtained between the parties during its term, are subject to the Arizona Public Records Law, A.R.S. § 39-121 et seq. The City will provide notice as promptly as practical to Licensee of any public records request made which includes Confidential Information provided to the City. Licensee shall have five (5) business days to obtain relief in the form of an order from the Maricopa County Superior Court or, only in a case where a question of federal law is presented, the United States District Court for the District of Arizona setting forth what Confidential Information is not subject to disclosure pursuant to the Arizona Public Records Law or all Information provided by Licensee including Confidential Information will be disclosed without liability or obligation by the City. The City will not initiate, support, represent or defend, or be responsible any legal action to prevent disclosure of any Confidential Information or other information provided by owner whether marked "Confidential" or not. Nor will City be liable for attorneys' fees and/or any other costs or expenses of any nature whatsoever in directly or indirectly asserting or directly or indirectly defending the right of Licensee to keep any Confidential Information from public disclosure pursuant to the Arizona Public Records Law.

28. **Conflict of Interest.** Licensee acknowledges that this License is subject to A.R.S. § 38-511.

29. **General Provisions.**

29.1. **Filings.** When not otherwise prescribed herein, all matters that this License requires to be filed with the City shall be filed with the office of the City Clerk.

29.2. **Force Majeure.**

29.2.1. Licensee shall not be held in default under, or in noncompliance with, the provisions of this License, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation, or revocation of this License) where such alleged noncompliance or default occurred or was caused by an act of God, an act or omission of governmental military or civilian authority, strike or lockout, riot, epidemic or quarantine, war, earthquake, fire, flood, tidal wave, unusually severe rain, wind, or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, terrorist acts, governmental, administrative or judicial order or regulation or other circumstances that could not have been avoided through Licensee's exercise of reasonable care, prudence and diligence. This provision includes work delays caused by waiting for utility providers to service or monitor their own above-ground or underground facilities to which Licensee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

29.2.2. Furthermore, the parties hereby agree that it is not the City's intention to subject Licensee to penalties, fines, forfeitures, or revocation of the License for so-called "technical" breach(es) or violation(s) of this License, which include but are not limited to the following: (i) in instances or for matters where a violation or a breach by Licensee of the License was good faith error that resulted in no or minimal negative impact on the Subscribers within the License Area or (ii) where strict performance with the terms of the License would result in practical difficulties and hardship to Licensee that outweigh the benefit to be derived by the City and/or Subscribers.

29.3. **Governing Law; Venue.** This License is subject to, and shall be governed by, all requirements of the Cable Act as amended from time to time the provisions of, A. R. S. §§ 9-505 through 9-510, as amended from time to time, and by other federal and state laws and regulations governing cable communications as amended from time to time. In a conflict between the terms and conditions of this License and the terms and conditions on which the City can grant a license, federal and state law shall control. Proper venue is in the Superior Court of Maricopa County or the United States District Court for the District of Arizona.

29.4. **Amendments.** This License may be modified only through a written amendment executed by authorized persons for both parties. Any such changes, including unauthorized written amendments, shall be void and without effect.

29.5. Severability. If any Section, sentence, paragraph, term, or provision of this License or any ordinance, regulation, law, or document incorporated herein by reference is held to be illegal, invalid, unconstitutional, or unenforceable, by the decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions hereof all of which shall remain in full force and effect for the term of this License.

29.6. Notice. Unless otherwise provided for in this License, all notices to be given hereunder shall be given in writing and may be hand delivered or given by certified first class mail, postage prepaid addressed to the parties at the addresses set forth below. Such notices will be deemed served and effective when delivered to the designated persons listed below during ordinary business hours or on the date of delivery by U.S. Mail registered or certified return receipt requested.

To Licensee:	Qwest Broadband Services, Inc. d/b/a CenturyLink 1801 California Street 10 <sup>th</sup> Fl. Denver, CO 80202 Attn: Public Policy
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With a copy, which is not notice, to:	Qwest Broadband Services, Inc. d/b/a CenturyLink 20 East Thomas Rd., 1 <sup>st</sup> Fl. Phoenix, AZ 85012
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To the City:	City of Glendale 5850 West Glendale Avenue Glendale, Arizona 85301 Attn: City Manager
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With a copy, which is not notice, to:	City of Glendale 5850 West Glendale Avenue Glendale, Arizona 85301 Attn: City Attorney
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29.7. Headings. The headings contained herein are intended solely to facilitate the reading thereof. Such headings shall not affect the meaning or interpretation of the text herein.

29.8. Integration; Acquired Licenses. This License constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreement, understanding, negotiation, drafts, discussion outlines, correspondence, memoranda, or otherwise regarding the subject matter hereof. This License hereby preempts and cancels any other license agreements granted by the City that are acquired by Licensee through the purchase or acquisition of other Cable Systems and/or cable operators. Upon completion of an acquisition the terms of this License shall govern Licensee's newly acquired Cable System(s) or cable operation(s).

IN WITNESS WHEREOF, the parties have executed this License on the dates below to be effective as of the Effective Date.

CITY OF GLENDALE

By: \_\_\_\_\_  
Brenda S. Fischer, City Manager

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Pamela Hanna, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael D. Bailey, City Attorney

QWEST BROADBAND SERVICES, INC. D/B/A  
CENTURYLINK

By: \_\_\_\_\_  
R. Steven Davis  
Exec. VP Public Policy

Date: \_\_\_\_\_



## Legislation Description

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**File #: 14-053, Version: 1**

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### **ONLINE TRAVEL TAXATION LITIGATION COMMON INTEREST AGREEMENT AMENDMENT**

Staff Contact: Michael Bailey, City Attorney

#### **Purpose and Recommended Action**

This is a request for City Council to waive reading beyond the title and authorize the City Attorney to enter into an Amendment to the Common Interest Agreement with the cities of Apache Junction, Chandler, Flagstaff, Mesa, Nogales, Peoria, Phoenix, Prescott, Scottsdale, Tempe and Tucson ("Parties") relating to litigation against online travel companies in relation to the underpayment of tax assessments.

#### **Background**

In 2010 a Common Interest Agreement was entered into by a number of Arizona cities and towns, including Glendale, to share confidential and privileged information and documents, and share the burdens, expenses and costs of pursuing tax assessments against the following on-line travel companies (OTCs): Expedia, Priceline.com, Orbitz, Worldwide and Travelocity.com. Holm Wright Hyde & Hays PLC was engaged to pursue this matter on a contingency basis on behalf of the various Arizona cities.

Under the current contract the cities and towns are not responsible for litigation costs in the event of loss. However, cities and towns are still liable for paying attorney's fees that may be awarded to the OTCs. The proposed amendment to the common interest agreement provides that cities and towns will split any attorneys' fees and costs that may be awarded to the OTCs, if they prevail. The proportion will be the same as what the cities and towns would use to divide any recovery. Glendale's share is approximately 1%. Currently our share of the recovery is projected to be about \$76,000.

#### **Previous Related Council Action**

On April 23, 2013 the Glendale City Council adopted Resolution No. 4667 New Series and authorized the entering into of a Common Interest Agreement with various valley cities to bring litigation against online travel companies in relation to the underpayment of tax assessments.

#### **Community Benefit/Public Involvement**

Entering into the Amendment to the Common Interest Agreement and continuing to participate in the multijurisdictional lawsuit would allow the City of Glendale the possibility of recouping underpaid municipal privilege taxes. Additionally, a successful conclusion to the litigation could require that the online travel companies pay the appropriate municipal privilege taxes going forward.

#### **Budget and Financial Impacts**

If the on-line travel companies were to prevail the City could expect to pay approximately 1% of any attorneys' fees and costs expended by the companies. That amount can't be estimated right now however it would be de minimis. Any fees awarded against the City would be paid from the License/Collection - Professional and Contractual Fund Number 11340-518200.

Capital Expense? No

Budgeted? No

Requesting Budget or Appropriation Transfer? No



RESOLUTION NO. 4843 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF A COMMON INTEREST AGREEMENT AMENDMENT WITH THE CITIES OF APACHE JUNCTION, CHANDLER, FLAGSTAFF, MESA, NOGALES, PEORIA, PHOENIX, PRESCOTT, SCOTTSDALE, TEMPE AND TUCSON RELATING TO JOINT LEGAL COUNSEL FOR COMMON LITIGATION IN THE MATTER OF TAX ASSESSMENTS AGAINST ON-LINE TRAVEL COMPANIES.

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 Common Interest Agreement Amendment with the cities of Apache Junction, Chandler, Flagstaff, Mesa, Nogales, Peoria, Phoenix, Prescott, Scottsdale, Tempe and Tucson relating to joint legal counsel for common litigation in the matter of tax assessments against on-line travel companies 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 City Attorney and the City Clerk be authorized and directed to execute and deliver any and all necessary documents on behalf of the City of Glendale.

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

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
City Clerk (SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

REVIEWED BY:

\_\_\_\_\_  
City Manager

## COMMON INTEREST AGREEMENT AMENDMENT

This Common Interest Agreement Amendment (“Amendment”) is entered into by and among the undersigned cities (“Cities”) in the matter of tax assessments against the following online travel companies (“OTCs”): Expedia, Inc.; Hotels.com, LP; Hotwire, Inc.; Priceline.com, Inc. (and affiliate Travelweb LLC); Orbitz Worldwide, Inc. (and affiliated entities); and Travelocity.com, LP (collectively “OTCs”). This Amendment modifies the Cities’ Common Interest Agreement as set forth below.

### RECITALS

A. The Cities executed the original common interests agreement, dated March 17, 2010, which recited the Cities’ intent to “shar[e] the burdens, expenses, and costs associated with litigation” (p. 1).

B. The Cities awarded Holm Wright Hyde & Hays PLC the contract to represent the Cities to assist in collecting unpaid taxes from the OTCs. Under the contract, the Cities are not responsible for litigation costs in the event of loss (p. 14, § 3), but the Cities are still liable for paying attorneys’ fees awarded to the OTCs.

C. The Cities desire to split proportionately (based on each City’s pro rata share of the assessments) all attorneys’ fees, if any, awarded to the OTCs (if they prevail). This proportionate split will be the same as the Cities would divide recovery and litigation costs if the Cities succeeded in their collection efforts.

D. The Cities’ respective attorneys are authorized to execute this Amendment on behalf of their respective Cities. Under § 11 of the Common Interest Agreement, the Cities may execute this Amendment in counterparts, with all counterparts constituting one agreement and each deemed an original.

Now, therefore, in consideration of the Cities’ mutual promises, the Cities amend the common interest agreement by adding a new Section 12.

12. Cost Sharing. If the Cities are successful in collecting unpaid taxes from the OTCs, then after paying Holm Wright’s fee, the Cities agree to split the litigation costs advanced by Holm Wright proportionately based on their assessments against the OTCs. The Cities will split and share the remaining recovery in proportion to each City’s assessment compared to all Cities’ assessments against the OTCs.

Common Interest Agreement Amendment

August 1, 2014

Page 2

If the OTCs prevail and the hearing officer or court awards them attorneys' fees against the Cities, the Cities will split and bear the OTCs' attorneys' fees in the same manner (in proportion to each City's assessment, compared to all Cities' assessments against the OTCs), not to exceed each City's statutory maximum.

DATED: August 1, 2014

City of Apache Junction

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

City of Flagstaff

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

City of Mesa

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

City of Peoria

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

City of Chandler

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

City of Glendale

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

City of Nogales

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

City of Phoenix

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

City of Prescott

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

City of Tempe

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

City of Scottsdale

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

City of Tucson

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_



## Legislation Description

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**File #:** 14-056, **Version:** 1

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**AUTHORIZATION TO ACCEPT THE 2014 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM FUNDING AND ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH MARICOPA COUNTY**

Staff Contact: Debora Black, Police Chief

**Purpose and Recommended Action**

This is a request for City Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to accept the 2014 Edward Byrne Memorial Justice Assistance Grant (JAG) program funding in the approximate amount of \$94,864, and enter into a memorandum of understanding with Maricopa County.

**Background**

Glendale Police Department (GPD) has accepted funding from the Edward Byrne Memorial JAG program annually since 2005. In honor of New York Police Officer Byrne, who died in the line of duty, a major U.S. Department of Justice initiative was titled the Edward Byrne Memorial Justice Assistance Grant Program. The Department's Bureau of Justice Assistance administers this program, which allows state and local governments to support a broad range of activities to prevent and control crime, and to improve the justice system. It has been nearly 20 years since state and local law enforcement first began applying for the program named after this young fallen hero.

This grant funding is available to Arizona state, local, and tribal efforts for use in preventing or reducing crime and violence. Maricopa County serves as the fiscal agent for this pass-through grant. The amount awarded to each city is based on the population and crime statistics of the community.

**Analysis**

If approved, this grant funding will be used toward field reporting software to enhance the current Computer Aided Dispatch (CAD) and Records Management System (RMS). The CAD and RMS system includes modules for booking, records management, dispatch, field reporting, property and evidence management, and crime analysis. The CAD and RMS system enables GPD to better analyze trends, link crimes, identify suspects, make arrests, and improve the quality of field reporting, which in turn assists with the prevention and reduction of crime and violence.

Staff is recommending that City Council authorize the City Manager to accept the 2014 Edward Byrne Memorial JAG program funding in the approximate amount of \$94,864, and enter into a memorandum of understanding with Maricopa County.

**Previous Related Council Action**

On September 10, 2013, Council authorized the City Manager to accept the 2013 Edward Byrne Memorial Justice Assistance Grant award in the approximate amount of \$86,334.

**Budget and Financial Impacts**

There is no financial match required for this grant. A specific account will be established in Fund 1840, the city's grant fund, once the agreement is fully executed.

RESOLUTION NO. 4844 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE ACCEPTANCE OF GRANT FUNDING FROM THE EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM FOR FY 2014 LOCAL SOLICITATION (CFDA #16.738) IN THE APPROXIMATE AMOUNT OF \$94,864 FOR THE GLENDALE POLICE DEPARTMENT.

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

SECTION 1. That it is deemed in the best interest of the City of Glendale and the citizens thereof that the grant documents accepting the funding from the Edward Byrne Memorial Justice Assistance Grant Program for FY 2014 Local Solicitation (CFDA #16.738) be entered into in the approximate amount of \$94,864 on behalf of the Glendale Police Department.

SECTION 2. That the City Manager is authorized to execute and deliver and any and all necessary documents on behalf of the Glendale Police Department. In the event additional grant funding is made available to the City of Glendale, the City Manager is hereby further authorized to execute and deliver any necessary documents to accept the additional funding.

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

\_\_\_\_\_  
M A Y O R

ATTEST:

\_\_\_\_\_  
City Clerk (SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

REVIEWED BY:

\_\_\_\_\_  
City Manager

g\_pd\_jag

RESOLUTION NO. 4844 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE ACCEPTANCE OF GRANT FUNDING FROM THE EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM FOR FY 2014 LOCAL SOLICITATION (CFDA #16.738) IN THE APPROXIMATE AMOUNT OF \$94,864 FOR THE GLENDALE POLICE DEPARTMENT.

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

SECTION 1. That it is deemed in the best interest of the City of Glendale and the citizens thereof that the grant documents accepting the funding from the Edward Byrne Memorial Justice Assistance Grant Program for FY 2014 Local Solicitation (CFDA #16.738) be entered into in the approximate amount of \$94,864 on behalf of the Glendale Police Department.

SECTION 2. That the City Manager is authorized to execute and deliver and any and all necessary documents on behalf of the Glendale Police Department. In the event additional grant funding is made available to the City of Glendale, the City Manager is hereby further authorized to execute and deliver any necessary documents to accept the additional funding.

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

\_\_\_\_\_  
M A Y O R

ATTEST:

\_\_\_\_\_  
City Clerk (SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

REVIEWED BY:

\_\_\_\_\_  
City Manager

g\_pd\_jag



CONTRACT NO. \_\_\_\_\_

**THE STATE OF ARIZONA  
COUNTY OF MARICOPA**

**KNOW ALL BY THESE PRESENT**

**MEMORANDUM OF UNDERSTANDING  
AMONG**

**CITY OF AVONDALE, CITY OF CHANDLER, TOWN OF GILBERT, CITY OF GLENDALE,  
CITY OF GOODYEAR, CITY OF MESA, CITY OF PEORIA, CITY OF PHOENIX, CITY OF  
SCOTTSDALE, CITY OF SURPRISE, CITY OF TEMPE, AND COUNTY OF MARICOPA,  
ARIZONA**

**EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM  
FY 2014 LOCAL SOLICITATION (CFDA #16.738)**

This Memorandum of Understanding (MOU) is made and entered into by and among the COUNTY of MARICOPA, hereinafter referred to as COUNTY; and the CITY of AVONDALE; and the CITY of CHANDLER; and the TOWN of GILBERT; and the CITY of GLENDALE; and the CITY of GOODYEAR; and the CITY of MESA; and the CITY of PEORIA; and the CITY of PHOENIX; and the CITY of SCOTTSDALE; and the CITY of SURPRISE; and the CITY of TEMPE, hereinafter referred to as CITIES and TOWNS; all of Maricopa County, State of Arizona, witnesseth:

**WHEREAS**, this MOU is made under the authority of A.R.S. §§11-201, -251:

**WHEREAS**, the CITIES and TOWNS and the COUNTY have become entitled to certain grant funds through the Edward Byrne Memorial Justice Assistance Grant (JAG) Program; and

**WHEREAS**, each governing body, in performing governmental functions or in paying for the performance of governmental functions hereunder, shall make that performance or those payments from current revenues legally available to that party; and

**WHEREAS**, each governing body finds that the performance of this MOU is in the best interests of all parties, that the undertaking will benefit the public, and that the division of costs fairly compensates the performing party for the services or functions under this agreement; and

**WHEREAS**, the CITIES and TOWNS agree the COUNTY shall receive all the funds and distribute the funds to the CITIES and TOWNS; and

**WHEREAS**, the CITIES and TOWNS and COUNTY believe it to be in their best interests to reallocate the JAG funds;

**NOW THEREFORE, the COUNTY and CITIES and TOWNS agree as follows:**

**Section 1**

COUNTY agrees to receive \$1,395,115 from the JAG award for the Maricopa County JAG Program.  
COUNTY agrees to pay City of Avondale a total of \$26,659 of JAG funds.  
COUNTY agrees to pay City of Chandler a total of \$55,890 of JAG funds.  
COUNTY agrees to pay Town of Gilbert a total of \$15,563 of JAG funds.  
COUNTY agrees to pay City of Glendale a total of \$94,864 of JAG funds.  
COUNTY agrees to pay City of Goodyear a total of \$7,714 of JAG funds.  
COUNTY agrees to pay City of Mesa a total of \$140,063 of JAG funds.  
COUNTY agrees to pay City of Peoria a total of \$20,976 of JAG funds.  
COUNTY agrees to pay City of Phoenix a total of \$699,230 of JAG funds.  
COUNTY agrees to pay City of Scottsdale a total of \$30,448 of JAG funds.

COUNTY agrees to pay City of Surprise a total of \$7,849 of JAG funds.

COUNTY agrees to pay City of Tempe a total of \$65,498 of JAG funds.

All payments to CITIES and TOWNS will be made within thirty (30) days after receipt of the JAG funds by COUNTY.

## **Section 2**

COUNTY agrees to use \$230,361 for the JAG Program until September 30, 2017.

## **Section 3**

- 1. Term.** This Agreement shall be in effect for the term of the FY2014 JAG grant, being October 1, 2013 through September 30, 2017, unless terminated sooner in accordance with the terms of the grant, and such reasonable time thereafter as may be needed to complete the administration of the grant. Per Section 7 below, this MOU shall not be effective until filed with the Maricopa County Recorder's Office.
- 2. Obligations of the COUNTY.** The COUNTY agrees to administer the Funds as provided in Section 1, and shall:
  - A. Ensure that the funds received by COUNTY are dispersed to the CITIES and TOWNS in accordance to this MOU, and shall
  - B. Collect and transmit to the appropriate Federal funding authorities all financial and program reports as required by the terms and conditions of the grant and applicable Federal regulations.
- 3. Obligations of the CITIES and TOWNS.** During the term of this Agreement;
  - A. The CITIES and TOWNS agree that the COUNTY will administer the Funds as provided in Section 1.
  - B. The CITIES and TOWNS will maintain and provide to the COUNTY all financial and program reports as required by the terms and conditions of the grant and applicable Federal regulations.
  - C. The CITIES and TOWNS will be responsible for their own actions in providing services under this MOU and shall hold harmless the parties to this MOU from any liability that may arise from the furnishing of the services by the other parties.
- 4. DISCLAIMER.** This MOU is not intended to and will not constitute, create, give rise to, or otherwise recognize a joint venture, agency, partnership or formal business association or organization of any kind among the parties, and the rights and obligations of the parties shall be only those expressly set forth in this MOU.
- 5. NON-AVAILABILITY OF FUNDS.** Each payment obligation of the parties created hereby is conditioned on the availability of funds. The parties recognize that the continuation of this MOU after the close of any of their respective fiscal years shall be subject to the approval of their respective governing bodies providing an appropriation covering this item as an expenditure. None of the parties represent that said budget items will be actually adopted.

**6. NOTICES.** Notices provided under this Agreement shall be directed to the following persons:

<p>The <b><u>COUNTY</u></b>:</p> <p>Alice Bustillo C/O County Manager's Office 301 W. Jefferson Street, 10th Floor Phoenix, AZ 85003 602-372-7059 Fax: 602-506-1642</p>	<p>The CITY of <b><u>AVONDALE</u></b></p> <p>Name: Kimberly Martinez</p> <p>Address: 11465 West Civic Center Drive</p> <p>Address:</p> <p>Address:</p> <p>City/St/Zip: Avondale AZ 85323</p> <p>Phone: 623-333-1000</p> <p>Fax: 623-333-0100</p>
<p>The CITY of <b><u>CHANDLER</u></b></p> <p>Name: Judy Mandt</p> <p>Address: Chandler Police Department</p> <p>Address: Mail Stop 303</p> <p>Address: PO Box 4008</p> <p>City/St/Zip: Chandler AZ 85244-4008</p> <p>Phone: 480-782-4085</p> <p>Fax: 480-782-4086</p>	<p>The TOWN of <b><u>GILBERT</u></b></p> <p>Name: Joseph Go</p> <p>Address: 75 E. Civic Center Dr</p> <p>Address:</p> <p>Address:</p> <p>City/St/Zip: Gilbert AZ 85296</p> <p>Phone: 480-635-7060</p> <p>Fax: 480-497-4943</p>
<p>The CITY of <b><u>GLENDALE</u></b></p> <p>Name: David Rice</p> <p>Address: 6835 N. 57<sup>th</sup> Drive</p> <p>Address:</p> <p>Address:</p> <p>City/St/Zip: Glendale AZ 85301</p> <p>Phone: 623-930-3212</p> <p>Fax: 623-847-1399</p>	<p>The CITY of <b><u>GOODYEAR</u></b></p> <p>Name: Christine McMurdy</p> <p>Address: City Manager's Office</p> <p>Address: 190 North Litchfield Road</p> <p>Address:</p> <p>City/St/Zip: Goodyear AZ 85338</p> <p>Phone: 623-882-7806</p> <p>Fax: 623-882-7077</p>
<p>The CITY of <b><u>MESA</u></b></p> <p>Name: Beth Thuringer</p> <p>Address: Mesa Police Department</p> <p>Address: P.O. Box 1466</p> <p>Address:</p> <p>City/St/Zip: Mesa AZ 85211</p> <p>Phone: 480-644-5365</p> <p>Fax: 480-644-2857</p>	<p>The CITY of <b><u>PEORIA</u></b></p> <p>Name: Teresa Corless</p> <p>Address: City of Peoria Police Department</p> <p>Address: 8351 W. Cinnabar Avenue</p> <p>Address:</p> <p>City/St/Zip: Peoria, AZ 85345</p> <p>Phone: 623-773-7035</p> <p>Fax: 623-773-7015</p>

<div>The CITY of <b><u>PHOENIX</u></b> Name: Gary Turner Address: Phoenix Police Department Address: 4<sup>th</sup> Floor, Suite 422 Address: 620 W. Washington St City/St/Zip: Phoenix AZ 85003 Phone: 602-534-3622 Fax: 602-534-1613</div>	<div>The CITY of <b><u>SCOTTSDALE</u></b> Name: Melissa Miller Address: Scottsdale PD Headquarters Address: 8401 E. Indian School Rd. Address: City/St/Zip: Scottsdale AZ 85251 Phone: 480-312-1979 Fax: 480-312-7891</div>
<div>The CITY of <b><u>TEMPE</u></b> Name: Miyoung Kim Address: C/O Tempe Police Department - OMBR Address: 120 E. 5<sup>th</sup> Street Address: City/St/Zip: Tempe AZ 85281 Phone: 480-350-8358 Fax:</div>	<div>The CITY of <b><u>SURPRISE</u></b> Name: Lt. Randy Rody Address: Surprise Police Department Address: 16000 N. Civic Center Plaza Address: City/St/Zip: Surprise AZ 85374 Phone: 480-312-1979 Fax: 480-312-7891</div>

#### **Section 4**

The parties to this MOU do not intend for any third party to obtain a right by virtue of this MOU.

#### **Section 5**

**CONFLICT OF INTEREST.** This MOU is subject to A.R.S. §38-511.

#### **Section 6**

By entering into this MOU, the parties do not intend to create any obligations express or implied other than those set out herein; further, this MOU shall not create any rights in any party not a signatory hereto.

#### **Section 7**

This MOU shall not be effective until filed with the Maricopa County Recorder's Office.

#### **Section 8**

The COUNTY and CITIES and TOWNS warrant they are in compliance with the provisions in A.R.S. §41-4401 (e-verify).

#### **Section 9**

Mutual Indemnification. Each Party (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other Party (as "Indemnatee") from and against all claims, losses, liability, costs, or expenses (including reasonable attorneys' fees, expert witnesses' fees and other litigation costs) (hereinafter collectively

**GMS APPLICATION NUMBER: 2014-H1867-AZ-DJ** (Mandatory)

referred to as “Claims”) arising out of bodily injury (including death) of any person or property damage, but only to the extent that such claims, which result in vicarious liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

<p>This Agreement is in the proper legal form and is within the powers and authority granted under the laws of this State to those parties represented by the undersigned legal counsel.</p> <p>_____</p> <p>Deputy County Attorney, Civil Svcs Div      Date</p>	<p><b>MARICOPA COUNTY</b></p> <p><b>By:</b> _____ Denny Barney</p> <p><b>Its:</b> <u>Chairman of the Board of Supervisors</u></p> <p><b>Attest:</b> _____ Fran McCarroll, Clerk of the Board</p> <p><b>DATE:</b> _____</p>
<p>This Agreement is in the proper legal form and is within the powers and authority granted under the laws of this State to those parties represented by the undersigned legal counsel.</p> <p>_____</p> <p>Avondale City Attorney      Date</p>	<p><b>CITY OF AVONDALE</b></p> <p><b>By:</b> _____</p> <p>Type Name: _____</p> <p><b>Its:</b> _____</p> <p><b>Attest:</b> _____</p> <p><b>DATE:</b> _____</p>
<p>This Agreement is in the proper legal form and is within the powers and authority granted under the laws of this State to those parties represented by the undersigned legal counsel.</p> <p>_____</p> <p>Chandler City Attorney      Date</p>	<p><b>CITY OF CHANDLER</b></p> <p><b>By:</b> _____</p> <p>Type Name: _____</p> <p><b>Its:</b> _____</p> <p><b>Attest:</b> _____</p> <p><b>DATE:</b> _____</p>
<p>This Agreement is in the proper legal form and is within the powers and authority granted under the laws of this State to those parties represented by the undersigned legal counsel.</p> <p>_____</p> <p>Gilbert Town Attorney      Date</p>	<p><b>TOWN OF GILBERT</b></p> <p><b>By:</b> _____</p> <p>Type Name: _____</p> <p><b>Its:</b> _____</p> <p><b>Attest:</b> _____</p> <p><b>DATE:</b> _____</p>

<p>This Agreement is in the proper legal form and is within the powers and authority granted under the laws of this State to those parties represented by the undersigned legal counsel.</p> <p>_____</p> <p>Glendale City Attorney <span style="float: right;">Date</span></p>	<p style="text-align: center;"><b>CITY OF GLENDALE</b></p> <p><b>By:</b> _____</p> <p>Type Name: _____</p> <p><b>Its:</b> _____</p> <p><b>Attest:</b> _____</p> <p><b>DATE:</b> _____</p>
<p>This Agreement is in the proper legal form and is within the powers and authority granted under the laws of this State to those parties represented by the undersigned legal counsel.</p> <p>_____</p> <p>Goodyear City Attorney <span style="float: right;">Date</span></p>	<p style="text-align: center;"><b>CITY OF GOODYEAR</b></p> <p><b>By:</b> _____</p> <p>Type Name: _____</p> <p><b>Its:</b> _____</p> <p><b>Attest:</b> _____</p> <p><b>DATE:</b> _____</p>
<p>This Agreement is in the proper legal form and is within the powers and authority granted under the laws of this State to those parties represented by the undersigned legal counsel.</p> <p>_____</p> <p>Mesa City Attorney <span style="float: right;">Date</span></p>	<p style="text-align: center;"><b>CITY OF MESA</b></p> <p><b>By:</b> _____</p> <p>Type Name: _____</p> <p><b>Its:</b> _____</p> <p><b>Attest:</b> _____</p> <p><b>DATE:</b> _____</p>
<p>This Agreement is in the proper legal form and is within the powers and authority granted under the laws of this State to those parties represented by the undersigned legal counsel.</p> <p>_____</p> <p>Peoria City Attorney <span style="float: right;">Date</span></p>	<p style="text-align: center;"><b>CITY OF PEORIA</b></p> <p><b>By:</b> _____</p> <p>Type Name: _____</p> <p><b>Its:</b> _____</p> <p><b>Attest:</b> _____</p> <p><b>DATE:</b> _____</p>

<p>This Agreement is in the proper legal form and is within the powers and authority granted under the laws of this State to those parties represented by the undersigned legal counsel.</p> <p>_____</p> <p>Phoenix City Attorney <span style="float: right;">Date</span></p>	<p style="text-align: center;"><b>CITY OF PHOENIX</b></p> <p><b>By:</b> _____</p> <p>Type Name: _____</p> <p><b>Its:</b> _____</p> <p><b>Attest:</b> _____</p> <p><b>DATE:</b> _____</p>
<p>This Agreement is in the proper legal form and is within the powers and authority granted under the laws of this State to those parties represented by the undersigned legal counsel.</p> <p>_____</p> <p>Scottsdale City Attorney <span style="float: right;">Date</span></p>	<p style="text-align: center;"><b>CITY OF SCOTTSDALE</b></p> <p><b>By:</b> _____</p> <p>Type Name: _____</p> <p><b>Its:</b> _____</p> <p><b>Attest:</b> _____</p> <p><b>DATE:</b> _____</p>
<p>This Agreement is in the proper legal form and is within the powers and authority granted under the laws of this State to those parties represented by the undersigned legal counsel.</p> <p>_____</p> <p>Surprise City Attorney <span style="float: right;">Date</span></p>	<p style="text-align: center;"><b>CITY OF SURPRISE</b></p> <p><b>By:</b> _____</p> <p>Type Name: _____</p> <p><b>Its:</b> _____</p> <p><b>Attest:</b> _____</p> <p><b>DATE:</b> _____</p>
<p>This Agreement is in the proper legal form and is within the powers and authority granted under the laws of this State to those parties represented by the undersigned legal counsel.</p> <p>_____</p> <p>Tempe City Attorney <span style="float: right;">Date</span></p>	<p style="text-align: center;"><b>CITY OF TEMPE</b></p> <p><b>By:</b> _____</p> <p>Type Name: _____</p> <p><b>Its:</b> _____</p> <p><b>Attest:</b> _____</p> <p><b>DATE:</b> _____</p>





## Legislation Description

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**File #: 14-058, Version: 1**

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**AUTHORIZATION TO RATIFY THE ACCEPTANCE OF THE 2014 HIGH INTENSITY DRUG TRAFFICKING AREA GRANT AGREEMENT AND ACCEPT THE GRANT AGREEMENT ADJUSTMENT FROM THE CITY OF TUCSON TO PROVIDE OVERTIME FUNDING FOR THE WARRANT APPREHENSION NETWORK AND TACTICAL ENFORCEMENT DETAIL**

Staff Contact: Debora Black, Police Chief

**Purpose and Recommended Action**

This is a request for City Council to waive reading beyond the title and adopt a resolution ratifying the acceptance and entering into of the 2014 High Intensity Drug Trafficking Area (HIDTA) grant agreement in the amount of \$34,000, and authorize the City Manager to enter into and accept the 2014 HIDTA grant agreement adjustment in the amount of \$6000, from the City of Tucson for a total amount of \$40,000, to provide overtime funding for the Warrant Apprehension Network and Tactical Enforcement Detail (WANTED).

**Background**

Glendale Police Department (GPD) has been accepting federal HIDTA grants distributed by the City of Tucson for WANTED since 2011. The WANTED initiative is an extension of the United States Marshals Service (USMS) Violent Offender Task Force. GPD entered into a memorandum of understanding with USMS on March 8, 2011 to join the Task Force and assigned one full-time detective as part of a joint law enforcement operation. The detective assigned investigates and arrests persons who have active state and federal warrants. The intent of the joint effort is to apprehend local, state, and federal fugitives.

By participating in the WANTED initiative, the detective has the opportunity to gain further training and experience in warrant apprehension. This additional training and experience ultimately benefits GPD through more efficient and effective coordination of the investigations and apprehensions of dangerous and wanted felons who reside and/or have committed violent crimes in the City of Glendale.

The HIDTA grant is awarded yearly and allows continued overtime funding for the detective assigned to the Task Force and working the WANTED. The grant also covers the overtime for the entire GPD Fugitive Apprehension Unit when working on USMS cases.

**Analysis**

In June 2014, a grant agreement adjustment was received, notifying GPD that an additional \$6000 would be awarded as part of the 2014 HIDTA grant agreement. Shortly thereafter, it was realized that the initial 2014 HIDTA grant agreement (HT-14-2313) in the amount of \$34,000 had not been formally accepted.

Staff is recommending that City Council adopt a resolution ratifying the acceptance and entering into of the

initial grant agreement in the amount of \$34,000, and authorize the City Manager to enter into and accept the grant agreement adjustment in the amount of \$6000 from the City of Tucson to provide overtime funding in the total amount of \$40,000

#### **Previous Related Council Action**

On August 13, 2013, Council authorized the acceptance of the 2013 HIDTA grant adjustment from the City of Tucson in the amount of \$20,800. This adjustment brought the total 2013 award to \$40,000.

On May 14, 2013, Council authorized the acceptance of the 2013 HIDTA grant from the City of Tucson in the amount of \$19,200.

#### **Community Benefit/Public Involvement**

Participation in the WANTED initiative assists GPD with more efficient and effective investigations, increasing the apprehension of fugitives, thereby reducing violent crime and improving public safety efforts in the City of Glendale.

#### **Budget and Financial Impacts**

There is no financial match required for this grant or grant adjustment. A specific account will be established in Fund 1840, the city's grant fund, once the grant and adjustment are accepted.

## RESOLUTION NO. 4845 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF THE HIGH INTENSITY DRUG TRAFFICKING AREA (HIDTA) GRANT AGREEMENT WITH THE CITY OF TUCSON IN THE AMOUNT OF \$34,000 (GRANT NO. HT-14-2313); AND AUTHORIZING AND DIRECTING THE ENTERING INTO OF A GRANT AGREEMENT ADJUSTMENT NOTICE IN THE AMOUNT OF \$6,000 WITH THE CITY OF TUCSON (GRANT NO. HT-14-2313, GAN #1) PROVIDING A TOTAL OF \$40,000 TO BE USED FOR OVERTIME FOR THE ARIZONA WARRANT APPREHENSION NETWORK AND TACTICAL ENFORCEMENT DETAIL (WANTED) BY 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 the agreement with the City of Tucson entitled "City of Tucson High Intensity Drug Trafficking Area (HIDTA) Grant" with the City of Tucson (COT Grant Number HT-14-2313), to be used for overtime by the Glendale Police Department for the Arizona Warrant Apprehension Network and Tactical Enforcement Detail (WANTED), be entered into.

SECTION 2. That it is deemed in the best interest of the City of Glendale and the citizens thereof that the agreement with the City of Tucson entitled "City of Tucson Grant Agreement Adjustment Notice" (COT Grant Number HT-14-2313; GAN #1), to be used for overtime by the Glendale Police Department for the Arizona Warrant Apprehension Network and Tactical Enforcement Detail (WANTED), be entered into.

SECTION 3. That the City Manager, or her designee, is hereby authorized to execute and deliver said agreements and any other documents necessary for the acceptance of said grants on behalf of the City of Glendale.

SECTION 4. That the grant agreement and the grant agreement adjustment are now on file in the office of the City Clerk of the City of Glendale.

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

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M A Y O R

ATTEST:

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City Clerk (SEAL)

APPROVED AS TO FORM:

---

City Attorney

REVIEWED BY:

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City Manager

g\_pd\_hidta



## CITY OF TUCSON HIGH INTENSITY DRUG TRAFFICKING AREA (HIDTA) GRANT AGREEMENT

COT Grant Number **HT-14-2313**

This Grant Agreement is made this 1<sup>ST</sup> day of January 2014 by and between the CITY OF TUCSON hereinafter called "CITY" and **GOVERNING BODY**, through **Glendale Police Department** hereinafter called "GRANTEE". The CITY enters into this Agreement pursuant to its authority under the provisions of A.R.S. § 11-951, et seq., and the City of Tucson's Resolution number 21460, having satisfied itself as to the qualification of GRANTEE.

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

1. This Agreement will commence on January 1, 2014 and terminate on December 31, 2015. This Agreement expires at the end of the award period unless prior written approval for an extension has been obtained from the CITY. A request for extension must be received by the CITY sixty (60) days prior to the end of the award period. The CITY may approve an extension that further the goals and objectives of the program and shall determine the length of any extension within Office of National Drug Control Policy (ONDCP) guidelines.
2. The GRANTEE agrees that grant funds will be used for the **Arizona Warrant Apprehension Network and Tactical Enforcement Detail (AZ WANTED)**.
3. The CITY will monitor the performance of the GRANTEE against goals and performance standards outlined in the grant application. Sub-standard performance as determined by the CITY will constitute non-compliance with this Agreement. The GRANTEE shall operate in a manner consistent with and in compliance with the provisions and stipulations of the approved grant application and this Agreement. If the CITY finds non-compliance, the GRANTEE will receive a written notice that identifies the area of non-compliance, and the appropriate corrective action to be taken. If the GRANTEE does not respond within thirty calendar days to this notice, and does not provide sufficient information concerning the steps that are being taken to correct the problem, the CITY may suspend funding; permanently terminate this Agreement and/or revoke the grant; Any deviation or failure to comply with the purpose and/or conditions of this Agreement without prior written CITY approval may constitute sufficient reason for the CITY to terminate this Agreement; revoke the grant; require the return of all unspent funds, perform an audit of expended funds; and require the return of any previously spent funds which are deemed to have been spent in violation of the purpose or conditions of this grant.
4. This Agreement may be modified only by a written amendment signed by the parties. Any notice given pursuant to this Agreement shall be in writing and shall be considered to have been given when actually received by the following addressee or their agents or employees:

A. If to the City of Tucson:

City of Tucson Police Department  
HIDTA FIDUCIARY SECTION  
270 S. Stone  
Tucson, Arizona 85701  
Attn: HIDTA Lead Management Analyst

B. If to the GRANTEE:

**Glendale Police Department  
6835 North 57<sup>th</sup> Drive  
Glendale, AZ 85364  
Attn: Acting Assistant Chief Rick St. John**

5. The GRANTEE may make budget adjustments only after written notification with signature approval from Arizona HIDTA Director is provided to the CITY. A grant adjustment notice (GAN) will be issued to the GRANTEE notifying the GRANTEE of the approval. Adjustments or reprogramming of the grantee's budget in an initiative or any reprogramming between initiative and/or agencies; in any amount, require the approval of the Board, the AZ HIDTA Director, and/or the ONDCP in accordance with HIDTA Program Policy and Budget Guidance.

APPROVED LINE ITEM PROGRAM BUDGET	
Personnel:	
Salaries	0.00
Fringe Benefits	0.00
Overtime	\$34,000.00
Travel	0.00
Facilities	0.00
Services	0.00
Operating Expenses:	
Supplies	0.00
Other	0.00
Equipment (listed below)	0.00
<b>TOTAL</b>	<b>\$34,000.00</b>
See attached for budget detail.	

6. The GRANTEE understands that financial reports are required for reimbursement of expenditures.
7. Every payment obligation of the CITY under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the CITY. No liability shall accrue to the CITY in the event this provision is exercised, and the CITY shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.
8. The GRANTEE understands that prior to the expenditure of confidential funds, an authorized official of the GRANTEE shall sign a certification indicating that he or she has read, understands, and agrees to abide by all of the conditions pertaining to confidential fund expenditures as set forth in *ONDCP Financial and Administrative Guide for Cooperative Agreements Guidelines and Exhibit B*.

9. The GRANTEE certifies that it will comply with *OMB Circular A-102 Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments* as codified in 28 CFR Part 66 and *OMB Circular A-87 Cost Principles for State, Local and Indian Tribal Governments* and HIDTA Program Policy & Budget Guidance.

**Link:** *OMB Circulars* <http://www.whitehouse.gov/omb/circulars/index.html>

10. The GRANTEE agrees to account for interest earned on Federal grant funds and shall remit interest earned in excess of the allowable amount as indicated in the *ONDCP Financial and Administrative Guide for Cooperative Agreements* and all unexpended grant funds to the CITY within 30 days after receipt of a written request from the CITY. The GRANTEE agrees to expend all encumbered funds within 90 days of expiration of this award.
11. The GRANTEE agrees to retain all books, account reports, files and other records, (paper and/or electronic) relating to this Agreement and the performance of this Agreement for no less than five (5) years from the last financial report submitted to the CITY. All such documents shall be subject to inspection and audit at reasonable times.
12. For the purpose of this grant, a capital expenditure is \$1,000 or above. If the GRANTEE'S policy defines a capital expenditure as less than \$1,000, the GRANTEE will use its own policy.

The GRANTEE shall maintain a tracking system, in accordance with ONDCP HIDTA Program Policy & Budget Guidance Section 8.04(A), to account for all HIDTA purchased equipment, vehicles, and other items valued at \$ 1000 or more at the time of purchase. This also includes lower cost, high-risk items, electronic devices and software, such as but not limited to digital cameras, palm pilots, and GPS devices.

The GRANTEE agrees to abide by Section 8.06 that those using HIDTA funds to purchase equipment must maintain a current inventory of HIDTA-purchased equipment and must provide that inventory to the HIDTA Director or an ONDCP employee, and/or the CITY upon request. A 100-percent physical inventory of HIDTA-purchased equipment must be conducted at least every two years.

13. The GRANTEE agrees to follow equipment disposition policies outlined in *OMB Circular A-102 Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments* as codified in 28 CFR, Part 66.32 (e) (1-3) when the equipment is no longer needed for the grant program. When no longer needed for the original program, the equipment may be used in other activities supported by the Office of National Drug Control Policy.

**Link:** *OMB Circulars* <http://www.whitehouse.gov/omb/circulars/index.html>

The GRANTEE agrees that the purchasing agency shall comply with ONDCP HIDTA Program Policy & Budget Guidance Section 8.07 in determining the end of the useful life and disposition of HIDTA purchased equipment. Purchasing agencies must retain documentation of the disposition and provide to the HIDTA Director and the CITY.

14. The GRANTEE agrees to keep time and attendance sheets signed by the employee and supervisory official having first hand knowledge of the work performed by the grant funded employees. The GRANTEE agrees to track overtime expenses in accordance with ONDCP HIDTA Program Policy & Budget Guidance.
15. The GRANTEE will comply with the audit requirements of *OMB Circular A-133 Audits of States, Local Governments and Non-Profit Organizations* and provide the CITY with the audit report and any findings within 90 days of receipt of such finding. If the report contains no findings, the GRANTEE must provide notification that the audit was completed.

**Link:** *OMB Circular A-133* <http://www.whitehouse.gov/omb/circulars/index.html>

16. The GRANTEE agrees that it will submit financial reports and supporting documentation to the CITY through the AZ HIDTA Finance Manager on forms/format provided by the CITY, documenting the activities supported by these grant funds. In the event reports are not received on or before the indicated date(s), funding will be suspended until such time as delinquent report(s) are received. These reports are submitted according to the following schedule:

<b>Report Period Month of:</b>	<b>Due Date:</b>	<b>Report Period Month of:</b>	<b>Due Date:</b>
January 1 - 31	February 25	July 1 - 31	August 25
February 1 - 29	March 25	August 1 - 31	September 25
March 1 - 30	April 25	September 1 - 30	October 25
October 1 - 31	November 25	April 1 - 30	May 25
November 1 - 30	December 25	May 1 - 31	June 25
December 1 - 31	January 25	June 1 - 30	July 25

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

17. All goods and services purchased with grant funds must be received by the GRANTEE within 60 days of the expiration of this award.
18. The GRANTEE agrees to obtain ONDCP approval through the Arizona HIDTA Director for all sole-source procurements in excess of \$100,000, and provide written notification to the CITY, as indicated in 21 CFR Part 1403.36(d)(4).
19. The GRANTEE agrees to check the U.S. General Service Administration (GSA) Excluded Parties Listing Service as required by Executive Order 12549, as defined in 28 CFR Part 67.510 for individuals, agencies, companies and corporations debarred or suspended from doing business with recipients receiving Federal funds. The GRANTEE agrees not to do business with any individual, agency, company or corporation listed in the Excluded Parties Listing Service.  
**Link:** *Excluded Parties Listing System* <http://epls.arnet.gov>
20. No funds shall be used to supplant federal, state, county or local funds that would otherwise be made available for such purposes. Supplanting means the deliberate reduction of State or local funds because of the existence of Federal funds.
21. The GRANTEE assigns to the CITY any claim for overcharges resulting from antitrust violations to the extent that such violations concern materials or services applied by third parties to the GRANTEE in exchange for grant funds provided under this Agreement.
22. The parties agree to use arbitration in the event of disputes in accordance with the provisions of A.R.S. § 12-1501 et seq.
23. The laws of the State of Arizona apply to questions arising under this Agreement and any litigation regarding this Agreement must be maintained in Arizona courts, except as provided in paragraph 25 of this Agreement pertaining to disputes, which are subject to arbitration.
24. The GRANTEE understands that grant funds will not be released until all required reports and reversion of funds from the prior year grant are submitted to the CITY.



25. The GRANTEE (as "Indemnitor") agrees to indemnify, defend and hold harmless the CITY (as "Indemnatee") from and against any and all claims, losses, liability, costs, or expenses, (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnatee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers. If the GRANTEE is a State agency this paragraph does not apply.
26. Unless GRANTEE is a State agency, GRANTEE shall cause its contractor(s) and subcontractors, if any to indemnify defend, save and hold harmless the City of Tucson, any jurisdictions or agency issuing any permits for any work arising out of this Agreement, and their respective directors, officers, officials, agents, and employees from and against any and all claims, actions, liabilities, damages, losses or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims" ) for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of GRANTEE'S contractor or any of the directors, officers, agents, or employees or subcontractors of such contractor. This indemnity includes any claim or amount arising out of or recovered under the Worker's Compensation Law or arising out of the failure of such contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligence or willful acts or omissions of the Indemnatee, be indemnified by such contractor from and against any and all claims. It is agreed that such contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. Insurance requirements for any contractor used by GRANTEE are incorporated herein by this reference and attached to this Agreement as Exhibit "A".
27. If the GRANTEE is a governmental political subdivision, the GRANTEE will, to the extent possible and practical share criminal justice information with other authorized criminal justice agencies. The process control number (PCN) shall be used in accordance with A.R.S. § 41-1750 when sharing data with other criminal justice agencies as electronic data systems are developed or improved.
28. The GRANTEE agrees to comply with the non-discrimination requirements of the Omnibus Crime Control and Safe Streets Act of 1968, as amended; 42 USC 3789(d); Title VI of the Civil Rights Act of 1964, as amended; Section 504, Rehabilitation Act of 1973, as amended; Subtitle A, Title II of the Americans with Disabilities Act (ADA) (1990); Title IX of the Education Amendments of 1972 and the Department of Justice regulations 28 CFR Part 54; The Age Discrimination Act of 1975; Department of Justice Non-Discrimination Regulations, 28 CFR Part 42, Subparts C, D, E, G and I; Department of Justice regulations on disability discrimination 28 CFR Part 35; all applicable state laws of A.R.S. § 41-1463; and Executive Orders 1999-4 and 2000-4. These laws prohibit discrimination on the basis of race, color, religion, sex and national origin including Limited English Proficiency (LEP) in the delivery of service. In the event that a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing against the GRANTEE, the GRANTEE will forward a copy of the findings to the Office for Civil Rights, Office of Justice Programs and the CITY.

29. The GRANTEE agrees to formulate and keep on file an Equal Employment Opportunity Plan (EEOP) (if grantee is required pursuant to 28 CFR 42.302). The GRANTEE certifies that they have forwarded to the Office for Civil Rights, Office of Justice Programs the EEOP, or certifications that they have prepared and have on file an EEOP, or that they are exempt from EEOP requirements. Failure to comply may result in suspension of the receipt of grant funds. Copies of all submissions such as certifications to or correspondence with the Office for Civil Rights, Office of Justice Programs regarding this requirement must be provided to the CITY by the GRANTEE.
30. The GRANTEE certifies to comply with the Drug-Free Workplace Act of 1988, and implemented in 28 CFR Part 67, Subpart F, for grantees, as defined in 28 CFR, Part 67 Sections 67.615 and 67.620.
31. The GRANTEE agrees to complete and keep on file, as appropriate, Immigration and Naturalization Form (I-9). This form is to be used by recipients to verify that persons are eligible to work in the United States. Additionally the GRANTEE ensures compliance with Executive Order 2005-30 federal immigration laws by state employers and contractors.
32. The GRANTEE agrees to notify the Arizona HIDTA Director and provide written notification to the CITY within ten (10) days in the event that the project official is replaced during the award period.
33. No rights or interest in this Agreement shall be assigned by GRANTEE without prior written approval of the CITY.
34. The GRANTEE agrees that no funds provided, or personnel employed under this Agreement shall be in any way or to any extent engaged in conduct of political activities in violation of U.S.C. Title 5, Part II, Chapter 15, Section 1502.
35. The GRANTEE certifies that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement.
36. The Grantee certifies that no federal funds will be paid, by or on behalf of, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and for the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement. If any funds other than Federal funds are paid or will be paid to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal award, grant loan, or cooperative agreement, the GRANTEE will complete and submit to the CITY Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions

37. This Agreement is subject to cancellation pursuant to the provision of A.R.S. § 38-511.
38. This Agreement may be cancelled at the CITY's discretion if not returned with authorized signatures to the CITY within 90 days of commencement of the award.
39. If any provision of this Agreement is held invalid the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall be in full force and effect.
40. Pursuant to resolution number 21460, adopted by Mayor and Council December 15, 2009, the Tucson Police Chief is authorized to enter into contracts and grant agreements for HIDTA operations.
41. In accordance with A.R.S. §41-4401, GRANTEE warrants compliance with E-Verify and all federal immigration laws and regulations relating to employees and warrants compliance with A.R.S. § 23-214A.

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

**FOR GRANTEE:**

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Acting Assistant Chief

Date

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Printed Name and Title

Note: If applicable, the Agreement must be approved by the appropriate county supervisory board or municipal council and appropriate local counsel (i.e. county or city attorney). Furthermore, if applicable, resolutions and meeting minutes must be forwarded to the CITY with the signed Agreement.

**Approved as to form and authority to enter into Agreement:**

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Legal counsel for GRANTEE

Date

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Printed Name and Title

**Statutory or other legal authority to enter into Agreement:**

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

**FOR CITY OF TUCSON:**

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Roberto A. Villaseñor, Chief of Police  
City of Tucson Police Department

Date

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Lisa Judge, Principal Assistant City Attorney  
City of Tucson Police Department  
Approved as to form

Date



CITY OF TUCSON  
GRANT AGREEMENT

**Insurance Requirements  
Exhibit "A"**

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***Insurance Requirements for Governmental Parties to a Grant Agreement:***

None.

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

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

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

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

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

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

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

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

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

2. **Automobile Liability**

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

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

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

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

3. **Worker's Compensation and Employers' Liability**

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

- a. Policy shall contain a waiver of subrogation against the City of Tucson, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. This requirement shall not apply to: Separately, EACH contractor or subcontractor exempt under A.R.S. 23-901, AND when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

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

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

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

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

All certificates required by this Contract shall be sent directly to the GRANTEE. The City of Tucson's project/contract number and project description are to be noted on the certificate of insurance. The City of Tucson reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY OF TUCSON'S RISK MANAGEMENT SECTION.**

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



CITY OF TUCSON  
HIGH INTENSITY DRUG TRAFFICKING AREA (HIDTA)  
GRANT AGREEMENT

**Confidential Funds Certification**  
**Exhibit "B"**

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**CONFIDENTIAL FUNDS CERTIFICATION**

This is to certify that I have read, understand, and agree to abide by all of the conditions for confidential funds as set forth in the effective edition of the Office of National Drug Control Policy Financial and Administrative Guide.

Grant Number: «GrantNumber»

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Authorized Official

**PROCEDURES**

Each project agency authorized to disburse confidential funds must develop and follow internal procedures, which incorporate the following elements:

**Deviations from these elements must receive prior approval of the ONDCP.**

1. Imprest Fund. The funds authorized will be established in an imprest fund, which is controlled by a bonded cashier.
2. Advance of Funds: The supervisor of the unit to which the imprest funds is assigned must authorize all advances of funds for the P/I. Such authorization must specify the information to be received, the amount of expenditures, and assumed name of the informant.
3. Informant Files: Informant files are confidential files of the true names, assumed names, and signature of all informants to whom payments of confidential expenditures have been made. To the extent possible, pictures and/or fingerprints of the informant payee should also be maintained. Refer to Informant Files "Documentation" (2) for a list of required documents for the informant files.
4. Cash Receipts.
  - a. The cashier shall receive from the agent or officer authorized to make a confidential payment, receipt for cash advanced to him/her for such purposes.
  - b. The agent or officer shall receive from the informant payee a receipt for cash paid to him/her.



5. Receipts for Purchase of Information. An Informant Payee Receipt shall identify the exact amount paid to and received by the informant payee on the date executed. Cumulative or anticipatory receipts are not permitted. Once the receipt has been completed no alteration is allowed. The agent shall prepare an Informant Payee Receipt containing the following information:
  - a. The jurisdiction initiating the payment.
  - b. A description of the information/evidence received.
  - c. The amount of payment, both in numeral and word form.
  - d. The date on which the payment was made.
  - e. The signature of the informant payee.
  - f. The signature of the case agent or officer making payment.
  - g. The signature of at least one other officer witnessing the payment.
  - h. The signature of the first-line supervisor authorizing and certifying the payment.
6. Review and Certification. The signed Informant Payee Receipt with a memorandum detailing the information received shall be forwarded to the agent or officer in charge. The agent or officer in charge shall compare the signatures. He/she shall also evaluate the information received in relation to the expense incurred, and add his/her evaluation remarks to the report of the agent or officer who made the expenditure from the imprest funds. The certification will be witnessed by the agent or officer in charge on the basis of the report and Informant Payee's Receipt.
7. Reporting of Funds. Each project shall prepare a reconciliation report on the imprest funds on a quarterly basis. Information to be included in the reconciliation report will be the assumed name of the informant payee, the amount received, the nature of the information given, and to what extent this information contributed to the investigation. Recipients/subrecipients shall retain the reconciliation report in their files and shall be available for review unless the State agency requests that the report be submitted to them on a quarterly basis.
8. Record and Audit Provisions. Each project and member agency must maintain specific records of each confidential fund transaction. At a minimum, these records must consist of all documentation concerning the request for funds, processing (to include the review and approve/disapprove), modifications, closure or impact material, and receipts and/or other documentation necessary to justify and track all expenditures. Refer to Informant Files Documentation (2) for a list of documents, which should be in an informant's file. In projects where funds are used for confidential expenditures, it will be understood that all of the above records, except the true name of the informant, are subject to the record and audit provision of grantor agency legislation.

## **INFORMANT FILES**

1. Security. A separate file should be established for each informant for accounting purposes. Informant files should be kept in a separate and secure storage facility, segregated from any other files, and under the exclusive control of the supervisor or an employee designated by him/her. The facility should be locked at all times when unattended. Access to these files should be limited to those employees who have a necessary legitimate need. An informant file should not leave the immediate area except for review by a management official or the handling agent, and should be returned prior to the close of business hours. Sign-out logs should be kept indicating the date, informant number, time in and out, and the signature of the person reviewing the file.
2. Documentation. Each file should include the following information:
  - a. Informant Payment Record - kept on top of the file. This record provides a summary of informant payments.
  - b. Informant Establishment Record - including complete identifying and location data, plus any other documents connected with the informant's establishment.
  - c. Current photograph and fingerprint card (or FBI/State Criminal Identification Number).
  - d. Agreement with cooperating individual.
  - e. Receipt for P/I.
  - f. Copies of all debriefing reports (except for the Headquarters case file).
  - g. Copies of case initiation reports bearing on the utilization of the informant (except for the Headquarters case file).
  - h. Copies of statements signed by the informant (unsigned copies will be placed in appropriate investigative files).
  - i. Any administrative correspondence pertaining to the informant, including documentation of any representations made on his behalf or any other nonmonetary considerations furnished.
  - j. Any deactivation report or declaration of any unsatisfactory informant.

## **INFORMANT MANAGEMENT AND UTILIZATION**

All persons who will be utilized as informants should be established as such. The specific procedures required in establishing a person as an informant may vary from jurisdiction to jurisdiction but, at a minimum, should include the following:

1. Assignment of an informant code name to protect the informant's identity.

2. An informant code book controlled by the supervisor or his/her designee containing:
  - a. Informant's code number.
  - b. Type of information (i.e. informant, defendant/informant, restricted use/informant).
  - c. Informant's true name.
  - d. Name of establishing law enforcement officer.
  - e. Date the establishment is approved.
  - f. Date of deactivation.
3. Establish each informant file in accordance with Informant File Documentation (2).
4. For each informant in an active status, the agent should review the informant file on a quarterly basis to assure it contains all relevant and current information. Where a MATERIAL face that was earlier reported on the Establishment Record is no longer correct (e.g. a change in criminal status, means of locating him/her, etc.), a supplemental establishing report should be submitted with the correct entry.
5. All informants being established should be checked in all available criminal indices. If verified FBI number is available, request a copy of the criminal records from the FBI. Where a verified FBI number is not available, the informant should be fingerprinted with a copy sent to the FBI and appropriate State authorities for analysis. The informant may be utilized on a provisional basis while awaiting a response from the FBI.

## **PAYMENTS TO INFORMANTS**

1. Any person who is to receive payments charged against PE/PI funds should be established as an informant. This includes a person who may otherwise be categorized as sources of information or informants under the control of another agency. The amount of payment should be commensurate with the value of services and/or information provided and should be based on the following factors:
  - a. The level of the targeted individual, organization or operation.
  - b. The amount of the actual or potential seizure.
  - c. The significance of the contribution made by the informant to the desired objectives.
2. There are various circumstances in which payments to informants may be made.
  - a. Payments for Information and/or Active Participation. When an informant assists in developing an investigation, either through supplying information or actively participating in it, he/she may be paid for his/her service either in a lump sum or in staggered payments. Payments for information leading to a seizure, with no defendants, should be held to a minimum.

- b. Payment for Informant Protection. When an informant needs protection, law enforcement agencies may absorb the expenses of relocation. These expenses may include travel for the informant and his/her immediate family, movement and/or storage of household goods, and living expense at the new location for a specific period of time (not to exceed 6 months). Payments should not exceed the amounts authorized by law enforcement employees for these activities.
  - c. Payments to Informants of Another Agency. To use or pay another agency's informant, he/she should be established as an informant. These payments should not be a duplication of a payment from another agency; however, sharing a payment is acceptable.
3. Documentation of payments to informants is critical and should be accomplished on a Informant Payee Receipt. Payment should be made and witnessed by two law enforcement officers and authorized payment amounts should be established and reviewed by at least the first line supervisory level. In unusual circumstances, a non-officer employee or an officer of another law enforcement agency may serve as witness. In all instances, the original signed receipt must be submitted to the project director for review and record keeping.

## **ACCOUNTING AND CONTROL PROCEDURES**

Special accounting and control procedures should govern the use and handling of confidential expenditures, as described below:

1. It is important that expenditures which conceptually should be charged to PE/PI/PS are so charged. It is only in this manner that these funds may be properly managed at all levels, and accurate forecasts of projected needs be made.
2. Each law enforcement entity should apportion its PE/PI/PS allowance throughout its jurisdiction and delegate authority to approve PE/PI/PS expenditures to those offices, as it deems appropriate.
3. Headquarters management should establish guidelines authorizing offices to spend up to a predetermined limit of their total allowance on any buy or investigation.
4. In exercising his/her authority to approve these expenditures, the supervisor should consider:
  - a. The significance of the investigation.
  - b. The need for this expenditure to further the investigation.
  - c. Anticipated expenditures in other investigations.


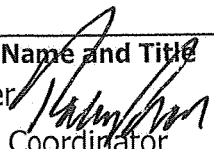
Funds for PE/PI/PS expenditures should be advanced to the officer for a specific purpose. If they are not expended for that purpose, they should be returned to the cashier. They should not be used for another purpose without first returning them and repeating the authorization and advance process based on the new purpose.

5. Funds for PE/PI/PS expenditure should be advanced to the officer on suitable receipt form. Informant Payee Receipt or a voucher for P/E should be completed to document funds used in the purchase of evidence or funds paid or advanced to an informant.
6. For security purposes there should be a 48-hour limit on the amount of time funds advanced for PE/PI/PS expenditure may be held outstanding. If it becomes apparent at any point within the 48-hour period that the expenditure will not materialize, the funds should be returned to the cashier as soon as possible. An extension of the 48-hour limit may be granted by the level of management that approved the advance. Factors to consider in granting such an extension are:
  - a. The amount of funds involved.
  - b. The degree of security under which the funds are being held.
  - c. How long an extension is required.
  - d. The significance of the expenditure.

Such extensions should be limited to 48 hours. Beyond this, the funds should be returned and readvanced, if necessary. Regardless of circumstances, within 48 hours of the advance, the cashier should be presented with either the unexpended funds, an executed Informant Payee Receipt or purchase of evidence or written notification by management that an extension has been granted.

7. P/S expenditures, when not endangering the safety of the officer or informant, need to be supported by canceled tickets, receipts, lease agreements, etc. If not available, the supervisor, or his immediate subordinate, must certify that the expenditures were necessary and justify why supporting documents were not obtained.

**CITY OF TUCSON  
GRANT AGREEMENT  
ADJUSTMENT NOTICE**

<b>Grantee Name and Address:</b> Glendale Police Department 6835 N 57th Drive Glendale, AZ 85737	<b>Grant Number:</b> HT-14-2313 <b>Initiative Name :</b> Warrant Apprehension Network and Tactical Enforcement Detail (WANTED). WANTED																																												
<b>Date:</b> <div style="text-align: right;">5/28/2014</div>	<b>Prepared By:</b> <div style="text-align: right;">Minnette Powell</div>																																												
<b>Project Title:</b> High Intensity Drug Trafficking Area - Cycle 24	<b>Adjustment Number:</b> <div style="text-align: right;">GAN #1</div>																																												
<b>Adjusted Grant Award Amount</b>																																													
<b>Original Grant Award Amount:</b>	\$ 34,000.00																																												
<b>Grant Award Adjustment:</b>	6,000.00																																												
<b>Adjusted Grant Award Amount:</b>	\$ 40,000.00																																												
<b>Adjusted Grant Period</b>																																													
<b>FROM Original Grant Period Ending Date:</b> <div style="text-align: right;">1/1/2014</div>	<b>TO Grant Period Ending Date:</b> <div style="text-align: right;">12/31/2015</div>																																												
<b>Budget Adjustment</b>																																													
<b>FROM Original Budget:</b>  <table style="width: 100%;"> <tr> <td style="width: 70%;"></td> <td style="text-align: right;"><b>Amount</b></td> </tr> <tr><td>Personnel</td><td style="text-align: right;">-</td></tr> <tr><td>ERE</td><td style="text-align: right;">-</td></tr> <tr><td>Overtime</td><td style="text-align: right;">34,000.00</td></tr> <tr><td>Travel</td><td style="text-align: right;">-</td></tr> <tr><td>Facilities</td><td style="text-align: right;">-</td></tr> <tr><td>Services</td><td style="text-align: right;">-</td></tr> <tr><td>Equipment</td><td style="text-align: right;">-</td></tr> <tr><td>Supplies</td><td style="text-align: right;">-</td></tr> <tr><td>Other</td><td style="text-align: right;">-</td></tr> <tr> <td style="text-align: right;"><b>Total:</b></td> <td style="text-align: right;"><b>\$ 34,000.00</b></td> </tr> </table>		<b>Amount</b>	Personnel	-	ERE	-	Overtime	34,000.00	Travel	-	Facilities	-	Services	-	Equipment	-	Supplies	-	Other	-	<b>Total:</b>	<b>\$ 34,000.00</b>	<b>TO Adjusted Budget:</b>  <table style="width: 100%;"> <tr> <td style="width: 70%;"></td> <td style="text-align: right;"><b>Amount</b></td> </tr> <tr><td>Personnel</td><td style="text-align: right;">\$ -</td></tr> <tr><td>ERE</td><td style="text-align: right;">\$ -</td></tr> <tr><td>Overtime</td><td style="text-align: right;">\$ 40,000.00</td></tr> <tr><td>Travel</td><td style="text-align: right;">\$ -</td></tr> <tr><td>Facilities</td><td style="text-align: right;">\$ -</td></tr> <tr><td>Services</td><td style="text-align: right;">\$ -</td></tr> <tr><td>Equipment</td><td style="text-align: right;">\$ -</td></tr> <tr><td>Supplies</td><td style="text-align: right;">\$ -</td></tr> <tr><td>Other</td><td style="text-align: right;">\$ -</td></tr> <tr> <td style="text-align: right;"><b>Total:</b></td> <td style="text-align: right;"><b>\$ 40,000.00</b></td> </tr> </table>		<b>Amount</b>	Personnel	\$ -	ERE	\$ -	Overtime	\$ 40,000.00	Travel	\$ -	Facilities	\$ -	Services	\$ -	Equipment	\$ -	Supplies	\$ -	Other	\$ -	<b>Total:</b>	<b>\$ 40,000.00</b>
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<b>Other Adjustments and Information</b>																																													
ID:40435- Awarding additional overtime funds to WANTED task force agencies to support drug related fugitive investigations. (GAN 1).																																													
<b>Prepared By: Name and Title</b> Minnette Powell  Lead Management Analyst/HIDTA	<b>Approved By: Name and Title</b> Richard Prater  Management Coordinator																																												
<input checked="" type="checkbox"/> logged in grant worksheet																																													



## Legislation Description

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**File #:** 14-061, **Version:** 1

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**AUTHORIZATION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH CITY OF PHOENIX POLICE DEPARTMENT FOR USE OF ITS RECORDS MANAGEMENT SYSTEM**

Staff Contact: Debora Black, Police Chief

**Purpose and Recommended Action**

This is a request for City Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into an intergovernmental agreement (IGA) with the City of Phoenix Police Department (PPD) for use of its Records Management System (RMS), Intergraph's *InPursuit*, through RMS Explorer.

**Background**

The Glendale Police Department (GPD) has been using the Phoenix Police Automated Computer Entry (PACE) system for at least two decades, which has allowed the sharing of law enforcement information. GPD has been an active user of the PACE system, routinely entering law enforcement information into PACE, and utilizing the system for investigative purposes. A previous IGA was entered into with PPD in 2012 to continue using PACE, and the agreement was to remain in effect for ten years at a cost of \$17,600 annually.

Recently, PPD began making major changes to its RMS and plans to launch its new RMS Explorer, shutting down the existing PACE system. PPD is working diligently to convert all existing data currently in PACE into the new system, and has been working with outside agencies who have data stored in PACE to secure the data in an alternate form. In order for GPD to access and utilize PPD's new RMS, Intergraph's *InPursuit*, through RMS Explorer, a new IGA with PPD is necessary. Because a cost model for the new system has not yet been developed by PPD, agencies entering into this new IGA will have access to the RMS at no cost.

PPD is currently working on a reasonable cost sharing model for the new and modernized RMS, based on licensing, maintenance, and support for the system. PPD has advised a separate IGA with cost sharing will be drafted once fees for agencies have been determined. Agencies choosing to continue accessing the new system will be required to enter into the new IGA. In anticipation of PPD shutting down the existing PACE system, the \$17,600 previously budgeted annually for the previous IGA with PPD was eliminated during the budget reduction process and not included in the FY 2014-15 Council adopted budget. It is likely GPD will utilize alternate solutions to access PPD data and will not enter into a new IGA when costs are established by PPD.

**Analysis**

Since PACE will be turned off once the new RMS is launched by PPD, it is imperative that GPD enter into a new agreement in order to have the same access to information through the new system. There is no cost to the city to enter into the new IGA and the agreement is virtually unchanged from the agreement entered into in

2012.

Staff is recommending that Council authorize the City Manager to enter into the IGA with PPD for use of its RMS.

**Previous Related Council Action**

On April 10, 2012, Council adopted a resolution, No. 4559 New Series, authorizing the City Manager to enter into an intergovernmental agreement with the City of Phoenix Police Department for use of its Police Automated Computer Entry system.

**Community Benefit/Public Involvement**

Entering into this IGA will continue to enhance and foster the exchange of criminal justice information, to assist in criminal investigations, and improve officer and public safety.

**Budget and Financial Impacts**

This IGA permits the temporary use of PPD's RMS without fees; therefore there is no cost to the city to enter into this IGA.



RESOLUTION NO. 4846 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 CITY OF PHOENIX POLICE DEPARTMENT FOR USE OF ITS RECORDS MANAGEMENT SYSTEM, INTERGRAPH'S INPURSUIT THROUGH RMS EXPLORER BY 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 an Intergovernmental Agreement with the City of Phoenix Police Department for use of its Records Management System, Intergraph's InPursuit through RMS Explorer by 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 \_\_\_\_\_, 2014.

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M A Y O R

ATTEST:

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City Clerk (SEAL)

APPROVED AS TO FORM:

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City Attorney

REVIEWED BY:

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City Manager



**Phoenix Police Department  
Intergovernmental Agreement**

This intergovernmental agreement ("Agreement") is made and entered into, this 27th day of July 2014, (the "Effective Date") by and between Glendale Police Department (hereinafter referred to as the "Participating Agency") and the City of Phoenix ("City"), a municipal corporation duly organized and existing under the laws of the State of Arizona, and its Police Department (hereinafter referred to as "PPD").

WHEREAS, the parties desire to enter into this Agreement on behalf of their respective law enforcement agencies to share law enforcement information for the purpose of enhancing the public safety, health, and welfare; and

WHEREAS, the parties are empowered to enter into this Agreement pursuant to A.R.S. § 13-3872 and Title 11, Chapter 7, Article 3, Arizona Revised Statutes as authorized by their legislative or other governing bodies, and, for the City and Participating Agency individually, pursuant to Chapter 2, Section 2(i), of the Charter of the City of Phoenix.

NOW, THEREFORE, the parties do hereby agree as follows:

**I. Purpose**

This Agreement sets forth the conditions governing the Participating Agency's use of the PPD Records Management System (RMS), Intergraph's *InPursuit*, (access is to certain aspects of the RMS through web based solution known as "RMS Explorer"). This Agreement is intended to enhance and foster the exchange of criminal justice information, to assist in criminal investigations, and improve officer/public safety.

The Participating Agency agrees to abide by all rules, regulations and/or statutes and laws governing participation and use of criminal justice information, including but not limited to criminal history record information, received and disseminated from the PPD RMS.

**II. Method of Execution**

This Agreement may be executed in one or more identical counterparts each of which shall be deemed an original, but all of which taken together shall constitute one agreement.

**III. Effective Date/Duration**

This Agreement will commence upon the Effective Date and continue in force for ten (10) years. The Participating Agency may terminate this Agreement by providing sixty (60) days' prior written notice to the other party of its intent to terminate the other party's access to its records through the methods provided in this Agreement.

The PPD may terminate the Agreement without providing notice at any time for good cause, such as misuse or abuse of the RMS system. Otherwise, PPD may terminate this Agreement without cause upon providing sixty (60) days' prior written notice to the Participating Agency.

#### **IV. Notice**

Any notice required or given pursuant to the Agreement shall be in writing and either delivered in person, deposited in the U.S. Mail, sent by transmission facsimile or deposited with any express mail (overnight) service addressed as follows. Notice will be deemed received at the time it is personally served, on the day it is sent by facsimile transmission, on the third day after it is deposited in the U.S. Mail, or on the second day after its deposit with any express mail (overnight) service. Any time period stated on a notice will be computed from the time the notice is deemed received. Notices sent by facsimile transmittal shall also be sent by regular mail to the recipient. This requirement for duplicate notice is not intended to change the effective date of the notice sent by facsimile transmission.

To City: Lt. Mark Tallman, SSO  
R & I /Central Booking Bureau  
Phoenix Police Department  
620 W. Washington Street  
Phoenix, Arizona 85003

To Participating Agency: Loretta Hadlock, Operations Manager  
Glendale Police Department  
6835 N 57<sup>th</sup> Drive  
Glendale, AZ 85301

#### **V. Indemnification**

The Participating Agency agrees to indemnify, defend and hold harmless the City of Phoenix, PPD, and any of its employees or officials from, and against any and all claims, demands, actions, suits and proceedings of any kind or nature including, but not limited to, claims arising out of false arrest or imprisonment, resulting from or involving any acts by or on the part of the Participating Agency in the exercise of this Agreement.

#### **VI. Financial Considerations**

The Participating Agency is responsible for sharing the cost of licensing and maintaining the necessary hardware and licensed software to RMS. The cost per user for access using RMS Explorer will be determined through a separate cost agreement. PPD will invoice agencies annually based on number of user accounts assigned to a Participating Agency. Upon any termination of this Agreement, the Participating Agency shall retain ownership of all equipment and other personal property Participating Agency acquired to access RMS, except any equipment and/or property Participating Agency acquired from City or PPD shall be returned to City or PPD.

#### **VII. Security**

The Participating Agency agrees to:

- A. Conduct thorough background screening of personnel. State and national Criminal History Record Information fingerprint identification checks must be conducted for all Participating Agency RMS users.
- B. Abide by all Arizona Criminal Justice Information System (ACJIS) and National Crime Information Center (NCIC) security requirements as published by the Arizona Department of Public Safety (DPS).
- C. Be responsible for the physical security of all computerized equipment used to access the PPD RMS system.
  - 1) Ensure the access location is under the direct control and supervision of authorized personnel.
  - 2) Ensure the access location is inaccessible to the public or persons not qualified to operate, view or possess PPD RMS system information.
- D. Cooperate with the PPD in any investigation into allegations of misuse of data contained in or utilized by the system.
- E. Establish local policies and procedures for safeguarding information and equipment, and impose disciplinary action against any individual found to be violating the local policies and procedures and/or the PPD RMS system policies and procedures.

#### **VIII. Information Ownership, Release, and Accuracy**

- A. Participating Agency and PPD retain ownership and control of all of the information that they provide through the system at all times. Except as required by law, information shall not be made available to any unauthorized requestor without the approval of the agency that respectively owns and/or controls the information.
- B. Participating Agency and PPD acknowledge that the law enforcement data maintained in RMS consists of information that may or may not be accurate. Participating Agency and PPD do not warrant the accuracy of any of the information contained in RMS.

#### **IX. Limitation of Liability**

- A. For the purposes of workers' compensation, an employee of a party to this Agreement, who works under the jurisdiction or control of, or who works within the jurisdictional boundaries of another party pursuant to this particular Agreement for mutual aid in law enforcement, shall be deemed to be an employee of the party who is the employee's primary employer and of the party under whose jurisdiction and control the employee is then working as provided in A.R.S. § 23-1022(D) and the primary employer party of such an employee shall be solely liable for payment of workers' compensation benefits. Each party herein shall comply with the provisions of A.R.S. § 23-1022(E) by posting the public notice required. Further, the personnel of either party to this Agreement will not for any purpose be considered employees or agents of the other party and each party assumes full responsibility for the actions of its personnel while performing services under this Agreement, and shall be solely responsible for their supervision, daily direction and control, payment of salary (including

withholding income taxes and social security), workers' compensation and disability benefits.

- B. Except for the purposes of workers' compensation as noted in Paragraph IX(A), herein, each party shall be solely responsible and liable for claims, demands or judgments (including costs, expenses and attorneys' fees) resulting from personal injury to any person, or damage to any property arising out of that party's own employee's performance under this Agreement. Each party shall have the right of contribution against the other parties with respect to tort liability judgments should both parties under this Agreement be found liable. This right of contribution shall not apply to any settlement or demand and each party shall be solely responsible for its own acts or omissions and those of its officers and employees by reason of its operations under this Agreement. This responsibility includes automobile liability. Each party represents that it shall maintain for the duration of this Agreement liability insurance. The parties may fulfill their obligations by programs of self-insurance.
- C. Each party agrees to be solely responsible for any expense resulting from industrial insurance claims made by that party's employees incurred as a result of operations under this Agreement.

#### **X. Dissemination Restrictions**

Personal use of any data provided through the PPD RMS system is strictly prohibited. The sale of any information obtained from RMS to any individuals, organization, government agency or corporation is strictly prohibited. The dissemination of any information obtained from PACE to any individual or organization that is not legally authorized to have access to the information is strictly prohibited.

#### **XI. Suspension of Services**

PPD reserves the right to immediately and unilaterally suspend the Participating Agency's access to the PPD RMS system when any terms of this Agreement are violated or, in the opinion of PPD, appear to have been violated. Such a suspended service shall only be resumed upon such terms and conditions as the PPD shall deem appropriate under the circumstances. Suspension may be followed by termination if deemed necessary by PPD.

#### **XII. Responsibilities**

- A. The Participating Agency agrees to:
  - 1. Query, access and use all information accessible in the PPD RMS system in strict compliance with Federal and State laws and regulations.
  - 2. Maintain a log of all queries into the RMS system. This log shall include the name of the person who queried the system, the purpose of the query, the PPD Department Report number and the date of the query.
- B. The City of Phoenix Police Department agrees to:
  - 1. Make available to the Participating Agency electronic access for the retrieval of information to be accessed by the Participating Agency for law enforcement purposes.

2. Provide training, system documentation, updates and other materials necessary to ensure the Participating Agency's ability to effectively utilize the PPD RMS system.
3. Authorize appropriate RMS access to authorized users at the Participating Agency.

### **XIII. Training**

The Participating Agency is responsible for ensuring any person who accesses the PPD RMS system is trained and certified for the functions that person is authorized to perform.

### **XIV. E-Verify and Scrutinized Business Operations**

A. To the extent applicable under A.R.S. § 41-4401, each party and its subcontractors warrant their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under A.R.S. § 23-214(A). A breach of the above-mentioned warranty by any party or its subcontractors shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the non-breaching party. Each party retains the legal right to randomly inspect the papers and records of the other party or its subcontractor employees that use the criminal justice information resulting through the participation in this Agreement to ensure that the other party or its subcontractors are complying with the above-mentioned warranty.

### **XV. Amendment**

This Agreement shall not be altered, changed or amended except by instrument in writing executed by the Participating Agency and PPD.

### **XVI. Cancellation**

In addition to the other provisions in this Agreement prescribing cancellation or termination, the parties understand and acknowledge that either party may cancel this Agreement pursuant to A.R.S. § 38-511, Arizona Revised Statutes.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURES ON FOLLOWING PAGE.**

IN WITNESS WHEREOF the parties have executed the Agreement between Participating Agency and the City of Phoenix as of the date first written above.

City of Phoenix, a municipal corporation duly  
organized and existing under the laws of the  
State of Arizona  
Ed Zuercher, City Manager

Participating Agency

By: [Signature]  
Daniel V. Garcia, Chief of Police

By: \_\_\_\_\_

The attorneys undersigned have determined that this Agreement  
is in proper form and is within the powers and authority granted  
under the laws of this state to their respective public agencies, in  
accordance with A.R.S. § 11-952(d).

By: [Signature]  
Acting City Attorney  
BXC

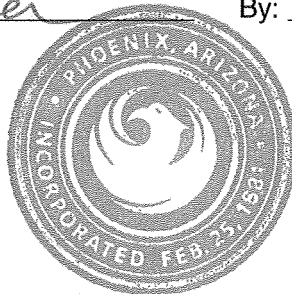
By: \_\_\_\_\_  
Attorney for Glendale Police Department

Attest:

Attest:

By: [Signature]  
City Clerk

By: \_\_\_\_\_  
City Clerk



CITY CLERK DEPT  
2014 JUN 13 PM 3:53



## Legislation Description

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**File #: 14-067, Version: 1**

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**AUTHORIZATION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE UNITED STATES  
DEPARTMENT OF JUSTICE DRUG ENFORCEMENT ADMINISTRATION TO CONTINUE PARTICIPATION IN A TASK  
FORCE**

Staff Contact: Debora Black, Police Chief

**Purpose and Recommended Action**

This is a request for City Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into an intergovernmental agreement (IGA) with the United States Department of Justice Drug Enforcement Administration (DEA) to continue participation in a DEA Task Force in the Phoenix Area.

**Background**

The Glendale Police Department (GPD) has partnered with DEA for more than two decades to fight the importation, sale, and use of dangerous drugs and narcotics; aiming to interdict the supply of drugs and the transfer of large sums of money that accompany the illicit drug trade. GPD has participated in the DEA Task Force since 2007, assigning detectives to the Task Force in the Phoenix area.

The goal of the Task Force is the disruption of illicit drug trafficking in the State of Arizona by immobilizing targeted violators and trafficking organizations. The assigned detectives gather and report intelligence data relating to trafficking in narcotics and dangerous drugs, conduct undercover operations where appropriate, and engage in other traditional methods of investigation in order that the Task Force's activities will result in effective prosecution before the courts of the United States and the State of Arizona.

The partnership with DEA promotes close cooperation between the agencies and greatly enhances information sharing, which assists with large scale operations to suppress drug importation and sales. The experience gained by the detectives assists GPD with staying informed of drug trafficking and its impact on the City of Glendale.

**Analysis**

During the period of assignment to the Task Force, the city will remain responsible for establishing the salary and benefits, including overtime, of the detectives assigned. The DEA will reimburse the city for overtime payments made to the detectives assigned to the task force, up \$17,374.24 annually per detective. The overtime reimbursement amount for the 2015 IGA was increased by 1% for the first time in three years.

**Previous Related Council Action**

On September 10, 2013, Council adopted a resolution, No. 4716 New Series, authorizing the City Manager to



enter into an intergovernmental agreement with the United States Department of Justice Drug Enforcement Administration for participation in a Task Force in the Phoenix Area.

**Community Benefit/Public Involvement**

Participation in the Task Force provides additional knowledge and experience that assists GPD with removing drug traffickers and the effects of their operations from city neighborhoods. Protecting the lives and property of the citizens of Glendale is an ongoing priority for law enforcement.

**Budget and Financial Impacts**

There is no cost to the city to enter into this IGA. Without this IGA, overtime costs for these types of drug investigations would have to be absorbed by the Police Department budget.

RESOLUTION NO. 4847 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE ENTERING INTO OF AN INTERGOVERNMENTAL AGREEMENT WITH THE UNITED STATES DEPARTMENT OF JUSTICE, DRUG ENFORCEMENT ADMINISTRATION (DEA) FOR ASSIGNMENT OF TWO GLENDALE POLICE DETECTIVES TO THE PHOENIX DEA TASK FORCE.

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

SECTION 1. That it is deemed in the best interest of the City of Glendale and the citizens thereof that the intergovernmental agreement entitled "Program-Funded State and Local Task Force Agreement" with the United States Department of Justice, Drug Enforcement Administration (DEA) for the assignment of two Glendale police detectives to the Phoenix DEA Task Force for a period of two years 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 City Council hereby authorizes and directs the City Manager, or her designee, to execute and deliver any and all necessary documents on behalf of the Glendale Police Department to effectuate these assignments. A copy of the agreement is now on file with the City Clerk of the City of Glendale.

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

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M A Y O R

ATTEST:

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City Clerk (SEAL)

APPROVED AS TO FORM:

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City Attorney

REVIEWED BY:

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City Manager

**PROGRAM-FUNDED STATE AND LOCAL TASK FORCE AGREEMENT  
BETWEEN  
DRUG ENFORCEMENT ADMINISTRATION  
AND  
THE CITY OF GLENDALE**

This agreement is made this 30<sup>th</sup> day of September, 2014, between the United States Department of Justice, Drug Enforcement Administration (hereinafter "DEA"), and The City of Glendale, Arizona Municipal Corporation (hereinafter "City"), acting through the Glendale Police Department (hereinafter "GPD"). DEA, City and GPD are referred to herein individually as "Party" and collectively as "Parties." The DEA is authorized to enter into this cooperative agreement concerning the use and abuse of controlled substances under the provisions of 21 U.S.C. § 873.

WHEREAS there is evidence that trafficking in narcotics and dangerous drugs exists throughout Arizona, and that such illegal activity has a substantial and detrimental effect on the health and general welfare of the people of the State of Arizona, the parties hereto agree to the following:

1. The DEA Phoenix Task Force will perform the activities and duties described below:
  - a. disrupt the illicit drug traffic in the State of Arizona by immobilizing targeted violators and trafficking organizations;
  - b. gather and report intelligence data relating to trafficking in narcotics and dangerous drugs; and,
  - c. conduct undercover operations where appropriate and engage in other traditional methods of investigation in order that the Task Force's activities will result in effective prosecution before the courts of the United States and the State of Arizona.
2. To accomplish the objectives of the DEA Phoenix Task Force Group 3 the GPD agrees to detail two (2) experienced Officers to the Task Force for a period of not less than two years. During this period of assignment, the GPD Officers will be under the direct supervision and control of DEA supervisory personnel assigned to the Task Force.
3. The GPD Officers assigned to the Task Force shall adhere to DEA policies and procedures. Failure to adhere to DEA policies and procedures shall be grounds for dismissal from the Task Force.
4. The GPD Officers assigned to the Task Force shall be deputized as Task Force Officers of DEA pursuant to 21 U.S.C. §878.

5. To accomplish the objectives of the DEA Phoenix Task Force, DEA will assign three (3) Special Agents to the Task Force. DEA will also, subject to the availability of annually appropriated funds or any continuing resolution thereof, provide necessary funds and equipment to support the activities of the DEA Special Agents and GPD Officers assigned to the Task Force. This support will include: office space, office supplies, travel funds, funds for the purchase of evidence and information, investigative equipment, training, and other support items.
6. During the period of assignment to the DEA Phoenix Task, the GPD will remain responsible for establishing the salary and benefits, including overtime, of the GPD Officers assigned to the Task Force, and for making all payments due them. DEA will, subject to availability of funds, reimburse the GPD for overtime payments made by it to the GPD Officers assigned to the DEA Phoenix Task Force for overtime, up to a sum equivalent to 25 percent of the salary of a GS-12, Step 1, law enforcement officer general schedule locality pay tables, rest of the United States table (currently \$17,374.25), per officer. ***Note: Task Force Officer's Overtime shall not include any costs for benefits, such as retirement, FICA, and other expenses.***
7. In no event will the GPD charge any indirect cost rate to DEA for the administration or implementation of this agreement.
8. The GPD shall maintain on a current basis complete and accurate records and accounts of all obligations and expenditures of funds under this agreement in accordance with generally accepted accounting principles and instructions provided by DEA to facilitate on-site inspection and auditing of such records and accounts.
9. The GPD shall permit and have readily available for examination and auditing by DEA, the United States Department of Justice, the Comptroller General of the United States, and any of their duly authorized agents and representatives, any and all records, documents, accounts, invoices, receipts or expenditures relating to this agreement. The GPD shall maintain all such reports and records until all litigation, claim, audits and examinations are completed and resolved, or for a period of three (3) after termination of this agreement, whichever is later.
10. The GPD shall comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, as amended, and all requirements imposed by or pursuant to the regulations of the United States Department of Justice implementing those laws, 28 C.F.R. Part 42, Subparts C, F, G, H, and I.
11. The GPD agrees that an authorized Officer or employee will execute and return to DEA the attached OJP Form 4061/6, Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements. The GPD acknowledges that this agreement will not take effect and no Federal funds will be awarded to the GPD by DEA until the completed certification is received.
12. When issuing statements, press releases, requests for proposals, bid solicitations, and other GPD documents describing projects or programs funded in whole or in part with federal money, the GPD shall clearly state: (1) the percentage of the total cost of the program or project which will be financed with Federal money; and, (2) the dollar amount of federal funds for the project or program.

13. The term of this agreement shall be effective from the date in paragraph number one (1) until September 29, 2015. This agreement may be terminated by either party on thirty days' advance written notice. Billings for all outstanding obligations must be received by DEA within 90 days of the date of termination of this agreement. DEA will be responsible only for obligations incurred by GPD during the term of this agreement.

**For the Drug Enforcement Administration:**

\_\_\_\_\_  
Douglas W. Coleman  
Special Agent in Charge

Date \_\_\_\_\_

**For the City of Glendale, an Arizona Municipal Corporation, acting through the Glendale Police Department:**

\_\_\_\_\_  
Debora Black  
Chief of Police

Date \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

Attachment



U.S. DEPARTMENT OF JUSTICE  
OFFICE OF JUSTICE PROGRAMS  
OFFICE OF THE COMPTROLLER

**CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND  
OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS**

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 28 CFR Part 69, "New Restrictions on Lobbying" and 28 CFR Part 67, "Government-wide Department and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon reliance will be placed when the Department of Justice determines to award the covered transaction, grant, or cooperative agreement.

**1. LOBBYING**

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 28 CFR Part 69, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 28 CFR Part 69, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all sub-recipients shall certify and disclose accordingly.

**2. DEBARMENT, SUSPENSION, AND OTHER  
RESPONSIBILITY MATTERS  
(DIRECT RECIPIENT)**

As required by Executive Order 12549, Debarment and Suspension, and implemented at 28 CFR Part 67, for prospective participants in primary covered transactions, as defined at 28 CFR Part 67, Section 67.510-

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a

public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

**3. DRUG-FREE WORKPLACE  
(GRANTEES OTHER THAN INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 28 CFR Part 67, Subpart E, for grantees, as defined at 28 CFR Part 67 Sections 67.615 and 67.620-

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drugs abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Department of Justice, Office of Justice Programs, ATTN: Control Desk, 633 Indiana Avenue, N.W., Washington, D.C. 20531. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site (s) for the performance of work done in connection with the specific grant.

Place of Performance (Street address, city, country, state, zip code)

DEA Arizona Offices

Check ☐ if there are workplace on file that are not identified here.

Section 67, 630 of the regulations provides that a grantee that is a State may elect to make one certification in each Federal fiscal year. A copy of which should be included with each application for Department of Justice funding. States and State agencies may elect to use OJP Form 406177.

Check ☐ if the State has elected to complete OJP Form 406177.

#### DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 28 CFR Part 67, Subpart F, for grantees, as defined at 28 CFR Part 67, Sections 67.615 and 67.620-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in connection with any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Department of Justice, Office of Justice Programs, ATTN: Control Desk, 633 Indiana Avenue, N.W., Washington, D.C. 20531.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

1. Grantee Name and Address:

For the City of Glendale, an Arizona Municipal Corporation, acting through the Glendale Police Department, 6835 N. 57th Dr., Glendale, AZ 85301

2. Application Number and/or Project Name

3. Grantee IRS/Vendor Number

4. Typed Name and Title of Authorized Representative

Debora Black, Chief

5. Signature

6. Date



## Legislation Description

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**File #: 14-071, Version: 1**

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**AUTHORIZATION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH GLENDALE ELEMENTARY SCHOOL DISTRICT NO. 40 FOR THE SERVICES OF A SCHOOL RESOURCE OFFICER AT TWO SCHOOL CAMPUSES**

Staff Contact: Debora Black, Police Chief

**Purpose and Recommended Action**

This is a request for City Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into an intergovernmental agreement (IGA) with Glendale Elementary School District No. 40 (GESD40) to assign one Glendale Police Officer at each of the two select campuses to serve as a School Resource Officer (SRO).

**Background**

SROs were assigned to schools in the Glendale area from 1992-2010. This program was primarily funded through grants received by the school districts and was found to be very effective for both the schools and the Glendale Police Department (GPD). Assigned SROs serve as a liaison between the school and the GPD; promoting crime prevention and police/community relationships in the schools and to other groups that have a potential impact on juvenile crime. The SROs educate the students and school personnel by providing relevant and informative educational programs dealing with peer pressure, child abuse, gangs, drug awareness, and other related issues. The SROs work on campus while school is in session. During the summer break SROs complete duties assigned by the GPD.

In 2011, due to a lack of grant funding, the assignment of SROs at campuses was discontinued. In 2013, a limited number of school districts, including GESD40, were able to identify funding in their budgets and began participating in the program once again. In late June 2014, the School Safety Program Oversight Committee agreed to spend almost \$12 million in the upcoming school year on school safety programs to add officers to schools across the state. Challenger Middle School and Harold W. Smith Elementary School, which are part of GESD40, were among the schools selected to receive funds.

**Analysis**

It is important that this item be considered now, as the school year began at both campuses on August 11, 2014. If approved, one officer will be assigned to Challenger Middle School, and one officer will be assigned to Harold W. Smith Elementary School, until May 28, 2015.

Staff is recommending that City Council adopt a resolution authorizing the City Manager to enter into an IGA with GESD40 to assign one Glendale Police Officer at each of the two select campuses to serve as an SRO.

**Previous Related Council Action**



On June 25, 2013, Council adopted a resolution authorizing the City Manager to enter into intergovernmental agreements with Peoria Unified School District and Tolleson Union High School District to assign Glendale Police Officers to select campuses as School Resource Officers.

On October 22, 2013, Council adopted a resolution authorizing the City Manager to enter into an intergovernmental agreement with Glendale Elementary School District No. 40 to assign a Glendale Police Officer to a select campus as a School Resource Officer.

### **Community Benefit/Public Involvement**

This partnership allows GPD to continue educational efforts in local schools while increasing police visibility and presence in the community.

### **Budget and Financial Impacts**

The yearly salary and benefits for an SRO were estimated for the school districts at the time of their grant applications based on a mid-range officer, and amounted to \$87,330.37. GESD40 received grant funding to pay \$72,775.31 for each officer at each school, covering the ten months of the school year. The remaining \$14,555.06 of each officer's salary and benefits, along with \$93,633 for each officer's one-time hiring and equipment costs, will be paid for by the Police Department.

<b>Cost</b>	<b>Fund-Department-Account</b>
<b>\$29,110.12</b>	<b>1000-12135-500200, GF-Training-Salaries</b>
<b>\$108,956</b>	<b>1000-12210-551400, GF-Fiscal Mgmt-Equipment</b>
<b>\$36,000</b>	<b>1000-12210-521000, GF-Fiscal Mgmt-Equipment less than \$5000</b>
<b>\$14,000</b>	<b>1000-12135-532500, GF-Training Fuel</b>
<b>\$9000</b>	<b>1000-12135-532400, GF-Training-Shop Charges</b>
<b>\$5000</b>	<b>1000-12160-518200, GF-Personnel Mgmt-Prof &amp; Contractual</b>
<b>\$4000</b>	<b>1000-12135-524400, GF-Training-Line Supplies</b>
<b>\$2400</b>	<b>1000-12135-501201, GF-Training-Safety Equipment</b>
<b>\$2400</b>	<b>1000-12135-502600, GF-Training-Uniform Allowance</b>
<b>\$2000</b>	<b>1000-12210-525650, GF-Fiscal Management-Bullet Proof Vest</b>
<b>\$1910</b>	<b>1000-12230-518200, GF-Communications-Prof &amp; Contractual</b>
<b>\$1200</b>	<b>1000-12210-514400, GF-Fiscal Mgmt-Cell Phone Charges</b>
<b>\$400</b>	<b>1000-12110-511400, GF-Fiscal Mgmt-Prof Development</b>

Capital Expense? No

Budgeted? No

Requesting Budget or Appropriation Transfer? Yes

If yes, where will the transfer be taken from? Identified funding for one-time cost for equipment and supplies will be through Public Safety Sales Tax fund. In compliance with the City Charter, a fourth quarter budget and cash transfer will be required.

RESOLUTION NO. 4848 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 GLENDALE ELEMENTARY SCHOOL DISTRICT NO. 40 FOR SERVICES OF SCHOOL RESOURCE OFFICERS TO AID IN REDUCING CRIME THROUGH EDUCATION, POSITIVE INTERACTION AND ENFORCEMENT FOR ASSIGNMENTS TO THE FOLLOWING SCHOOLS: ONE POLICE OFFICER AT CHALLENGER MIDDLE SCHOOL AND ONE POLICE OFFICER AT HAROLD W. SMITH ELEMENTARY SCHOOL.

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 Glendale Elementary School District No. 40 for the assignment of one police officer at Challenger Middle School and the assignment of one police officer at Harold W. Smith Elementary School to aid in reducing crime on each school campus through education, positive interaction and enforcement be entered into, which agreement is 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 are hereby directed and authorized to execute and deliver all documents necessary on behalf of the City of Glendale.

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

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M A Y O R

ATTEST:

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City Clerk (SEAL)

APPROVED AS TO FORM:

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City Attorney

REVIEWED BY:

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City Manager  
iga\_pd\_gesd\_cms\_hws

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
THE CITY OF GLENDALE  
AND  
GLENDALE ELEMENTARY SCHOOL DISTRICT NO. 40  
FOR  
SERVICES OF SCHOOL RESOURCE OFFICERS**

This Intergovernmental Agreement ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_ 2014, by and between the City of Glendale, a municipal corporation ("City"), and the Glendale Elementary School District No. 40 ("District"), for Challenger Middle School, 6905 West Maryland Avenue, Glendale, AZ 85303, and Harold W. Smith Elementary School, 6534 N 63<sup>rd</sup> Avenue, Glendale, AZ 85301 ("Schools"), political subdivisions of the State of Arizona. (City and District are referred to herein individually as a "Party and collectively as the "Parties").

**WITNESSETH**

1. **Purpose of Agreement.** The purpose of this Agreement is for the City to assign one police officer to each of the Schools from August 11, 2014 to May 28, 2015. The program is a cooperative effort between the City and the District. The police officers will work with and aid the School's administration and student population in reducing crime on the School's campus. Activities include education, positive police/student interaction, and enforcement of criminal laws.
2. **Term.** The term of the Agreement shall be from August 11, 2014 until the end of the School year, May 28, 2015. During the days the Schools are not in session, the police officers shall perform his/her regular police duties at a station as determined by the Chief of Police or his/her designee.
3. **Termination.** Either Party upon 30 days prior written notice may terminate the Agreement without cause.
4. **Relationship of Parties.** City shall have the status of an independent contractor for the purpose of this Agreement. The police officer assigned to the School, shall be considered an employee of the City and shall be subject to its control and supervision; however, the principal (or his/her designee) of the School will provide an evaluation of the assigned police officer to the Chief of Police or his/her designee. The police officer assigned to the School will be subject to the current procedures in effect for police officers of the Glendale Police Department ("GPD"), including attendance at all mandated training and testing to maintain state police officers certification. This Agreement is not intended to, and will not constitute, create, give rise to, or otherwise recognize a joint venture, partnership, or formal business association or organization of any kind between Parties, and the rights and obligations of the Parties shall be only those expressly set forth in this Agreement. The Parties agree that no person supplied by the District to accomplish the goal of this Agreement is a City employee and no rights under City civil service, retirement, or personnel rules accrue to such person.

5. Cost. District agrees to pay the City \$72,775.31 for the 2014-15 school year for each of the police officer's benefits/salary. The District will not be responsible for overtime (unless the District requests it) or other expenses relating to or resulting from police related activities, such as criminal investigations and response to gang fights, assaults, and arsons. Each Party will maintain a budget for expenditures under this Agreement. Payment from the District is due quarterly upon receipt of an itemized statement detailing services rendered.
6. Police Officers Responsibilities. The police officer's duties and responsibilities while at the assigned School shall be as follows:
  - 6.1 Serve as a liaison between the School and GPD.
  - 6.2 Solicit and promote crime prevention and police/community relations in School and/or to other groups that have a potential impact on juvenile crime.
  - 6.3 Consult with students, parents, teachers, and School officials regarding problems and issues. Be knowledgeable of referral agencies in order to provide information to the requesting parties.
  - 6.4 Work with other unit members, School personnel, and provide supervision in a positive, cooperative and productive manner.
  - 6.5 Enforce all applicable laws in a fair and consistent manner.
  - 6.6 Perform an authorized tasks or assignments as instructed by the GPD supervisor.
  - 6.7 Educate the students and School personnel by providing relevant and informative educational programs.
  - 6.8 Be flexible in his/her work schedule to attend major events as deemed appropriate by School administration.
  - 6.9 Maintain high visible presence on and around campus.
7. Time and Place of Performance. The police officer will be available for duty at the assigned School each day that the School is in session during the regular School year. The police officer's activities will be restricted to the designated School grounds except for:
  - 7.1 Follow-up home visits when needed as a result of School related student problems.
  - 7.2 Incentive programs approved by the Parties.
  - 7.3 In response to off campus, but School related criminal activity.
  - 7.4 In response to emergency police activities.
  - 7.5 Mandatory GPD meetings.
  - 7.6 Mandatory GPD programs to maintain continuing proficiency standards to maintain police officers certification.
  - 7.7 Any scheduled court hearings, trials or grand jury that requires the police officer's appearance.

8. District Responsibilities.

8.1 The District will provide each police officer an office and such equipment, as is necessary, at the assigned School. The equipment shall include a telephone and filing space capable of being secured.

8.2 The Schools agrees to act reasonably and in good faith to assist the police officer in the performance of his/her duties and responsibilities.

9. Cancellation. The City and the District acknowledge that this Agreement is subject to cancellation by either Party pursuant to the provisions of A.R.S. § 38-511.

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

11. Entire Agreement. This Agreement comprises the entire agreement of the Parties and supersedes any and all other agreements or understandings, oral and written, whether previous to the execution hereof or contemporaneous herewith. Any amendments or modifications to this Agreement shall be made only in writing and signed by the Parties to this Agreement.

12. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

13. Worker's Compensation. An employee of either Party shall be deemed to be an "employee" of both public agencies while performing pursuant to this Agreement solely for purposes of A.R.S. § 23-1022 and the Arizona Workers' Compensation laws. The primary employer shall be solely liable for any workers' compensation benefits, which may accrue. Each Party shall post a notice pursuant to the provisions of A.R.S. § 23-1022.

14. FERPA Compliance. Both Parties will ensure that the dissemination and disposition of educational records complies at all times with the Family Educational Rights and Privacy Act of 1974 and any subsequent amendments thereto.

15. Non-Discrimination. Both Parties agree to comply with all applicable provisions of state and federal laws and regulations, including the Americans with Disabilities Act and Executive Order 99-4, which is incorporated herein by reference, mandating non-discrimination and requiring that all persons, regardless of race, religion, sex, age, national origin or political affiliation shall have equal access to employment opportunity.
16. Property Disposition. The Parties do not anticipate having to dispose of any property upon partial or complete termination of this Agreement. However, to the extent that such disposition is necessary, property shall be returned to its original owner.
17. E-Verify. Both Parties acknowledge that immigration laws require them to register and participate with the E-Verify program (employment verification program administered by the United States Department of Homeland Security and the Social Security Administration or any successor program) as they both employ one or more employees in this state. Both Parties warrant that they have registered with and participate with E-Verify. If either Party later determines that the other non-compliant Party has not complied with E-Verify, it will notify the non-compliant Party by certified mail of the determination and of the right to appeal the determination.
18. Foreign Prohibitions. Both Parties certify under A.R.S. §§ 35-391 *et seq.*, and 35-393 *et seq.*, that they do not have, and during the term of this Agreement will not have, “scrutinized” business operations, as defined in the preceding statutory sections, in the countries of Sudan or Iran.
19. Notice. All notices relating to this Agreement shall be deemed given when mailed, by certified or registered mail, or overnight courier, to the other Party at the address set forth below or such other address as may be given in writing from time to time:

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

CITY OF GLENDALE, an Arizona  
municipal corporation

\_\_\_\_\_  
Brenda S. Fischer, City Manager

ATTEST:

\_\_\_\_\_  
Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael D. Bailey, City Attorney

By: \_\_\_\_\_  
Glendale Elementary School District No. 40

Approved as to Form and within the powers and  
authority of the District:

\_\_\_\_\_  
Legal Counsel for the District





## Legislation Description

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**File #: 14-072, Version: 1**

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**AUTHORIZATION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH GLENDALE UNION HIGH SCHOOL DISTRICT FOR THE SERVICES OF A SCHOOL RESOURCE OFFICER AT TWO SCHOOL CAMPUSES**

Staff Contact: Debora Black, Police Chief

**Purpose and Recommended Action**

This is a request for City Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into an intergovernmental agreement (IGA) with Glendale Union High School District (GUHSD) to assign one Glendale Police Officer at each of the two select campuses to serve as a School Resource Officer (SRO).

**Background**

SROs were assigned to schools in the Glendale area from 1992-2010. This program was primarily funded through grants received by the school districts and was found to be very effective for both the schools and the Glendale Police Department (GPD). Assigned SROs serve as a liaison between the school and the GPD; promoting crime prevention and police/community relations in the schools and to other groups that have a potential impact on juvenile crime. The SROs educate the students and school personnel by providing relevant and informative educational programs dealing with peer pressure, child abuse, gangs, drug awareness, and other related issues. The SROs work on campus while school is in session. During the summer break SROs complete duties assigned by the GPD.

In 2011, due to a lack of grant funding, the assignment of SROs at campuses was discontinued. In 2013, a few school districts were able to locate funding in their budgets and began participating in the program once again. In late June 2014, the School Safety Program Oversight Committee agreed to spend almost \$12 million in the upcoming school year on school safety programs to add officers to school sites across the state. Glendale High School and Independence High School, which are part of GUHSD, were among the schools selected to receive funds.

**Analysis**

It is important that this item be considered now, as the school year began at both campuses on August 11, 2014. If approved, one officer will be assigned to Glendale High School, and one officer will be assigned to Independence High School until May 29, 2015.

Staff is recommending that City Council adopt a resolution authorizing the City Manager to enter into an IGA with GUHSD to assign one Glendale Police Officer at each of the two select campuses to serve as an SRO.

**Previous Related Council Action**

On June 25, 2013, Council adopted a resolution authorizing the City Manager to enter into intergovernmental agreements with Peoria Unified School District and Tolleson Union High School District to assign Glendale Police Officers to select campuses as School Resource Officers.

On October 22, 2013, Council adopted a resolution authorizing the City Manager to enter into an intergovernmental agreement with Glendale Elementary School District No. 40 to assign a Glendale Police Officer to a select campus as a School Resource Officer.

### **Community Benefit/Public Involvement**

This partnership allows the GPD to continue educational efforts in local schools while increasing police visibility and the presence in the community.

### **Budget and Financial Impacts**

The yearly salary and benefits for an SRO were estimated for the school districts at the time of their grant applications based on a mid-range officer, and amounted to \$87,330.37. GUHSD received grant funding to pay \$72,775.31 for each officer at each school, covering the ten months of the school year. The remaining \$14,555.06 of each officer's salary and benefits, along with \$93,633 for each officer's one-time hiring and equipment costs, will be paid for by the Police Department.

<b>Cost</b>	<b>Fund-Department-Account</b>
<b>\$29,110.12</b>	<b>1000-12135-500200, GF-Training-Salaries</b>
<b>\$108,956</b>	<b>1000-12210-551400, GF-Fiscal Mgmt-Equipment</b>
<b>\$36,000</b>	<b>1000-12210-521000, GF-Fiscal Mgmt-Equipment less than \$5000</b>
<b>\$14,000</b>	<b>1000-12135-532500, GF-Training Fuel</b>
<b>\$9000</b>	<b>1000-12135-532400, GF-Training-Shop Charges</b>
<b>\$5000</b>	<b>1000-12160-518200, GF-Personnel Mgmt-Prof &amp; Contractual</b>
<b>\$4000</b>	<b>1000-12135-524400, GF-Training-Line Supplies</b>
<b>\$2400</b>	<b>1000-12135-501201, GF-Training-Safety Equipment</b>
<b>\$2400</b>	<b>1000-12135-502600, GF-Training-Uniform Allowance</b>
<b>\$2000</b>	<b>1000-12210-525650, GF-Fiscal Management-Bullet Proof Vest</b>
<b>\$1910</b>	<b>1000-12230-518200, GF-Communications-Prof &amp; Contractual</b>
<b>\$1200</b>	<b>1000-12210-514400, GF-Fiscal Mgmt-Cell Phone Charges</b>
<b>\$400</b>	<b>1000-12110-511400, GF-Fiscal Mgmt-Prof Development</b>

Capital Expense? No

Budgeted? No

Requesting Budget or Appropriation Transfer? Yes

If yes, where will the transfer be taken from? Identified funding for one-time cost for equipment and supplies will be through Public Safety Sales Tax fund. In compliance with the City Charter, a fourth quarter budget and cash transfer will be required.

RESOLUTION NO. 4849 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 GLENDALE UNION HIGH SCHOOL DISTRICT FOR SERVICES OF SCHOOL RESOURCE OFFICERS TO AID IN REDUCING CRIME THROUGH EDUCATION, POSITIVE INTERACTION AND ENFORCEMENT FOR ASSIGNMENTS TO THE FOLLOWING SCHOOLS: ONE POLICE OFFICER AT GLENDALE UNION HIGH SCHOOL AND ONE POLICE OFFICER AT INDEPENDENCE HIGH SCHOOL.

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 Glendale Union High School District for the assignment of one police officer at Glendale High School and the assignment of one police officer at Independence High School to aid in reducing crime on each school campus through education, positive interaction and enforcement be entered into, which agreement is 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 are hereby directed and authorized to execute and deliver all documents necessary on behalf of the City of Glendale.

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

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
City Clerk (SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

REVIEWED BY:

\_\_\_\_\_  
City Manager  
iga\_pd\_guhs\_iuh

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
THE CITY OF GLENDALE  
AND  
GLENDALE UNION HIGH SCHOOL DISTRICT  
FOR  
SERVICES OF SCHOOL RESOURCE OFFICERS**

This Intergovernmental Agreement ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_ 2014, by and between the City of Glendale, a municipal corporation ("City"), and the Glendale Union High School District ("District"), for Glendale High School, 6216 West Glendale Avenue, Glendale, AZ 85301, and Independence High School, 6602 North 75<sup>th</sup> Avenue, Glendale, AZ 85303 ("Schools"), political subdivisions of the State of Arizona. (City, District and Schools are referred to herein individually as a "Party and collectively as the "Parties").

**WITNESSETH**

1. **Purpose of Agreement.** The purpose of this Agreement is for the City to assign one police officer to each of the Schools from August 11, 2014 to May 29, 2015. The program is a cooperative effort between the City and the District. The police officers will work with and aid the School's administration and student population in reducing crime on the School's campus. Activities include education, positive police/student interaction, and enforcement of criminal laws.
2. **Term.** The term of the Agreement shall be from August 11, 2014 until the end of the School year, May 29, 2015. During the days the Schools are not in session, the police officers shall perform his/her regular police duties at a station as determined by the Chief of Police or his/her designee.
3. **Termination.** Either Party upon 30 days prior written notice may terminate the Agreement without cause.
4. **Relationship of Parties.** City shall have the status of an independent contractor for the purpose of this Agreement. The police officer assigned to the School, shall be considered an employee of the City and shall be subject to its control and supervision; however, the principal (or his/her designee) of the School will provide an evaluation of the assigned police officer to the Chief of Police or his/her designee. The police officer assigned to the School will be subject to the current procedures in effect for police officers of the Glendale Police Department ("GPD"), including attendance at all mandated training and testing to maintain state police officers certification. This Agreement is not intended to, and will not constitute, create, give rise to, or otherwise recognize a joint venture, partnership, or formal business association or organization of any kind between Parties, and the rights and obligations of the Parties shall be only those expressly set forth in this Agreement. The Parties agree that no person supplied by the District to accomplish the goal of this Agreement is a City employee and no rights under City civil service, retirement, or personnel rules accrue to such person.

5. Cost. District agrees to pay the City \$72,775.31 for the 2014-15 school year for each of the police officer's benefits/salary. The District will not be responsible for overtime (unless the District requests it) or other expenses relating to or resulting from police related activities, such as criminal investigations and response to gang fights, assaults, and arsons. Each Party will maintain a budget for expenditures under this Agreement. Payment from the District is due upon receipt of an itemized statement.
6. Police Officers Responsibilities. The police officer's duties and responsibilities while at their assigned School shall be as follows:
  - 6.1 Serve as a liaison between the School and GPD.
  - 6.2 Solicit and promote crime prevention and police/community relations in School and/or to other groups that have a potential impact on juvenile crime.
  - 6.3 Consult with students, parents, teachers, and School officials regarding problems and issues. Be knowledgeable of referral agencies in order to provide information to the requesting parties.
  - 6.4 Work with other unit members, School personnel, and provide supervision in a positive, cooperative and productive manner.
  - 6.5 Enforce all applicable laws in a fair and consistent manner.
  - 6.6 Perform authorized tasks or assignments as instructed by their GPD supervisor.
  - 6.7 Educate the students and School personnel by providing relevant and informative educational programs.
  - 6.8 Will be flexible in his/her work schedule to attend major events as deemed appropriate by School administration.
  - 6.9 Maintain a high visible presence on and around campus.
7. Time and Place of Performance. The police officer will be available for duty at the assigned School each day that the School is in session during the regular School year. The police officer's activities will be restricted to the designated School grounds except for:
  - 7.1 Follow-up home visits when needed as a result of School related student problems.
  - 7.2 Incentive programs approved by the Parties.
  - 7.3 In response to off campus, but School related criminal activity.
  - 7.4 In response to emergency police activities.
  - 7.5 Mandatory GPD meetings.
  - 7.6 Mandatory GPD programs to maintain continuing proficiency standards to maintain police officers certification.
  - 7.7 Any scheduled court hearings, trials or grand jury that requires the police officer's appearance.

8. District Responsibilities.

8.1 The District will provide each police officer an office and such equipment, as is necessary, at their assigned School. The equipment shall include a telephone and filing space capable of being secured.

8.2 The Schools agree to act reasonably and in good faith to assist the police officer in the performance of his/her duties and responsibilities.

9. Cancellation. The City and the District acknowledge that this Agreement is subject to cancellation by either Party pursuant to the provisions of A.R.S. § 38-511.

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

11. Entire Agreement. This Agreement comprises the entire agreement of the Parties and supersedes any and all other agreements or understandings, oral and written, whether previous to the execution hereof or contemporaneous herewith. Any amendments or modifications to this Agreement shall be made only in writing and signed by the Parties to this Agreement.

12. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

13. Worker's Compensation. An employee of either Party shall be deemed to be an "employee" of both public agencies while performing pursuant to this Agreement solely for purposes of A.R.S. § 23-1022 and the Arizona Workers' Compensation laws. The primary employer shall be solely liable for any workers' compensation benefits, which may accrue. Each Party shall post a notice pursuant to the provisions of A.R.S. § 23-1022.

14. FERPA Compliance. Both Parties will ensure that the dissemination and disposition of educational records complies at all times with the Family Educational Rights and Privacy Act of 1974 and any subsequent amendments thereto.

15. Non-Discrimination. Both Parties agree to comply with all applicable provisions of state and federal laws and regulations, including the Americans with Disabilities Act and Executive Order 99-4, which is incorporated herein by reference, mandating non-discrimination and requiring that all persons, regardless of race, religion, sex, age, national origin or political affiliation shall have equal access to employment opportunity.
16. Property Disposition. The Parties do not anticipate having to dispose of any property upon partial or complete termination of this Agreement. However, to the extent that such disposition is necessary, property shall be returned to its original owner.
17. E-Verify. Both Parties acknowledge that immigration laws require them to register and participate with the E-Verify program (employment verification program administered by the United States Department of Homeland Security and the Social Security Administration or any successor program) as they both employ one or more employees in this state. Both Parties warrant that they have registered with and participate with E-Verify. If either Party later determines that the other non-compliant Party has not complied with E-Verify, it will notify the non-compliant Party by certified mail of the determination and of the right to appeal the determination.
18. Foreign Prohibitions. Both Parties certify under A.R.S. §§ 35-391 *et seq.*, and 35-393 *et seq.*, that they do not have, and during the term of this Agreement will not have, “scrutinized” business operations, as defined in the preceding statutory sections, in the countries of Sudan or Iran.
19. Notice. All notices relating to this Agreement shall be deemed given when mailed, by certified or registered mail, or overnight courier, to the other Party at the address set forth below or such other address as may be given in writing from time to time:

If to CITY:                      Glendale Police Department  
Attn: Chief Debora Black  
6835 North 57<sup>th</sup> Drive  
Glendale, Arizona 85301

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

If to DISTRICT:                Glendale Union High School District  
Attn: Allison Mattingly  
7650 North 43<sup>rd</sup> Avenue  
Glendale, Arizona 85301



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

CITY OF GLENDALE, an Arizona  
municipal corporation

\_\_\_\_\_  
Brenda S. Fischer, City Manager

ATTEST:

\_\_\_\_\_  
Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael D. Bailey, City Attorney

By: \_\_\_\_\_  
Glendale Union High School District

Approved as to Form and within the powers and  
authority of the District:

\_\_\_\_\_  
Legal Counsel for the District



## Legislation Description

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**File #: 14-073, Version: 1**

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**AUTHORIZATION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH PEORIA UNIFIED SCHOOL DISTRICT FOR THE SERVICES OF A SCHOOL RESOURCE OFFICER AT TWO SCHOOL CAMPUSES**

Staff Contact: Debora Black, Police Chief

**Purpose and Recommended Action**

This is a request for City Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into an intergovernmental agreement (IGA) with Peoria Unified School District (PUSD) to assign one Glendale Police Officer at each of the two select campuses to serve as a School Resource Officer (SRO).

**Background**

SROs were assigned to schools in the Glendale area from 1992-2010. This program was primarily funded through grants received by the school districts and was found to be very effective for both the schools and the Glendale Police Department (GPD). Assigned SROs serve as a liaison between the school and the GPD; promoting crime prevention and police/community relationships in the schools and to other groups that have a potential impact on juvenile crime. The SROs educate the students and school personnel by providing relevant and informative educational programs dealing with peer pressure, child abuse, gangs, drug awareness, and other related issues. The SROs work on campus while school is in session. During the summer break SROs complete duties assigned by the GPD.

In 2011, due to a lack of grant funding, the assignment of SROs at campuses was discontinued. In 2013, a few school districts, including PUSD, were able to locate funding in their budgets and began participating in the program once again. This is a continuation of an existing program for SROs at Cactus High School and Ironwood High School.

**Analysis**

It is important that this item be considered now, as the school year began at both campuses on August 6, 2014. If approved, one officer will be assigned to Cactus High School, and one officer will be assigned to Ironwood High School, until May 21, 2015.

Staff is recommending that City Council adopt a resolution authorizing the City Manager to enter into an IGA with PUSD to assign one Glendale Police Officer at each of the two select campuses to serve as an SRO.

**Previous Related Council Action**

On June 25, 2013, Council adopted a resolution authorizing the City Manager to enter into intergovernmental

agreements with Peoria Unified School District and Tolleson Union High School District to assign Glendale Police Officers to select campuses as School Resource Officers.

On October 22, 2013, Council adopted a resolution authorizing the City Manager to enter into an intergovernmental agreement with Glendale Elementary School District No. 40 to assign a Glendale Police Officer to a select campus as a School Resource Officer.

#### **Community Benefit/Public Involvement**

This partnership allows the GPD to continue educational efforts in local schools while increasing police visibility and the presence in the community.

#### **Budget and Financial Impacts**

The yearly salary and benefits for an SRO were estimated for the school districts at the time of their grant applications based on a mid-range officer, and amounted to \$87,330.37. PUSD will pay \$72,775.31 for each officer at each school, covering the ten months of the school year. The remaining \$14,555.06 of each officer's salary and benefits will be paid for by the Police Department.

<b>Cost</b>	<b>Fund-Department-Account</b>
<b>\$29,110.12</b>	<b>1000-12135-500200, General Fund-Training-Salaries</b>

Capital Expense? No

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from?

RESOLUTION NO. 4850 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 PEORIA UNIFIED SCHOOL DISTRICT FOR SERVICES OF SCHOOL RESOURCE OFFICERS TO AID IN REDUCING CRIME THROUGH EDUCATION, POSITIVE INTERACTION AND ENFORCEMENT WITH ASSIGNMENTS TO THE FOLLOWING SCHOOLS: ONE POLICE OFFICER AT CACTUS HIGH SCHOOL AND ONE POLICE OFFICER AT IRONWOOD HIGH SCHOOL.

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 Peoria Unified School District for the assignment of one police officer at Cactus High School and the assignment of one police officer at Ironwood High School to aid in reducing crime on each school campus through education, positive interaction and enforcement be entered into, which agreement is 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 are hereby directed and authorized to execute and deliver all documents necessary on behalf of the City of Glendale.

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

---

M A Y O R

ATTEST:

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City Clerk (SEAL)

APPROVED AS TO FORM:

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City Attorney

REVIEWED BY:

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City Manager  
iga\_pd\_psd\_cactus

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
THE CITY OF GLENDALE  
AND  
PEORIA UNIFIED SCHOOL DISTRICT  
FOR  
SERVICES OF SCHOOL RESOURCE OFFICERS**

This Intergovernmental Agreement ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_ 2014, by and between the City of Glendale, a municipal corporation ("City"), and the Peoria Unified School District ("District"), for Cactus High School, 6330 West Greenway Road, Glendale, AZ 85306, and Ironwood High School, 6051 West Sweetwater Avenue, Glendale, AZ 85304 ("Schools"), political subdivisions of the State of Arizona. (City, District and Schools are referred to herein individually as a "Party and collectively as the "Parties").

**WITNESSETH**

1. **Purpose of Agreement.** The purpose of this Agreement is for the City to assign one police officer to each of the Schools from August 6, 2014 to May 21, 2015. The program is a cooperative effort between the City and the District. The police officers will work with and aid the School's administration and student population in reducing crime on the School's campus. Activities include education, positive police/student interaction, and enforcement of criminal laws.
2. **Term.** The term of the Agreement shall be from August 6, 2014 until the end of the School year, May 21, 2015. During the days the Schools are not in session, the police officers shall perform his/her regular police duties at a station as determined by the Chief of Police or his/her designee.
3. **Termination.** Either Party upon 30 days prior written notice may terminate the Agreement without cause.
4. **Relationship of Parties.** City shall have the status of an independent contractor for the purpose of this Agreement. The police officer assigned to the School, shall be considered an employee of the City and shall be subject to its control and supervision; however, the principal (or his/her designee) of the School will provide an evaluation of the assigned police officer to the Chief of Police or his/her designee. The police officer assigned to the School will be subject to the current procedures in effect for police officers of the Glendale Police Department ("GPD"), including attendance at all mandated training and testing to maintain state police officers certification. This Agreement is not intended to, and will not constitute, create, give rise to, or otherwise recognize a joint venture, partnership, or formal business association or organization of any kind between Parties, and the rights and obligations of the Parties shall be only those expressly set forth in this Agreement. The Parties agree that no person supplied by the District to accomplish the goal of this Agreement is a City employee and no rights under City civil service, retirement, or personnel rules accrue to such person.

5. Cost. District agrees to pay the City \$72,775.31 for the 2014-15 school year for each of the police officer's benefits/salary. The District will not be responsible for overtime (unless the District requests it) or other expenses relating to or resulting from police related activities, such as criminal investigations and response to gang fights, assaults, and arsons. Each Party will maintain a budget for expenditures under this Agreement. Payment from the District is due upon receipt of an itemized statement.
6. Police Officers Responsibilities. The police officer's duties and responsibilities while at their assigned School shall be as follows:
  - 6.1 Serve as a liaison between the School and GPD.
  - 6.2 Solicit and promote crime prevention and police/community relations in School and/or to other groups that have a potential impact on juvenile crime.
  - 6.3 Consult with students, parents, teachers, and School officials regarding problems and issues. Be knowledgeable of referral agencies in order to provide information to the requesting parties.
  - 6.4 Work with other unit members, School personnel, and provide supervision in a positive, cooperative and productive manner.
  - 6.5 Enforce all applicable laws in a fair and consistent manner.
  - 6.6 Perform authorized tasks or assignments as instructed by their GPD supervisor.
  - 6.7 Educate the students and School personnel by providing relevant and informative educational programs.
  - 6.8 Will be flexible in his/her work schedule to attend major events as deemed appropriate by School administration.
  - 6.9 Maintain a high visible presence on and around campus.
7. Time and Place of Performance. The police officer will be available for duty at the assigned School each day that the School is in session during the regular School year. The police officer's activities will be restricted to the designated School grounds except for:
  - 7.1 Follow-up home visits when needed as a result of School related student problems.
  - 7.2 Incentive programs approved by the Parties.
  - 7.3 In response to off campus, but School related criminal activity.
  - 7.4 In response to emergency police activities.
  - 7.5 Mandatory GPD meetings.
  - 7.6 Mandatory GPD programs to maintain continuing proficiency standards to maintain police officers certification.
  - 7.7 Any scheduled court hearings, trials or grand jury that requires the police officer's appearance.

8. District Responsibilities.

8.1 The District will provide each police officer an office and such equipment, as is necessary, at their assigned School. The equipment shall include a telephone and filing space capable of being secured.

8.2 The Schools agree to act reasonably and in good faith to assist the police officer in the performance of his/her duties and responsibilities.

9. Cancellation. The City and the District acknowledge that this Agreement is subject to cancellation by either Party pursuant to the provisions of A.R.S. § 38-511.

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

11. Entire Agreement. This Agreement comprises the entire agreement of the Parties and supersedes any and all other agreements or understandings, oral and written, whether previous to the execution hereof or contemporaneous herewith. Any amendments or modifications to this Agreement shall be made only in writing and signed by the Parties to this Agreement.

12. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

13. Worker's Compensation. An employee of either Party shall be deemed to be an "employee" of both public agencies while performing pursuant to this Agreement solely for purposes of A.R.S. § 23-1022 and the Arizona Workers' Compensation laws. The primary employer shall be solely liable for any workers' compensation benefits, which may accrue. Each Party shall post a notice pursuant to the provisions of A.R.S. § 23-1022.

14. FERPA Compliance. Both Parties will ensure that the dissemination and disposition of educational records complies at all times with the Family Educational Rights and Privacy Act of 1974 and any subsequent amendments thereto.

15. Non-Discrimination. Both Parties agree to comply with all applicable provisions of state and federal laws and regulations, including the Americans with Disabilities Act and Executive Order 99-4, which is incorporated herein by reference, mandating non-discrimination and requiring that all persons, regardless of race, religion, sex, age, national origin or political affiliation shall have equal access to employment opportunity.
16. Property Disposition. The Parties do not anticipate having to dispose of any property upon partial or complete termination of this Agreement. However, to the extent that such disposition is necessary, property shall be returned to its original owner.
17. E-Verify. Both Parties acknowledge that immigration laws require them to register and participate with the E-Verify program (employment verification program administered by the United States Department of Homeland Security and the Social Security Administration or any successor program) as they both employ one or more employees in this state. Both Parties warrant that they have registered with and participate with E-Verify. If either Party later determines that the other non-compliant Party has not complied with E-Verify, it will notify the non-compliant Party by certified mail of the determination and of the right to appeal the determination.
18. Foreign Prohibitions. Both Parties certify under A.R.S. §§ 35-391 *et seq.*, and 35-393 *et seq.*, that they do not have, and during the term of this Agreement will not have, “scrutinized” business operations, as defined in the preceding statutory sections, in the countries of Sudan or Iran.
19. Notice. All notices relating to this Agreement shall be deemed given when mailed, by certified or registered mail, or overnight courier, to the other Party at the address set forth below or such other address as may be given in writing from time to time:



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

CITY OF GLENDALE, an Arizona  
municipal corporation

\_\_\_\_\_  
Brenda S. Fischer, City Manager

ATTEST:

\_\_\_\_\_  
Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael D. Bailey, City Attorney

By: \_\_\_\_\_  
Peoria Unified School District

Approved as to Form and within the powers and  
authority of the District:

\_\_\_\_\_  
Legal Counsel for the District



## Legislation Description

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**File #: 14-098, Version: 1**

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**AUTHORIZATION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH TOLLESON UNION HIGH SCHOOL DISTRICT NO. 214 FOR THE SERVICES OF A SCHOOL RESOURCE OFFICER AT ONE SCHOOL CAMPUS**

Staff Contact: Debora Black, Police Chief

### **Purpose and Policy Guidance**

This is a request for City Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into an intergovernmental agreement (IGA) with Tolleson Union High School District No. 214 (TUHSD214) to assign one Glendale Police Officer at a select campus to serve as a School Resource Officer (SRO).

### **Background**

SROs were assigned to schools in the Glendale area from 1992-2010. This program was primarily funded through grants received by the school districts and was found to be very effective for both the schools and the Glendale Police Department (GPD). Assigned SROs serve as a liaison between the school and the GPD; promoting crime prevention and police/community relations in the school and to other groups that have a potential impact on juvenile crime. The SROs educate the students and school personnel by providing relevant and informative educational programs dealing with peer pressure, child abuse, gangs, drug awareness, and other related issues. The SROs work on campus while school is in session. During the summer break SROs complete duties assigned by the Police Department.

In 2011, due to a lack of grant funding, the assignment of SROs at campuses was discontinued. In 2013, a few school districts, including TUHSD214, were able to locate funding in their budgets and began participating in the program once again. In late June 2014, the School Safety Program Oversight Committee agreed to spend almost \$12 million in the upcoming school year on school safety programs to add officers to school sites across the state. Copper Canyon High School, which is part of TUHSD214, was among the schools selected to receive funds.

### **Analysis**

It is important that this item be considered now, as the school year began at the selected campus on August 4, 2014. If approved, one officer will be assigned to Copper Canyon High School until May 22, 2015.

Staff is recommending that City Council adopt a resolution authorizing the City Manager to enter into an IGA with TUHSD214 to assign one Glendale Police Officer at the select campus to serve as an SRO.

### **Previous Related Council Action**

On June 25, 2013, Council adopted a resolution authorizing the City Manager to enter into intergovernmental agreements with Peoria Unified School District and Tolleson Union High School District to assign Glendale Police Officers to select campuses as School Resource Officers.

On October 22, 2013, Council adopted a resolution authorizing the City Manager to enter into an intergovernmental agreement with Glendale Elementary School District No. 40 to assign a Glendale Police Officer to a select campus as a School Resource Officer.

#### **Community Benefit/Public Involvement**

This partnership allows the GPD to continue educational efforts in local schools while increasing police visibility and the presence in the community.

#### **Budget and Financial Impacts**

The yearly salary and benefits for an SRO were estimated for the school districts at the time of their grant applications based on a mid-range officer, and amounted to \$87,330.37. TUHSD214 received grant funding to pay \$72,775.31, covering the ten months of the school year. The remaining \$14,555.06 of the officer's salary and benefits will be paid for by the Police Department.

<b>Cost</b>	<b>Fund-Department-Account</b>
<b>\$14,555.06</b>	<b>1000-12135-500200, General Fund-Training-Salaries</b>

Capital Expense? No

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from?

RESOLUTION NO. 4851 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 TOLLESON UNION HIGH SCHOOL DISTRICT NO. 214 FOR THE ASSIGNMENT OF ONE SCHOOL RESOURCE OFFICER AT COPPER CANYON HIGH SCHOOL TO AID IN REDUCING CRIME THROUGH EDUCATION, POSITIVE INTERACTION AND ENFORCEMENT.

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 Tolleson Union High School District No. 214 for the assignment of one police officer at Copper Canyon High School to aid in reducing crime on the school campus through education, positive interaction and enforcement be entered into, which agreement is 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 are hereby directed and authorized to execute and deliver all documents necessary on behalf of the City of Glendale.

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

\_\_\_\_\_  
M A Y O R

ATTEST:

\_\_\_\_\_  
City Clerk (SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

REVIEWED BY:

\_\_\_\_\_  
City Manager

iga\_pd\_tolleson uhsd

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
THE CITY OF GLENDALE  
AND  
TOLLESON UNION HIGH SCHOOL DISTRICT NO. 214  
FOR  
SERVICES OF SCHOOL RESOURCE OFFICERS**

This Intergovernmental Agreement ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between the City of Glendale, a municipal corporation ("City"), and the Tolleson Union High School District No. 214 ("District"), for Copper Canyon High School, 9126 West Camelback Road, Glendale, Arizona, 85305 ("School"), a political subdivision of the State of Arizona. (City and District are referred to herein individually as a "Party" and collectively as the "Parties").

**RECITALS**

- A. The District has funding available through its School Safety Program Grant to fund school resources officer services ("SRO Services") for Copper Canyon High School and for the District's 2015 summer school programming ("Summer School Program").
- B. The City and the District desire to enter into an agreement whereby the City will provide a sworn, certified police officer to provide SRO Services at Copper Canyon High School during the 2014-2015 school year (the "School Year").
- C. The District is authorized to enter into the Agreement pursuant to A.R.S. §§ 15-342 and 11-952.
- D. The City is authorized to enter into this Agreement pursuant to A.R.S. § 11-952.

**AGREEMENT**

Now, therefore, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **General Terms and Conditions**

- a. **Term.** The term of this Agreement shall be from July 31, 2014 until May 22, 2015 (the end of the school year).
- b. **Relationship of Parties.** City shall have the status of an independent contractor for the purpose of this Agreement. The SRO assigned to the School shall be considered an employee of the City and shall be subject to its control and supervision. The SRO will be subject to the current procedures in effect for police officers of the Glendale Police Department ("GPD"), including attendance

at all mandated training and testing to maintain police officer certification. The City, and not the District, shall determine the time of its performance of the SRO Services agreed to in this Agreement, so long as it complies with the scope of work set out in this Agreement in Section 2 and all of its subparagraphs. This Agreement is not intended to, and will not constitute, create, give rise to, or otherwise recognize a joint venture, partnership, or formal business association or organization of any kind between the Parties, and the rights and obligations of the Parties shall be only those expressly set forth in this Agreement. The Parties agree that no person supplied by the District to accomplish the goal of this Agreement is a City employee and no rights under City civil service, retirement, or personnel rules accrue to any such person. The District does not have the authority to supervise or control the actual work of the City, its employees, or its subcontractors.

- c. Chain of Command and Channels of Communication. The Principal or Principal's designee will communicate directly with the SRO's commanding officer about any issues or concerns involving the SRO. If there is an issue that cannot be resolved between the Principal or designee and the commanding officer, the District's Grants and Federal Programs Coordinator will communicate with the commanding officer or his/her superiors, as determined appropriate by the City.
- d. Coordination of Processes to Address Student Misconduct. The Parties will work together to identify and streamline any separate processes for investigating and responding to acts of student misconduct that may also implicate criminal misconduct.
- e. Records. Parties shall maintain the records required in this Agreement for a period of three years after the termination of this Agreement.
- f. Program Continuation Subject to Appropriation. The provisions of this Agreement for payment of funds by the District shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. The District shall be the sole judge and authority in determining the availability of funds under this Agreement and the District shall keep the City fully informed as to the availability of funds for this program. The obligation of the District to make any payment pursuant to this Agreement is a current expense of the District, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of the District. If the Governing Board of the District fails to appropriate money sufficient to pay the reimbursements as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of the then-current fiscal year and the City and the District shall be relieved of any subsequent obligation under this Agreement.

g. Termination. Either Party may terminate this Agreement upon thirty (30) days prior written notice to the other Party at the addresses indicated below. Five (5) days after the District fails to make reimbursements as required by this Agreement, the City may terminate this Agreement by delivering ten (10) days written notice to the District. The District may terminate this Agreement immediately should the School Safety Grant funding become unavailable for any reason. The District further has the right to terminate this Agreement at any time that it appears in the reasonable judgment of the District that the SRO is displaying inappropriate conduct that negatively affects or distracts from the teaching environment. In such an event, the District shall direct the SRO to return to his GPD station and shall immediately contact the SRO's superior officer and/or another person designated by the City by telephone or fax to describe the situation and the District's concern. The City, then, shall have seventy-two (72) hours to correct the problem or to schedule a meeting with the District to attempt to resolve the issue. If the issue cannot be resolved, the District and the City agree:

- i. The City shall supply the District with another certified police officer, who is trained as an SRO and shall meet the requirements of Paragraph 2, to replace the SRO, or
- ii. The City and the District may mutually agree that the School will no longer have an SRO for the remainder of the school year, nor will the District be required to pay for the unfulfilled portion of the SRO's work (although District is required to pay for any work already performed by the SRO), or
- iii. District may terminate the Agreement.

The District shall not be required to pay for the SRO's services during any time the SRO is reassigned to the GPD pending resolution of an issue concerning inappropriate conduct.

h. Cancellation. This Agreement may be cancelled pursuant to A.R.S. § 38-511.

i. Dispute Resolution Process. The Parties agree that they shall use all reasonable efforts to resolve any dispute or claim through good faith negotiations. If the Parties are unable to resolve the dispute or claim through negotiations, upon written request of either party, the City's Police Chief or designee, and the School Principal or designee, will attempt to resolve the matter with ten (10) days of the date of the written request that referred the matter to them. If the matter is not resolved, the matter shall be immediately referred to the City Manager or designee and the District Superintendent or designee. If the matter is still not resolved within ten (10) days, the Parties may terminate this Agreement pursuant to Paragraph 1.g of this Agreement.

j. Entire Agreement. This Agreement comprises the entire agreement of the Parties and supersedes any other agreements or understandings, oral and written, whether previous to the execution of this Agreement or contemporaneous herewith. Any

amendments or modifications to this Agreement shall be made only in writing and signed by the Parties to this Agreement.

- k. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.
- l. Workers' Compensation. Any employee of either Party shall be deemed to be an "employee" of both public agencies while performing pursuant to this Agreement solely for the purposes of A.R.S. § 23-1022 and the Arizona Workers' Compensation laws. The primary employer shall be solely liable for any workers' compensation benefits that may accrue. Each Party shall post a notice pursuant to the provisions of A.R.S. § 23-1022.
- m. FERPA Compliance. The Parties will ensure that the dissemination and disposition of educational records complies at all times with the Family Educational Rights and Privacy Act of 1974 and any subsequent amendments thereto.
- n. Non-Discrimination. The Parties agree to comply with all state and federal law and regulations, including the Americans with Disabilities Act and Executive Order 99-4 and 2009-09, which are incorporated herein by reference, mandating non-discrimination and requiring that all persons, regardless of age, religion, sex, race, national origin, or political affiliation shall have equal access to employment opportunity.
- o. Property Disposition. The Parties do not anticipate having to dispose of any property upon partial or complete termination of this Agreement. However, to the extent that such disposition is necessary, property shall be returned to its original owner.
- p. E-Verify. The Parties acknowledge that immigration laws require them to register and participate with the E-Verify program (employment verification program administered by the United States Department of Homeland Security and the Social Security Administration or any successor program) as they both employ one or more employees in this state. The Parties warrant that they have registered with and participate with E-Verify. If either Party later determines that the other non-compliant Party has not complied with E-Verify, it will notify the non-compliant Party by certified mail of the determination and the right to appeal the determination.
- q. Fingerprinting Requirements. The Parties shall comply with the fingerprinting requirements of A.R.S. § 15-512 unless otherwise exempted.
- r. Severability and Savings. If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any



s. Notices. All notices relating to this Agreement shall be deemed given when mailed, by certified or registered mail, or overnight courier, to the other Party at the address set forth below or such other addresses as may be given in writing from time to time:

**With a copy to:**

**Udall Shumway, PLC**  
**Attn: Cathleen Dooley**  
**1138 N. Alma School Road, Ste. 101**  
**Mesa, Arizona 85201**

b. The City agrees to involve the District, including CCHS personnel, in the selection process for assigning an officer to the SRO position if the currently assigned officer must be replaced. This process will include allowing a CCHS administrator to be on the final selection committee once GPD has identified final candidates for the position. The City agrees that it will select an officer for the

SRO position who demonstrates a commitment to the goals of the School Safety Grant.

- c. The City will invoice the District for payment of the SRO's services on a monthly basis.
- d. During the days the School is not in session, the police officer assigned as a School Resource Officer ("SRO") shall perform his/her regular police duties at a station as determined by the Chief of Police or his/her designee. The City agrees that it is responsible for 100% of the SRO's salary and expenses when the SRO is assigned to work at another location during times the School is not in session.
- e. The City shall ensure that the designated GPD officer(s) performing SRO Services attend annual training provided by the Arizona Department of Education ("ADE").
- f. The City shall ensure that the SRO's GPD supervisor attends training provided by the ADE.
- g. The SRO(s) performing SRO Services shall fulfill their duties as sworn law enforcement officers for the State of Arizona. SROs must be present and accessible on the Copper Canyon High School ("CCHS") campus as assigned by the Grant. Absent an emergency, the SRO shall not be called away from the CCHS. If the SRO is called away on police business, including but not limited to City-mandated training, City-mandated meetings, City-related emergencies, etc., the District shall not be invoiced for that time and the costs shall be borne by the City. If the SRO is attending an SRO-related training or other activity mandated by the Grant, the District shall be invoiced for that time.
- h. The City shall ensure that the SRO(s) assigned to CCHS complete 180 hours of Law Related Education ("LRE"), which shall consist of 80 hours of classroom instruction to ongoing cohort groups of students, and at least 100 hours of universal instruction.
- i. The SRO will maintain a weekly activity log that tracks his/her LRE instruction hours, teacher and subject or staff/community group the instruction was directed at, the topic of each LRE lesson, and the time that the SRO spends off of CCHD campus during duty hours. The SRO shall also provide a monthly recap of LRE activities, law enforcement activity, and time on campus to be presented to the Principal.
- j. The City shall, within ten (10) business days of a request by the District, provide verification to the District of the SRO's successful criminal records check, e.g., a copy of current fingerprint clearance card, copy of criminal records report, etc.

k. To the extent permitted by law, City specifically agrees that it shall indemnify the District, for costs, including, but not limited to, actual damages, compensatory damages, punitive damages, and any related attorneys' fees and costs that arise from an SRO's use of physical force on students or the interviewing and searching of students where the SRO is acting outside of or in excess of the District's rules and policies related to use of physical force or interviewing and searching students.

l. The SRO assigned to CCHS shall:

- i. Serve as a liaison between the School and GPD.
- ii. Solicit and promote crime prevention and police/community relations in School and/or to other groups that have a potential impact on juvenile crime.
- iii. Consult with students, parents, teachers, and School officials regarding problems and issues and will be knowledgeable of referral agencies in order to provide information to the requesting parties.
- iv. Work with other unit members and School personnel and provide supervision in a positive, cooperative, and productive manner.
- v. Enforce all applicable laws in a fair and consistent manner.
- vi. Perform tasks or assignments as instructed by the GPD supervisor.
- vii. Educate the students and School personnel by providing relevant and informative educational programs.
- viii. Be flexible in his/her work schedule to attend major events (without causing the SRO to incur overtime hours) as deemed appropriate by School administration.
- ix. Maintain a highly visible presence on and around campus.
- x. Be available for duty at CCHS each day that School is in session during the regular school year. Other than any GPD-related activities that the SRO may perform when not at the School, the SRO's activities will be restricted to CCHS except for:
  1. Follow-up home visits when needed as a result of School related student problems.
  2. Incentive programs approved by the Parties.
  3. In response to off-campus, but School related criminal activity.
  4. In response to emergency police activities.
  5. To attend mandatory GPD meetings.
  6. To attend mandatory GPD programs to maintain continuing proficiency standards to maintain police officer certification.
  7. To attend any scheduled court hearings, trials, or grand jury that requires the SRO's appearance.

3. Obligations of the District:

- a. The District shall reimburse the City monthly for the services the City provides pursuant to its obligations identified in Paragraph 2 of this Agreement. Specifically, the District agrees:

- i. To pay the City an amount not to exceed \$72,775.31 for the 2014-2015 school year for the SRO's benefits and salary unless summer school is assigned to CCHS, in which case, the District will pay the City an amount not to exceed \$80,052.83 for the 2014-2015 school year and summer school session.
  - ii. The District will not pay for SRO Services for any times that school is not in session, nor for any personal vacations or sick leave taken by the SRO during times that school is in session.
  - iii. The SRO's time worked at CCHS must be substantiated by time cards and approved by the Principal or his/her designee. The District and the City shall share equally the cost of the SRO's overtime worked on school-related investigations, with each Party paying 50% of the cost. The District shall not use Program Grant funds to pay any part of overtime costs for the SRO's overtime. The SRO must obtain approval from the GPD before working on any school-related overtime. Overtime payments shall not exceed, under any circumstance, twenty (20) hours annually. The City shall pay 100% of the SRO's costs during the one month summer vacation and any other times that school is not in session and the City assigns the SRO to City related duties.
  - iv. The District shall pay invoices from the City within fifteen (15) days of receipt, so long as proper documentation is on file to support the invoiced amount.
- b. The District shall provide office space that provides privacy for the SRO to conduct confidential business. The office shall include the necessary equipment for the SRO to effectively perform his/her duties.
- c. The District will complete an SRO performance assessment twice per year. The SRO(s) will assist the Principal with the preparation of the assessment based upon requirements of ADE and the District. The District will share the performance assessment with the SRO's GPD supervisor.
- d. The District shall provide \$100 for classroom instructional supplies for the SRO as may be incurred throughout the School Year.
- e. No District or CCHS administrator shall interfere with the sworn law enforcement duties of a GPD officer. It is agreed, however, that at such times as the SRO is acting within the role of a sworn law enforcement officer but is also acting outside of or in excess of District rules and policies regarding interviewing and searching students and/or the use of appropriate physical force on students, the City shall hold the District harmless from such actions by the SRO. The SRO shall not be responsible for assistance in administrative discipline, unless a definitive danger is perceived by school staff or the student is suspected of breaking a criminal law.

IN WITNESS WHEREOF, the City and the District have executed this Agreement as of the date of the last signature set forth below.

CITY OF GLENDALE, an Arizona  
municipal corporation

\_\_\_\_\_  
Brenda S. Fischer, City Manager

ATTEST:

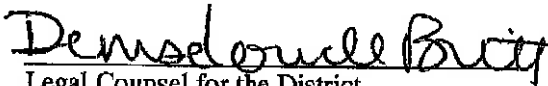
\_\_\_\_\_  
Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael D. Bailey, City Attorney

By:   
Tolleson Union High School District No. 214

Approved as to Form and within the powers and  
authority of the District:

  
Legal Counsel for the District



## Legislation Description

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**File #: 14-106, Version: 1**

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**AMENDMENT NO. 12 TO INTERGOVERNMENTAL AGREEMENT WITH ARIZONA DEPARTMENT OF ECONOMIC SECURITY FOR COMMUNITY ACTION PROGRAM FUNDING AND OPERATIONS**

Staff Contact: Erik Strunk, Director, Community Services

**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 Amendment No. 12 to the intergovernmental agreement (IGA) with the Arizona Department of Economic Security (DES) for Community Action Program (CAP) funding and operations.

**Background**

The CAP provides direct services to low and moderate income Glendale residents. Services include energy assistance payments and crisis assistance for families, which includes homeless assistance, rent and mortgage subsidies.

Currently the CAP is being operated through an agreement with the State of Arizona DES which provides funding in the amount of \$1,091,638 for the provision of CAP services in FY 2014-15. In exchange for these funds, the City provides a General Fund "match" in the amount of \$5,954.

If approved, this amendment will increase additional funding to the CAP by an amount of \$13,927, which will in turn be used to process more applications, shorten payment processing and assist with approximately 75 more resident applications.

Amendment No. 12 also clarifies that the Glendale CAP is the sole provider of CAP services within Glendale's municipal boundaries and agrees to notify the DES should its current location be moved or it provides services at another location within Glendale (this was not previously specified in the State Plan provided to the City of Glendale by the Department of Economic Security). This amendment in no way changes or causes an impact on the current provision of services to eligible Glendale residents.

**Previous Related Council Action**

On June 10, 2014, City Council approved entering into Amendment No. 11 of the IGA between the City and DES for FY 2014-15 funding for CAP operations. Amendments No. 1 through 10 were previously entered into by the City Manager. This was the direction of the City Council when they approved the original five-year IGA on June 22, 2010, between the city and DES for CAP operations.

**Community Benefit/Public Involvement**

There is no impact to the quality of CAP services being provided. CAP ensures that the low and moderate-income Glendale residents will continue to receive crisis services that promote financial stability and enhance the quality of life in Glendale.

**Budget and Financial Impacts**

The recommended action does not impact the CAP General Fund budget.

RESOLUTION NO. 4852 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF AMENDMENT NUMBER 12 TO THE INTER-GOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF ECONOMIC SECURITY FOR COMMUNITY ACTION PROGRAM FUNDING.

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 Amendment Number 12 to the Intergovernmental Agreement (Contract ID Number DE111089001) between the City of Glendale and the Arizona Department of Economic Security for Community Action Program funding be entered into, which amendment 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 amendment on behalf of the City of Glendale.

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

\_\_\_\_\_  
M A Y O R

ATTEST:

\_\_\_\_\_  
City Clerk (SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

REVIEWED BY:

\_\_\_\_\_  
City Manager



## Intergovernmental Agreement CONTRACT AMENDMENT

1. CONTRACTOR (Name and address)  <b>City of Glendale 5850 W. Glendale Ave. Glendale, Arizona 85301</b>	2. CONTRACT ID NUMBER  <b>DE111089001</b>
3. AMENDMENT NUMBER <b>Twelve (12)</b>	
4. THE PARTIES AGREE TO THE FOLLOWING AMENDMENT  Pursuant to the Terms and Conditions, Amendments or Modifications section, the purpose of this amendment is to:  <b>Funding</b> for the contract period July 1, 2014 through June 30, 2015: The reimbursement ceiling for the service Community Services is increased from \$169,591 to \$183,518. This is an increase of \$13,927.  The cumulative reimbursement ceiling for the contract period July 1, 2010 through June 30, 2015 is \$5,993,833.  Therefore, the Itemized Service Budget for the service of Community Services (Attachment B) is revised and attached.  <b>ADD</b> Scope of Work, Service Provision, Section 6.4.8 The Contractor shall provide services throughout the designated geographic service area as identified in the CSBG State Plan located at <a href="https://www.azdes.gov/main.aspx?menu=10&amp;id=8577">https://www.azdes.gov/main.aspx?menu=10&amp;id=8577</a> . Services shall be provided at the locations identified on the Facility Location Chart. Contract services may be moved or expanded to other site locations within the designated geographic service area only by a written contract amendment. Relinquishment of a partial designated geographic service area shall not be permitted. The Contractor shall provide written notification of its relinquishment of an entire designated geographic service area not less than one year prior to the proposed effective date of the relinquishment.	
5. EXCEPT AS PROVIDED HEREIN, ALL TERMS AND CONDITIONS OF THE ORIGINAL CONTRACT AS HERETOFORE CHANGED AND/OR AMENDED REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT. THE AMENDMENT SHALL BECOME EFFECTIVE ON THE DATE OF LAST SIGNATURE UNLESS OTHERWISE SPECIFIED HEREIN. BY SIGNING THIS FORM ON BEHALF OF THE CONTRACTOR, THE SIGNATORY CERTIFIES HE/SHE HAS THE AUTHORITY TO BIND THE CONTRACTOR TO THIS CONTRACT.	
6. <b>ARIZONA DEPARTMENT OF ECONOMIC SECURITY</b>  SIGNATURE OF AUTHORIZED INDIVIDUAL  TYPED NAME  TITLE <b>Procurement Manager</b>  DATE	7. NAME OF CONTRACTOR <b>City of Glendale</b>  SIGNATURE OF AUTHORIZED INDIVIDUAL  TYPED NAME  TITLE  DATE
IN ACCORDANCE WITH ARS §11-952 THIS CONTRACT AMENDMENT HAS BEEN REVIEWED BY THE UNDERSIGNED WHO HAVE DETERMINED THAT THIS CONTRACT AMENDMENT IS IN APPROPRIATE FORM AND WITHIN THE POWERS AND AUTHORITY GRANTED TO EACH RESPECTIVE PUBLIC BODY.	
<b>ARIZONA ATTORNEY GENERAL'S OFFICE</b>	
BY:  ASSISTANT ATTORNEY GENERAL	BY:  PUBLIC AGENCY LEGAL COUNSEL
DATE:	DATE:



## Legislation Description

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**File #: 14-117, Version: 1**

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**AUTHORIZATION TO ENTER INTO A SETTLEMENT AGREEMENT; AND, TWO NEW DIGITAL BILLBOARD PLACEMENT LICENSE AGREEMENTS FOR THE OPERATION OF DIGITAL BILLBOARDS ALONG THE AGUA FRIA FREEWAY (LOOP 101) BETWEEN BETHANY HOME ROAD AND ORANGEWOOD AVENUE**

Staff Contact: Deborah Robberson, Chief Deputy City Attorney

Staff Contact: Brian Friedman, Economic Development Director

### **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 the following agreements in a form substantially similar to the ones attached hereto:

- A Settlement Agreement with Lamar Advertising Company, Inc., Lamar Central Outdoor, LLC (Lamar), and American Outdoor Advertising, LLC (American) concerning the amount of compensation due the City for business royalty pursuant to Contract Nos. C-6855 and C-6855-1, Digital Marquee Placement License Agreements for digital billboards located in the vicinity of Glendale Avenue and Loop 101;
- A new Digital Billboard Placement License Agreement with Lamar for the installation, operation, maintenance, and repair of digital billboard advertising equipment on city-owned property located at 9802 W. Bethany Home Road; and,
- A new Digital Billboard Placement License Agreement with Lamar for the installation, operation, maintenance, and repair of digital billboard advertising equipment on city-owned property located at 7691 N. 99 Avenue.

### **Background**

The City of Glendale entered into two license agreements with American in 2009 for the construction and operation of two digital billboards on city-owned property, providing new revenue streams for the City's General Fund including: a one-time business royalty for each billboard, ongoing monthly license fees, and ongoing annual business royalty payments. It was American's intent to construct additional billboards on city-owned property at a future date and City Council authorized the City Manager to conduct negotiations related to several locations along the Loop 101 later that year.

On July 1, 2012, the rights and obligations for the license agreements were assigned or otherwise acquired by Lamar from American. In 2013, city staff began discussions with representatives of Lamar regarding their interest in constructing additional billboards at the locations previously authorized for negotiation. Around that same time, the City Auditor initiated a review of the existing license agreements, including revenue payments received by the city. The audit results indicated that annual business royalty payments made by both American and Lamar were incorrectly calculated, resulting in underpayments, and the issue had not been previously detected by the City. Staff immediately began work to resolve the disputed amount related to the existing contracts and to address Lamar's interest in constructing two new billboards.

## Analysis

This item seeks approval of a Settlement Agreement and two new Digital Billboard Placement License Agreements as a package. If approved, the four contracts are expected to generate approximately \$11.6 million in license fees over the contracts' terms, in addition to royalty payments representing a percentage of Lamar's total advertising revenue. If approved, the revenue benefits to the city would be:

- \$425,000 one-time lump sum payment to resolve disputed royalties due pursuant to two initial agreements
- \$240,000 per year plus annual CPI increase for license fees on two initial agreements
- \$240,000 per year plus annual 2% increase for license fees from two new agreements
- Annual business royalty for four signs based on a percentage of total revenue, less rent

The two new proposed license agreements are contingent upon approval of the Settlement Agreement. The Settlement Agreement intends to resolve the dispute regarding annual business royalty payments associated with the initial license agreements, Contract Nos. C-6855 and C-6855-1. The City contends that payments of both rent and business royalty, calculated separately, are required pursuant to paragraph 4(A)(2) of the license agreements. Lamar contends that rent amounts are an offset to the calculation of business royalty and that full payment has been provided for the annual periods beginning 10/15/2009 and ending 10/14/2013. The disputed amount under the City's interpretation is \$659,941. The Settlement compromises this amount and changes the method of calculating the revenues to be consistent with Lamar's interpretation for future years.

The Settlement Agreement settles and compromises this dispute for the sum of \$425,000 payable to the City contemporaneously with the execution of the new license agreements; and revises the royalty calculation set forth in paragraph 4(A)(2) of Contract Nos. C-6855 and C-6855-1 to offset the annual business royalty payments by the amount of rent paid in the previous 12 months. The calculation method is described below and would be the consistent in all four License Agreements moving forward.

The contractual terms for the two new proposed license agreements are consistent with initial Contract Nos. C-6855 and C-6855-1 with the following exceptions:

- The annual business royalty will be calculated by utilizing the monthly license fees as an offset.
- The initial agreements use the Consumer Price Index (CPI) for the annual increase of base license fee while the proposed new license agreements utilize a 2% flat annual increase beginning with the 13<sup>th</sup> monthly payment.
- The initial agreements included the payment of a one-time, \$500,000 business royalty as they were the first billboards in the market area while the new proposed license agreements do not include the one-time business royalty.
- The initial agreements included a referral fee for advertising clients provided by the City. No referrals fees have been generated. In lieu of the referral fee, the new proposed license agreements provide the City with the opportunity to advertise on Lamar's digital billboards (subject to space availability) in the greater metro area at no charge, terms of use are consistent with the initial agreements.

The two new proposed license agreements are expected to generate minimum annual revenue of \$240,000 from monthly license fees (\$10,000 per month, per billboard). Over the course of the 20-year term with annual increases, the revenue generation would be approximately \$5.8 million benefitting the City's General Fund.

The new license agreements, as well as the initial agreements, include a provision for annual business royalty payments, off-set by the amount of monthly license fees paid. In the event the annual business royalty calculation results in a negative number, no royalty payment is required; nor, is the city required to provide a refund, offset, or reduction against past or future monthly license fee payments. The percentages of Total Revenue used in the royalty calculation are identical to the initial agreements and are proposed to be calculated as follows:

- Thirty-three percent (33%) of the Total Revenue less than or equal to \$425,000 received during the previous 12 months;
- Plus, forty percent (40%) of the Total Revenue exceeding \$425,000 received during the previous 12 months;
- Less the amount of monthly rent paid during the same 12 month period.

#### **Previous Related Council Action**

On March 24, 2009, City Council adopted a resolution authorizing the City Manager to enter into a digital billboard license agreement with American.

On April 9, 2009, the following contracts were executed authorizing American to install, operate, maintain, and repair digital advertising equipment on city-owned property located in the vicinity of Glendale Avenue and the Agua Fria Freeway (Loop 101):

- C-6855, Agua Fria South, 7111 N. 99<sup>th</sup> Avenue on the southeast corner of the Glendale Park and Ride facility located north of Glendale Avenue between the Loop 101 and 99 Avenue; and,
- C-6855-1, Agua Fria North, 7291 N. 99<sup>th</sup> Avenue, northeast end of the Park and Ride facility located north of Glendale Avenue between the Loop 101 and 99 Avenue.

On December 22, 2009, City Council adopted a resolution authorizing the City Manager to negotiate digital billboard license agreements with American, at the following locations:

- 6291 N. 99 Avenue, north of the northeast corner of 99 Avenue and Bethany Home Road
- 9802 W. Bethany Home Road, northwest corner of Bethany Home Road and Loop 101;
- 7691 N. 99 Avenue, south of the southeast corner of Orangewood Avenue and 99 Avenue
- 9802 W. Camelback Road, northwest corner of Camelback Road and Loop 101; and,
- 7291 N. 99<sup>th</sup> Avenue, north end of the Park and Ride at Glendale Avenue and Loop 101 (previously executed C-6855-1)

#### **Community Benefit/Public Involvement**

Entering into the Settlement Agreement and two new license agreements results in the City collecting a portion of the disputed royalty payments pursuant to the initial agreements; avoids uncertainty and expense of litigation; avoids potential termination of initial agreements by Lamar and potential repayment of one-time business royalty payments paid pursuant to the initial agreements; retains license fee revenue from the initial agreements; creates two new license fees resulting in ongoing revenue streams; and, still provides the City a percentage of total advertising revenue. Combined, these contracts are expected to generate approximately \$11.6 million in license fees over the respective terms in addition to a percentage of total advertising revenue for the City's General Fund which pays for a variety of services for City of Glendale residents.

#### **Budget and Financial Impacts**

There is no expenditure required by the City to enter into these agreements.

RESOLUTION NO. 4853 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE ENTERING INTO OF A SETTLEMENT AGREEMENT AND MUTUAL RELEASE WITH LAMAR ADVERTISING COMPANY, INC., LAMAR CENTRAL OUTDOOR, L.L.C., AND AMERICAN OUTDOOR ADVERTISING, L.L.C.; AND AUTHORIZING THE ENTERING INTO OF TWO NEW DIGITAL BILLBOARD PLACEMENT LICENSE AGREEMENTS WITH LAMAR CENTRAL OUTDOOR, L.L.C. FOR THE OPERATION OF TWO ADDITIONAL DIGITAL BILLBOARDS LOCATED ON CITY-OWNED PROPERTY IN THE VICINITY OF THE AGUA FRIA FREEWAY (LOOP 101) BETWEEN BETHANY HOME ROAD AND ORANGEWOOD AVENUE IN GLENDALE, ARIZONA.

WHEREAS, the City of Glendale entered into two digital marquee placement license agreements with American Outdoor (Contract Nos. C-6855 and C-6855-1) for the use of City-owned property to operate digital marquees/digital billboards; and

WHEREAS, the rights and obligations of American Outdoor relating to the License Agreements have been assigned or otherwise acquired by Lamar Central Outdoor, L.L.C.; and

WHEREAS, a dispute exists concerning the amount of compensation due the City pursuant to the License Agreements; and

WHEREAS, the City of Glendale, Lamar Advertising Company, Inc., Lamar Central Outdoor, L.L.C., and American Outdoor Advertising, L.L.C. desire to settle the dispute under the terms set forth in the settlement agreement.

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

SECTION 1. That the City Manager or her designee is hereby authorized to execute and deliver the Settlement Agreement and Mutual Release with Lamar Advertising Company, Inc., Lamar Central Outdoor, L.L.C., and American Outdoor Advertising, L.L.C. to settle and compromise a dispute relating to Contract Nos. C-6855 and C-6855-1, which agreement is now on file with the City Clerk.

SECTION 2. That the City Manager or her designee is hereby authorized to execute and deliver two Digital Billboard Placement License Agreements with Lamar Central Outdoor, L.L.C. for digital billboards at the following locations in Glendale, Arizona for the installation, operation, maintenance, and repair of digital billboard advertising equipment on city-owned property. Said license agreements are on file with the City Clerk.

1. 9802 West Bethany Home Road, Glendale, Arizona
2. 7691 North 99th Avenue, Glendale, Arizona

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

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M A Y O R

ATTEST:

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City Clerk (SEAL)

APPROVED AS TO FORM:

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City Attorney

REVIEWED BY:

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City Manager

l\_lamar\_bb 3\_4.docx

RESOLUTION NO. 4853 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE ENTERING INTO OF A SETTLEMENT AGREEMENT AND MUTUAL RELEASE WITH LAMAR ADVERTISING COMPANY, INC., LAMAR CENTRAL OUTDOOR, L.L.C., AND AMERICAN OUTDOOR ADVERTISING, L.L.C.; AND AUTHORIZING THE ENTERING INTO OF TWO NEW DIGITAL BILLBOARD PLACEMENT LICENSE AGREEMENTS WITH LAMAR CENTRAL OUTDOOR, L.L.C. FOR THE OPERATION OF TWO ADDITIONAL DIGITAL BILLBOARDS LOCATED ON CITY-OWNED PROPERTY IN THE VICINITY OF THE AGUA FRIA FREEWAY (LOOP 101) BETWEEN BETHANY HOME ROAD AND ORANGEWOOD AVENUE IN GLENDALE, ARIZONA.

WHEREAS, the City of Glendale entered into two digital marquee placement license agreements with American Outdoor (Contract Nos. C-6855 and C-6855-1) for the use of City-owned property to operate digital marquees/digital billboards; and

WHEREAS, the rights and obligations of American Outdoor relating to the License Agreements have been assigned or otherwise acquired by Lamar Central Outdoor, L.L.C.; and

WHEREAS, a dispute exists concerning the amount of compensation due the City pursuant to the License Agreements; and

WHEREAS, the City of Glendale, Lamar Advertising Company, Inc., Lamar Central Outdoor, L.L.C., and American Outdoor Advertising, L.L.C. desire to settle the dispute under the terms set forth in the settlement agreement.

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

SECTION 1. That the City Manager or her designee is hereby authorized to execute and deliver the Settlement Agreement and Mutual Release with Lamar Advertising Company, Inc., Lamar Central Outdoor, L.L.C., and American Outdoor Advertising, L.L.C. to settle and compromise a dispute relating to Contract Nos. C-6855 and C-6855-1, which agreement is now on file with the City Clerk.

SECTION 2. That the City Manager or her designee is hereby authorized to execute and deliver two Digital Billboard Placement License Agreements with Lamar Central Outdoor, L.L.C. for digital billboards at the following locations in Glendale, Arizona for the installation, operation, maintenance, and repair of digital billboard advertising equipment on city-owned property. Said license agreements are on file with the City Clerk.



1. 9802 West Bethany Home Road, Glendale, Arizona
2. 7691 North 99th Avenue, Glendale, Arizona

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

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M A Y O R

ATTEST:

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City Clerk (SEAL)

APPROVED AS TO FORM:

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City Attorney

REVIEWED BY:

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City Manager

l\_lamar\_bb 3\_4.docx

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (hereinafter "Agreement") is made and entered into between LAMAR ADVERTISING COMPANY, INC., a Delaware corporation, LAMAR CENTRAL OUTDOOR, L.L.C., a Delaware limited liability company (together "Lamar"), AMERICAN OUTDOOR ADVERTISING, LLC, a Nevada limited liability company ("American Outdoor"), and the City of Glendale ("City") (each a "Party; collectively, the "Parties") this \_\_\_\_ day of September 2014, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged.

### RECITALS

- A. In 2009, American Outdoor and the City entered into two digital marquee placement license agreements, Contract Nos. C-6855 and C-6855-1 (collectively, "License Agreements"), for the use of City-owned property to operate digital marquees/digital billboards.
- B. The rights and obligations of American Outdoor in the License Agreements have been assigned or otherwise acquired by Lamar.
- C. A dispute exists concerning the amount of compensation due the City pursuant to the License Agreements. The City contends that payments of both rent and business royalty, calculated separately, are required and that additional business royalty amounts are due and owing for the period beginning October 15, 2009 to October 14, 2013. Lamar and American Outdoor contend that rent amounts are an offset to the calculation of business royalties and that full payment has been provided for the period beginning October 15, 2009 to October 14, 2013.
- D. The parties desire to settle and compromise this dispute under the terms set forth herein. This Agreement does not constitute an admission as to any fact, legal principle, or liability by any Party.

### SETTLEMENT TERMS

In consideration of the agreements, mutual covenants, conditions, promises and releases contained herein, and with reference to the foregoing facts, the Parties to this Agreement agree as follows:

1. The Recitals are adopted herein by reference.
2. **SETTLEMENT PAYMENT.** In full and complete settlement of any and all business royalty payments due under License Agreements for the time period beginning on the Effective Date of the License Agreements through October, 14 2013, the last completed fiscal year of the License Agreements, Lamar shall pay to the City the sum of \$425,000 (the "Settlement Payment") to be paid by cashier's check contemporaneously with the approval and execution ("Effective Date") by the City of Digital Billboard License Placement Agreements for the following two locations: 7691 North 99<sup>th</sup> Avenue and 9802 West Bethany Home Road ("New Agreements").

3. REVISED LICENSE AGREEMENTS. Paragraph 4(A)(2), Rent, Royalty and Other Consideration, of Contract No. C-6855 and Contract No. C-6855-1 shall be deleted and replaced with the following:

Beginning with the royalty period of October 15, 2013 through October 14, 2014, and continuing annually thereafter, Licensee shall pay City an ongoing annual business royalty ("Royalty Payment") calculated as follows:

- a) Thirty-three percent (33%) of the Total Revenue (as defined below) less than or equal to \$425,000 received during the previous 12 months for the use or operation of the Marquee or License Area; and
- b) Forty percent (40%) of the Total Revenue (as defined below) exceeding \$425,000 received during the previous 12 months for the use or operation of the Marquee or License Area.
- c) Minus the amount of the monthly rent paid during the same previous 12-month period.
- d) By way of example:

For Total Revenue of \$400,000 in 12 months where rent is \$10,000 per month, a Royalty Payment of \$12,000 is required and calculated as follows:

$$\begin{aligned} & 33\% \text{ of Total Revenue minus Sum of 12 monthly rent payments} \\ & .33 \times \$400,000 = \$132,000 \\ & \$132,000 - \$120,000 = \$12,000 \\ & \$12,000 = \text{Annual Royalty Payment} \end{aligned}$$

For Total Revenue of \$600,000 in 12 months where rent is \$10,000 per month, a Royalty Payment of \$90,250 is required and calculated as follows:

$$\begin{aligned} & 33\% \text{ of Total Revenue of } \$425,000 \text{ plus } 40\% \text{ of Total Revenue over } \$425,000 \text{ minus Sum} \\ & \text{of 12 monthly rent payments} \\ & .33 \times \$425,000 = \$140,250 \\ & .40 \times \$175,000 = \$70,000 \\ & \$140,250 + \$70,000 - \$120,000 = \$90,250 \end{aligned}$$

- e) In the event the Royalty Payment calculation results in a negative number, no Royalty Payment is required and no refund, offset, or reduction against past or future monthly rent payments is due Licensee.
- f) "Total Revenue," as that term is used in this section, means all revenue, income or receipts Licensee receives or collects for use or operation of the Marquee or License Area, minus applicable taxes and any advertising agency commissions.

4. RELEASE.

- 4.1. Lamar, for itself, its officers, directors, employees, agents, successors and assigns, releases and forever discharges the City and its officials, officers, directors, employees, agents, successors and assigns from any and all past, present and future actions, causes of action, claims, party actions, suits at law or in equity, including claims or suits for contribution and/or indemnity, of whatever nature, and all general, special, and consequential damages, whether known or unknown at this time, which have or may result from any actions, actions, errors, and omissions of the City to the date of this Agreement and that are in any way related to the business royalty payments due to the City pursuant to the License Agreements for the time period up to and including October 14, 2013. This release extends to all claims that could have been asserted in any lawsuit on the date of this Agreement.
- 4.2. The City , for itself, its officers, directors, employees, agents, successors and assigns, releases and forever discharges Lamar and American Outdoor and its officials, officers, directors, shareholders, employees, agents, successors and assigns from any and all past, present and future actions, causes of action, claims, party actions, suits at law or in equity, including claims or suits for contribution and/or indemnity, of whatever nature, and all general, special, and consequential damages, whether known or unknown at this time, which have or may result from any actions, actions, errors, and omissions of Lamar and American Outdoor to the date of this Agreement and that are in any way related to the business royalty payments due to the City pursuant to the License Agreements for the time period up to and including October 14, 2013. This release extends to all claims that could have been asserted in any lawsuit on the date of this Agreement; provided however that this release shall not apply to any future claims by the City against Lamar for Royalty Payments for the current fiscal year of October 15, 2013 through October 14, 2014 ("Current Fiscal Year"), which has not concluded or been tabulated. Notwithstanding this exception, the Revised License Agreements (Paragraph 3, herein) shall apply to the Current Fiscal Year.
- 4.3. American Outdoor, for itself, its officers, directors, employees, agents, successors and assigns, releases and forever discharges the City and its officials, officers, directors, employees, agents, successors and assigns from any and all past, present and future actions, causes of action, claims, party actions, suits at law or in equity, including claims or suits for contribution and/or indemnity, of whatever nature, and all general, special, and consequential damages, whether known or unknown at this time, which have or may result from any actions, actions, errors, and omissions of the City to the date of this Agreement and that are in any way related to the business royalty payments due to the City pursuant to the License Agreements for the time period up to and including October 14, 2013. This release extends to all claims that could have been asserted in any lawsuit on the date of this Agreement.

5. CONTINGENCY. If the New Agreements are not approved and executed by the City and Lamar, or if the City otherwise does not issue final approval for operation of the Digital Billboards built pursuant to the New Agreements, except for reasons other than noncompliance with construction standards, this Agreement shall be void and have no effect, and the City shall immediately refund the Settlement Payment made by Lamar.

6. MISCELLANEOUS.

- 6.1. Each party to this Agreement represents and warrants to each other party to this Agreement that each has full power, capacity and authority to enter into this Agreement.
- 6.2. Each of the Parties hereto agrees to execute and deliver to each of the other Parties hereto all additional documents required to implement the terms and conditions of this Agreement.
- 6.3. The Parties agree that the rights and obligations arising out of the Agreement, and each of its terms, shall inure to the benefit of and be binding upon the successors and assigns of the Parties, and each of them.
- 6.4. In any action at law or in equity to enforce any of the provisions or rights under this Agreement, the prevailing party shall be entitled to recover from the unsuccessful party all costs, expenses and reasonable attorney's fees incurred by the prevailing party (including, without limitation, such costs, expenses and fees on appeal) and, if such prevailing party shall recover judgment in any such action or proceeding, such costs, expenses and fees, including those of expert witnesses and attorney's fees, shall be included as part of the judgment.
- 6.5. This Agreement contains the entire and final agreement and understanding concerning the subject matter herein, and supersedes, cancels and replaces any prior negotiations or agreements between the Parties relating to the business royalty payments due to the City pursuant to the License Agreements for the period beginning on the Initial Date of the License Agreements through October 14, 2013.
- 6.6. This Agreement is made and entered into in the State of Arizona, and shall in all respects be interpreted, enforced and governed by and under the laws of the State of Arizona, including any disputes hereunder, and shall be construed according to its fair meaning. This Agreement shall be construed without regard to the identity of the person who drafted its various provisions; each and every provision of this Agreement shall be construed as though each of the Parties participated equally in drafting same, and any rule of construction that a document is to be construed against the drafting party shall not be applicable to this Agreement. The paragraph and section headings herein have been inserted for convenience only, and shall not be construed or referred to in resolving questions of interpretation or construction.
- 6.7. The Parties may execute duplicate originals of this Agreement, or any documents they are required to sign or furnish hereunder, in counterparts, any of which shall be deemed to be the original if fully executed by all of the Parties. Signatures by facsimile shall be acceptable to all Parties hereto.
- 6.8. This Agreement may not be amended, altered, modified or otherwise changed except in a writing that is signed by the party against whom the change is alleged to be effective and expressly stating that it is an amendment of this Agreement.
- 6.9. If any part of this Agreement is held by a court of competent jurisdiction to be unenforceable, the remainder of this Agreement shall continue to remain in full force and effect.

6.10. The signators below represent and warrant that each has authority to enter this Agreement on behalf of and bind hereto each party for whom/which he or she signs.

CITY OF GLENDALE, an Arizona municipal  
corporation

\_\_\_\_\_  
Brenda S. Fischer, City Manager

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael D. Bailey, City Attorney

LAMAR CENTRAL OUTDOOR, L.L.C., a Delaware  
limited liability company

\_\_\_\_\_  
By: Christina Butler  
Its: Vice President/General Manager

Date: \_\_\_\_\_

STATE OF ARIZONA       )  
                                      ) ss.  
County of Maricopa       )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2013, by \_\_\_\_\_ in his/her capacity as authorized representative of LAMAR CENTRAL  
OUTDOOR ADVERTISING, L.L.C.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

LAMAR ADVERTISING COMPANY, INC.,  
a Delaware corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
                                      ) ss.  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2013, by \_\_\_\_\_ in his/her capacity as authorized representative of

\_\_\_\_\_

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

AMERICAN OUTDOOR ADVERTISING, LLC,  
a Nevada limited liability company

by \_\_\_\_\_

its \_\_\_\_\_

STATE OF \_\_\_\_\_ )

) ss.

County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2013, by \_\_\_\_\_ in his/her capacity as authorized representative of

\_\_\_\_\_

\_\_\_\_\_  
Notary Public

My Commission Expires:



**DIGITAL BILLBOARD PLACEMENT  
LICENSE AGREEMENT**  
(7691 North 99<sup>th</sup> Avenue)

This Digital Billboard Placement License Agreement ("Agreement") is entered and executed to be effective the \_\_\_\_ day of \_\_\_\_\_, 2014 ("Effective Date"), between the City of Glendale, an Arizona municipal corporation ("City"), and Lamar Central Outdoor, LLC, a Delaware limited liability company, registered and authorized to do business in the State of Arizona ("Licensee").

**RECITALS**

- A. The City is the owner of certain real property located in the vicinity of Glendale Avenue and the Agua Fria Freeway (Loop 101), Glendale, Arizona, designated by the Maricopa County Assessor's Office as Parcel No. 142-56-032, within which the area more fully described in Exhibit A will be licensed for use pursuant to this Agreement ("License Area").
- B. The Licensee desires to install, operate, maintain and repair digital billboard advertising equipment ("Billboard") in the described License Area and to construct certain improvements within the License Area, depicted in the Exhibits B and C, Conduit Area and Design Concept, respectively.
- C. The City is willing to grant to the Licensee a license to use the License Area for the purpose stated subject to the requirements of this Agreement and subject to the guarantee of this agreement by Licensee's parent corporation, which is attached hereto as Exhibit D.

**AGREEMENT**

In consideration of the mutual covenants and conditions set forth herein, and for good and valuable consideration given, it is hereby agreed as follows:

- 1. **License.** The City grants to the Licensee the right to use the "License Area" only for use as stated and subject to the provisions and conditions of this Agreement:
  - 1.1 Billboard Area. During the term of this Agreement, Licensee will have access to and may locate one Digital Billboard and all supporting equipment enclosures used solely in connection with the Digital Billboard within the License Area.
  - 1.2 Conduit Area. During the term of this Agreement, Licensee will have access to and may locate conduit and cable to provide electrical service and coaxial cabling to the Digital Billboard, as described in Exhibit B of this Agreement or as otherwise approved by the City.
  - 1.3 Rights, Use Requirements and Restrictions
    - a. Licensee's rights under this Agreement are subject to all covenants, restrictions, easements, agreements, reservations and encumbrances upon, and all other conditions of title to the License Area.
    - b. Licensee's rights under this Agreement are subject to all present and future building restrictions, regulations, zoning laws, ordinances, resolutions and orders of any local, state or federal agency, now or hereafter having jurisdiction over the License Area or the Licensee's use of the License Area.
    - c. Licensee may use the License Area only for constructing, installing, operating, maintaining, and repairing the Billboard and no other use.

- d. Except for the Digital Billboard, Licensee must not install any signs in the License Area other than required safety warning signs or any other signs as are requested or approved by the City, and Licensee bears all costs pertaining to the erection, installation, maintenance, and removal of all signs.
  - e. Licensee must at all times use its commercially reasonable best efforts to minimize any impact that its use of the License Area will have on other uses of the License Area. Licensee is aware that the License Area may be improved and utilized for parking.
  - f. Licensee may not remove, damage, or alter in any way any improvements or property of the City upon the License Area, whether currently existing or installed in the future, without the City's prior written approval.
  - g. Licensee must repair any damage or alteration to the License Area to the same condition that existed before the damage or alteration.
  - h. Licensee has non-exclusive right for ingress and egress, seven days a week, 24 hours a day, for the construction, installation and maintenance of the Digital Billboard, which right will be exercised so as to not unreasonably interfere with City operations or use of the License Area.
- 1.4 "AS-IS" Acceptance. Licensee warrants that it has studied and inspected the License Area, obtained any information and professional advice as the Licensee has determined to be necessary related to this Agreement, and therefore accepts the same "AS IS" without any express or implied warranties of any kind, other than those warranties contained in § 12.2, including any warranties or representations by the City as to its condition or fitness for any use.
- 1.5 Limitation on Grant. The parties do not by this instrument intend to create a lease, easement, or other real property interest or vest with Licensee any real property interest in the License Area and nothing express or implied in this Agreement grants Licensee any right or authority to enter, occupy, or use any property that is not solely owned by the City and fully described herein.
- 1.6 Rights Reserved
- a. Licensee acknowledges that its use of the License Area is subject and subordinate to the City's use of the License Area, including use of the License Area for parking. Licensee agrees that use of License Area for parking, including for any event held at the University of Phoenix Stadium, shall have precedence over any construction, installation and maintenance activities by Licensee.
  - b. Licensee will not install, operate or allow its agents, employees, or contractors to use any equipment, methodology or technology that may interfere with the optimum effective use or operation of the City's fire, emergency or other communication equipment, methodology or technology (i.e., voice or other data receiving and/or transmitting equipment) that is presently in use or may be in use in the future.
    - 1. If such interference does occur, the Licensee must immediately discontinue using the equipment, methodology or technology that causes the interference until corrective measures are taken which must be made at no cost to the City.
    - 2. City and the Licensee will use their best reasonable efforts to resolve immediately any interference problems, but if an interference problem

is unavoidable, the City's right to use the City's fire, emergency, or other communication equipment remains paramount to any use of the License Area by the Licensee and Licensee has the right to terminate this Agreement without penalty and without any cost to the City.

- c. City may, at all times, enter upon the License Area for any lawful purpose, provided the action does not unreasonably interfere with the Licensee's use or occupancy of the License Area.
- d. Without limiting the generality of the foregoing, the City and any furnisher of utilities and other services may, at their own cost:
  - 1. Enter upon the License Area at any time to make repairs, replacements or alterations that, in the opinion of the City or the furnisher of utilities and other services, may be necessary or advisable and from time to time to construct or install over, in, or under the License Area systems or parts; and
  - 2. In connection with any maintenance, use the License Area for access to other parts in and around the License Area; provided that in the exercise of these rights of access, repairs, alterations or new construction, the City does not unreasonably interfere with the use and occupancy of the License Area by the Licensee.
- e. The exercise of any of the foregoing rights by the City or others does not constitute a termination of the License, nor serve as the grounds for any abatement of Monthly License Fees, Royalty Payments, or any claim for damages.

## 2. Term

- 2.1 License Period. This Agreement is for a period of 240 months commencing on the Effective Date.
- 2.2 Initial Construction. Licensee must install and place into use the Digital Billboard in accordance with the specification set forth herein no later than December 31, 2014 ("Initial Construction Date") or this Agreement will automatically terminate unless, for the purposes of completing construction, this completion date is extended by the City Manager in writing.
- 2.3 Surrender of Possession
  - a. Upon the expiration or termination of this Agreement, the Licensee's right to occupy the License Area and to exercise the privileges and rights granted by this Agreement cease, and it must surrender and leave the License Area in good condition; normal wear and tear excepted.
  - b. Unless otherwise provided herein, all trade fixtures, equipment, and other personal property installed or placed by the Licensee on the License Area remains the property of the Licensee, and the Licensee may, at any time during the term of this Agreement, and for an additional period of 30 days after its expiration, remove the same from the License Area so long as Licensee is not in default of any of its obligations and if Licensee repairs, at its sole cost, any damage caused by the removal.
  - c. Any property not removed by the Licensee within the 30-day period becomes a part of the License Area, and ownership vests in the City. Alternatively, the City may, at the Licensee's expense, have the property removed.

- 2.4 Hold-Over. In the event Licensee continues to occupy the License Area after the expiration or termination of this Agreement, such hold-over does not constitute a renewal or extension of this Agreement, and the Licensee must pay the City twice the Monthly License Fees and Royalty Payments (as defined below), with each month fully accruing after the first day of the month regardless of the actual number of days Licensee holds over during the month, plus any Royalty Payments (as defined below) accrued during the hold-over; provided however if the City and Licensee are in negotiations to renew this Agreement or to enter into a new lease for the premises leased herein, the standard License Fee and Royalty Payments shall apply and this Agreement shall become a month-to-month agreement until otherwise terminated.

### **3. License Fees, Royalty Payments**

- 3.1 For its right to use the License Area, the Licensee must pay, without notice and free from all claims, deductions and setoffs against the City, license fees and royalties as follows:

a. Monthly License Fees.

1. The license fee for the Licensed Area ("Monthly License Fee") is as follows:
  - (i) For the period beginning on the first day of the first month at least 90 days after the Effective date or the first day of the month following the date the Certificate of Occupancy is issued, whichever is earlier ("Commencement Date"), for a period of twelve (12) months, the Monthly License Fee shall be \$10,000 per month (\$120,000 per annum), plus all applicable taxes.
  - (ii) Effective on the first day of the 13<sup>th</sup> month and annually thereafter, the Monthly License Fee will increase 2%. Monthly License Fee increases made in accordance with this section do not require notice to Licensee and become effective solely by operation of this provision.
2. Licensee will pay the Monthly License Fee and continue to pay the Monthly License Fee on the first day of each following month until the expiration or earlier termination of this Agreement as set forth herein.
3. If the Monthly License Fee is not received by the fifth day of any month, Licensee will pay an additional 5% each month for each Monthly License Fee amount due and unpaid.

b. Royalty Payments. In addition to the Monthly License Fee, during the term of this Agreement, Licensee must pay City each year on or before the 60th day after each anniversary of the Commencement Date a royalty ("Royalty Payment") calculated as follows:

1. Thirty-three percent (33%) of the Total Revenue (as defined below) less than or equal to \$425,000 received during the previous 12 months for the use or operation of the Digital Billboard or License Area; and
2. Forty percent (40%) of the Total Revenue (as defined below) exceeding \$425,000 received during the previous 12 months for the use or operation of the Digital Billboard or License Area.

3. Minus the amount of the Monthly License Fees paid during the same previous 12-month period.

4. By way of example:

For Total Revenue of \$400,000 in the first 12 months, a Royalty Payment of \$12,000 is required and calculated as follows:

33% of Total Revenue minus Sum of 12 Monthly License Fees

$$.33 \times \$400,000 = \$132,000$$

$$\$132,000 - \$120,000 = \$12,000$$

$$\$12,000 = \text{Annual Royalty Payment}$$

For Total Revenue of \$600,000 in the first 12 months, a Royalty Payment of \$90,250 is required and calculated as follows:

33% of Total Revenue of \$425,000 plus 40% of Total Revenue over \$425,000 minus Sum of 12 Monthly License Fees

$$.33 \times \$425,000 = \$140,250$$

$$.40 \times \$175,000 = \$70,000$$

$$\$140,250 + \$70,000 - \$120,000 = \$90,250$$

5. In the event the Royalty Payment calculation results in a negative number, no Royalty Payment is required and no refund, offset, or reduction against past or future Monthly License Fees is due Licensee.
- c. "Total Revenue," as that term is used in this section, means all revenue, income or receipts Licensee receives or collects for use or operation of the Digital Billboard or License Area, minus applicable taxes and any advertising agency commissions.
  - d. Licensee will pay an additional 5% each month for each Royalty Payment amount due and unpaid.

#### 4. Financial Statements Required

- 4.1 At the time the Royalty Payment is due, Licensee must submit independently verified revenue reports prepared and certified by an independent, licensed Certified Public Accountant (CPA), attesting to the accuracy of the total revenue collections reported during the royalty period and any adjustments reported.
- 4.2 In the event the independent verification is not submitted with the Royalty Payment, Licensee shall pay a 5% late fee for each month or portion of month until the independent verification is submitted. If the independent verification is not submitted within 90 days of the due date, the City reserves the right to hire an independent CPA to conduct the work on behalf of the City at Licensee's expense. Failure to pay for the cost of the independent review within 30 days of receipt of an invoice or failure to pay the 5% late fee within 30 days will result in the City's right to terminate the contract for cause.
- 4.3 Inspection and Audit. Upon request, City may inspect Licensee's business and financial records relating to this Agreement. Additionally, upon 15 days' notice, City may, at its expense, audit Licensee's financial records relating to this Agreement for the purpose of assuring compliance with this Agreement, the cost of which will be reimbursed to the City should any material non-compliance be found.

## 5. Licensee's Operations

### 5.1 Generally

- a. Licensee must at all times have on-call and at the City's access an active, qualified, and experienced representative to supervise the Digital Billboard, and who is authorized to act for the Licensee in matters pertaining to all emergencies and the day-to-day operation of the Digital Billboard. Licensee will provide the City Engineer's Office with the names, addresses, and 24-hour telephone numbers of all such persons in writing.
- b. Licensee must operate and maintain the License Area in an orderly and clean manner and all facilities and equipment in a well-maintained state at all times.
- c. The Licensee is responsible for obtaining and paying for all utilities necessary to operate the Digital Billboard.

### 5.2 Improvements

#### a. Approvals

1. The Digital Billboard placed upon the License Area will not require conformance to City of Glendale Zoning Ordinance, Section 7.110; the digital billboard will be consistent in height, size and design with the signs Licensee's operates on city-owned property governed by contracts Nos. C-6855 and C-6855-1 and is required to be submitted to and receive approval from the City Planning Department. No construction activities related to Digital Billboard placement in the License Area may commence before all Planning Department approval processes have been completed.
2. Licensee's ability to use the License Area on an on-going basis is contingent upon its obtaining, after the execution date of this Agreement, all of the required certificates, permits, and other approvals that may be required by any federal, state or local authorities (collectively "Governmental Approvals"), as well as satisfactory soil boring tests that sufficiently support the Licensee's intended use of the License Area. Licensee shall pay for all boring tests.
3. Prior to any construction upon the License Area, Licensee must obtain all necessary construction permits and complete all requirements of the permits prior to any use of the License Area.
4. After construction activity is complete, Licensee will restore the City's property to the satisfaction of the City Engineer, and if Licensee fails to restore the License Area as required, the City may take all actions necessary to restore the License Area, and the Licensee will pay all of City's reasonable costs of such restoration upon demand.
5. The following procedure governs Licensee's submission to the City of all plans for the License Area and the Licensee's Improvements, including any proposed changes by the Licensee of previously approved plans:
  - (i) The Licensee will coordinate with the City as necessary on significant design issues prior to preparing plans being submitted.

- (ii) Upon execution of this Agreement, City and Licensee will each designate a project manager to coordinate the parties' participation in designing and constructing the Licensee's Improvements. Each project manager will devote such time and efforts to the project as may be necessary for timely, good faith and convenient coordination among all persons involved with the project and compliance with this Agreement. The City's project manager will not be exclusively assigned to this Agreement or the Licensee's Improvements.
- (iii) Licensee acknowledges that as of the date of this Agreement, the City has not approved or promised to approve any plans for the Licensee's Improvements and no plans are considered approved until stamped "APPROVED" and dated by the City's Building Safety Department.
- (iv) No final plans are considered approved until the Licensee delivers to the City a formal certification by an engineer licensed in Arizona acceptable to the City to the effect that all of Licensee's Improvements are properly designed to be safe and functional as designed and as required by this Agreement. The certification must be accompanied by and refer to any backup information and analysis as the City may reasonably require.
- (v) Licensee acknowledges that the City's project manager's authority with respect to the License Area is limited to the administration of the requirements of this Agreement. Licensee is responsible to secure all zoning approvals, design revisions or other Governmental Approvals and to satisfy all governmental requirements pertaining to the project and will not rely on the City or the City's project manager for any of the same.
- (vi) City's issuance of building permits does not constitute approval of any plans for purposes of this Agreement. City's project manager will be reasonably available to coordinate and assist Licensee in working through issues that may arise in connection with plan approvals and requirements.
- (vii) Licensee when submitting plans will allow adequate time for all communications and plan revisions necessary to obtain approvals and schedule its performances and revise its plans as necessary to timely obtain all approvals.
- (viii) The parties will use reasonable efforts to resolve any design and construction issues to their mutual satisfaction but, in the event of an impasse for any reason, final decision authority regarding all design and construction issues rests with the City.
- (ix) Licensee is subject to all design review and sign permit fees as determined by the City's project manager.

b. Design, Labor and Materials

- 1. Licensee's Improvements must be designed and materials and labor purchased at the Licensee's sole expense.

2. All of Licensee's Improvements will be designed so as to present uniformity of design, function, appearance and quality throughout and consistent with other improvements located in or near the License Area.
  3. Except as otherwise specifically provided for herein, in no event is the City obligated to compensate the Licensee in any manner for any of the Licensee's Improvements or other work provided by the Licensee during or related to this Agreement.
  4. Licensee must timely pay for all labor, materials and work, and all professional and other services related to its operations within the License Area, and will defend, indemnify and hold harmless the City against all related claims caused by Licensee.
  5. All work performed on the License Area by the Licensee must be performed in a workmanlike manner, as reasonably determined by the City, and will be diligently pursued to completion and in conformance with all building codes and similar rules.
  6. All of Licensee's Improvements must be high-quality, safe, modern in design and attractive in appearance, all as approved by the City in accordance with its standard policies and procedures.
  7. Licensee must participate as a member of the Blue Stake Center under A.R.S. § 40-360.21 et seq. regarding underground facilities, and the Licensee will submit proof of such participation to the City Engineer upon request.
- c. Records. Licensee must keep as-built records of the Licensee's Improvements and furnish copies of records to the City, at no cost to the City, upon completion of the improvements and any changes to the same.
  - d. Construction Bonds. Prior to the commencement of any construction in the License Area, Licensee must provide the City with payment and performance bonds in amounts equal to the full amount of the written construction contract for the construction to be performed on, in, and related to the License Area.
    1. The payment bond will be solely for the protection of claimants supplying labor or materials for the required construction work, and the performance bond is solely for the protection of the City, conditioned upon the faithful performance of the required construction work.
    2. Each bond must be executed by a surety company duly authorized to do business in Arizona.

### 5.3 Performance Bond

- a. In addition to any other bond required by this Agreement, Licensee must, no later than the Effective Date, provide to the City and maintain during the term of this Agreement a cash deposit, letter of credit, or performance bond in the amount of \$250,000.
- b. The performance bond, letter of credit, or the terms of a cash deposit will be conditioned upon the Licensee's faithful performance of all of its obligations under this Agreement.



- c. Any bond provided to fulfill the requirements of this section must be issued by a surety company duly authorized to do business in Arizona and which is acceptable to the City's Risk Manager.
- d. Any letter of credit provided to fulfill the requirements of this section must be provided by a national bank authorized to do business in Arizona and the instrument must be structured such that it can be drawn upon by the City without the necessity of the countersignature of Licensee.

#### 5.4 Maintenance of License Area

- a. Licensee, at its own expense, is responsible for improvements to and maintenance of the License Area during the term of this Agreement.
- b. Licensee, at its own expense, will use commercially reasonable efforts to minimize the collateral visual and aesthetic impacts of the Billboard, which will include, but not be limited to, replacing existing equipment with smaller equipment, decreasing the area used to house supporting equipment, or decreasing the size of any wireless communications equipment.

#### 5.5 City Ad Placements. As consideration for the grant of this Agreement by the City, Licensee must also:

- a. Accept and coordinate with City as part of any regular and routine ad placement on the Digital Billboard on-going ad placements by the City for City-related events ("City Placements");
  - 1. City Placements will consist of one 8-second spot per minute on either side, but not both simultaneously, of the Digital Billboard.
  - 2. Alternatively, City may instead elect to place City Placements for an equivalent amount of time on other digital outdoor advertising structures operated by the Licensee in the Greater Phoenix metropolitan area subject to space availability.
  - 3. City Placements will be at no additional cost to the City and will result in no setoff against Monthly License Fees or Royalty Payments.
- b. Broadcast any message on the Billboard the City considers necessary for public safety; and
- c. Receive, consider and promptly respond to any City objection to Digital Billboard advertising displayed in the License Area.

#### 5.6 Co-Location

- a. Licensee will use reasonable efforts to cooperate with the City and any third parties with regard to the possible co-location of additional facilities or equipment in the License Area.
  - 1. If a co-location is feasible, City may, in its sole discretion, negotiate a co-location license agreement with any third party on terms the City considers appropriate, not inconsistent with the rights and obligations of the parties under this Agreement.
  - 2. Licensee's approval for co-location is not required, provided that the co-locator is expressly prohibited from attaching to or coming into physical contact with equipment, facilities or structures Licensee has installed in the License area or visually impairs the operation of the Billboard.

3. Any rent or fees paid by an additional co-locator belong solely to the City.
  4. If any third party desires to co-locate equipment or associated fixtures on Licensee's equipment, facilities or structures, the third-party carrier will be directed to Licensee in order to secure a separate agreement and the City will consider any necessary amendment to this Agreement.
- b. Prior to permitting the installation by any third party in or around the License Area of any additional equipment which may interfere with the Licensee's operation of the Digital Billboard, City will give Licensee 30 days' notice so that the Licensee can determine if the third-party's equipment will interfere with the Billboard.
1. If Licensee determines that interference is likely to occur, Licensee may, within 30 days, give the City a detailed written explanation of the anticipated interference, including any supporting documentation as may be reasonably necessary for the City to evaluate the Licensee's position.
  2. City and the Licensee will seek to resolve any interference problems before the City permits the third party to operate its proposed equipment.
  3. If a third party is permitted to operate in or near the License Area, and the third-party's operations interfere with Licensee's Billboard (as operating and configured prior to the third-party operations beginning), then the City will direct the third party to remedy the interference within 72 hours and, if the interference is not resolved within this 72-hour period, then the third party will be required to cease its operations until the interference is resolved.
  4. These same procedures apply to
    - (i) Any interference caused by Licensee with respect to equipment existing and as configured on the Commencement Date, and
    - (ii) Any licensee equipment existing on the Commencement Date which is later reconfigured so as to interfere with Licensee's Billboard.

#### 5.7 Insurance

- a. Licensee must procure and at all times maintain the minimum insurance as outlined below for its operations in the License Area:

##### **Minimum Insurance Requirements**

1. **Workers' Compensation Insurance** with Statutory Limits. This policy shall include employer's liability insurance with limits of at least \$1,000,000.
2. **Commercial General Liability Insurance** in the minimum amounts indicated below or such additional amounts as reasonably required by the City, including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of any agreement with the City, Products-Completed Operations Hazard, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of your performance of work for the City. Said insurance shall have minimum limits for Bodily Injury and Property Damage Liability

equal to the policy limits, but not less than \$2,000,000 each occurrence and \$4,000,000 aggregate.

3. **Automobile Liability Insurance** against claims of Personal Injury (including bodily injury and death) and Property Damage covering all owned, leased, hired and non-owned vehicles used in the performance of services pursuant to an agreement with the City with minimum limits for Bodily Injury and Property Damage Liability equal to the policy limits, but not less than \$1,000,000 each occurrence. Coverage shall include 'any auto'.

- b. Insurance must be issued by a company authorized to provide coverage in Arizona and rated at least A-,VII by AM Best and naming the City and its board members, officials, officers, agents, and employees as an additional insured by endorsement with a requirement of 30 days' written notice to the City prior to cancellation for any reason.
- c. The insurance must also include advertising and contractual liability coverage for the obligation of indemnity assumed in this Agreement, subject to standard policy provisions and exclusions.
- d. Licensee's insurance must be primary and non-contributory with respect to all other available sources. Licensee must provide appropriate certificates and endorsements of insurance to the City for all insurance policies required by this section.
- e. As commercially reasonable, City's Risk Manager may alter the requirements above or determine additional insurance is necessary for Licensee's operations.

f. **Notice of Cancellation**

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.

g. **Waiver of Subrogation**

Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City by virtue of the payment of any loss under such insurance. Contractor agrees to make reasonable efforts to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

- 5.8 Notices to the City. The Licensee will provide the City, without request, copies of any petition or application related to any filing by the Licensee of bankruptcy, receivership or trusteeship and any notices received from regulatory agencies pertaining to the operations of the Billboard.

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

7. **Indemnification and Limitation of Liability**

- 7.1 Licensee will defend, indemnify and hold harmless the City, its officers and employees, and agents (collectively, the "City") from all loss, damages or claims of whatever nature, including attorney's fees, expert witness fees and costs of litigation, that arise out of any act or omission of Licensee or its agents, employees and invitees (collectively, "Licensee") in connection with Licensee's operations in the License Area and that result directly or indirectly in any type of injury to or death of any person or the damage to or

loss of any property, or that arise out of Licensee's operations, including the failure of the Licensee to comply with any provision of this Agreement.

- a. City will in all instances, except for loss, damages or claims resulting from the sole negligence or fault of City, be indemnified by Licensee against all losses, damages or claims. City will give the Licensee prompt notice of any claim made or suit instituted that may subject the Licensee to liability under this section, although timing of such notice will not diminish Licensee's duty to indemnify, and the Licensee will have the right to compromise and defend the same to the extent of its own interest.
- b. City may, but does not have the duty to, participate in the defense of any claim or litigation with attorneys of the City's selection and at the City's sole cost without relieving the Licensee of any obligations hereunder.
- c. Licensee's obligations under this Agreement survive any termination of this Agreement or the Licensee's activities in the License Area.

7.2. Neither Party is liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data (except as provided herein), or interruption or loss of use of service (except as provided herein), even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

## **8. Taxes and Licenses**

- 8.1. Licensee must pay any leasehold tax, possessory-interest tax, sales tax, personal property tax, transaction privilege tax or other exaction assessed or assessable as a result of its occupancy of the License Area under authority of this Agreement, including any such tax assessable on the City.
- 8.2. If any law or judicial decision results in the imposition of a real property tax on the interest of the City, the tax must also be paid by the Licensee on a proportional basis for the period this Agreement is in effect.
- 8.3. Licensee must, at its own cost, obtain and maintain in full force and effect during the term of this Agreement all licenses and permits required for all activities authorized by this Agreement.

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

## **10. Termination**

### **10.1 For Cause**

- a. Licensee may terminate this Agreement in the event of any of the following:
  1. Applications for Governmental Approval are rejected;
  2. Governmental Approval issued to Licensee by the City is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority;
  3. Licensee reasonably determines that any soil boring tests are unsatisfactory;

4. Prior to initial construction of the Digital Billboard, Licensee reasonably determines that the License Area is no longer technically compatible for its use;
  5. Prior to initial construction of the Digital Billboard, Licensee reasonably determines that it will be unable to use the License Area for its intended purposes.
  6. Issuance by a court of competent jurisdiction of an injunction in any way preventing or restraining the Licensee's use of any portion of the License Area and the injunction remaining in force for a period of 30 consecutive days.
  7. The inability of the Licensee to use any substantial portion of the License Area for a period of 90 consecutive days due to the enactment or enforcement of any law or regulation or because of fire, earthquake or similar casualty or Acts of God or the public enemy. No Monthly License Fees shall be due during the period of non-use and such fees shall be discounted on a pro-rata basis for the number of days of non-use.
  8. If the License Area or Digital Billboard is destroyed or damaged in either party's reasonable judgment to substantially and adversely affect the use of the Digital Billboard.
- b. The City may terminate this Agreement and seek damages by giving Licensee 30 days' written notice after the happening of any of the following events:
1. The failure of Licensee to perform any of its obligations under this Agreement and such failure is not cured fully within the 30 days' notice period or, if the cure cannot reasonably be completed within the 30 days' notice period, then within 90 days from the date of the original notice; provided that Licensee must initiate the cure within the original 30 days' notice period and thereafter diligently pursue the cure;
  2. The taking of possession for a period of 90 days or more of substantially all of the personal property used in the License Area belonging to the Licensee by or pursuant to final lawful authority of any legislative act, resolution, rule, order or decree or any act, resolution, rule, order or decree of any court or governmental board, agency, officer, receiver, trustee or liquidator; or
  3. The filing of any lien against the License Area because of any act or omission of the Licensee that is not discharged or fully bonded within 30 days of receipt of actual notice by the Licensee.
- c. The City may terminate this Agreement and seek any other remedy allowed by law or equity by giving the Licensee 15 days' written notice of the Licensee's failure to timely pay rent or any other charges required to be paid by the Licensee pursuant to this Agreement.
- d. The City may terminate this Agreement if the Licensee at any time and for any reason fails to maintain all insurance coverage required by this Agreement, immediately terminate this Agreement or alternatively and at its sole discretion, secure the required insurance at Licensee's expense, which will be immediately due and payable.

- 10.2 Without Cause. Each party may, in its sole discretion and without cause, terminate this Agreement by giving the other party written notice one year prior to the termination date.
- a. In the event the City terminates without cause within the first five years of this agreement, Licensee's actual capital cost directly related to equipment that is located on the License Area that cannot be removed for other use or salvage will be reimbursed to Licensee using a straight-line depreciation method calculated over the lesser of the equipment's useful life or the term of this Agreement, less the cost of bringing the property back to its original condition and any salvage value.
  - b. In the event Licensee terminates without cause within the first five years of this agreement, Licensee will, at its own expense, return the property back to its original condition within 90 days of termination.
  - c. In order to ensure adequate accounting of capital costs in the event of termination without cause, Licensee will provide written documentation of the capital costs and depreciation schedule for the equipment prior to the issuance of the Certificate of Occupancy.
- 10.3 Upon termination, Licensee will immediately pay to the City any due and unpaid Monthly License Fees and any Royalty Payments.
- 10.4 Upon the termination of this Agreement for any reason, all rights of the Licensee terminate, including all rights of the Licensee's creditors, trustees and assigns, and all others similarly situated as to the License Area.

## **11. Default**

- 11.1 Failure by a party to take any authorized action upon default by the other party of any of the other party's obligations does not constitute a waiver of the default nor of any subsequent default by the other party.
- 11.2 Acceptance of Monthly License Fees, Royalty Payments and other payments by the City under the terms of this Agreement for any period after a default by the Licensee of any of its obligations is not considered waiver or estoppel of the City's right to terminate this Agreement for any subsequent failure by the Licensee to comply with its obligations.

## **12. City's Representations and Warranties.** The City represents and warrants to the Licensee that:

- 12.1 It has full right, power, and authority to execute this Agreement;
- 12.2 The City has good and unencumbered title to the License Area free and clear of any liens or mortgages, except those disclosed to the Licensee that will not interfere with the Licensee's right to use the License Area; and
- 12.3 The City's execution and performance of this Agreement will not violate any laws, ordinances, covenants, mortgages, licenses or other agreements binding on the City.

## **13. Hazardous Waste**

- 13.1 Licensee must not produce, dispose, transport, treat, use or store any hazardous waste or toxic substance upon or about the License Area subject to regulation under the Arizona Hazardous Waste Management Act, A.R.S. § 49-901 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., the Toxic Substances Control Act, 15 U.S.C. 2601 et seq., or any other federal, state or local law pertaining to hazardous waste or toxic substances.

- 13.2 Licensee must not use the License Area in a manner inconsistent with any regulations, permits or approvals issued by the Arizona Department of Health Services.
- 13.3 Licensee must defend, indemnify and hold the City harmless against any loss or liability incurred by reason of any hazardous waste or toxic substance on or affecting the License Area attributable to or caused in any way by the Licensee, and immediately notify the City of any hazardous waste or toxic substance at any time discovered or existing upon the License Area.
- 13.4 Licensee must promptly and without a request by the City provide the City's Environmental Program Manager with copies of all written communications between the Licensee and any governmental agency concerning environmental inquiries, reports or problems on the License Area.

#### **14. Notice**

- 14.1 Except as otherwise provided, all notices required or permitted to be given under this Agreement may be personally delivered or mailed by certified mail, return receipt requested, postage prepaid, to the following addresses:
  - To the City: City Manager  
City of Glendale  
5850 West Glendale Avenue  
Glendale, Arizona 85301
  - with a copy to: City Attorney  
City of Glendale  
5850 West Glendale Avenue  
Glendale, Arizona 85301
  - To the Licensee: Lamar Central Outdoor Advertising, L.L.C.  
1661 E. Camelback Ste. 320  
Phoenix, Arizona 85016
- 14.2 Any notice given by certified mail is considered received on the third business day after the date of mailing.
- 14.3 Either party may designate in writing a different address for notice purposes pursuant to this section.

#### **15. Assignment**

- 15.1 Licensee may assign this Agreement, upon 30 days' written notice to the City and upon City's written consent, which may not be unreasonably withheld, conditioned or delayed. City may as a condition of consent, require that any assignee submit biographical and financial information to the City at least 30 days prior to any the assignment of Licensee's interest under this Agreement.
- 15.2 Licensee may, upon notice to the City, mortgage or grant a security interest in this Agreement and Digital Billboard, and may assign this Agreement and Digital Billboard to any mortgagees, deed of trust beneficiaries or holders of security interests, including their successors or assigns ("Mortgagees"), provided such Mortgagees agree to be bound by the terms of this Agreement. In this event, City will execute consent to financing as may be reasonably required by Mortgagees. In no event will the Licensee grant or attempt to grant a security interest in the real property of the License Area.
- 15.3 Subject to subsections 14.1 and 14.2, Licensee may not assign or sublease any of its interest under this Agreement, nor permit any other person to occupy the License Area.

16. **Severability.** If any provision of this Agreement is declared invalid by a court of competent jurisdiction, the remaining terms remain effective, provided that elimination of the invalid provision does not materially prejudice either party with regard to its respective rights and obligations; in the event of material prejudice, then the adversely affected party may terminate this Agreement.
17. **Immigration Law Compliance.**
- 17.1 Licensee, and on behalf any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.
  - 17.2 Any breach of warranty under this section above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
  - 17.3 City retains the legal right to inspect the papers of Licensee or subcontractor employee who performs work under this Agreement to ensure that Licensee or any subcontractor is compliant with the warranty under this section.
  - 17.4 City may conduct random inspections, and upon request of the City, Licensee must provide copies of papers and records demonstrating continued compliance with the warranty under this section. Licensee agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this section.
  - 17.5 Licensee agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon itself and expressly accrue those obligations directly to the benefit of the City. Licensee also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.
  - 17.6 Licensee's warranty and obligations under this section to the City is continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.
  - 17.7 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.
18. **Conflicts.** This Agreement is subject to cancellation for conflicts of interest under the provisions of A.R.S. § 38-511.
19. **Litigation.** This Agreement is governed by the laws of the State of Arizona. If any litigation or arbitration between the City and the Licensee arises under this Agreement, the successful party is entitled to recover its reasonable attorney's fees, expert witness fees and other costs incurred in connection with the litigation or arbitration.
20. **Miscellaneous.** This Agreement constitutes the entire agreement between the parties concerning the matters contained herein and supersedes all prior negotiations, understandings and agreements between the parties concerning all related matters. This Agreement will be interpreted, applied and enforced according to the fair meaning of its terms and not be construed strictly in favor of or against either party, regardless of which party may have drafted any of its provisions. No provision of this Agreement may be waived or modified except by a writing signed by the party against whom such waiver or modification is sought to be enforced. The



terms of this Agreement are binding upon and inure to the benefit of the parties' successors and assigns.

21. **Exhibits.**

EXHIBIT A1-2 – Legal Description/Aerial Map

EXHIBIT B – Conduit Area

EXHIBIT C – Design Concept

EXHIBIT D - Corporate Parent Guarantee

EXECUTED to be effective on the date specified above.

CITY OF GLENDALE, an Arizona  
municipal corporation

\_\_\_\_\_  
Brenda S. Fischer, City Manager

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael D. Bailey, City Attorney

LAMAR CENTRAL OUTDOOR, L.L.C., a  
Delaware limited liability company

\_\_\_\_\_  
By: Christina Butler  
Its: Vice President/General Manager

Date: \_\_\_\_\_

STATE OF ARIZONA            )  
  ) ss.  
County of Maricopa         )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by  
\_\_\_\_\_ in his/her capacity as authorized representative of LAMAR CENTRAL OUTDOOR ADVERTISING,  
L.L.C.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public

**EXHIBIT "A" - LEGAL DESCRIPTION  
7691 N. 99TH AVENUE**

NORTH SIGN NO. 2

THAT PORTION OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 4,  
TOWNSHIP 2 NORTH, RANGE 1 EAST OF THE GILA AND SALT RIVER BASE AND  
MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS  
FOLLOWS:

COMMENCING AT A ½ INCH REBAR MARKING THE WEST QUARTER CORNER OF SAID  
SECTION 4, WHICH BEARS SOUTH 00 DEGREES 05 MINUTES 57 SECONDS WEST 2581.90  
FEET FROM A PK NAIL MARKING THE NORTHWEST CORNER OF SAID SECTION 4;

THENCE ALONG THE WEST LINE OF SAID SECTION 4, NORTH 00 DEGREES 05 MINUTES 57  
SECONDS EAST, A DISTANCE OF 502.77 FEET;

THENCE SOUTH 89 DEGREES 54 MINUTES 03 SECONDS EAST, A DISTANCE OF 101.08 FEET  
TO THE POINT OF BEGINNING;

THENCE NORTH 10 DEGREES 12 MINUTES 14 SECONDS EAST, A DISTANCE OF 35.00 FEET;

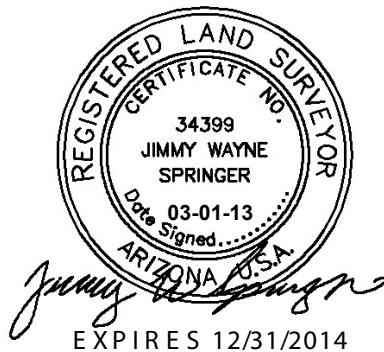
THENCE SOUTH 79 DEGREES 47 MINUTES 46 SECONDS EAST, A DISTANCE OF 60.00 FEET  
TO THE WEST RIGHT-OF WAY OF AGUA FRIA FREEWAY (LOOP 101);

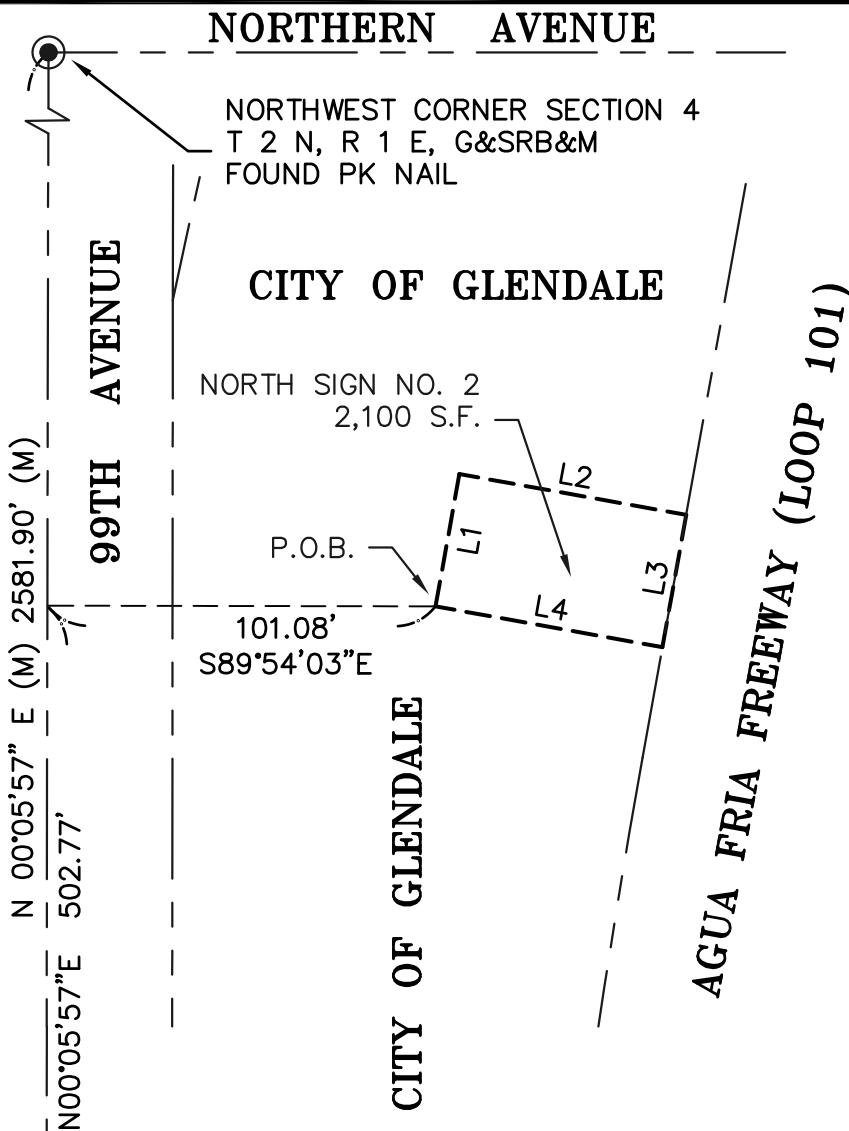
THENCE ALONG SAID WEST RIGHT-OF-WAY SOUTH 10 DEGREES 12 MINUTES 14 SECONDS  
WEST, A DISTANCE OF 35.00 FEET;

THENCE NORTH 79 DEGREES 47 MINUTES 46 SECONDS WEST, A DISTANCE OF 60.00 FEET  
TO THE POINT OF BEGINNING.

CONTAINING 2,100 SQUARE FEET, MORE OR LESS.

AGUA FRIA NORTH NO. 2  
EXHIBIT A1  
PAGE 1 OF 2

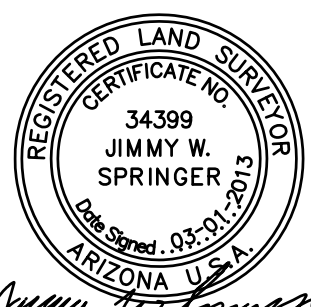




NORTH

1 INCH = 50 FEET  
SCALE

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N10°12'14"E	35.00
L2	S79°47'46"E	60.00
L3	S10°12'14"W	35.00
L4	N79°47'46"W	60.00

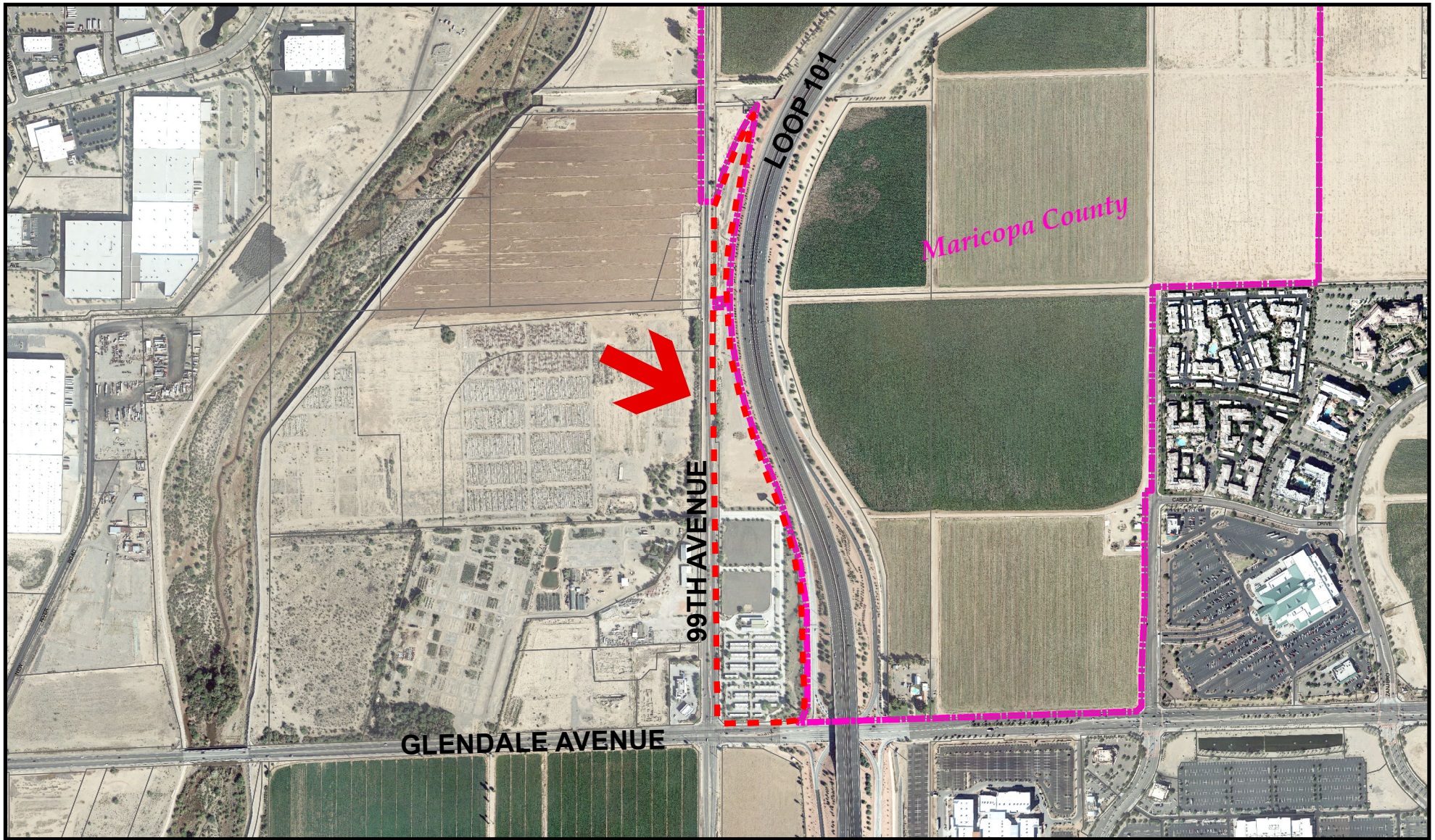


*Jimmy W. Springer*  
Expires 12/31/2014

EXHIBIT A1  
AGUA FRIA NORTH NO. 2  
NORTH SIGN NO. 2  
PAGE 2 OF 2

THUNDERBIRD SURVEYING LLC  
6911 EAST THUNDERBIRD ROAD  
SCOTTSDALE, ARIZONA 85254  
PHONE (480) 629-4399





**LOCATION:**  
7691 N. 99TH AVENUE  
**REQUEST:**  
LICENSE AGREEMENT WITH  
LAMAR OUTDOOR



Aerial Date: November 2012



**EXHIBIT "B" - CONDUIT AREA  
7691 N. 99TH AVENUE**

NORTH SIGN NO. 2 ELECTRICAL

THAT PORTION OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 2 NORTH, RANGE 1 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A ½ INCH REBAR MARKING THE WEST QUARTER CORNER OF SAID SECTION 4, WHICH BEARS SOUTH 00 DEGREES 05 MINUTES 57 SECONDS WEST 2581.90 FEET FROM A PK NAIL MARKING THE NORTHWEST CORNER OF SAID SECTION 4;

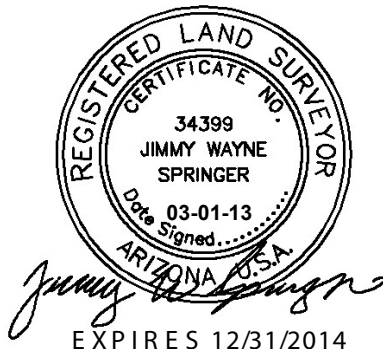
THENCE ALONG THE WEST LINE OF SAID SECTION 4, NORTH 00 DEGREES 05 MINUTES 57 SECONDS EAST, A DISTANCE OF 532.76 FEET;

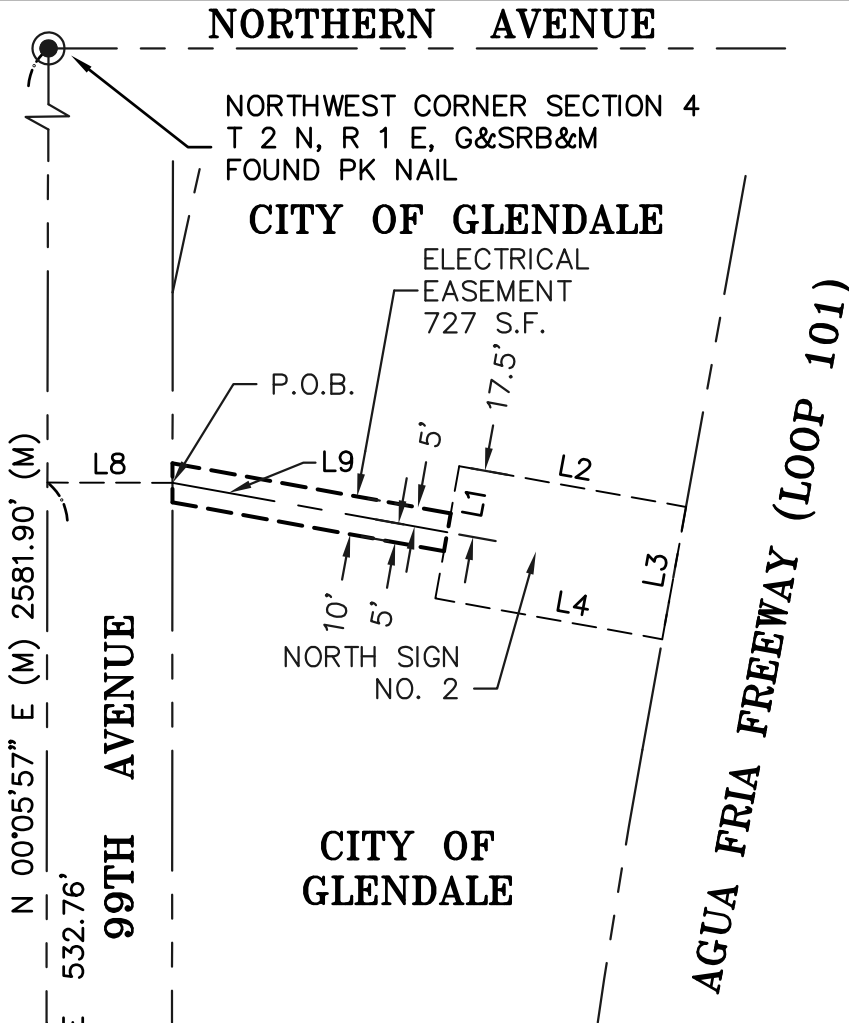
THENCE SOUTH 89 DEGREES 54 MINUTES 03 SECONDS EAST, A DISTANCE OF 32.57 FEET TO THE EAST RIGHT-OF-WAY OF 99<sup>TH</sup> AVENUE AND THE POINT OF BEGINNING;

THENCE ALONG THE CENTERLINE OF A TEN FOOT (10') WIDE ELECTRICAL EASEMENT, FIVE FEET EACH SIDE OF THE CENTERLINE DESCRIBED HEREIN, SOUTH 79 DEGREES 47 MINUTES 46 SECONDS EAST, A DISTANCE OF 72.71 FEET TO THE POINT OF TERMINUS.

CONTAINING 727 SQUARE FEET, MORE OR LESS.

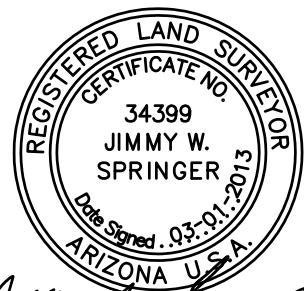
AGUA FRIA NORTH NO. 2  
EXHIBIT A3  
PAGE 1 OF 2





LINE TABLE		
LINE	BEARING	DISTANCE
L1	N10°12'14"E	35.00
L2	S79°47'46"E	60.00
L3	S10°12'14"W	35.00
L4	N79°47'46"W	60.00
L8	S89°54'03"E	32.57
L9	S79°47'46"E	72.71

WEST QUARTER CORNER SECTION 4  
T 2 N, R 1 E, G&SRB&M  
FOUND 1/2" REBAR DOWN 0.6'



*Jimmy W. Springer*  
Expires 12/31/2014

EXHIBIT A3  
AGUA FRIA NORTH NO. 2  
NORTH SIGN NO. 2 ELECTRICAL  
PAGE 2 OF 2

THUNDERBIRD SURVEYING LLC  
6911 EAST THUNDERBIRD ROAD  
SCOTTSDALE, ARIZONA 85254  
PHONE (480) 629-4399

NORTH SIGN NO. 2 ACCESS

THAT PORTION OF THE WEST HALF OF THE OF SECTION 4, TOWNSHIP 2 NORTH, RANGE 1 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A ½ INCH REBAR MARKING THE WEST QUARTER CORNER OF SAID SECTION 4, WHICH BEARS NORTH 00 DEGREES 03 MINUTES 47 SECONDS EAST 2609.53 FEET FROM MARICOPA COUNTY HIGHWAY DEPARTMENT (MCHD) BRASS CAP MARKING THE SOUTH CORNER OF SAID SECTION 4;

THENCE ALONG THE WEST LINE OF SAID SECTION 4, SOUTH 00 DEGREES 03 MINUTES 47 SECONDS WEST, A DISTANCE OF 880.87 FEET;

THENCE SOUTH 89 DEGREES 56 MINUTES 13 SECONDS EAST, A DISTANCE OF 55.00 FEET TO THE EAST RIGHT-OF-WAY OF 99<sup>TH</sup> AVENUE AND THE POINT OF BEGINNING;

THENCE ALONG THE CENTERLINE OF A TWENTY FOOT (20') WIDE ACCESS EASEMENT, TEN FEET EACH SIDE OF THE CENTERLINE DESCRIBED HEREIN, SOUTH 89 DEGREES 56 MINUTES 13 SECONDS EAST, A DISTANCE OF 78.68 FEET TO A TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 100.00 FEET;

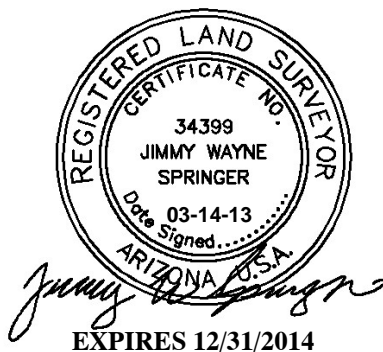
THENCE ALONG SAID CURVE WITH A CENTRAL ANGLE OF 108 DEGREES 49 MINUTES 00 SECONDS, A DISTANCE OF 189.92 FEET TO A TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 2441.83 FEET;

THENCE ALONG SAID CURVE WITH A CENTRAL ANGLE OF 28 DEGREES 54 MINUTES 33 SECONDS, A DISTANCE OF 1232.05 FEET;

THENCE NORTH 10 DEGREES 09 MINUTES 20 SECONDS EAST, A DISTANCE OF 29.25 FEET TO THE POINT OF TERMINIUS.

CONTAINING 30,598 SQUARE FEET, MORE OR LESS.

AGUA FRIA NORTH NO. 2  
EXHIBIT A2  
PAGE 1 OF 2

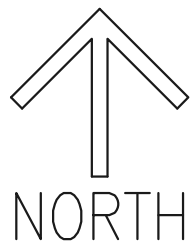




WEST QUARTER CORNER SECTION 4  
T 2 N, R 1 E, G&SRB&M  
FOUND 1 1/2" REBAR DOWN 0.6'

NORTHWEST CORNER SECTION 4  
T 2 N, R 1 E, G&SRB&M  
FOUND PK NAIL

99TH AVENUE



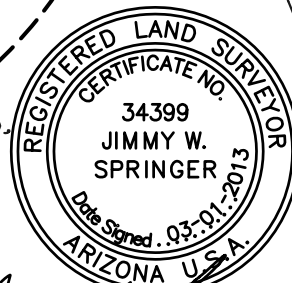
1 INCH = 50 FEET  
SCALE

CURVE TABLE			
CURVE	DELTA	RADIUS	TANGENT
C1	108°49'00"	100.00	189.92
C2	28°54'33"	2441.83	1232.05

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N10°12'14"E	35.00
L2	S79°47'46"E	60.00
L3	S10°12'14"W	35.00
L4	N79°47'46"W	60.00
L5	S89°56'13"E	55.00
L6	S89°56'13"E	78.68
L7	N10°09'20"E	29.25

NORTH SIGN  
NO 2 ACCESS  
30,598 S.F.  
P.O.B.

SOUTHWEST CORNER SECTION 4  
T 2 N, R 1 E, G&SRB&M  
FOUND MCHD BRASS CAP FLUSH



Expires 12/31/2014

EXHIBIT A2  
AGUA FRIA NORTH NO. 2  
NORTH SIGN NO. 2 ACCESS  
PAGE 2 OF 2

THUNDERBIRD SURVEYING LLC  
6911 EAST THUNDERBIRD ROAD  
SCOTTSDALE, ARIZONA 85254  
PHONE (480) 629-4399

**EXHIBIT "C" - DESIGN CONCEPT**  
**7691 N. 99TH AVENUE**



## EXHIBIT D

### Corporate Parent Guarantee

In order to induce City to enter into the Digital Billboard Placement License Agreement (the “License”) by and between the City of Glendale, an Arizona municipal corporation (“City”) and LAMAR CENTRAL OUTDOOR, L.L.C., a Delaware limited liability company (“Lamar”), LAMAR ADVERTISING COMPANY, INC., a public Delaware corporation (“Parent”), as the owner of greater than fifty one percent (51%) of the voting and equity interests in Lamar, and as the managing member of Lamar, hereby unconditionally guarantees the prompt and complete performance of and compliance with all covenants, obligations and duties of Lamar arising under or relating to the License.

1. Parent’s obligations pursuant to this paragraph are primary and not secondary, and City need not seek satisfaction of any breach from Lamar before seeking satisfaction from Parent, which waives any notice of acceptance of this Guaranty.
2. 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 License shall apply.
3. In addition, for the City benefit and as consideration for the License, Parent hereby makes the same representations and warranties as to Parent as those made by Lamar in the License, except that Parent represents that it is a corporation duly formed and validly existing under the laws of the State of Delaware.
4. Notices given to Parent shall be delivered and deemed received in the same manner as set forth in the Notice section of the License. Parent acknowledges that it has received a copy of the License.
5. This Guaranty shall continue in full force and effect until all obligations of Lamar under the License have been paid or performed in full.
6. Parent agrees that its obligations 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 License;
  - b. any failure, omission or delay on the part of City to conform or comply with any term of the License;
  - c. any waiver, compromise, release, settlement or extension of time of performance or observance of any of the obligations or agreements contained in the License;
  - 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 Lamar, Parent, or any other guarantor of Lamar’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 Lamar, Parent, or any other guarantor of Lamar’s obligations into or with any person, or any sale, lease or transfer of any of the assets of Lamar, Parent or any other guarantor of Lamar’s obligations to any other person; or
  - f. any change in the ownership of the capital stock or equity ownership of Lamar, Parent, or any other guarantor of Lamar’s obligations or any change in the relationship between Lamar, Parent, or any other guarantor of the License obligations, or any termination of

7. Parent waives any defense arising by reason of any disability of Lamar or by reason of the cessation, dissolution, or non-existence of Lamar, from any cause whatsoever,
8. Lamar waives all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Guaranty.

LAMAR ADVERTISING COMPANY, INC.,  
a Delaware corporation

Date: \_\_\_\_\_

**DIGITAL BILLBOARD PLACEMENT  
LICENSE AGREEMENT**  
(9802 West Bethany Home Road)

This Digital Billboard Placement License Agreement ("Agreement") is entered and executed to be effective the \_\_\_\_ day of \_\_\_\_\_, 2014 ("Effective Date"), between the City of Glendale, an Arizona municipal corporation ("City"), and Lamar Central Outdoor, LLC, a Delaware limited liability company, registered and authorized to do business in the State of Arizona ("Licensee").

**RECITALS**

- A. The City is the owner of certain real property located in the vicinity of Bethany Home Road and the Agua Fria Freeway (Loop 101), Glendale, Arizona, designated by the Maricopa County Assessor's Office as Parcel No. 102-01-010M, within which the area more fully described in Exhibit A will be licensed for use pursuant to this Agreement ("License Area").
- B. The Licensee desires to install, operate, maintain and repair digital billboard advertising equipment ("Billboard") in the described License Area and to construct certain improvements within the License Area, depicted in the Exhibits B and C, Conduit Area and Design Concept, respectively.
- C. The City is willing to grant to the Licensee a license to use the License Area for the purpose stated subject to the requirements of this Agreement and subject to the guarantee of this agreement by Licensee's parent corporation, which is attached hereto as Exhibit D.

**AGREEMENT**

In consideration of the mutual covenants and conditions set forth herein, and for good and valuable consideration given, it is hereby agreed as follows:

- 1. **License.** The City grants to the Licensee the right to use the "License Area" only for use as stated and subject to the provisions and conditions of this Agreement:
  - 1.1 Billboard Area. During the term of this Agreement, Licensee will have access to and may locate one Digital Billboard and all supporting equipment enclosures used solely in connection with the Digital Billboard within the License Area.
  - 1.2 Conduit Area. During the term of this Agreement, Licensee will have access to and may locate conduit and cable to provide electrical service and coaxial cabling to the Digital Billboard, as described in Exhibit B of this Agreement or as otherwise approved by the City.
  - 1.3 Rights, Use Requirements and Restrictions
    - a. Licensee's rights under this Agreement are subject to all covenants, restrictions, easements, agreements, reservations and encumbrances upon, and all other conditions of title to the License Area.
    - b. Licensee's rights under this Agreement are subject to all present and future building restrictions, regulations, zoning laws, ordinances, resolutions and orders of any local, state or federal agency, now or hereafter having jurisdiction over the License Area or the Licensee's use of the License Area.
    - c. Licensee may use the License Area only for constructing, installing, operating, maintaining, and repairing the Billboard and no other use.

- d. Except for the Digital Billboard, Licensee must not install any signs in the License Area other than required safety warning signs or any other signs as are requested or approved by the City, and Licensee bears all costs pertaining to the erection, installation, maintenance, and removal of all signs.
  - e. Licensee must at all times use its commercially reasonable best efforts to minimize any impact that its use of the License Area will have on other uses of the License Area. Licensee is aware that the License Area may be improved and utilized for parking.
  - f. Licensee may not remove, damage, or alter in any way any improvements or property of the City upon the License Area, whether currently existing or installed in the future, without the City's prior written approval.
  - g. Licensee must repair any damage or alteration to the License Area to the same condition that existed before the damage or alteration.
  - h. Licensee has non-exclusive right for ingress and egress, seven days a week, 24 hours a day, for the construction, installation and maintenance of the Digital Billboard, which right will be exercised so as to not unreasonably interfere with City operations or use of the License Area.
- 1.4 "AS-IS" Acceptance. Licensee warrants that it has studied and inspected the License Area, obtained any information and professional advice as the Licensee has determined to be necessary related to this Agreement, and therefore accepts the same "AS IS" without any express or implied warranties of any kind, other than those warranties contained in § 12.2, including any warranties or representations by the City as to its condition or fitness for any use.
- 1.5 Limitation on Grant. The parties do not by this instrument intend to create a lease, easement, or other real property interest or vest with Licensee any real property interest in the License Area and nothing express or implied in this Agreement grants Licensee any right or authority to enter, occupy, or use any property that is not solely owned by the City and fully described herein.
- 1.6 Rights Reserved
- a. Licensee acknowledges that its use of the License Area is subject and subordinate to the City's use of the License Area, including use of the License Area for parking. Licensee agrees that use of License Area for parking, including for any event held at the University of Phoenix Stadium, shall have precedence over any construction, installation and maintenance activities by Licensee.
  - b. Licensee will not install, operate or allow its agents, employees, or contractors to use any equipment, methodology or technology that may interfere with the optimum effective use or operation of the City's fire, emergency or other communication equipment, methodology or technology (i.e., voice or other data receiving and/or transmitting equipment) that is presently in use or may be in use in the future.
    - 1. If such interference does occur, the Licensee must immediately discontinue using the equipment, methodology or technology that causes the interference until corrective measures are taken which must be made at no cost to the City.
    - 2. City and the Licensee will use their best reasonable efforts to resolve immediately any interference problems, but if an interference problem

is unavoidable, the City's right to use the City's fire, emergency, or other communication equipment remains paramount to any use of the License Area by the Licensee and Licensee has the right to terminate this Agreement without penalty and without any cost to the City.

- c. City may, at all times, enter upon the License Area for any lawful purpose, provided the action does not unreasonably interfere with the Licensee's use or occupancy of the License Area.
- d. Without limiting the generality of the foregoing, the City and any furnisher of utilities and other services may, at their own cost:
  - 1. Enter upon the License Area at any time to make repairs, replacements or alterations that, in the opinion of the City or the furnisher of utilities and other services, may be necessary or advisable and from time to time to construct or install over, in, or under the License Area systems or parts; and
  - 2. In connection with any maintenance, use the License Area for access to other parts in and around the License Area; provided that in the exercise of these rights of access, repairs, alterations or new construction, the City does not unreasonably interfere with the use and occupancy of the License Area by the Licensee.
- e. The exercise of any of the foregoing rights by the City or others does not constitute a termination of the License, nor serve as the grounds for any abatement of Monthly License Fees, Royalty Payments, or any claim for damages.

## 2. Term

- 2.1 License Period. This Agreement is for a period of 240 months commencing on the Effective Date.
- 2.2 Initial Construction. Licensee must install and place into use the Digital Billboard in accordance with the specification set forth herein no later than December 31, 2014 ("Initial Construction Date") or this Agreement will automatically terminate unless, for the purposes of completing construction, this completion date is extended by the City Manager in writing.
- 2.3 Surrender of Possession
  - a. Upon the expiration or termination of this Agreement, the Licensee's right to occupy the License Area and to exercise the privileges and rights granted by this Agreement cease, and it must surrender and leave the License Area in good condition; normal wear and tear excepted.
  - b. Unless otherwise provided herein, all trade fixtures, equipment, and other personal property installed or placed by the Licensee on the License Area remains the property of the Licensee, and the Licensee may, at any time during the term of this Agreement, and for an additional period of 30 days after its expiration, remove the same from the License Area so long as Licensee is not in default of any of its obligations and if Licensee repairs, at its sole cost, any damage caused by the removal.
  - c. Any property not removed by the Licensee within the 30-day period becomes a part of the License Area, and ownership vests in the City. Alternatively, the City may, at the Licensee's expense, have the property removed.

- 2.4 Hold-Over. In the event Licensee continues to occupy the License Area after the expiration or termination of this Agreement, such hold-over does not constitute a renewal or extension of this Agreement, and the Licensee must pay the City twice the Monthly License Fees and Royalty Payments (as defined below), with each month fully accruing after the first day of the month regardless of the actual number of days Licensee holds over during the month, plus any Royalty Payments (as defined below) accrued during the hold-over; provided however if the City and Licensee are in negotiations to renew this Agreement or to enter into a new lease for the premises leased herein, the standard License Fee and Royalty Payments shall apply and this Agreement shall become a month-to-month agreement until otherwise terminated.

### **3. License Fees, Royalty Payments**

- 3.1 For its right to use the License Area, the Licensee must pay, without notice and free from all claims, deductions and setoffs against the City, license fees and royalties as follows:

a. Monthly License Fees.

1. The license fee for the Licensed Area ("Monthly License Fee") is as follows:
  - (i) For the period beginning on the first day of the first month at least 90 days after the Effective date or the first day of the month following the date the Certificate of Occupancy is issued, whichever is earlier ("Commencement Date"), for a period of twelve (12) months, the Monthly License Fee shall be \$10,000 per month (\$120,000 per annum), plus all applicable taxes.
  - (ii) Effective on the first day of the 13<sup>th</sup> month and annually thereafter, the Monthly License Fee will increase 2%. Monthly License Fee increases made in accordance with this section do not require notice to Licensee and become effective solely by operation of this provision.
2. Licensee will pay the Monthly License Fee and continue to pay the Monthly License Fee on the first day of each following month until the expiration or earlier termination of this Agreement as set forth herein.
3. If the Monthly License Fee is not received by the fifth day of any month, Licensee will pay an additional 5% each month for each Monthly License Fee amount due and unpaid.

b. Royalty Payments. In addition to the Monthly License Fee, during the term of this Agreement, Licensee must pay City each year on or before the 60th day after each anniversary of the Commencement Date a royalty ("Royalty Payment") calculated as follows:

1. Thirty-three percent (33%) of the Total Revenue (as defined below) less than or equal to \$425,000 received during the previous 12 months for the use or operation of the Digital Billboard or License Area; and
2. Forty percent (40%) of the Total Revenue (as defined below) exceeding \$425,000 received during the previous 12 months for the use or operation of the Digital Billboard or License Area.



3. Minus the amount of the Monthly License Fees paid during the same previous 12-month period.

4. By way of example:

For Total Revenue of \$400,000 in the first 12 months, a Royalty Payment of \$12,000 is required and calculated as follows:

33% of Total Revenue minus Sum of 12 Monthly License Fees

$$.33 \times \$400,000 = \$132,000$$

$$\$132,000 - \$120,000 = \$12,000$$

$$\$12,000 = \text{Annual Royalty Payment}$$

For Total Revenue of \$600,000 in the first 12 months, a Royalty Payment of \$90,250 is required and calculated as follows:

33% of Total Revenue of \$425,000 plus 40% of Total Revenue over \$425,000 minus Sum of 12 Monthly License Fees

$$.33 \times \$425,000 = \$140,250$$

$$.40 \times \$175,000 = \$70,000$$

$$\$140,250 + \$70,000 - \$120,000 = \$90,250$$

5. In the event the Royalty Payment calculation results in a negative number, no Royalty Payment is required and no refund, offset, or reduction against past or future Monthly License Fees is due Licensee.
- c. "Total Revenue," as that term is used in this section, means all revenue, income or receipts Licensee receives or collects for use or operation of the Digital Billboard or License Area, minus applicable taxes and any advertising agency commissions.
  - d. Licensee will pay an additional 5% each month for each Royalty Payment amount due and unpaid.

#### 4. Financial Statements Required

- 4.1 At the time the Royalty Payment is due, Licensee must submit independently verified revenue reports prepared and certified by an independent, licensed Certified Public Accountant (CPA), attesting to the accuracy of the total revenue collections reported during the royalty period and any adjustments reported.
- 4.2 In the event the independent verification is not submitted with the Royalty Payment, Licensee shall pay a 5% late fee for each month or portion of month until the independent verification is submitted. If the independent verification is not submitted within 90 days of the due date, the City reserves the right to hire an independent CPA to conduct the work on behalf of the City at Licensee's expense. Failure to pay for the cost of the independent review within 30 days of receipt of an invoice or failure to pay the 5% late fee within 30 days will result in the City's right to terminate the contract for cause.
- 4.3 Inspection and Audit. Upon request, City may inspect Licensee's business and financial records relating to this Agreement. Additionally, upon 15 days' notice, City may, at its expense, audit Licensee's financial records relating to this Agreement for the purpose of assuring compliance with this Agreement, the cost of which will be reimbursed to the City should any material non-compliance be found.

## 5. Licensee's Operations

### 5.1 Generally

- a. Licensee must at all times have on-call and at the City's access an active, qualified, and experienced representative to supervise the Digital Billboard, and who is authorized to act for the Licensee in matters pertaining to all emergencies and the day-to-day operation of the Digital Billboard. Licensee will provide the City Engineer's Office with the names, addresses, and 24-hour telephone numbers of all such persons in writing.
- b. Licensee must operate and maintain the License Area in an orderly and clean manner and all facilities and equipment in a well-maintained state at all times.
- c. The Licensee is responsible for obtaining and paying for all utilities necessary to operate the Digital Billboard.

### 5.2 Improvements

#### a. Approvals

1. The Digital Billboard placed upon the License Area will not require conformance to City of Glendale Zoning Ordinance, Section 7.110; the digital billboard will be consistent in height, size and design with the signs Licensee's operates on city-owned property governed by contracts Nos. C-6855 and C-6855-1 and is required to be submitted to and receive approval from the City Planning Department. No construction activities related to Digital Billboard placement in the License Area may commence before all Planning Department approval processes have been completed.
2. Licensee's ability to use the License Area on an on-going basis is contingent upon its obtaining, after the execution date of this Agreement, all of the required certificates, permits, and other approvals that may be required by any federal, state or local authorities (collectively "Governmental Approvals"), as well as satisfactory soil boring tests that sufficiently support the Licensee's intended use of the License Area. Licensee shall pay for all boring tests.
3. Prior to any construction upon the License Area, Licensee must obtain all necessary construction permits and complete all requirements of the permits prior to any use of the License Area.
4. After construction activity is complete, Licensee will restore the City's property to the satisfaction of the City Engineer, and if Licensee fails to restore the License Area as required, the City may take all actions necessary to restore the License Area, and the Licensee will pay all of City's reasonable costs of such restoration upon demand.
5. The following procedure governs Licensee's submission to the City of all plans for the License Area and the Licensee's Improvements, including any proposed changes by the Licensee of previously approved plans:
  - (i) The Licensee will coordinate with the City as necessary on significant design issues prior to preparing plans being submitted.

- (ii) Upon execution of this Agreement, City and Licensee will each designate a project manager to coordinate the parties' participation in designing and constructing the Licensee's Improvements. Each project manager will devote such time and efforts to the project as may be necessary for timely, good faith and convenient coordination among all persons involved with the project and compliance with this Agreement. The City's project manager will not be exclusively assigned to this Agreement or the Licensee's Improvements.
- (iii) Licensee acknowledges that as of the date of this Agreement, the City has not approved or promised to approve any plans for the Licensee's Improvements and no plans are considered approved until stamped "APPROVED" and dated by the City's Building Safety Department.
- (iv) No final plans are considered approved until the Licensee delivers to the City a formal certification by an engineer licensed in Arizona acceptable to the City to the effect that all of Licensee's Improvements are properly designed to be safe and functional as designed and as required by this Agreement. The certification must be accompanied by and refer to any backup information and analysis as the City may reasonably require.
- (v) Licensee acknowledges that the City's project manager's authority with respect to the License Area is limited to the administration of the requirements of this Agreement. Licensee is responsible to secure all zoning approvals, design revisions or other Governmental Approvals and to satisfy all governmental requirements pertaining to the project and will not rely on the City or the City's project manager for any of the same.
- (vi) City's issuance of building permits does not constitute approval of any plans for purposes of this Agreement. City's project manager will be reasonably available to coordinate and assist Licensee in working through issues that may arise in connection with plan approvals and requirements.
- (vii) Licensee when submitting plans will allow adequate time for all communications and plan revisions necessary to obtain approvals and schedule its performances and revise its plans as necessary to timely obtain all approvals.
- (viii) The parties will use reasonable efforts to resolve any design and construction issues to their mutual satisfaction but, in the event of an impasse for any reason, final decision authority regarding all design and construction issues rests with the City.
- (ix) Licensee is subject to all design review and sign permit fees as determined by the City's project manager.

b. Design, Labor and Materials

- 1. Licensee's Improvements must be designed and materials and labor purchased at the Licensee's sole expense.

2. All of Licensee's Improvements will be designed so as to present uniformity of design, function, appearance and quality throughout and consistent with other improvements located in or near the License Area.
  3. Except as otherwise specifically provided for herein, in no event is the City obligated to compensate the Licensee in any manner for any of the Licensee's Improvements or other work provided by the Licensee during or related to this Agreement.
  4. Licensee must timely pay for all labor, materials and work, and all professional and other services related to its operations within the License Area, and will defend, indemnify and hold harmless the City against all related claims caused by Licensee.
  5. All work performed on the License Area by the Licensee must be performed in a workmanlike manner, as reasonably determined by the City, and will be diligently pursued to completion and in conformance with all building codes and similar rules.
  6. All of Licensee's Improvements must be high-quality, safe, modern in design and attractive in appearance, all as approved by the City in accordance with its standard policies and procedures.
  7. Licensee must participate as a member of the Blue Stake Center under A.R.S. § 40-360.21 et seq. regarding underground facilities, and the Licensee will submit proof of such participation to the City Engineer upon request.
- c. Records. Licensee must keep as-built records of the Licensee's Improvements and furnish copies of records to the City, at no cost to the City, upon completion of the improvements and any changes to the same.
  - d. Construction Bonds. Prior to the commencement of any construction in the License Area, Licensee must provide the City with payment and performance bonds in amounts equal to the full amount of the written construction contract for the construction to be performed on, in, and related to the License Area.
    1. The payment bond will be solely for the protection of claimants supplying labor or materials for the required construction work, and the performance bond is solely for the protection of the City, conditioned upon the faithful performance of the required construction work.
    2. Each bond must be executed by a surety company duly authorized to do business in Arizona.

### 5.3 Performance Bond

- a. In addition to any other bond required by this Agreement, Licensee must, no later than the Effective Date, provide to the City and maintain during the term of this Agreement a cash deposit, letter of credit, or performance bond in the amount of \$250,000.
- b. The performance bond, letter of credit, or the terms of a cash deposit will be conditioned upon the Licensee's faithful performance of all of its obligations under this Agreement.

- c. Any bond provided to fulfill the requirements of this section must be issued by a surety company duly authorized to do business in Arizona and which is acceptable to the City's Risk Manager.
- d. Any letter of credit provided to fulfill the requirements of this section must be provided by a national bank authorized to do business in Arizona and the instrument must be structured such that it can be drawn upon by the City without the necessity of the countersignature of Licensee.

#### 5.4 Maintenance of License Area

- a. Licensee, at its own expense, is responsible for improvements to and maintenance of the License Area during the term of this Agreement.
- b. Licensee, at its own expense, will use commercially reasonable efforts to minimize the collateral visual and aesthetic impacts of the Billboard, which will include, but not be limited to, replacing existing equipment with smaller equipment, decreasing the area used to house supporting equipment, or decreasing the size of any wireless communications equipment.

#### 5.5 City Ad Placements. As consideration for the grant of this Agreement by the City, Licensee must also:

- a. Accept and coordinate with City as part of any regular and routine ad placement on the Digital Billboard on-going ad placements by the City for City-related events ("City Placements");
  - 1. City Placements will consist of one 8-second spot per minute on either side, but not both simultaneously, of the Digital Billboard.
  - 2. Alternatively, City may instead elect to place City Placements for an equivalent amount of time on other digital outdoor advertising structures operated by the Licensee in the Greater Phoenix metropolitan area subject to space availability.
  - 3. City Placements will be at no additional cost to the City and will result in no setoff against Monthly License Fees or Royalty Payments.
- b. Broadcast any message on the Billboard the City considers necessary for public safety; and
- c. Receive, consider and promptly respond to any City objection to Digital Billboard advertising displayed in the License Area.

#### 5.6 Co-Location

- a. Licensee will use reasonable efforts to cooperate with the City and any third parties with regard to the possible co-location of additional facilities or equipment in the License Area.
  - 1. If a co-location is feasible, City may, in its sole discretion, negotiate a co-location license agreement with any third party on terms the City considers appropriate, not inconsistent with the rights and obligations of the parties under this Agreement.
  - 2. Licensee's approval for co-location is not required, provided that the co-locator is expressly prohibited from attaching to or coming into physical contact with equipment, facilities or structures Licensee has installed in the License area or visually impairs the operation of the Billboard.

3. Any rent or fees paid by an additional co-locator belong solely to the City.
  4. If any third party desires to co-locate equipment or associated fixtures on Licensee's equipment, facilities or structures, the third-party carrier will be directed to Licensee in order to secure a separate agreement and the City will consider any necessary amendment to this Agreement.
- b. Prior to permitting the installation by any third party in or around the License Area of any additional equipment which may interfere with the Licensee's operation of the Digital Billboard, City will give Licensee 30 days' notice so that the Licensee can determine if the third-party's equipment will interfere with the Billboard.
1. If Licensee determines that interference is likely to occur, Licensee may, within 30 days, give the City a detailed written explanation of the anticipated interference, including any supporting documentation as may be reasonably necessary for the City to evaluate the Licensee's position.
  2. City and the Licensee will seek to resolve any interference problems before the City permits the third party to operate its proposed equipment.
  3. If a third party is permitted to operate in or near the License Area, and the third-party's operations interfere with Licensee's Billboard (as operating and configured prior to the third-party operations beginning), then the City will direct the third party to remedy the interference within 72 hours and, if the interference is not resolved within this 72-hour period, then the third party will be required to cease its operations until the interference is resolved.
  4. These same procedures apply to
    - (i) Any interference caused by Licensee with respect to equipment existing and as configured on the Commencement Date, and
    - (ii) Any licensee equipment existing on the Commencement Date which is later reconfigured so as to interfere with Licensee's Billboard.

#### 5.7 Insurance

- a. Licensee must procure and at all times maintain the minimum insurance as outlined below for its operations in the License Area:

##### **Minimum Insurance Requirements**

1. **Workers' Compensation Insurance** with Statutory Limits. This policy shall include employer's liability insurance with limits of at least \$1,000,000.
2. **Commercial General Liability Insurance** in the minimum amounts indicated below or such additional amounts as reasonably required by the City, including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of any agreement with the City, Products-Completed Operations Hazard, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of your performance of work for the City. Said insurance shall have minimum limits for Bodily Injury and Property Damage Liability

equal to the policy limits, but not less than \$2,000,000 each occurrence and \$4,000,000 aggregate.

3. **Automobile Liability Insurance** against claims of Personal Injury (including bodily injury and death) and Property Damage covering all owned, leased, hired and non-owned vehicles used in the performance of services pursuant to an agreement with the City with minimum limits for Bodily Injury and Property Damage Liability equal to the policy limits, but not less than \$1,000,000 each occurrence. Coverage shall include 'any auto'.

- b. Insurance must be issued by a company authorized to provide coverage in Arizona and rated at least A-,VII by AM Best and naming the City and its board members, officials, officers, agents, and employees as an additional insured by endorsement with a requirement of 30 days' written notice to the City prior to cancellation for any reason.
- c. The insurance must also include advertising and contractual liability coverage for the obligation of indemnity assumed in this Agreement, subject to standard policy provisions and exclusions.
- d. Licensee's insurance must be primary and non-contributory with respect to all other available sources. Licensee must provide appropriate certificates and endorsements of insurance to the City for all insurance policies required by this section.
- e. As commercially reasonable, City's Risk Manager may alter the requirements above or determine additional insurance is necessary for Licensee's operations.
- f. **Notice of Cancellation**

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.

- g. **Waiver of Subrogation**

Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City by virtue of the payment of any loss under such insurance. Contractor agrees to make reasonable efforts to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

- 5.8 Notices to the City. The Licensee will provide the City, without request, copies of any petition or application related to any filing by the Licensee of bankruptcy, receivership or trusteeship and any notices received from regulatory agencies pertaining to the operations of the Billboard.

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

## 7. **Indemnification and Limitation of Liability**

- 7.1 Licensee will defend, indemnify and hold harmless the City, its officers and employees, and agents (collectively, the "City") from all loss, damages or claims of whatever nature, including attorney's fees, expert witness fees and costs of litigation, that arise out of any act or omission of Licensee or its agents, employees and invitees (collectively, "Licensee") in connection with Licensee's operations in the License Area and that result directly or indirectly in any type of injury to or death of any person or the damage to or

loss of any property, or that arise out of Licensee's operations, including the failure of the Licensee to comply with any provision of this Agreement.

- a. City will in all instances, except for loss, damages or claims resulting from the sole negligence or fault of City, be indemnified by Licensee against all losses, damages or claims. City will give the Licensee prompt notice of any claim made or suit instituted that may subject the Licensee to liability under this section, although timing of such notice will not diminish Licensee's duty to indemnify, and the Licensee will have the right to compromise and defend the same to the extent of its own interest.
- b. City may, but does not have the duty to, participate in the defense of any claim or litigation with attorneys of the City's selection and at the City's sole cost without relieving the Licensee of any obligations hereunder.
- c. Licensee's obligations under this Agreement survive any termination of this Agreement or the Licensee's activities in the License Area.

7.2. Neither Party is liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data (except as provided herein), or interruption or loss of use of service (except as provided herein), even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

## **8. Taxes and Licenses**

- 8.1. Licensee must pay any leasehold tax, possessory-interest tax, sales tax, personal property tax, transaction privilege tax or other exaction assessed or assessable as a result of its occupancy of the License Area under authority of this Agreement, including any such tax assessable on the City.
- 8.2. If any law or judicial decision results in the imposition of a real property tax on the interest of the City, the tax must also be paid by the Licensee on a proportional basis for the period this Agreement is in effect.
- 8.3. Licensee must, at its own cost, obtain and maintain in full force and effect during the term of this Agreement all licenses and permits required for all activities authorized by this Agreement.

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

## **10. Termination**

### **10.1 For Cause**

- a. Licensee may terminate this Agreement in the event of any of the following:
  1. Applications for Governmental Approval are rejected;
  2. Governmental Approval issued to Licensee by the City is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority;
  3. Licensee reasonably determines that any soil boring tests are unsatisfactory;



4. Prior to initial construction of the Digital Billboard, Licensee reasonably determines that the License Area is no longer technically compatible for its use;
  5. Prior to initial construction of the Digital Billboard, Licensee reasonably determines that it will be unable to use the License Area for its intended purposes.
  6. Issuance by a court of competent jurisdiction of an injunction in any way preventing or restraining the Licensee's use of any portion of the License Area and the injunction remaining in force for a period of 30 consecutive days.
  7. The inability of the Licensee to use any substantial portion of the License Area for a period of 90 consecutive days due to the enactment or enforcement of any law or regulation or because of fire, earthquake or similar casualty or Acts of God or the public enemy. No Monthly License Fees shall be due during the period of non-use and such fees shall be discounted on a pro-rata basis for the number of days of non-use.
  8. If the License Area or Digital Billboard is destroyed or damaged in either party's reasonable judgment to substantially and adversely affect the use of the Digital Billboard.
- b. The City may terminate this Agreement and seek damages by giving Licensee 30 days' written notice after the happening of any of the following events:
1. The failure of Licensee to perform any of its obligations under this Agreement and such failure is not cured fully within the 30 days' notice period or, if the cure cannot reasonably be completed within the 30 days' notice period, then within 90 days from the date of the original notice; provided that Licensee must initiate the cure within the original 30 days' notice period and thereafter diligently pursue the cure;
  2. The taking of possession for a period of 90 days or more of substantially all of the personal property used in the License Area belonging to the Licensee by or pursuant to final lawful authority of any legislative act, resolution, rule, order or decree or any act, resolution, rule, order or decree of any court or governmental board, agency, officer, receiver, trustee or liquidator; or
  3. The filing of any lien against the License Area because of any act or omission of the Licensee that is not discharged or fully bonded within 30 days of receipt of actual notice by the Licensee.
- c. The City may terminate this Agreement and seek any other remedy allowed by law or equity by giving the Licensee 15 days' written notice of the Licensee's failure to timely pay rent or any other charges required to be paid by the Licensee pursuant to this Agreement.
- d. The City may terminate this Agreement if the Licensee at any time and for any reason fails to maintain all insurance coverage required by this Agreement, immediately terminate this Agreement or alternatively and at its sole discretion, secure the required insurance at Licensee's expense, which will be immediately due and payable.

- 10.2 Without Cause. Each party may, in its sole discretion and without cause, terminate this Agreement by giving the other party written notice one year prior to the termination date.
- a. In the event the City terminates without cause within the first five years of this agreement, Licensee's actual capital cost directly related to equipment that is located on the License Area that cannot be removed for other use or salvage will be reimbursed to Licensee using a straight-line depreciation method calculated over the lesser of the equipment's useful life or the term of this Agreement, less the cost of bringing the property back to its original condition and any salvage value.
  - b. In the event Licensee terminates without cause within the first five years of this agreement, Licensee will, at its own expense, return the property back to its original condition within 90 days of termination.
  - c. In order to ensure adequate accounting of capital costs in the event of termination without cause, Licensee will provide written documentation of the capital costs and depreciation schedule for the equipment prior to the issuance of the Certificate of Occupancy.
- 10.3 Upon termination, Licensee will immediately pay to the City any due and unpaid Monthly License Fees and any Royalty Payments.
- 10.4 Upon the termination of this Agreement for any reason, all rights of the Licensee terminate, including all rights of the Licensee's creditors, trustees and assigns, and all others similarly situated as to the License Area.

## **11. Default**

- 11.1 Failure by a party to take any authorized action upon default by the other party of any of the other party's obligations does not constitute a waiver of the default nor of any subsequent default by the other party.
- 11.2 Acceptance of Monthly License Fees, Royalty Payments and other payments by the City under the terms of this Agreement for any period after a default by the Licensee of any of its obligations is not considered waiver or estoppel of the City's right to terminate this Agreement for any subsequent failure by the Licensee to comply with its obligations.

## **12. City's Representations and Warranties.** The City represents and warrants to the Licensee that:

- 12.1 It has full right, power, and authority to execute this Agreement;
- 12.2 The City has good and unencumbered title to the License Area free and clear of any liens or mortgages, except those disclosed to the Licensee that will not interfere with the Licensee's right to use the License Area; and
- 12.3 The City's execution and performance of this Agreement will not violate any laws, ordinances, covenants, mortgages, licenses or other agreements binding on the City.

## **13. Hazardous Waste**

- 13.1 Licensee must not produce, dispose, transport, treat, use or store any hazardous waste or toxic substance upon or about the License Area subject to regulation under the Arizona Hazardous Waste Management Act, A.R.S. § 49-901 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., the Toxic Substances Control Act, 15 U.S.C. 2601 et seq., or any other federal, state or local law pertaining to hazardous waste or toxic substances.

- 13.2 Licensee must not use the License Area in a manner inconsistent with any regulations, permits or approvals issued by the Arizona Department of Health Services.
- 13.3 Licensee must defend, indemnify and hold the City harmless against any loss or liability incurred by reason of any hazardous waste or toxic substance on or affecting the License Area attributable to or caused in any way by the Licensee, and immediately notify the City of any hazardous waste or toxic substance at any time discovered or existing upon the License Area.
- 13.4 Licensee must promptly and without a request by the City provide the City's Environmental Program Manager with copies of all written communications between the Licensee and any governmental agency concerning environmental inquiries, reports or problems on the License Area.

#### **14. Notice**

- 14.1 Except as otherwise provided, all notices required or permitted to be given under this Agreement may be personally delivered or mailed by certified mail, return receipt requested, postage prepaid, to the following addresses:
  - To the City: City Manager  
City of Glendale  
5850 West Glendale Avenue  
Glendale, Arizona 85301
  - with a copy to: City Attorney  
City of Glendale  
5850 West Glendale Avenue  
Glendale, Arizona 85301
  - To the Licensee: Lamar Central Outdoor Advertising, L.L.C.  
1661 E. Camelback Ste. 320  
Phoenix, Arizona 85016
- 14.2 Any notice given by certified mail is considered received on the third business day after the date of mailing.
- 14.3 Either party may designate in writing a different address for notice purposes pursuant to this section.

#### **15. Assignment**

- 15.1 Licensee may assign this Agreement, upon 30 days' written notice to the City and upon City's written consent, which may not be unreasonably withheld, conditioned or delayed. City may as a condition of consent, require that any assignee submit biographical and financial information to the City at least 30 days prior to any the assignment of Licensee's interest under this Agreement.
- 15.2 Licensee may, upon notice to the City, mortgage or grant a security interest in this Agreement and Digital Billboard, and may assign this Agreement and Digital Billboard to any mortgagees, deed of trust beneficiaries or holders of security interests, including their successors or assigns ("Mortgagees"), provided such Mortgagees agree to be bound by the terms of this Agreement. In this event, City will execute consent to financing as may be reasonably required by Mortgagees. In no event will the Licensee grant or attempt to grant a security interest in the real property of the License Area.
- 15.3 Subject to subsections 14.1 and 14.2, Licensee may not assign or sublease any of its interest under this Agreement, nor permit any other person to occupy the License Area.

16. **Severability.** If any provision of this Agreement is declared invalid by a court of competent jurisdiction, the remaining terms remain effective, provided that elimination of the invalid provision does not materially prejudice either party with regard to its respective rights and obligations; in the event of material prejudice, then the adversely affected party may terminate this Agreement.
17. **Immigration Law Compliance.**
- 17.1 Licensee, and on behalf any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.
  - 17.2 Any breach of warranty under this section above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
  - 17.3 City retains the legal right to inspect the papers of Licensee or subcontractor employee who performs work under this Agreement to ensure that Licensee or any subcontractor is compliant with the warranty under this section.
  - 17.4 City may conduct random inspections, and upon request of the City, Licensee must provide copies of papers and records demonstrating continued compliance with the warranty under this section. Licensee agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this section.
  - 17.5 Licensee agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon itself and expressly accrue those obligations directly to the benefit of the City. Licensee also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.
  - 17.6 Licensee's warranty and obligations under this section to the City is continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.
  - 17.7 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.
18. **Conflicts.** This Agreement is subject to cancellation for conflicts of interest under the provisions of A.R.S. § 38-511.
19. **Litigation.** This Agreement is governed by the laws of the State of Arizona. If any litigation or arbitration between the City and the Licensee arises under this Agreement, the successful party is entitled to recover its reasonable attorney's fees, expert witness fees and other costs incurred in connection with the litigation or arbitration.
20. **Miscellaneous.** This Agreement constitutes the entire agreement between the parties concerning the matters contained herein and supersedes all prior negotiations, understandings and agreements between the parties concerning all related matters. This Agreement will be interpreted, applied and enforced according to the fair meaning of its terms and not be construed strictly in favor of or against either party, regardless of which party may have drafted any of its provisions. No provision of this Agreement may be waived or modified except by a writing signed by the party against whom such waiver or modification is sought to be enforced. The

terms of this Agreement are binding upon and inure to the benefit of the parties' successors and assigns.

21. **Exhibits.**

EXHIBIT A1-2 – Legal Description/Aerial Map

EXHIBIT B – Conduit Area

EXHIBIT C – Design Concept

EXHIBIT D - Corporate Parent Guarantee

EXECUTED to be effective on the date specified above.

CITY OF GLENDALE, an Arizona  
municipal corporation

\_\_\_\_\_  
Brenda S. Fischer, City Manager

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael D. Bailey, City Attorney

LAMAR CENTRAL OUTDOOR, L.L.C., a  
Delaware limited liability company

\_\_\_\_\_  
By: Christina Butler  
Its: Vice President/General Manager

Date: \_\_\_\_\_

STATE OF ARIZONA            )  
  ) ss.  
County of Maricopa         )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by  
\_\_\_\_\_ in his/her capacity as authorized representative of LAMAR CENTRAL OUTDOOR ADVERTISING,  
L.L.C.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public

**EXHIBIT "A" - LEGAL DESCRIPTION  
9802 W. BETHANY HOME ROAD**

SOUTH SIGN NO 2

THAT PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 2 NORTH, RANGE 1 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A MARICOPA COUNTY HIGHWAY DEPARTMENT (MCHD) BRASS CAP, MARKING THE SOUTHWEST CORNER OF SAID SECTION 9, WHICH BEARS SOUTH 00 DEGREES 04 MINUTES 51 SECONDS WEST 2596.64 FEET (MEASURED) SOUTH 00 DEGREES 04 MINUTES 52 SECONDS WEST 2596.65 FEET (RECORD) FROM A MCHD BRASS CAP MARKING THE WEST QUARTER CORNER OF SAID SECTION 9;

THENCE ALONG THE WEST LINE OF SAID SECTION 9, NORTH 00 DEGREES 04 MINUTES 51 SECONDS EAST 588.44 FEET;

THENCE SOUTH 89 DEGREES 55 MINUTES 09 SECONDS EAST, A DISTANCE OF 707.47 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 06 DEGREES 46 MINUTES 25 SECONDS EAST, A DISTANCE OF 35.00 FEET;

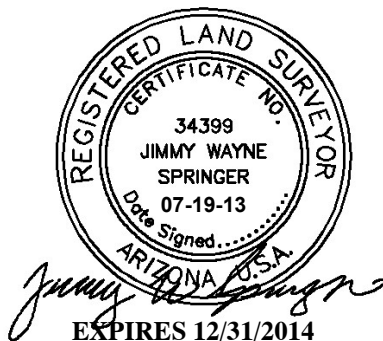
THENCE SOUTH 83 DEGREES 13 MINUTES 35 SECONDS EAST, A DISTANCE OF 60.00 FEET TO AN CHAIN LINK FENCE;

THENCE ALONG SAID CHAIN LINK FENCE, SOUTH 06 DEGREES 46 MINUTES 25 SECONDS WEST, A DISTANCE OF 35.00 FEET;

THENCE NORTH 83 DEGREES 13 MINUTES 35 SECONDS WEST, A DISTANCE OF 60.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 2,100 SQUARE FEET, MORE OR LESS.

AGUA FRIA SOUTH NO 2  
EXHIBIT A1  
PAGE 1 OF 2



# MARYLAND AVENUE

WEST 1/4 CORNER SECTION 9  
T 2 N, R 1 E, G&SRB&M  
FOUND MCHD BRASS CAP FLUSH

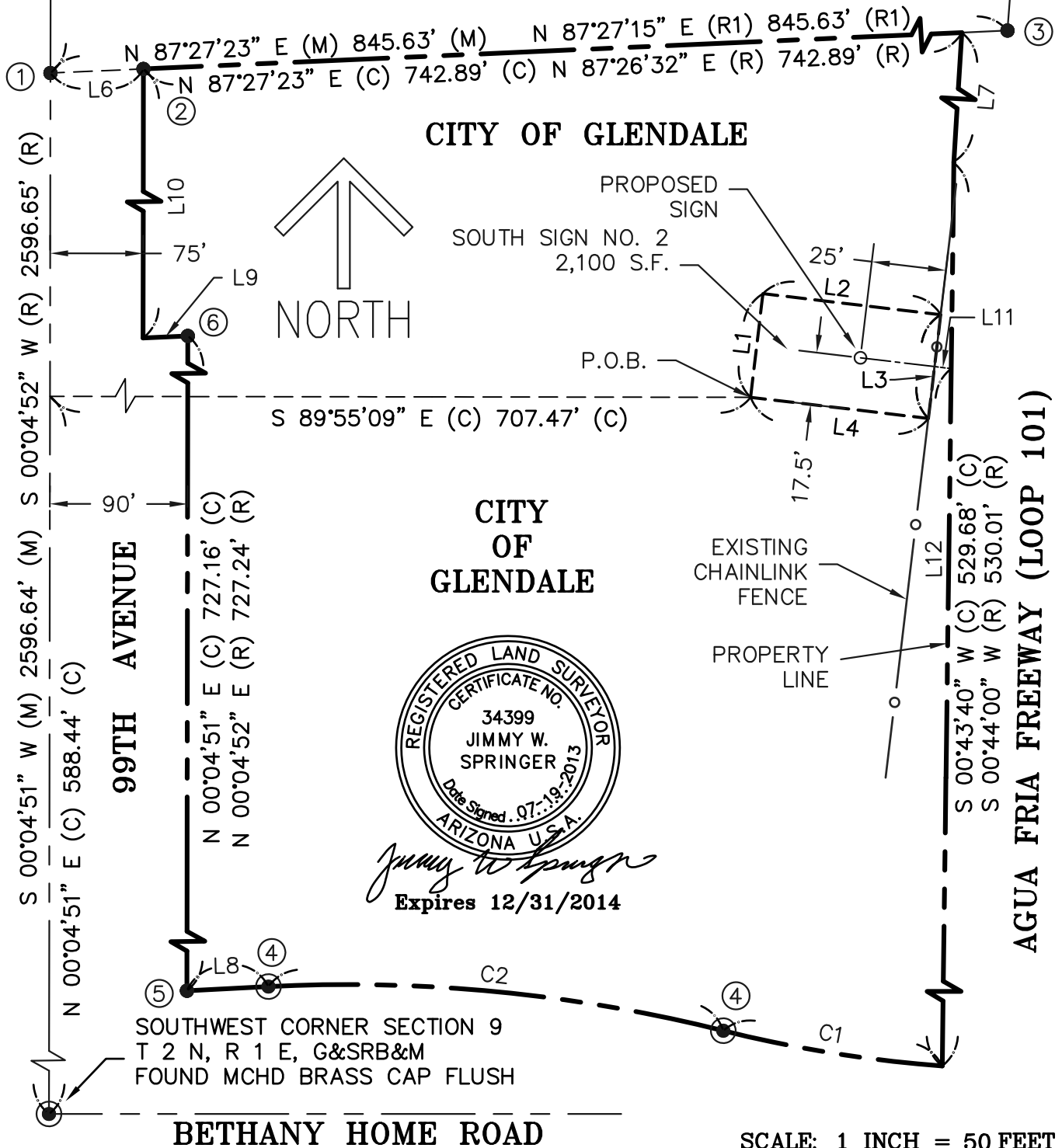


EXHIBIT A1  
AGUA FRIA SOUTH NO. 2  
SOUTH SIGN NO. 2  
PAGE 2 OF 3

THUNDERBIRD SURVEYING LLC  
6911 EAST THUNDERBIRD ROAD  
SCOTTSDALE, ARIZONA 85254  
PHONE (480) 629-4399



CURVE TABLE						
CURVE	DELTA	RADIUS	LENGTH	TANGENT	CH BEARING	CHORD
C1(C)	9°46'37"	1175.02	200.50	100.50	S80°52'42"E	200.26
C1(R)	9°46'37"	1175.00	200.50	100.49	S80°51'31"E	200.26
C2(M)	16°58'04"	1395.02	413.13	208.09	N84°28'25"W	411.62
C2(R)	16°58'04"	1395.00	413.12	208.08	N84°27'15"W	411.61

LINE TABLE		
LINE	BEARING	DISTANCE
L1(C)	N06°46'25"E	35.00
L2(C)	S83°13'35"E	60.00
L3(C)	S06°46'25"W	35.00
L4(C)	N83°13'35"W	60.00
L5(M)	S00°04'51"W	1298.22
L5(R)	S00°04'52"W	1298.32
L5(R1)	S00°04'52"W	1298.34
L6(C)	N87°27'23"E	75.08
L6(R)	N87°26'32"E	75.08
L7(C)	S04°20'38"W	538.78
L7(R)	S04°20'58"W	539.12
L8(M)	S86°55'56"W	73.66
L8(R)	S87°03'45"W	73.55
L9(C)	S87°26'31"W	15.01
L9(R)	S87°26'32"W	15.02
L10(C)	N00°04'51"E	239.97
L10(R)	N00°04'52"E	240.00
L11(C)	S83°13'35"E	5.74
L12(C)	S00°43'40"W	329.25

## REFERENCES

(R) WARRANTY DEED, DOCUMENT  
2008-0179280

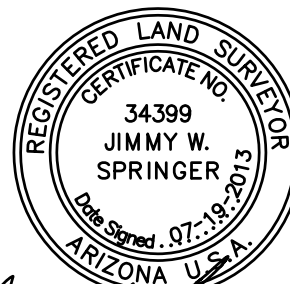
(R1) RECORD OF SURVEY, ACCORDING  
TO BOOK 1132 OF MAPS, PAGE 32,  
RECORDS OF MARICOPA COUNTY,  
ARIZONA.

## MONUMENT TABLE

- (1) FOUND PK NAIL IN PAVEMENT.
- (2) FOUND 1/2" REBAR, DAMAGED,  
BENT NORTHEAST.
- (3) FOUND PK NAIL IN CONCRETE,  
W/TAG LS 31020.
- (4) FOUND ADOT BRASS CAP IN  
CONCRETE.
- (5) FOUND 1/2" IRON BAR, W/TAG LS  
22285.
- (6) FOUND 1/2" REBAR, DAMAGED,  
BENT NORTHWEST.

## LEGEND

- (R) RECORD BEARING OR DISTANCE
- (M) MEASURED BEARING OR DISTANCE
- (C) CALCULATED BEARING OR DISTANCE
- ⊙ BRASS CAP AS DESCRIBED
- FOUND MONUMENT AS DESCRIBED

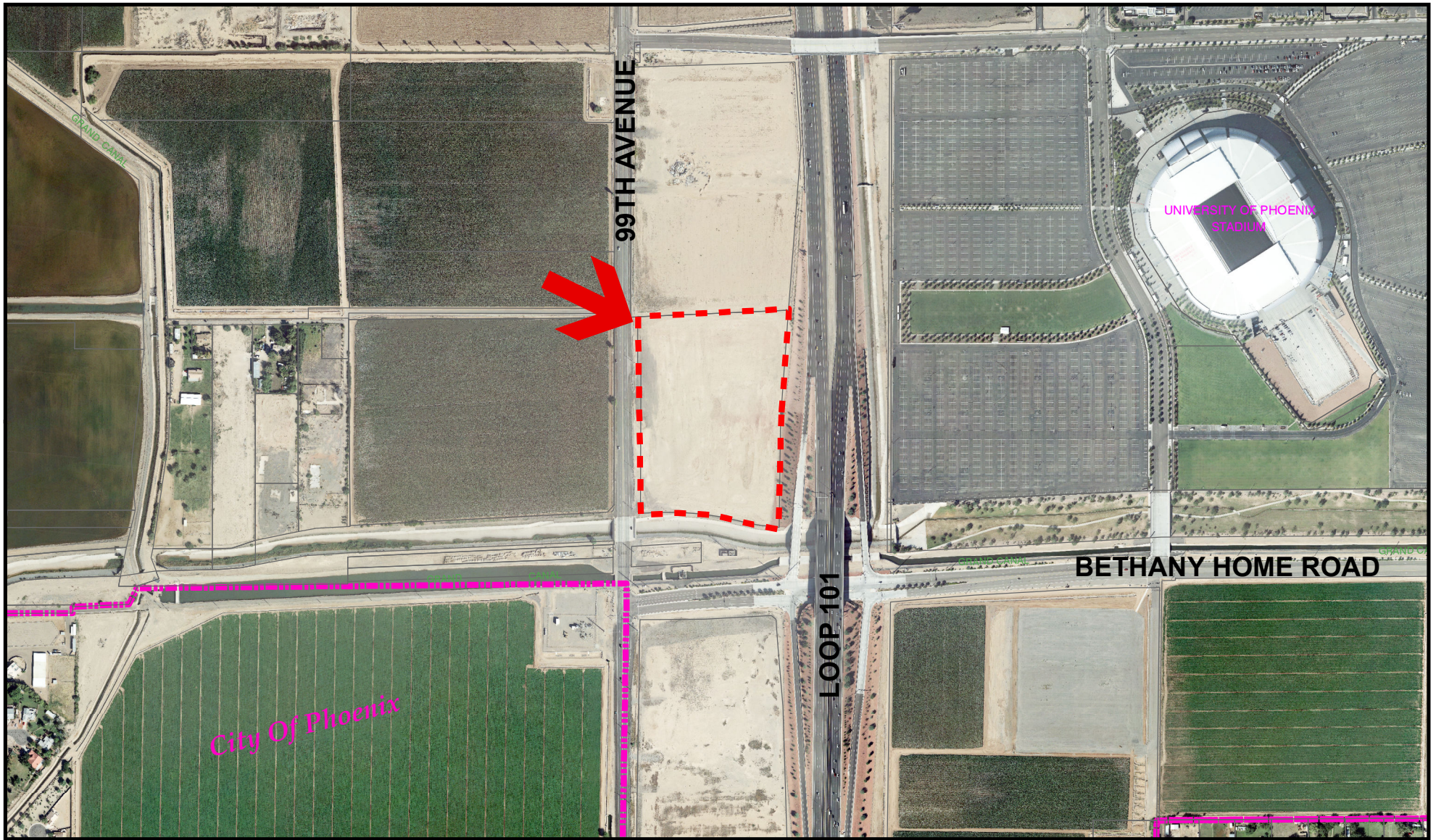


*Jimmy W. Springer*  
**Expires 12/31/2014**

EXHIBIT A1  
AGUA FRIA SOUTH NO. 2  
SOUTH SIGN NO. 2  
PAGE 3 OF 3

THUNDERBIRD SURVEYING LLC  
6911 EAST THUNDERBIRD ROAD  
SCOTTSDALE, ARIZONA 85254  
PHONE (480) 629-4399





**LOCATION:**  
9802 W. BETHANY HOME ROAD

**REQUEST:**  
LICENSE AGREEMENT WITH  
LAMAR OUTDOOR



Aerial Date: November 2012



**EXHIBIT "B" - CONDUIT AREA  
9802 W. BETHANY HOME ROAD**

**SOUTH SIGN NO 2 ELECTRICAL**

THAT PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 2 NORTH, RANGE 1 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A MARICOPA COUNTY HIGHWAY DEPARTMENT (MCHD) BRASS CAP, MARKING THE SOUTHWEST CORNER OF SAID SECTION 9, WHICH BEARS SOUTH 00 DEGREES 04 MINUTES 51 SECONDS WEST 2596.64 FEET (MEASURED) SOUTH 00 DEGREES 04 MINUTES 52 SECONDS WEST 2596.65 FEET (RECORD) FROM A MCHD BRASS CAP MARKING THE WEST QUARTER CORNER OF SAID SECTION 9;

THENCE ALONG THE WEST LINE OF SAID SECTION 9, NORTH 00 DEGREES 04 MINUTES 51 SECONDS EAST 605.82 FEET;

THENCE SOUTH 89 DEGREES 55 MINUTES 09 SECONDS EAST, A DISTANCE OF 90.00 FEET TO THE EAST RIGHT-OF-WAY OF 99<sup>TH</sup> AVENUE AND THE POINT OF BEGINNING;

THENCE ALONG THE CENTERLINE OF A TEN FOOT (10') WIDE ELECTRICAL EASEMENT, FIVE FEET EACH SIDE OF THE CENTERLINE DESCRIBED HEREIN, SOUTH 89 DEGREES 55 MINUTES 09 SECONDS EAST, A DISTANCE OF 619.51 FEET TO THE POINT OF TERMINIUS.

CONTAINING 6,195 SQUARE FEET, MORE OR LESS.

AGUA FRIA SOUTH NO 2 ELECTRICAL  
EXHIBIT A3  
PAGE 1 OF 2



MARYLAND AVENUE

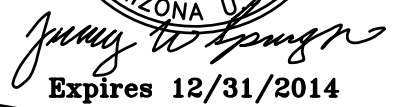
WEST 1/4 CORNER SECTION 9  
T 2 N, R 1 E, G&SRB&M  
FOUND MCHD BRASS CAP FLUSH



LINE TABLE		
LINE	BEARING	DISTANCE
L1(C)	S89°55'09"E	90.00

CITY OF GLENDALE

L1(C) S89°55'09"E 90.00  
 S 00°04'51" W (M) S 00°04'52" W (R) 2596.65' (R)  
 90'  
 CITY OF GLENDALE  
 L1  
 P.O.B.  
 S 89°55'09" E (C) 619.51' (C)  
 10' 5'  
 10' SOUTH SIGN NO 2  
 ELECTRICAL EASEMENT  
 6,195 S.F.  
 P.O.T.  
 SOUTH SIGN NO. 2  
 17.50'  
 35'  
 60'  
 35'  
 60'  
 CITY OF GLENDALE  
 S 00°04'51" W (M) 2596.64' (M) S 00°04'52" W (R) 2596.65' (R)  
 N 00°04'51" E (C) 605.82' (C)  
 99TH AVENUE  
 REGISTERED LAND SURVEYOR  
 CERTIFICATE NO.  
 34399  
 JIMMY W.  
 SPRINGER  
 Date Signed: 07-19-2013  
 ARIZONA U.S.A.  
*Jimmy W. Springer*  
 Expires 12/31/2014  
 SOUTHWEST CORNER SECTION 9  
 T 2 N, R 1 E, G&SRB&M  
 FOUND MCHD BRASS CAP FLUSH  
 P.O.C.  
 BETHANY HOME ROAD  
 SCALE: 1 INCH = 50'

**Expires 12/31/2014**

P.O.C. **BETHANY HOME ROAD**

**SCALE: 1 INCH = 50 FEET**

**THUNDERBIRD SURVEYING LLC**  
6911 EAST THUNDERBIRD ROAD  
SCOTTSDALE, ARIZONA 85254  
PHONE (480) 629-4399

SOUTH SIGN NO 2 ACCESS

THAT PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 2 NORTH, RANGE 1 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A MARICOPA COUNTY HIGHWAY DEPARTMENT (MCHD) BRASS CAP, MARKING THE SOUTHWEST CORNER OF SAID SECTION 9, WHICH BEARS SOUTH 00 DEGREES 04 MINUTES 51 SECONDS WEST 2596.64 FEET (MEASURED) SOUTH 00 DEGREES 04 MINUTES 52 SECONDS WEST 2596.65 FEET (RECORD) FROM A MCHD BRASS CAP MARKING THE WEST QUARTER CORNER OF SAID SECTION 9;

THENCE ALONG THE WEST LINE OF SAID SECTION 9, NORTH 00 DEGREES 04 MINUTES 51 SECONDS EAST 910.69 FEET;

THENCE SOUTH 89 DEGREES 55 MINUTES 09 SECONDS EAST, A DISTANCE OF 90.00 FEET TO THE EAST RIGHT-OF-WAY OF 99<sup>TH</sup> AVENUE AND THE POINT OF BEGINNING;

THENCE ALONG THE CENTERLINE OF A TWENTY FOOT (20') WIDE ACCESS EASEMENT, TEN FEET EACH SIDE OF THE CENTERLINE DESCRIBED HEREIN, SOUTH 85 DEGREES 39 MINUTES 03 SECONDS EAST, A DISTANCE OF 557.09 FEET TO A TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 100.00 FEET;

THENCE ALONG SAID CURVE WITH A CENTRAL ANGLE OF 92 DEGREES 25 MINUTE 28 SECONDS, AN ARC DISTANCE OF 161.31 FEET;

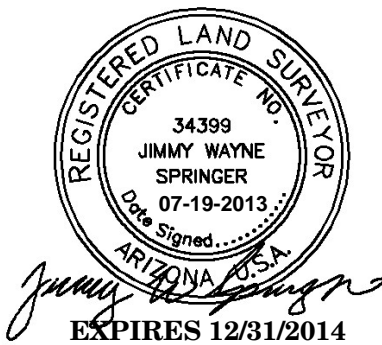
THENCE SOUTH 06 DEGREES 46 MINUTES 25 SECONDS WEST, A DISTANCE OF 136.75 FEET TO THE POINT OF TERMINIUS.

CONTAINING 17,103 SQUARE FEET, MORE OR LESS.

AGUA FRIA SOUTH NO 2 ACCESS

EXHIBIT A2

PAGE 1 OF 2



# MARYLAND AVENUE

WEST 1/4 CORNER SECTION 9  
T 2 N, R 1 E, G&SRB&M  
FOUND MCHD BRASS CAP FLUSH

CITY  
OF  
GLENDALE

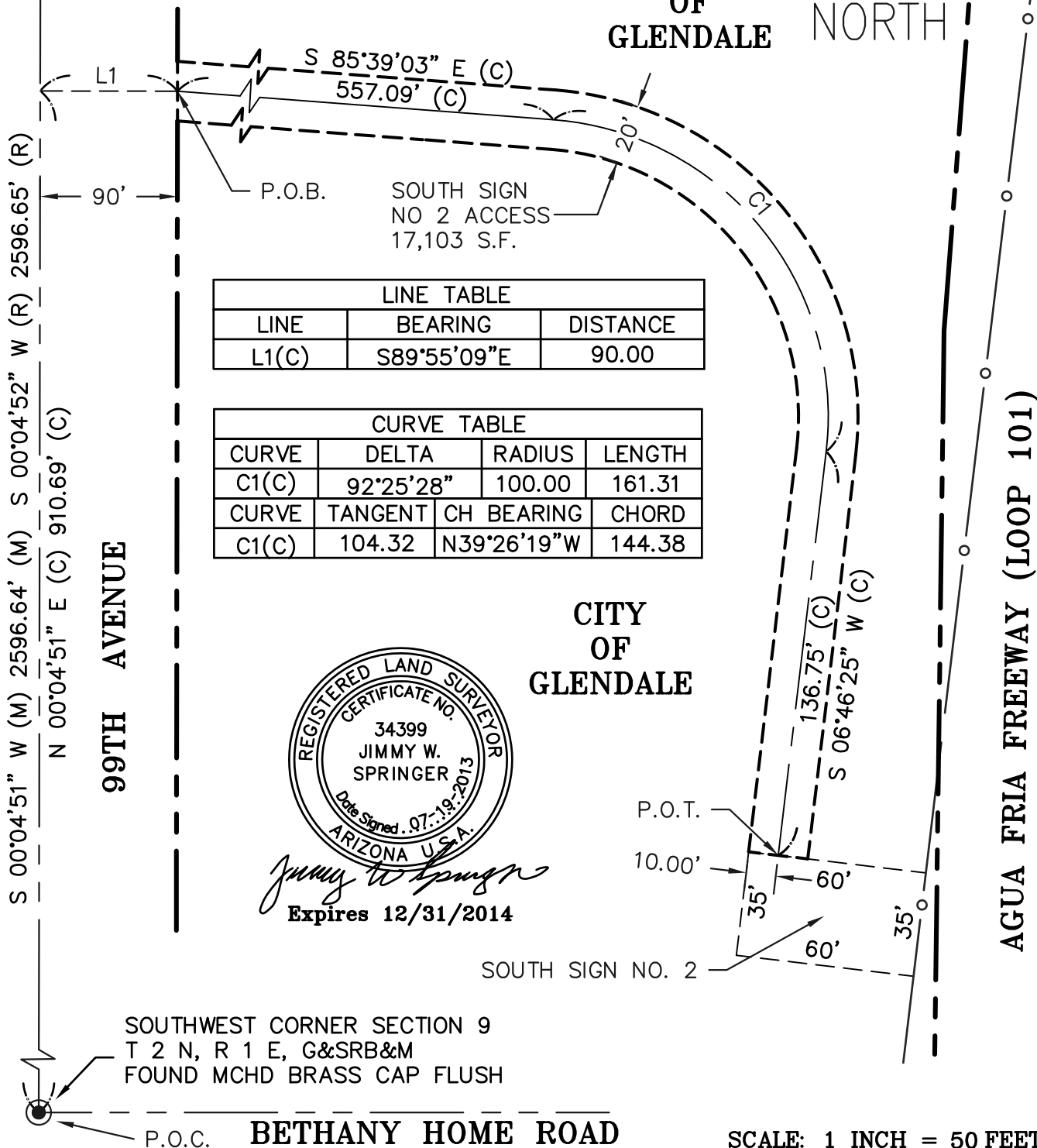


EXHIBIT A2  
AGUA FRIA SOUTH NO. 2  
SOUTH ACCESS NO. 2  
PAGE 2 OF 2

THUNDERBIRD SURVEYING LLC  
6911 EAST THUNDERBIRD ROAD  
SCOTTSDALE, ARIZONA 85254  
PHONE (480) 629-4399

**EXHIBIT "C" - DESIGN CONCEPT  
9802 W. BETHANY HOME ROAD**



## EXHIBIT D

### Corporate Parent Guarantee

In order to induce City to enter into the Digital Billboard Placement License Agreement (the “License”) by and between the City of Glendale, an Arizona municipal corporation (“City”) and LAMAR CENTRAL OUTDOOR, L.L.C., a Delaware limited liability company (“Lamar”), LAMAR ADVERTISING COMPANY, INC., a public Delaware corporation (“Parent”), as the owner of greater than fifty one percent (51%) of the voting and equity interests in Lamar, and as the managing member of Lamar, hereby unconditionally guarantees the prompt and complete performance of and compliance with all covenants, obligations and duties of Lamar arising under or relating to the License.

1. Parent’s obligations pursuant to this paragraph are primary and not secondary, and City need not seek satisfaction of any breach from Lamar before seeking satisfaction from Parent, which waives any notice of acceptance of this Guaranty.
2. 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 License shall apply.
3. In addition, for the City benefit and as consideration for the License, Parent hereby makes the same representations and warranties as to Parent as those made by Lamar in the License, except that Parent represents that it is a corporation duly formed and validly existing under the laws of the State of Delaware.
4. Notices given to Parent shall be delivered and deemed received in the same manner as set forth in the Notice section of the License. Parent acknowledges that it has received a copy of the License.
5. This Guaranty shall continue in full force and effect until all obligations of Lamar under the License have been paid or performed in full.
6. Parent agrees that its obligations 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 License;
  - b. any failure, omission or delay on the part of City to conform or comply with any term of the License;
  - c. any waiver, compromise, release, settlement or extension of time of performance or observance of any of the obligations or agreements contained in the License;
  - 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 Lamar, Parent, or any other guarantor of Lamar’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 Lamar, Parent, or any other guarantor of Lamar’s obligations into or with any person, or any sale, lease or transfer of any of the assets of Lamar, Parent or any other guarantor of Lamar’s obligations to any other person; or
  - f. any change in the ownership of the capital stock or equity ownership of Lamar, Parent, or any other guarantor of Lamar’s obligations or any change in the relationship between Lamar, Parent, or any other guarantor of the License obligations, or any termination of



7. Parent waives any defense arising by reason of any disability of Lamar or by reason of the cessation, dissolution, or non-existence of Lamar, from any cause whatsoever,
8. Lamar waives all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Guaranty.

LAMAR ADVERTISING COMPANY, INC.,  
a Delaware corporation

Date: \_\_\_\_\_

Date: \_\_\_\_\_

My Commission Expires:

**DIGITAL BILLBOARD PLACEMENT  
LICENSE AGREEMENT**  
(9802 West Bethany Home Road)

This Digital Billboard Placement License Agreement ("Agreement") is entered and executed to be effective the \_\_\_\_ day of \_\_\_\_\_, 2014 ("Effective Date"), between the City of Glendale, an Arizona municipal corporation ("City"), and Lamar Central Outdoor, LLC, a Delaware limited liability company, registered and authorized to do business in the State of Arizona ("Licensee").

**RECITALS**

- A. The City is the owner of certain real property located in the vicinity of Bethany Home Road and the Agua Fria Freeway (Loop 101), Glendale, Arizona, designated by the Maricopa County Assessor's Office as Parcel No. 102-01-010M, within which the area more fully described in Exhibit A will be licensed for use pursuant to this Agreement ("License Area").
- B. The Licensee desires to install, operate, maintain and repair digital billboard advertising equipment ("Billboard") in the described License Area and to construct certain improvements within the License Area, depicted in the Exhibits B and C, Conduit Area and Design Concept, respectively.
- C. The City is willing to grant to the Licensee a license to use the License Area for the purpose stated subject to the requirements of this Agreement and subject to the guarantee of this agreement by Licensee's parent corporation, which is attached hereto as Exhibit D.

**AGREEMENT**

In consideration of the mutual covenants and conditions set forth herein, and for good and valuable consideration given, it is hereby agreed as follows:

- 1. **License.** The City grants to the Licensee the right to use the "License Area" only for use as stated and subject to the provisions and conditions of this Agreement:
  - 1.1 Billboard Area. During the term of this Agreement, Licensee will have access to and may locate one Digital Billboard and all supporting equipment enclosures used solely in connection with the Digital Billboard within the License Area.
  - 1.2 Conduit Area. During the term of this Agreement, Licensee will have access to and may locate conduit and cable to provide electrical service and coaxial cabling to the Digital Billboard, as described in Exhibit B of this Agreement or as otherwise approved by the City.
  - 1.3 Rights, Use Requirements and Restrictions
    - a. Licensee's rights under this Agreement are subject to all covenants, restrictions, easements, agreements, reservations and encumbrances upon, and all other conditions of title to the License Area.
    - b. Licensee's rights under this Agreement are subject to all present and future building restrictions, regulations, zoning laws, ordinances, resolutions and orders of any local, state or federal agency, now or hereafter having jurisdiction over the License Area or the Licensee's use of the License Area.
    - c. Licensee may use the License Area only for constructing, installing, operating, maintaining, and repairing the Billboard and no other use.

- d. Except for the Digital Billboard, Licensee must not install any signs in the License Area other than required safety warning signs or any other signs as are requested or approved by the City, and Licensee bears all costs pertaining to the erection, installation, maintenance, and removal of all signs.
  - e. Licensee must at all times use its commercially reasonable best efforts to minimize any impact that its use of the License Area will have on other uses of the License Area. Licensee is aware that the License Area may be improved and utilized for parking.
  - f. Licensee may not remove, damage, or alter in any way any improvements or property of the City upon the License Area, whether currently existing or installed in the future, without the City's prior written approval.
  - g. Licensee must repair any damage or alteration to the License Area to the same condition that existed before the damage or alteration.
  - h. Licensee has non-exclusive right for ingress and egress, seven days a week, 24 hours a day, for the construction, installation and maintenance of the Digital Billboard, which right will be exercised so as to not unreasonably interfere with City operations or use of the License Area.
- 1.4 "AS-IS" Acceptance. Licensee warrants that it has studied and inspected the License Area, obtained any information and professional advice as the Licensee has determined to be necessary related to this Agreement, and therefore accepts the same "AS IS" without any express or implied warranties of any kind, other than those warranties contained in § 12.2, including any warranties or representations by the City as to its condition or fitness for any use.
- 1.5 Limitation on Grant. The parties do not by this instrument intend to create a lease, easement, or other real property interest or vest with Licensee any real property interest in the License Area and nothing express or implied in this Agreement grants Licensee any right or authority to enter, occupy, or use any property that is not solely owned by the City and fully described herein.
- 1.6 Rights Reserved
- a. Licensee acknowledges that its use of the License Area is subject and subordinate to the City's use of the License Area, including use of the License Area for parking. Licensee agrees that use of License Area for parking, including for any event held at the University of Phoenix Stadium, shall have precedence over any construction, installation and maintenance activities by Licensee.
  - b. Licensee will not install, operate or allow its agents, employees, or contractors to use any equipment, methodology or technology that may interfere with the optimum effective use or operation of the City's fire, emergency or other communication equipment, methodology or technology (i.e., voice or other data receiving and/or transmitting equipment) that is presently in use or may be in use in the future.
    - 1. If such interference does occur, the Licensee must immediately discontinue using the equipment, methodology or technology that causes the interference until corrective measures are taken which must be made at no cost to the City.
    - 2. City and the Licensee will use their best reasonable efforts to resolve immediately any interference problems, but if an interference problem

is unavoidable, the City's right to use the City's fire, emergency, or other communication equipment remains paramount to any use of the License Area by the Licensee and Licensee has the right to terminate this Agreement without penalty and without any cost to the City.

- c. City may, at all times, enter upon the License Area for any lawful purpose, provided the action does not unreasonably interfere with the Licensee's use or occupancy of the License Area.
- d. Without limiting the generality of the foregoing, the City and any furnisher of utilities and other services may, at their own cost:
  - 1. Enter upon the License Area at any time to make repairs, replacements or alterations that, in the opinion of the City or the furnisher of utilities and other services, may be necessary or advisable and from time to time to construct or install over, in, or under the License Area systems or parts; and
  - 2. In connection with any maintenance, use the License Area for access to other parts in and around the License Area; provided that in the exercise of these rights of access, repairs, alterations or new construction, the City does not unreasonably interfere with the use and occupancy of the License Area by the Licensee.
- e. The exercise of any of the foregoing rights by the City or others does not constitute a termination of the License, nor serve as the grounds for any abatement of Monthly License Fees, Royalty Payments, or any claim for damages.

## 2. Term

- 2.1 License Period. This Agreement is for a period of 240 months commencing on the Effective Date.
- 2.2 Initial Construction. Licensee must install and place into use the Digital Billboard in accordance with the specification set forth herein no later than December 31, 2014 ("Initial Construction Date") or this Agreement will automatically terminate unless, for the purposes of completing construction, this completion date is extended by the City Manager in writing.
- 2.3 Surrender of Possession
  - a. Upon the expiration or termination of this Agreement, the Licensee's right to occupy the License Area and to exercise the privileges and rights granted by this Agreement cease, and it must surrender and leave the License Area in good condition; normal wear and tear excepted.
  - b. Unless otherwise provided herein, all trade fixtures, equipment, and other personal property installed or placed by the Licensee on the License Area remains the property of the Licensee, and the Licensee may, at any time during the term of this Agreement, and for an additional period of 30 days after its expiration, remove the same from the License Area so long as Licensee is not in default of any of its obligations and if Licensee repairs, at its sole cost, any damage caused by the removal.
  - c. Any property not removed by the Licensee within the 30-day period becomes a part of the License Area, and ownership vests in the City. Alternatively, the City may, at the Licensee's expense, have the property removed.

- 2.4 Hold-Over. In the event Licensee continues to occupy the License Area after the expiration or termination of this Agreement, such hold-over does not constitute a renewal or extension of this Agreement, and the Licensee must pay the City twice the Monthly License Fees and Royalty Payments (as defined below), with each month fully accruing after the first day of the month regardless of the actual number of days Licensee holds over during the month, plus any Royalty Payments (as defined below) accrued during the hold-over; provided however if the City and Licensee are in negotiations to renew this Agreement or to enter into a new lease for the premises leased herein, the standard License Fee and Royalty Payments shall apply and this Agreement shall become a month-to-month agreement until otherwise terminated.

### **3. License Fees, Royalty Payments**

- 3.1 For its right to use the License Area, the Licensee must pay, without notice and free from all claims, deductions and setoffs against the City, license fees and royalties as follows:

a. Monthly License Fees.

1. The license fee for the Licensed Area ("Monthly License Fee") is as follows:
  - (i) For the period beginning on the first day of the first month at least 90 days after the Effective date or the first day of the month following the date the Certificate of Occupancy is issued, whichever is earlier ("Commencement Date"), for a period of twelve (12) months, the Monthly License Fee shall be \$10,000 per month (\$120,000 per annum), plus all applicable taxes.
  - (ii) Effective on the first day of the 13<sup>th</sup> month and annually thereafter, the Monthly License Fee will increase 2%. Monthly License Fee increases made in accordance with this section do not require notice to Licensee and become effective solely by operation of this provision.
2. Licensee will pay the Monthly License Fee and continue to pay the Monthly License Fee on the first day of each following month until the expiration or earlier termination of this Agreement as set forth herein.
3. If the Monthly License Fee is not received by the fifth day of any month, Licensee will pay an additional 5% each month for each Monthly License Fee amount due and unpaid.

b. Royalty Payments. In addition to the Monthly License Fee, during the term of this Agreement, Licensee must pay City each year on or before the 60th day after each anniversary of the Commencement Date a royalty ("Royalty Payment") calculated as follows:

1. Thirty-three percent (33%) of the Total Revenue (as defined below) less than or equal to \$425,000 received during the previous 12 months for the use or operation of the Digital Billboard or License Area; and
2. Forty percent (40%) of the Total Revenue (as defined below) exceeding \$425,000 received during the previous 12 months for the use or operation of the Digital Billboard or License Area.

3. Minus the amount of the Monthly License Fees paid during the same previous 12-month period.

4. By way of example:

For Total Revenue of \$400,000 in the first 12 months, a Royalty Payment of \$12,000 is required and calculated as follows:

33% of Total Revenue minus Sum of 12 Monthly License Fees

$$.33 \times \$400,000 = \$132,000$$

$$\$132,000 - \$120,000 = \$12,000$$

$$\$12,000 = \text{Annual Royalty Payment}$$

For Total Revenue of \$600,000 in the first 12 months, a Royalty Payment of \$90,250 is required and calculated as follows:

33% of Total Revenue of \$425,000 plus 40% of Total Revenue over \$425,000 minus Sum of 12 Monthly License Fees

$$.33 \times \$425,000 = \$140,250$$

$$.40 \times \$175,000 = \$70,000$$

$$\$140,250 + \$70,000 - \$120,000 = \$90,250$$

5. In the event the Royalty Payment calculation results in a negative number, no Royalty Payment is required and no refund, offset, or reduction against past or future Monthly License Fees is due Licensee.
- c. "Total Revenue," as that term is used in this section, means all revenue, income or receipts Licensee receives or collects for use or operation of the Digital Billboard or License Area, minus applicable taxes and any advertising agency commissions.
  - d. Licensee will pay an additional 5% each month for each Royalty Payment amount due and unpaid.

#### 4. Financial Statements Required

- 4.1 At the time the Royalty Payment is due, Licensee must submit independently verified revenue reports prepared and certified by an independent, licensed Certified Public Accountant (CPA), attesting to the accuracy of the total revenue collections reported during the royalty period and any adjustments reported.
- 4.2 In the event the independent verification is not submitted with the Royalty Payment, Licensee shall pay a 5% late fee for each month or portion of month until the independent verification is submitted. If the independent verification is not submitted within 90 days of the due date, the City reserves the right to hire an independent CPA to conduct the work on behalf of the City at Licensee's expense. Failure to pay for the cost of the independent review within 30 days of receipt of an invoice or failure to pay the 5% late fee within 30 days will result in the City's right to terminate the contract for cause.
- 4.3 Inspection and Audit. Upon request, City may inspect Licensee's business and financial records relating to this Agreement. Additionally, upon 15 days' notice, City may, at its expense, audit Licensee's financial records relating to this Agreement for the purpose of assuring compliance with this Agreement, the cost of which will be reimbursed to the City should any material non-compliance be found.

## 5. Licensee's Operations

### 5.1 Generally

- a. Licensee must at all times have on-call and at the City's access an active, qualified, and experienced representative to supervise the Digital Billboard, and who is authorized to act for the Licensee in matters pertaining to all emergencies and the day-to-day operation of the Digital Billboard. Licensee will provide the City Engineer's Office with the names, addresses, and 24-hour telephone numbers of all such persons in writing.
- b. Licensee must operate and maintain the License Area in an orderly and clean manner and all facilities and equipment in a well-maintained state at all times.
- c. The Licensee is responsible for obtaining and paying for all utilities necessary to operate the Digital Billboard.

### 5.2 Improvements

#### a. Approvals

1. The Digital Billboard placed upon the License Area will not require conformance to City of Glendale Zoning Ordinance, Section 7.110; the digital billboard will be consistent in height, size and design with the signs Licensee's operates on city-owned property governed by contracts Nos. C-6855 and C-6855-1 and is required to be submitted to and receive approval from the City Planning Department. No construction activities related to Digital Billboard placement in the License Area may commence before all Planning Department approval processes have been completed.
2. Licensee's ability to use the License Area on an on-going basis is contingent upon its obtaining, after the execution date of this Agreement, all of the required certificates, permits, and other approvals that may be required by any federal, state or local authorities (collectively "Governmental Approvals"), as well as satisfactory soil boring tests that sufficiently support the Licensee's intended use of the License Area. Licensee shall pay for all boring tests.
3. Prior to any construction upon the License Area, Licensee must obtain all necessary construction permits and complete all requirements of the permits prior to any use of the License Area.
4. After construction activity is complete, Licensee will restore the City's property to the satisfaction of the City Engineer, and if Licensee fails to restore the License Area as required, the City may take all actions necessary to restore the License Area, and the Licensee will pay all of City's reasonable costs of such restoration upon demand.
5. The following procedure governs Licensee's submission to the City of all plans for the License Area and the Licensee's Improvements, including any proposed changes by the Licensee of previously approved plans:
  - (i) The Licensee will coordinate with the City as necessary on significant design issues prior to preparing plans being submitted.

- (ii) Upon execution of this Agreement, City and Licensee will each designate a project manager to coordinate the parties' participation in designing and constructing the Licensee's Improvements. Each project manager will devote such time and efforts to the project as may be necessary for timely, good faith and convenient coordination among all persons involved with the project and compliance with this Agreement. The City's project manager will not be exclusively assigned to this Agreement or the Licensee's Improvements.
- (iii) Licensee acknowledges that as of the date of this Agreement, the City has not approved or promised to approve any plans for the Licensee's Improvements and no plans are considered approved until stamped "APPROVED" and dated by the City's Building Safety Department.
- (iv) No final plans are considered approved until the Licensee delivers to the City a formal certification by an engineer licensed in Arizona acceptable to the City to the effect that all of Licensee's Improvements are properly designed to be safe and functional as designed and as required by this Agreement. The certification must be accompanied by and refer to any backup information and analysis as the City may reasonably require.
- (v) Licensee acknowledges that the City's project manager's authority with respect to the License Area is limited to the administration of the requirements of this Agreement. Licensee is responsible to secure all zoning approvals, design revisions or other Governmental Approvals and to satisfy all governmental requirements pertaining to the project and will not rely on the City or the City's project manager for any of the same.
- (vi) City's issuance of building permits does not constitute approval of any plans for purposes of this Agreement. City's project manager will be reasonably available to coordinate and assist Licensee in working through issues that may arise in connection with plan approvals and requirements.
- (vii) Licensee when submitting plans will allow adequate time for all communications and plan revisions necessary to obtain approvals and schedule its performances and revise its plans as necessary to timely obtain all approvals.
- (viii) The parties will use reasonable efforts to resolve any design and construction issues to their mutual satisfaction but, in the event of an impasse for any reason, final decision authority regarding all design and construction issues rests with the City.
- (ix) Licensee is subject to all design review and sign permit fees as determined by the City's project manager.

b. Design, Labor and Materials

- 1. Licensee's Improvements must be designed and materials and labor purchased at the Licensee's sole expense.



2. All of Licensee's Improvements will be designed so as to present uniformity of design, function, appearance and quality throughout and consistent with other improvements located in or near the License Area.
  3. Except as otherwise specifically provided for herein, in no event is the City obligated to compensate the Licensee in any manner for any of the Licensee's Improvements or other work provided by the Licensee during or related to this Agreement.
  4. Licensee must timely pay for all labor, materials and work, and all professional and other services related to its operations within the License Area, and will defend, indemnify and hold harmless the City against all related claims caused by Licensee.
  5. All work performed on the License Area by the Licensee must be performed in a workmanlike manner, as reasonably determined by the City, and will be diligently pursued to completion and in conformance with all building codes and similar rules.
  6. All of Licensee's Improvements must be high-quality, safe, modern in design and attractive in appearance, all as approved by the City in accordance with its standard policies and procedures.
  7. Licensee must participate as a member of the Blue Stake Center under A.R.S. § 40-360.21 et seq. regarding underground facilities, and the Licensee will submit proof of such participation to the City Engineer upon request.
- c. Records. Licensee must keep as-built records of the Licensee's Improvements and furnish copies of records to the City, at no cost to the City, upon completion of the improvements and any changes to the same.
- d. Construction Bonds. Prior to the commencement of any construction in the License Area, Licensee must provide the City with payment and performance bonds in amounts equal to the full amount of the written construction contract for the construction to be performed on, in, and related to the License Area.
1. The payment bond will be solely for the protection of claimants supplying labor or materials for the required construction work, and the performance bond is solely for the protection of the City, conditioned upon the faithful performance of the required construction work.
  2. Each bond must be executed by a surety company duly authorized to do business in Arizona.

### 5.3 Performance Bond

- a. In addition to any other bond required by this Agreement, Licensee must, no later than the Effective Date, provide to the City and maintain during the term of this Agreement a cash deposit, letter of credit, or performance bond in the amount of \$250,000.
- b. The performance bond, letter of credit, or the terms of a cash deposit will be conditioned upon the Licensee's faithful performance of all of its obligations under this Agreement.

- c. Any bond provided to fulfill the requirements of this section must be issued by a surety company duly authorized to do business in Arizona and which is acceptable to the City's Risk Manager.
- d. Any letter of credit provided to fulfill the requirements of this section must be provided by a national bank authorized to do business in Arizona and the instrument must be structured such that it can be drawn upon by the City without the necessity of the countersignature of Licensee.

#### 5.4 Maintenance of License Area

- a. Licensee, at its own expense, is responsible for improvements to and maintenance of the License Area during the term of this Agreement.
- b. Licensee, at its own expense, will use commercially reasonable efforts to minimize the collateral visual and aesthetic impacts of the Billboard, which will include, but not be limited to, replacing existing equipment with smaller equipment, decreasing the area used to house supporting equipment, or decreasing the size of any wireless communications equipment.

#### 5.5 City Ad Placements. As consideration for the grant of this Agreement by the City, Licensee must also:

- a. Accept and coordinate with City as part of any regular and routine ad placement on the Digital Billboard on-going ad placements by the City for City-related events ("City Placements");
  - 1. City Placements will consist of one 8-second spot per minute on either side, but not both simultaneously, of the Digital Billboard.
  - 2. Alternatively, City may instead elect to place City Placements for an equivalent amount of time on other digital outdoor advertising structures operated by the Licensee in the Greater Phoenix metropolitan area subject to space availability.
  - 3. City Placements will be at no additional cost to the City and will result in no setoff against Monthly License Fees or Royalty Payments.
- b. Broadcast any message on the Billboard the City considers necessary for public safety; and
- c. Receive, consider and promptly respond to any City objection to Digital Billboard advertising displayed in the License Area.

#### 5.6 Co-Location

- a. Licensee will use reasonable efforts to cooperate with the City and any third parties with regard to the possible co-location of additional facilities or equipment in the License Area.
  - 1. If a co-location is feasible, City may, in its sole discretion, negotiate a co-location license agreement with any third party on terms the City considers appropriate, not inconsistent with the rights and obligations of the parties under this Agreement.
  - 2. Licensee's approval for co-location is not required, provided that the co-locator is expressly prohibited from attaching to or coming into physical contact with equipment, facilities or structures Licensee has installed in the License area or visually impairs the operation of the Billboard.

3. Any rent or fees paid by an additional co-locator belong solely to the City.
  4. If any third party desires to co-locate equipment or associated fixtures on Licensee's equipment, facilities or structures, the third-party carrier will be directed to Licensee in order to secure a separate agreement and the City will consider any necessary amendment to this Agreement.
- b. Prior to permitting the installation by any third party in or around the License Area of any additional equipment which may interfere with the Licensee's operation of the Digital Billboard, City will give Licensee 30 days' notice so that the Licensee can determine if the third-party's equipment will interfere with the Billboard.
1. If Licensee determines that interference is likely to occur, Licensee may, within 30 days, give the City a detailed written explanation of the anticipated interference, including any supporting documentation as may be reasonably necessary for the City to evaluate the Licensee's position.
  2. City and the Licensee will seek to resolve any interference problems before the City permits the third party to operate its proposed equipment.
  3. If a third party is permitted to operate in or near the License Area, and the third-party's operations interfere with Licensee's Billboard (as operating and configured prior to the third-party operations beginning), then the City will direct the third party to remedy the interference within 72 hours and, if the interference is not resolved within this 72-hour period, then the third party will be required to cease its operations until the interference is resolved.
  4. These same procedures apply to
    - (i) Any interference caused by Licensee with respect to equipment existing and as configured on the Commencement Date, and
    - (ii) Any licensee equipment existing on the Commencement Date which is later reconfigured so as to interfere with Licensee's Billboard.

#### 5.7 Insurance

- a. Licensee must procure and at all times maintain the minimum insurance as outlined below for its operations in the License Area:

##### **Minimum Insurance Requirements**

1. **Workers' Compensation Insurance** with Statutory Limits. This policy shall include employer's liability insurance with limits of at least \$1,000,000.
2. **Commercial General Liability Insurance** in the minimum amounts indicated below or such additional amounts as reasonably required by the City, including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of any agreement with the City, Products-Completed Operations Hazard, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of your performance of work for the City. Said insurance shall have minimum limits for Bodily Injury and Property Damage Liability

equal to the policy limits, but not less than \$2,000,000 each occurrence and \$4,000,000 aggregate.

3. **Automobile Liability Insurance** against claims of Personal Injury (including bodily injury and death) and Property Damage covering all owned, leased, hired and non-owned vehicles used in the performance of services pursuant to an agreement with the City with minimum limits for Bodily Injury and Property Damage Liability equal to the policy limits, but not less than \$1,000,000 each occurrence. Coverage shall include 'any auto'.

- b. Insurance must be issued by a company authorized to provide coverage in Arizona and rated at least A-,VII by AM Best and naming the City and its board members, officials, officers, agents, and employees as an additional insured by endorsement with a requirement of 30 days' written notice to the City prior to cancellation for any reason.
- c. The insurance must also include advertising and contractual liability coverage for the obligation of indemnity assumed in this Agreement, subject to standard policy provisions and exclusions.
- d. Licensee's insurance must be primary and non-contributory with respect to all other available sources. Licensee must provide appropriate certificates and endorsements of insurance to the City for all insurance policies required by this section.
- e. As commercially reasonable, City's Risk Manager may alter the requirements above or determine additional insurance is necessary for Licensee's operations.

f. **Notice of Cancellation**

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.

g. **Waiver of Subrogation**

Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City by virtue of the payment of any loss under such insurance. Contractor agrees to make reasonable efforts to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

- 5.8 Notices to the City. The Licensee will provide the City, without request, copies of any petition or application related to any filing by the Licensee of bankruptcy, receivership or trusteeship and any notices received from regulatory agencies pertaining to the operations of the Billboard.

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

7. **Indemnification and Limitation of Liability**

- 7.1 Licensee will defend, indemnify and hold harmless the City, its officers and employees, and agents (collectively, the "City") from all loss, damages or claims of whatever nature, including attorney's fees, expert witness fees and costs of litigation, that arise out of any act or omission of Licensee or its agents, employees and invitees (collectively, "Licensee") in connection with Licensee's operations in the License Area and that result directly or indirectly in any type of injury to or death of any person or the damage to or

loss of any property, or that arise out of Licensee's operations, including the failure of the Licensee to comply with any provision of this Agreement.

- a. City will in all instances, except for loss, damages or claims resulting from the sole negligence or fault of City, be indemnified by Licensee against all losses, damages or claims. City will give the Licensee prompt notice of any claim made or suit instituted that may subject the Licensee to liability under this section, although timing of such notice will not diminish Licensee's duty to indemnify, and the Licensee will have the right to compromise and defend the same to the extent of its own interest.
- b. City may, but does not have the duty to, participate in the defense of any claim or litigation with attorneys of the City's selection and at the City's sole cost without relieving the Licensee of any obligations hereunder.
- c. Licensee's obligations under this Agreement survive any termination of this Agreement or the Licensee's activities in the License Area.

7.2. Neither Party is liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data (except as provided herein), or interruption or loss of use of service (except as provided herein), even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

## 8. Taxes and Licenses

- 8.1. Licensee must pay any leasehold tax, possessory-interest tax, sales tax, personal property tax, transaction privilege tax or other exaction assessed or assessable as a result of its occupancy of the License Area under authority of this Agreement, including any such tax assessable on the City.
- 8.2. If any law or judicial decision results in the imposition of a real property tax on the interest of the City, the tax must also be paid by the Licensee on a proportional basis for the period this Agreement is in effect.
- 8.3. Licensee must, at its own cost, obtain and maintain in full force and effect during the term of this Agreement all licenses and permits required for all activities authorized by this Agreement.

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

## 10. Termination

### 10.1 For Cause

- a. Licensee may terminate this Agreement in the event of any of the following:
  1. Applications for Governmental Approval are rejected;
  2. Governmental Approval issued to Licensee by the City is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority;
  3. Licensee reasonably determines that any soil boring tests are unsatisfactory;

4. Prior to initial construction of the Digital Billboard, Licensee reasonably determines that the License Area is no longer technically compatible for its use;
  5. Prior to initial construction of the Digital Billboard, Licensee reasonably determines that it will be unable to use the License Area for its intended purposes.
  6. Issuance by a court of competent jurisdiction of an injunction in any way preventing or restraining the Licensee's use of any portion of the License Area and the injunction remaining in force for a period of 30 consecutive days.
  7. The inability of the Licensee to use any substantial portion of the License Area for a period of 90 consecutive days due to the enactment or enforcement of any law or regulation or because of fire, earthquake or similar casualty or Acts of God or the public enemy. No Monthly License Fees shall be due during the period of non-use and such fees shall be discounted on a pro-rata basis for the number of days of non-use.
  8. If the License Area or Digital Billboard is destroyed or damaged in either party's reasonable judgment to substantially and adversely affect the use of the Digital Billboard.
- b. The City may terminate this Agreement and seek damages by giving Licensee 30 days' written notice after the happening of any of the following events:
1. The failure of Licensee to perform any of its obligations under this Agreement and such failure is not cured fully within the 30 days' notice period or, if the cure cannot reasonably be completed within the 30 days' notice period, then within 90 days from the date of the original notice; provided that Licensee must initiate the cure within the original 30 days' notice period and thereafter diligently pursue the cure;
  2. The taking of possession for a period of 90 days or more of substantially all of the personal property used in the License Area belonging to the Licensee by or pursuant to final lawful authority of any legislative act, resolution, rule, order or decree or any act, resolution, rule, order or decree of any court or governmental board, agency, officer, receiver, trustee or liquidator; or
  3. The filing of any lien against the License Area because of any act or omission of the Licensee that is not discharged or fully bonded within 30 days of receipt of actual notice by the Licensee.
- c. The City may terminate this Agreement and seek any other remedy allowed by law or equity by giving the Licensee 15 days' written notice of the Licensee's failure to timely pay rent or any other charges required to be paid by the Licensee pursuant to this Agreement.
- d. The City may terminate this Agreement if the Licensee at any time and for any reason fails to maintain all insurance coverage required by this Agreement, immediately terminate this Agreement or alternatively and at its sole discretion, secure the required insurance at Licensee's expense, which will be immediately due and payable.

- 10.2 Without Cause. Each party may, in its sole discretion and without cause, terminate this Agreement by giving the other party written notice one year prior to the termination date.
- a. In the event the City terminates without cause within the first five years of this agreement, Licensee's actual capital cost directly related to equipment that is located on the License Area that cannot be removed for other use or salvage will be reimbursed to Licensee using a straight-line depreciation method calculated over the lesser of the equipment's useful life or the term of this Agreement, less the cost of bringing the property back to its original condition and any salvage value.
  - b. In the event Licensee terminates without cause within the first five years of this agreement, Licensee will, at its own expense, return the property back to its original condition within 90 days of termination.
  - c. In order to ensure adequate accounting of capital costs in the event of termination without cause, Licensee will provide written documentation of the capital costs and depreciation schedule for the equipment prior to the issuance of the Certificate of Occupancy.
- 10.3 Upon termination, Licensee will immediately pay to the City any due and unpaid Monthly License Fees and any Royalty Payments.
- 10.4 Upon the termination of this Agreement for any reason, all rights of the Licensee terminate, including all rights of the Licensee's creditors, trustees and assigns, and all others similarly situated as to the License Area.

## **11. Default**

- 11.1 Failure by a party to take any authorized action upon default by the other party of any of the other party's obligations does not constitute a waiver of the default nor of any subsequent default by the other party.
- 11.2 Acceptance of Monthly License Fees, Royalty Payments and other payments by the City under the terms of this Agreement for any period after a default by the Licensee of any of its obligations is not considered waiver or estoppel of the City's right to terminate this Agreement for any subsequent failure by the Licensee to comply with its obligations.

## **12. City's Representations and Warranties.** The City represents and warrants to the Licensee that:

- 12.1 It has full right, power, and authority to execute this Agreement;
- 12.2 The City has good and unencumbered title to the License Area free and clear of any liens or mortgages, except those disclosed to the Licensee that will not interfere with the Licensee's right to use the License Area; and
- 12.3 The City's execution and performance of this Agreement will not violate any laws, ordinances, covenants, mortgages, licenses or other agreements binding on the City.

## **13. Hazardous Waste**

- 13.1 Licensee must not produce, dispose, transport, treat, use or store any hazardous waste or toxic substance upon or about the License Area subject to regulation under the Arizona Hazardous Waste Management Act, A.R.S. § 49-901 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., the Toxic Substances Control Act, 15 U.S.C. 2601 et seq., or any other federal, state or local law pertaining to hazardous waste or toxic substances.

- 13.2 Licensee must not use the License Area in a manner inconsistent with any regulations, permits or approvals issued by the Arizona Department of Health Services.
- 13.3 Licensee must defend, indemnify and hold the City harmless against any loss or liability incurred by reason of any hazardous waste or toxic substance on or affecting the License Area attributable to or caused in any way by the Licensee, and immediately notify the City of any hazardous waste or toxic substance at any time discovered or existing upon the License Area.
- 13.4 Licensee must promptly and without a request by the City provide the City's Environmental Program Manager with copies of all written communications between the Licensee and any governmental agency concerning environmental inquiries, reports or problems on the License Area.

#### **14. Notice**

- 14.1 Except as otherwise provided, all notices required or permitted to be given under this Agreement may be personally delivered or mailed by certified mail, return receipt requested, postage prepaid, to the following addresses:
  - To the City: City Manager  
City of Glendale  
5850 West Glendale Avenue  
Glendale, Arizona 85301
  - with a copy to: City Attorney  
City of Glendale  
5850 West Glendale Avenue  
Glendale, Arizona 85301
  - To the Licensee: Lamar Central Outdoor Advertising, L.L.C.  
1661 E. Camelback Ste. 320  
Phoenix, Arizona 85016
- 14.2 Any notice given by certified mail is considered received on the third business day after the date of mailing.
- 14.3 Either party may designate in writing a different address for notice purposes pursuant to this section.

#### **15. Assignment**

- 15.1 Licensee may assign this Agreement, upon 30 days' written notice to the City and upon City's written consent, which may not be unreasonably withheld, conditioned or delayed. City may as a condition of consent, require that any assignee submit biographical and financial information to the City at least 30 days prior to any the assignment of Licensee's interest under this Agreement.
- 15.2 Licensee may, upon notice to the City, mortgage or grant a security interest in this Agreement and Digital Billboard, and may assign this Agreement and Digital Billboard to any mortgagees, deed of trust beneficiaries or holders of security interests, including their successors or assigns ("Mortgagees"), provided such Mortgagees agree to be bound by the terms of this Agreement. In this event, City will execute consent to financing as may be reasonably required by Mortgagees. In no event will the Licensee grant or attempt to grant a security interest in the real property of the License Area.
- 15.3 Subject to subsections 14.1 and 14.2, Licensee may not assign or sublease any of its interest under this Agreement, nor permit any other person to occupy the License Area.



16. **Severability.** If any provision of this Agreement is declared invalid by a court of competent jurisdiction, the remaining terms remain effective, provided that elimination of the invalid provision does not materially prejudice either party with regard to its respective rights and obligations; in the event of material prejudice, then the adversely affected party may terminate this Agreement.
17. **Immigration Law Compliance.**
- 17.1 Licensee, and on behalf any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.
  - 17.2 Any breach of warranty under this section above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
  - 17.3 City retains the legal right to inspect the papers of Licensee or subcontractor employee who performs work under this Agreement to ensure that Licensee or any subcontractor is compliant with the warranty under this section.
  - 17.4 City may conduct random inspections, and upon request of the City, Licensee must provide copies of papers and records demonstrating continued compliance with the warranty under this section. Licensee agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this section.
  - 17.5 Licensee agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon itself and expressly accrue those obligations directly to the benefit of the City. Licensee also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.
  - 17.6 Licensee's warranty and obligations under this section to the City is continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.
  - 17.7 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.
18. **Conflicts.** This Agreement is subject to cancellation for conflicts of interest under the provisions of A.R.S. § 38-511.
19. **Litigation.** This Agreement is governed by the laws of the State of Arizona. If any litigation or arbitration between the City and the Licensee arises under this Agreement, the successful party is entitled to recover its reasonable attorney's fees, expert witness fees and other costs incurred in connection with the litigation or arbitration.
20. **Miscellaneous.** This Agreement constitutes the entire agreement between the parties concerning the matters contained herein and supersedes all prior negotiations, understandings and agreements between the parties concerning all related matters. This Agreement will be interpreted, applied and enforced according to the fair meaning of its terms and not be construed strictly in favor of or against either party, regardless of which party may have drafted any of its provisions. No provision of this Agreement may be waived or modified except by a writing signed by the party against whom such waiver or modification is sought to be enforced. The

terms of this Agreement are binding upon and inure to the benefit of the parties' successors and assigns.

21. **Exhibits.**

EXHIBIT A1-2 – Legal Description/Aerial Map

EXHIBIT B – Conduit Area

EXHIBIT C – Design Concept

EXHIBIT D - Corporate Parent Guarantee

EXECUTED to be effective on the date specified above.

CITY OF GLENDALE, an Arizona  
municipal corporation

\_\_\_\_\_  
Brenda S. Fischer, City Manager

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael D. Bailey, City Attorney

LAMAR CENTRAL OUTDOOR, L.L.C., a  
Delaware limited liability company

\_\_\_\_\_  
By: Christina Butler  
Its: Vice President/General Manager

Date: \_\_\_\_\_

STATE OF ARIZONA            )  
  ) ss.  
County of Maricopa         )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by  
\_\_\_\_\_ in his/her capacity as authorized representative of LAMAR CENTRAL OUTDOOR ADVERTISING,  
L.L.C.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public

**EXHIBIT "A" - LEGAL DESCRIPTION  
9802 W. BETHANY HOME ROAD**

SOUTH SIGN NO 2

THAT PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 2 NORTH, RANGE 1 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A MARICOPA COUNTY HIGHWAY DEPARTMENT (MCHD) BRASS CAP, MARKING THE SOUTHWEST CORNER OF SAID SECTION 9, WHICH BEARS SOUTH 00 DEGREES 04 MINUTES 51 SECONDS WEST 2596.64 FEET (MEASURED) SOUTH 00 DEGREES 04 MINUTES 52 SECONDS WEST 2596.65 FEET (RECORD) FROM A MCHD BRASS CAP MARKING THE WEST QUARTER CORNER OF SAID SECTION 9;

THENCE ALONG THE WEST LINE OF SAID SECTION 9, NORTH 00 DEGREES 04 MINUTES 51 SECONDS EAST 588.44 FEET;

THENCE SOUTH 89 DEGREES 55 MINUTES 09 SECONDS EAST, A DISTANCE OF 707.47 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 06 DEGREES 46 MINUTES 25 SECONDS EAST, A DISTANCE OF 35.00 FEET;

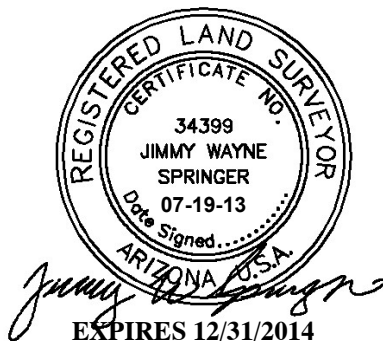
THENCE SOUTH 83 DEGREES 13 MINUTES 35 SECONDS EAST, A DISTANCE OF 60.00 FEET TO AN CHAIN LINK FENCE;

THENCE ALONG SAID CHAIN LINK FENCE, SOUTH 06 DEGREES 46 MINUTES 25 SECONDS WEST, A DISTANCE OF 35.00 FEET;

THENCE NORTH 83 DEGREES 13 MINUTES 35 SECONDS WEST, A DISTANCE OF 60.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 2,100 SQUARE FEET, MORE OR LESS.

AGUA FRIA SOUTH NO 2  
EXHIBIT A1  
PAGE 1 OF 2



# MARYLAND AVENUE

WEST 1/4 CORNER SECTION 9  
T 2 N, R 1 E, G&SRB&M  
FOUND MCHD BRASS CAP FLUSH

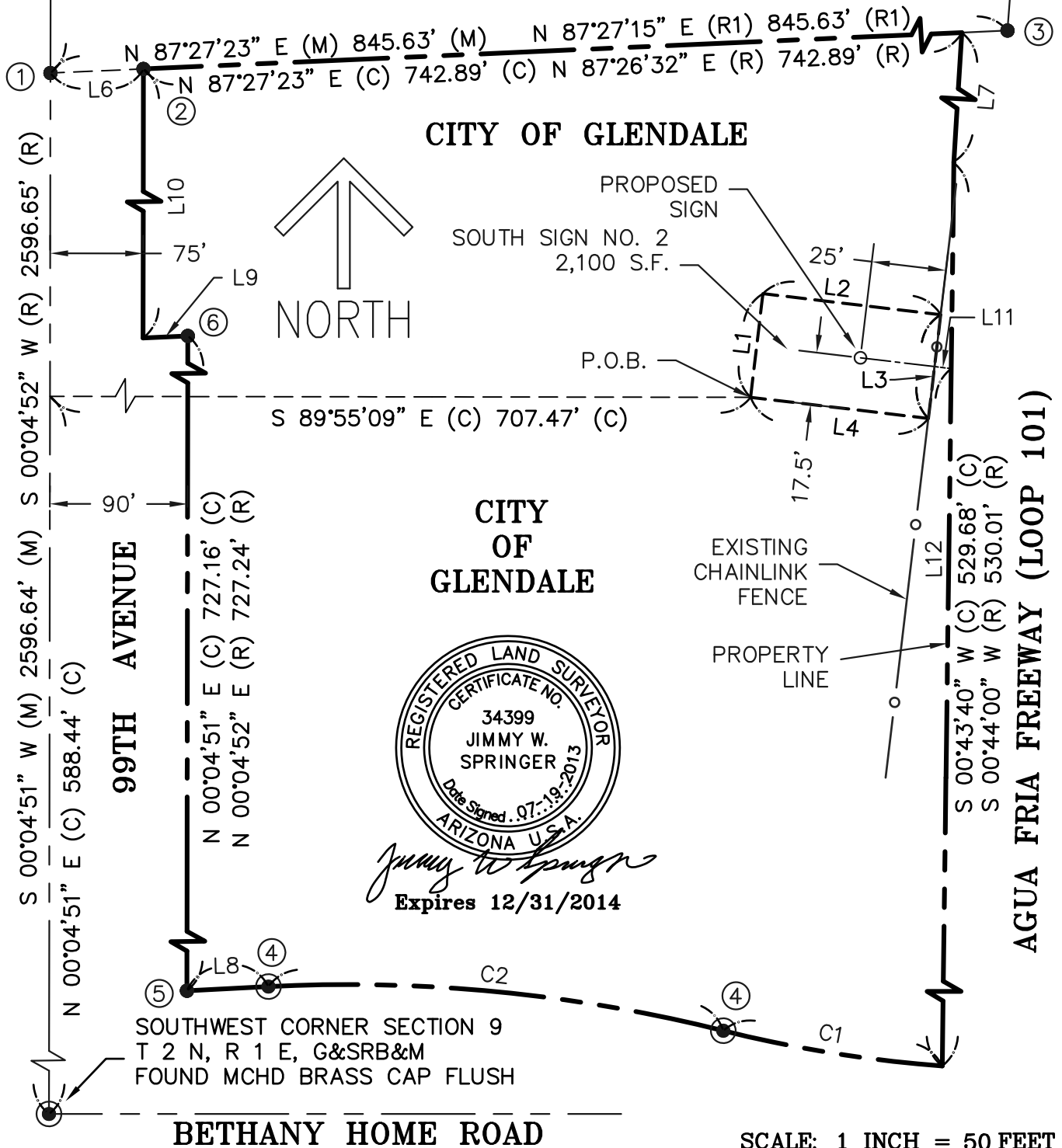


EXHIBIT A1  
AGUA FRIA SOUTH NO. 2  
SOUTH SIGN NO. 2  
PAGE 2 OF 3

THUNDERBIRD SURVEYING LLC  
6911 EAST THUNDERBIRD ROAD  
SCOTTSDALE, ARIZONA 85254  
PHONE (480) 629-4399

CURVE TABLE						
CURVE	DELTA	RADIUS	LENGTH	TANGENT	CH BEARING	CHORD
C1(C)	9°46'37"	1175.02	200.50	100.50	S80°52'42"E	200.26
C1(R)	9°46'37"	1175.00	200.50	100.49	S80°51'31"E	200.26
C2(M)	16°58'04"	1395.02	413.13	208.09	N84°28'25"W	411.62
C2(R)	16°58'04"	1395.00	413.12	208.08	N84°27'15"W	411.61

LINE TABLE		
LINE	BEARING	DISTANCE
L1(C)	N06°46'25"E	35.00
L2(C)	S83°13'35"E	60.00
L3(C)	S06°46'25"W	35.00
L4(C)	N83°13'35"W	60.00
L5(M)	S00°04'51"W	1298.22
L5(R)	S00°04'52"W	1298.32
L5(R1)	S00°04'52"W	1298.34
L6(C)	N87°27'23"E	75.08
L6(R)	N87°26'32"E	75.08
L7(C)	S04°20'38"W	538.78
L7(R)	S04°20'58"W	539.12
L8(M)	S86°55'56"W	73.66
L8(R)	S87°03'45"W	73.55
L9(C)	S87°26'31"W	15.01
L9(R)	S87°26'32"W	15.02
L10(C)	N00°04'51"E	239.97
L10(R)	N00°04'52"E	240.00
L11(C)	S83°13'35"E	5.74
L12(C)	S00°43'40"W	329.25

## REFERENCES

(R) WARRANTY DEED, DOCUMENT  
2008-0179280

(R1) RECORD OF SURVEY, ACCORDING  
TO BOOK 1132 OF MAPS, PAGE 32,  
RECORDS OF MARICOPA COUNTY,  
ARIZONA.

## MONUMENT TABLE

- (1) FOUND PK NAIL IN PAVEMENT.
- (2) FOUND 1/2" REBAR, DAMAGED,  
BENT NORTHEAST.
- (3) FOUND PK NAIL IN CONCRETE,  
W/TAG LS 31020.
- (4) FOUND ADOT BRASS CAP IN  
CONCRETE.
- (5) FOUND 1/2" IRON BAR, W/TAG LS  
22285.
- (6) FOUND 1/2" REBAR, DAMAGED,  
BENT NORTHWEST.

## LEGEND

- (R) RECORD BEARING OR DISTANCE
- (M) MEASURED BEARING OR DISTANCE
- (C) CALCULATED BEARING OR DISTANCE
- ⊙ BRASS CAP AS DESCRIBED
- FOUND MONUMENT AS DESCRIBED

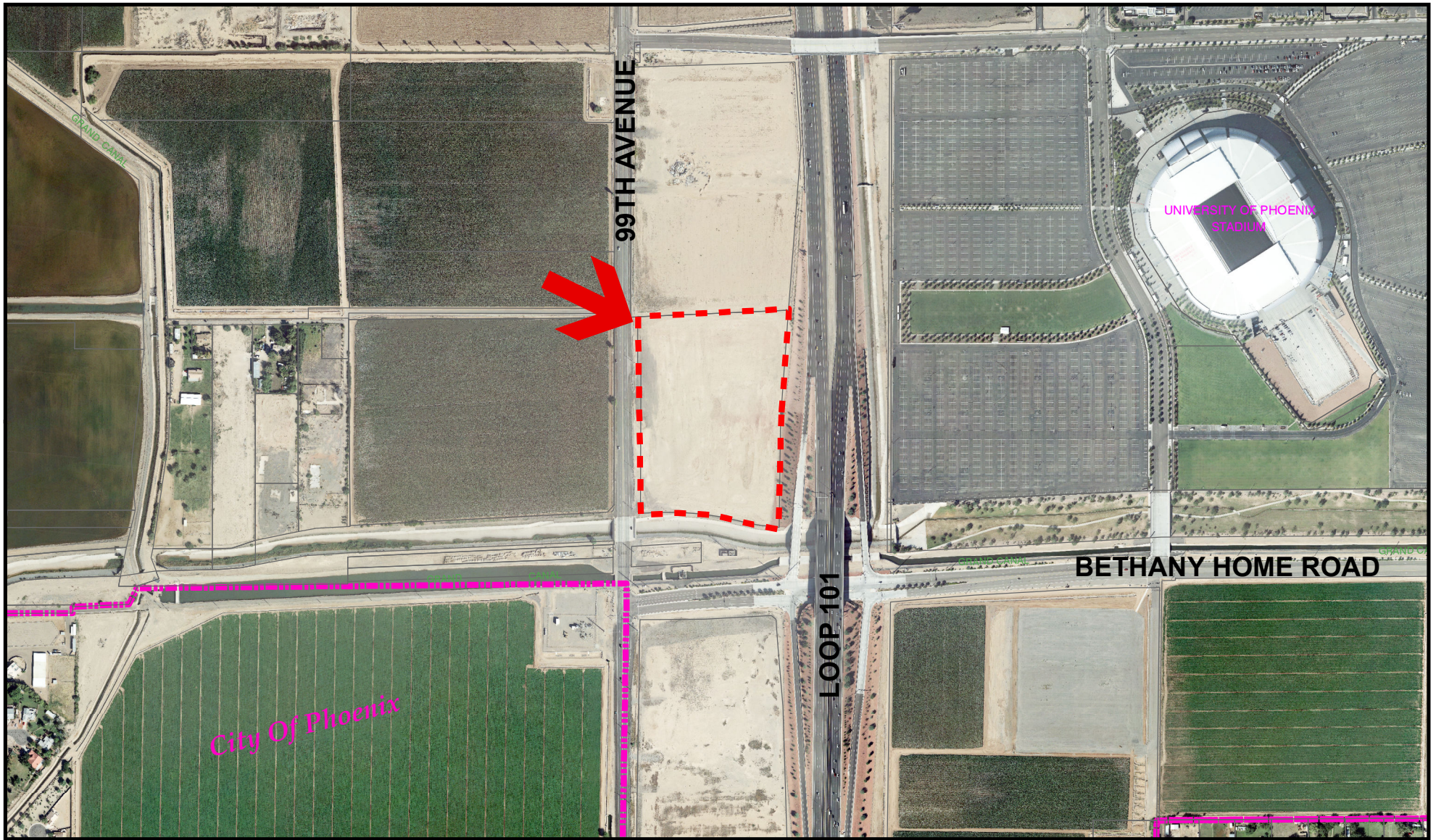


*Jimmy W. Springer*  
**Expires 12/31/2014**

EXHIBIT A1  
AGUA FRIA SOUTH NO. 2  
SOUTH SIGN NO. 2  
PAGE 3 OF 3

THUNDERBIRD SURVEYING LLC  
6911 EAST THUNDERBIRD ROAD  
SCOTTSDALE, ARIZONA 85254  
PHONE (480) 629-4399





**LOCATION:**  
9802 W. BETHANY HOME ROAD

**REQUEST:**  
LICENSE AGREEMENT WITH  
LAMAR OUTDOOR



Aerial Date: November 2012



**EXHIBIT "B" - CONDUIT AREA  
9802 W. BETHANY HOME ROAD**

**SOUTH SIGN NO 2 ELECTRICAL**

THAT PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 2 NORTH, RANGE 1 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A MARICOPA COUNTY HIGHWAY DEPARTMENT (MCHD) BRASS CAP, MARKING THE SOUTHWEST CORNER OF SAID SECTION 9, WHICH BEARS SOUTH 00 DEGREES 04 MINUTES 51 SECONDS WEST 2596.64 FEET (MEASURED) SOUTH 00 DEGREES 04 MINUTES 52 SECONDS WEST 2596.65 FEET (RECORD) FROM A MCHD BRASS CAP MARKING THE WEST QUARTER CORNER OF SAID SECTION 9;

THENCE ALONG THE WEST LINE OF SAID SECTION 9, NORTH 00 DEGREES 04 MINUTES 51 SECONDS EAST 605.82 FEET;

THENCE SOUTH 89 DEGREES 55 MINUTES 09 SECONDS EAST, A DISTANCE OF 90.00 FEET TO THE EAST RIGHT-OF-WAY OF 99<sup>TH</sup> AVENUE AND THE POINT OF BEGINNING;

THENCE ALONG THE CENTERLINE OF A TEN FOOT (10') WIDE ELECTRICAL EASEMENT, FIVE FEET EACH SIDE OF THE CENTERLINE DESCRIBED HEREIN, SOUTH 89 DEGREES 55 MINUTES 09 SECONDS EAST, A DISTANCE OF 619.51 FEET TO THE POINT OF TERMINIUS.

CONTAINING 6,195 SQUARE FEET, MORE OR LESS.

AGUA FRIA SOUTH NO 2 ELECTRICAL  
EXHIBIT A3  
PAGE 1 OF 2





# MARYLAND AVENUE

WEST 1/4 CORNER SECTION 9  
T 2 N, R 1 E, G&SRB&M  
FOUND MCHD BRASS CAP FLUSH



LINE TABLE		
LINE	BEARING	DISTANCE
L1(C)	S89°55'09"E	90.00

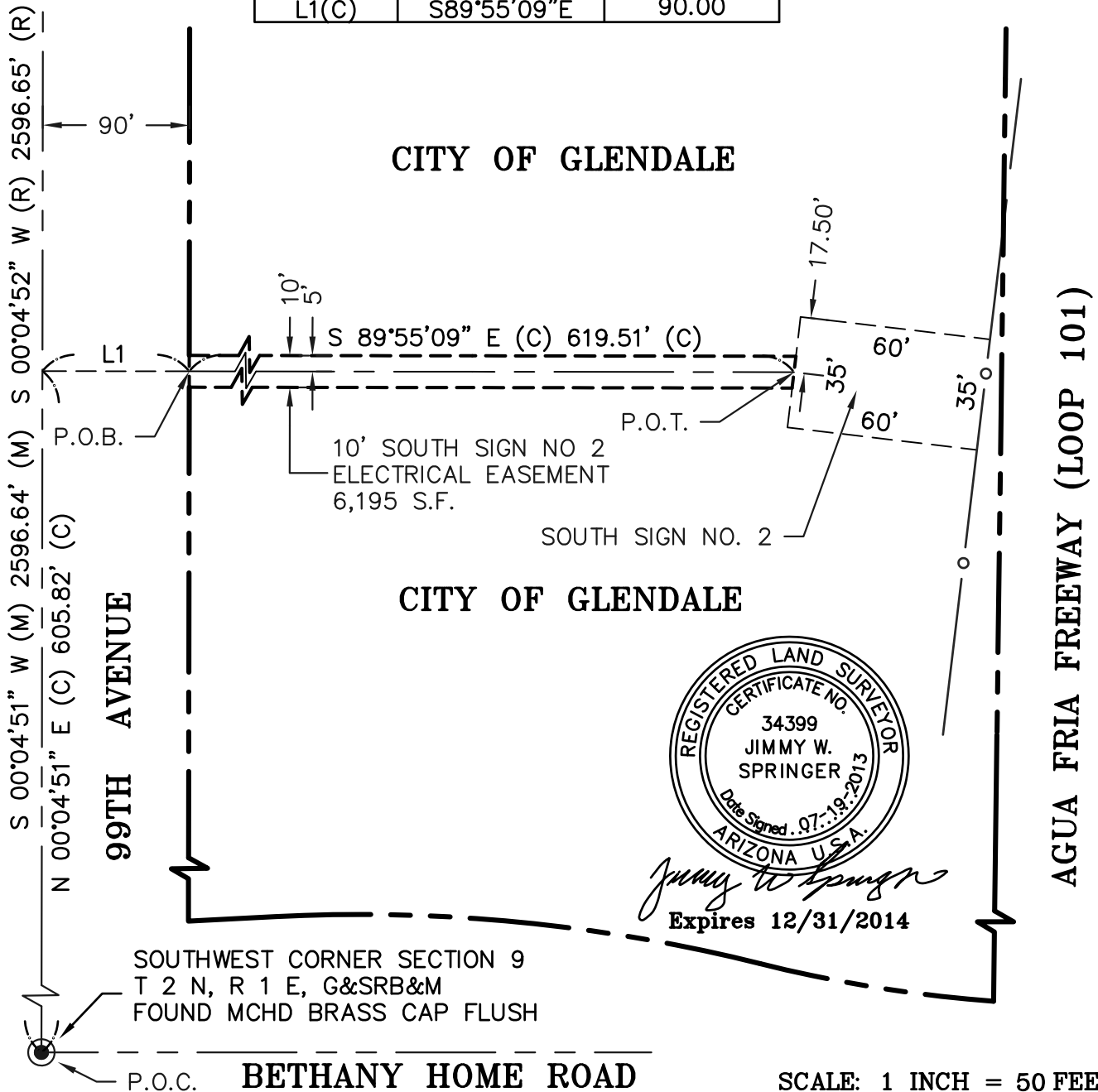


EXHIBIT A3  
AGUA FRIA SOUTH NO. 2  
SOUTH SIGN NO. 2 ELECTRICAL  
PAGE 2 OF 2

THUNDERBIRD SURVEYING LLC  
6911 EAST THUNDERBIRD ROAD  
SCOTTSDALE, ARIZONA 85254  
PHONE (480) 629-4399

SOUTH SIGN NO 2 ACCESS

THAT PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 2 NORTH, RANGE 1 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A MARICOPA COUNTY HIGHWAY DEPARTMENT (MCHD) BRASS CAP, MARKING THE SOUTHWEST CORNER OF SAID SECTION 9, WHICH BEARS SOUTH 00 DEGREES 04 MINUTES 51 SECONDS WEST 2596.64 FEET (MEASURED) SOUTH 00 DEGREES 04 MINUTES 52 SECONDS WEST 2596.65 FEET (RECORD) FROM A MCHD BRASS CAP MARKING THE WEST QUARTER CORNER OF SAID SECTION 9;

THENCE ALONG THE WEST LINE OF SAID SECTION 9, NORTH 00 DEGREES 04 MINUTES 51 SECONDS EAST 910.69 FEET;

THENCE SOUTH 89 DEGREES 55 MINUTES 09 SECONDS EAST, A DISTANCE OF 90.00 FEET TO THE EAST RIGHT-OF-WAY OF 99<sup>TH</sup> AVENUE AND THE POINT OF BEGINNING;

THENCE ALONG THE CENTERLINE OF A TWENTY FOOT (20') WIDE ACCESS EASEMENT, TEN FEET EACH SIDE OF THE CENTERLINE DESCRIBED HEREIN, SOUTH 85 DEGREES 39 MINUTES 03 SECONDS EAST, A DISTANCE OF 557.09 FEET TO A TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 100.00 FEET;

THENCE ALONG SAID CURVE WITH A CENTRAL ANGLE OF 92 DEGREES 25 MINUTE 28 SECONDS, AN ARC DISTANCE OF 161.31 FEET;

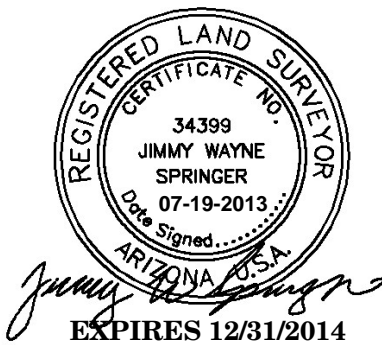
THENCE SOUTH 06 DEGREES 46 MINUTES 25 SECONDS WEST, A DISTANCE OF 136.75 FEET TO THE POINT OF TERMINIUS.

CONTAINING 17,103 SQUARE FEET, MORE OR LESS.

AGUA FRIA SOUTH NO 2 ACCESS

EXHIBIT A2

PAGE 1 OF 2



# MARYLAND AVENUE

WEST 1/4 CORNER SECTION 9  
T 2 N, R 1 E, G&SRB&M  
FOUND MCHD BRASS CAP FLUSH

CITY  
OF  
GLENDALE

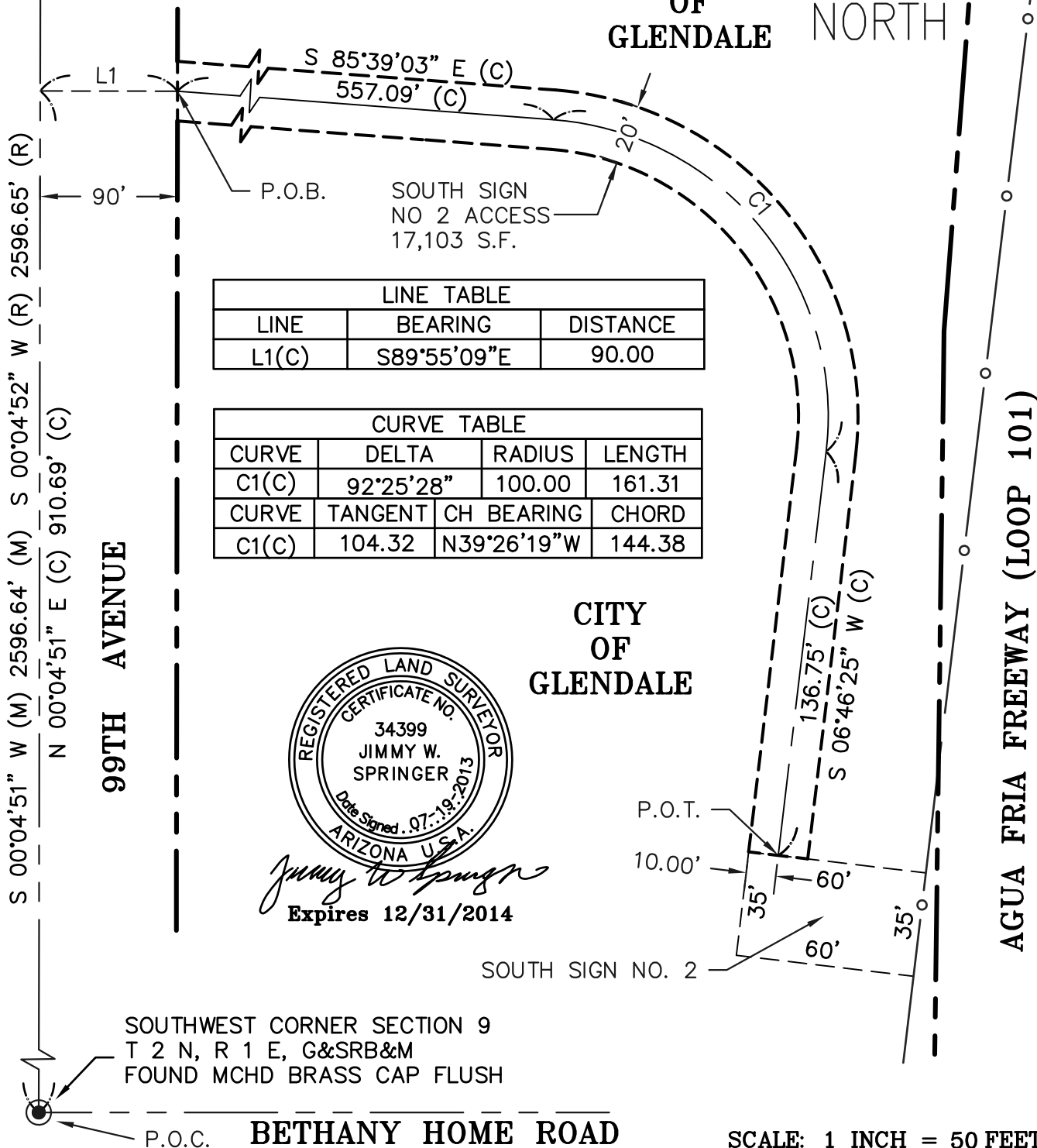


EXHIBIT A2  
AGUA FRIA SOUTH NO. 2  
SOUTH ACCESS NO. 2  
PAGE 2 OF 2

THUNDERBIRD SURVEYING LLC  
6911 EAST THUNDERBIRD ROAD  
SCOTTSDALE, ARIZONA 85254  
PHONE (480) 629-4399

**EXHIBIT "C" - DESIGN CONCEPT  
9802 W. BETHANY HOME ROAD**



## EXHIBIT D

### Corporate Parent Guarantee

In order to induce City to enter into the Digital Billboard Placement License Agreement (the “License”) by and between the City of Glendale, an Arizona municipal corporation (“City”) and LAMAR CENTRAL OUTDOOR, L.L.C., a Delaware limited liability company (“Lamar”), LAMAR ADVERTISING COMPANY, INC., a public Delaware corporation (“Parent”), as the owner of greater than fifty one percent (51%) of the voting and equity interests in Lamar, and as the managing member of Lamar, hereby unconditionally guarantees the prompt and complete performance of and compliance with all covenants, obligations and duties of Lamar arising under or relating to the License.

1. Parent’s obligations pursuant to this paragraph are primary and not secondary, and City need not seek satisfaction of any breach from Lamar before seeking satisfaction from Parent, which waives any notice of acceptance of this Guaranty.
2. 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 License shall apply.
3. In addition, for the City benefit and as consideration for the License, Parent hereby makes the same representations and warranties as to Parent as those made by Lamar in the License, except that Parent represents that it is a corporation duly formed and validly existing under the laws of the State of Delaware.
4. Notices given to Parent shall be delivered and deemed received in the same manner as set forth in the Notice section of the License. Parent acknowledges that it has received a copy of the License.
5. This Guaranty shall continue in full force and effect until all obligations of Lamar under the License have been paid or performed in full.
6. Parent agrees that its obligations 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 License;
  - b. any failure, omission or delay on the part of City to conform or comply with any term of the License;
  - c. any waiver, compromise, release, settlement or extension of time of performance or observance of any of the obligations or agreements contained in the License;
  - 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 Lamar, Parent, or any other guarantor of Lamar’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 Lamar, Parent, or any other guarantor of Lamar’s obligations into or with any person, or any sale, lease or transfer of any of the assets of Lamar, Parent or any other guarantor of Lamar’s obligations to any other person; or
  - f. any change in the ownership of the capital stock or equity ownership of Lamar, Parent, or any other guarantor of Lamar’s obligations or any change in the relationship between Lamar, Parent, or any other guarantor of the License obligations, or any termination of

7. Parent waives any defense arising by reason of any disability of Lamar or by reason of the cessation, dissolution, or non-existence of Lamar, from any cause whatsoever,
8. Lamar waives all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Guaranty.

LAMAR ADVERTISING COMPANY, INC.,  
a Delaware corporation

Date: \_\_\_\_\_

LAMAR CENTRAL OUTDOOR, L.L.C., a  
Delaware limited liability company

My Commission Expires:



## Legislation Description

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**File #: 14-126, Version: 1**

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**ANNEXATION APPLICATION AN-173: SABRE BUSINESS PARK (PUBLIC HEARING REQUIRED)**

Staff Contact: Jon M. Froke, AICP, Planning Director

**Purpose and Recommended Action**

This is a request for City Council to conduct a public hearing on the blank annexation petition for Annexation Area No. 173 (AN-173) as required by Arizona State Statute 9-471. The annexation is approximately 147 acres in size, and is located on the east side of State Route 303 and both sides of Bethany Home Road.

**Background**

This annexation request involves 147 acres owned by two property owners. The property is presently farmed. The property will be developed as an industrial park in the future.

The area is designated Luke Compatible Land Use (LCLU) on the General Plan. The zoning district which implements the Luke Compatible Land Use designation is M-1 (Light Industrial). The property is zoned RU-43 (Rural Residential) in Maricopa County. After annexation, the city applies the most compatible Glendale zoning district to a newly annexed property. The most compatible Glendale zoning district is A-1 (Agricultural). This process will occur simultaneously with the annexation.

Simultaneous with this annexation request, staff is processing a rezoning request which will rezone the property to M-1 (Light Industrial). This rezoning request will be brought forward to Council after the annexation is completed.

The proposed annexation is within the noise contours of Luke Air Force Base. Future development will comply with all state statutes and city zoning ordinance provisions for development in the vicinity of a military airport. The property is not within a floodplain or floodway. As part of the development of the property, all drainage and storm water retention requirements of the city will be met.

**Analysis**

Staff recommends that this area be annexed to allow future growth and employment opportunities for Glendale. This request will implement Council direction to consider annexation requests anywhere within the Municipal Planning Area (MPA).

The Arizona League of Cities and Towns defines annexation as the process by which a city or town may assume jurisdiction over unincorporated territory adjacent to its boundaries.

As required by state statute, the blank petition was filed with the Maricopa County Recorder on August 13,

2014. State statute requires that the City Council public hearing on the blank petition be held within the last 10 days of the 30 day waiting period after the blank petition is filed, thus the public hearing must occur during this 10 day window.

Per past Council direction, Glendale will not provide water and sewer service west of 115<sup>th</sup> Avenue. Viable private companies will provide water and sewer services for any annexed area located beyond the city's existing service area including this property. The property is presently within the water service area of Adaman Mutual Water Service Company.

The property is not within the certificated area of any sewer provider, and the property owners are members of the Loop 303 Property Owners Group, working on a sewer solution with EPCOR, a private sewer provider, to establish a certificated sewer service area with a dedicated sewer service provider, so that sewer service can be established at the time of development.

Following the public hearing on the blank annexation, the next step in the City's approval process is that staff would bring an ordinance before the City Council for consideration. If the ordinance is approved, staff would bring forward a rezoning request for City Council's consideration. A fiscal impact study would be provided at the time the ordinance is brought before City Council.

#### **Previous Related Council Action**

At Council Workshop on June 3, 2008, there was discussion on the MPA. Council provided direction that provision of water and sewer services to the geographic area located west of 115<sup>th</sup> Avenue would be paid for by property owners in this area with no impact on existing Glendale water and sewer customers elsewhere in the city. This position was reaffirmed at Council Workshop on August 21, 2012.

Council approved a memorandum of understanding on March 9, 2010 that would permit Global Water Resources, a private sewer company, to provide sewer services in the Loop 303 Corridor.

On October 2, 2012, staff made a formal presentation to the Council concerning the Loop 303 Corridor.

On October 23, 2012, Council adopted Resolution 4624 which authorized the City of Glendale to enter into a Pre-Annexation Development Agreement (PADA) and an agreement for Future Wastewater and Recycled Services Agreement (Wastewater Agreement). The PADA was between the city and participating landowners within the Loop 303 Corridor Group, while the Wastewater Agreement was between the city and Global Water Resources.

On September 24, 2013 Council approved the assignment of the agreements, including the Wastewater Agreement from Global Water Resources to EPCOR Water, one of the existing private water and sewer providers within the MPA. This action allows EPCOR to be the water and sewer provider for much of this area.

At the January 24, 2014 City Council Workshop staff provided an update on the Annexation Policy and the PADA. Council noted that staff should continue as they have been doing and look at annexations as they come in.



At the August 5, 2014 City Council Workshop staff provided an update on the Annexation Policy.

### **Community Benefit/Public Involvement**

Glendale 2025, the City's General Plan, includes specific goals addressing the need for growth management. Annexation is a tool that can be used by the city to direct and manage growth. The Loop 303 Corridor is an opportunity to develop an employment base in this portion of Glendale. Annexation will bring a large area for future rail served industrial development into the corporate limits of the city, rather than having new development under Maricopa County jurisdiction. Job creation, employment opportunities, and private sector investment will be realized in the short and long term in this area as it develops for commercial and industrial uses.

Annexation requires any future development meet the Glendale General Plan requirements as well as all other development standards for the city, rather than Maricopa County. These improvements may include road improvements as required by the Transportation Department.

Annexation will implement Council direction to annex land located within the Loop 303 Corridor. The annexation would ensure city review of all development for compatibility with the mission of Luke Air Force Base.

Once annexed, the city is required to provide services. On undeveloped sites, the city has the opportunity to work with the applicant at the time of zoning to best plan for the provision of city services.

OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL  
ELECTRONIC RECORDING  
20140532948,08/13/2014 12:46,  
AP303BETHANY-7-1-1--,N

When recorded, mail to:  
City Clerk, City of Glendale  
5850 West Glendale Avenue  
Glendale, Arizona 85301

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**ANNEXATION PETITION  
OF  
THE CITY OF GLENDALE**

**A Portion of Sections 12 and 13 of Township 2 North, Range 2  
West of the Gila and Salt River Base and Meridian,  
Maricopa County, Arizona,**

Northeast Corner of State Route 303 and Bethany Home Road Annexation

Blank Petition Recorded on: August 13, 2014

**TO THE HONORABLE MAYOR AND COUNCIL OF THE CITY OF  
GLENDALE, ARIZONA:**

**We, the undersigned, the owners of one-half or more in value of the real and personal property and more than one-half of the persons owning real and personal property that would be subject to taxation by the City of Glendale in the event of annexation within the territory proposed to be annexed, which is hereafter described, said territory being contiguous to the corporate limits of the City of Glendale, with the exterior boundaries of the territory proposed to be annexed shown on the legal description attached hereto marked Exhibit "A" and made a part of, and map attached hereto, marked Exhibit "B" and made a part hereof, request the City of Glendale to annex the following described territory, provided that the requirements of Arizona Revised Statutes Section 9-471, and amendments thereto are fully observed.**

<b>DATE</b>	<b>SIGNATURE OF OWNER</b>	<b>LOT, BLOCK, SUBDIVISION OR ADDRESS</b>

## Exhibit "A"

A portion of the southeast quarter of Section 12, Township 2 North, Range 2 West of the Gila and Salt River Meridian, Maricopa County, Arizona, being more particularly described as follows:

Commencing at the south quarter corner of said Section 12, monumented by a Maricopa County aluminum cap in pothole, from which the southeast corner of said Section 12, monumented by a 2003 Maricopa County aluminum cap in hand hole stamped "LS 29891" bears as a basis of bearing South 89 degrees 30 minutes 14 seconds East, 2,633.08 feet;

Thence along said south line of said Section 12, South 89 degrees 30 minutes 14 seconds East, 612.58 feet;

Thence departing said south line, North 00 degrees 29 minutes 46 seconds East, 33.00 feet to the north line of the south 33.00 feet of said southeast quarter and the Point of Beginning;

Thence departing said north line, along the new right-of-way line of State Route 303L, as shown on the Final R/W Plans for Arizona Department of Transportation Project No. 303-A(209)N, North 69 degrees, 14 minutes, 25 seconds West, 170.35 feet;

Thence North 86 degrees 14 minutes 06 seconds West, 271.84 feet;

Thence North 12 degrees 13 minutes 58 seconds West, 150.04 feet;

Thence North 00 degrees 07 minutes 02 seconds East, 146.14 feet;

Thence North 02 degrees 01 minutes 02 seconds West, 1009.52 feet;

Thence North 04 degrees 00 minutes 09 seconds East, 866.57 feet;

Thence North 00 degrees 58 minutes 09 seconds East, 350.37 feet;

Thence South 89 degrees 01 minutes 51 seconds East, 150.00 feet;

Thence North 00 degrees 58 minutes 09 seconds East, 38.88 feet to the east-west mid-section line of said Section 12;

Thence departing said new right-of-way line, along said east-west mid-section line, South 89 degrees 44 minutes 53 seconds East, 990.98 feet to the northeast corner of the northwest quarter of the southeast quarter of said Section 12;

Thence departing said east-west mid-section line, along the east line of said northwest quarter of the southeast quarter of Section 12, South 00 degrees 08 minutes 47 seconds West, 1332.88 feet to the southeast corner of said northwest quarter of the southeast quarter of Section 12, said corner also being the northwest corner of the southeast quarter of the southeast quarter of said Section 12;

Thence departing said east line, along the north line of said southeast quarter of the southeast quarter of Section 12, South 89 degrees 37 minutes 33 seconds East, 1,284.20 feet to the west line of the east 33.00 feet of said southeast quarter of the southeast quarter of Section 12;

Thence departing said north line, along said west line, South 00 degrees 10 minutes 32 seconds West, 1,302.61 feet to the north line of the south 33.00 feet of the southeast quarter of said section 12;

Thence departing said west line, along said north line, North 89 degrees 30 minutes 14 seconds West, 1,987.31 feet to the Point of Beginning;

And that portion of the following described property, in the Southwest quarter of the Northeast quarter Section 13, Township 2 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

Commencing from a Maricopa County aluminum cap in pot hole marking the North quarter corner of said Section 13, being North 89 degrees 30 minutes 14 seconds West, 2,633.08 feet from a 2003 Maricopa County aluminum cap in hand hole stamped "LS29891" marking the Northeast corner of said section 13;

Thence along the north-south mid-section line of said Section 13, South 00 degrees 15 minutes 39 seconds West, 1323.13 feet;

Thence South 89 degrees 31 minutes 45 seconds East 100.76 feet, to Point of Beginning;

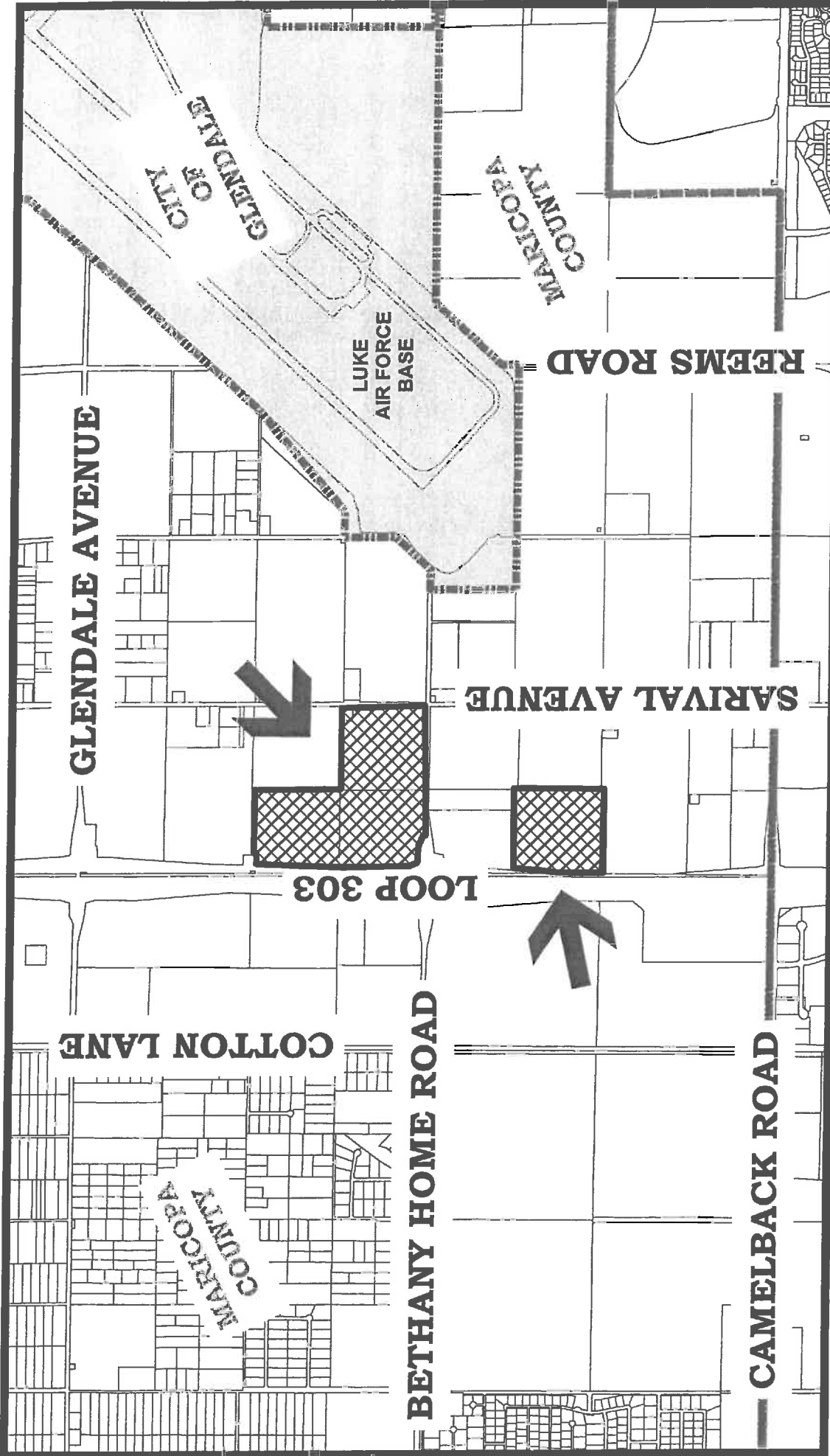
Thence South 89 degrees 31 minutes 45 seconds East, 1216.47 feet;

Thence South 00 degrees 13 minutes 19 seconds West, 1322.55 feet;

Thence North 89 degrees 33 minutes 15 seconds West, 1270.12 feet;

Thence along the new right-of-way line of State Route 303L, North 00 degrees 15 minutes 39 degrees East, 670.80 feet;

Thence North 04 degrees 53 minutes 15 seconds East, 654.09 feet to Point of Beginning.



# EXHIBIT "B"

**CASE NO. AN-173**

**PROPOSED ANNEXATION OF APPROXIMATELY 147 ACRES  
AT THE NORTHEAST CORNER OF STATE ROUTE 303 AND BETHANY HOME ROAD.**



- Glendale City Boundaries
- City of Glendale
- Proposed Annexation





## CITY OF GLENDALE

### ANNEXATION AREA NO.173 [AN-173]

### CERTIFICATION OF MAP

I, \_\_\_\_\_, Mayor of the City of Glendale, Arizona, do hereby certify that the foregoing map is a true and correct map of the territory annexed under and by virtue of the petition of the real and personal property owners in the said territory and by Ordinance No. \_\_\_\_\_, annexing the territory described in Ordinance No. \_\_\_\_\_ and as shown on said map as a part of the territory to be included within the corporate limits of the City of Glendale, Arizona.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

AFFIDAVIT

STATE OF ARIZONA       )  
                                      ) SS.  
County of Maricopa       )

ANNEXATION AREA NO. 173

THOMAS RITZ, being first duly sworn, upon oath deposes and says:

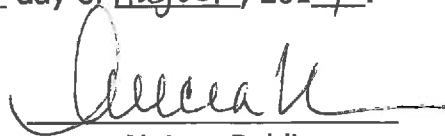
1. I am a Senior Planner for the City of Glendale, Arizona. I am preparing this affidavit based on information in the files of the City.
2. No part of the area shown on the attached map and described in the attached annexation petition and legal description, as proposed to be annexed into the City of Glendale, to the best of the City of Glendale's information, knowledge and belief, is already subject to an earlier filing for annexation by any other municipality.
3. This affidavit has been prepared to comply with the requirements of A.R.S. 9-471(A) (6).

FURTHER YOUR AFFIANT SAYETH NOT



\_\_\_\_\_  
THOMAS RITZ

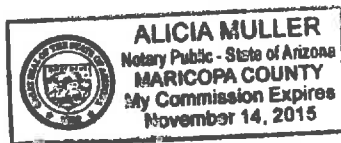
SUBSCRIBED AND SWORN to before me this 13 day of August, 2014.



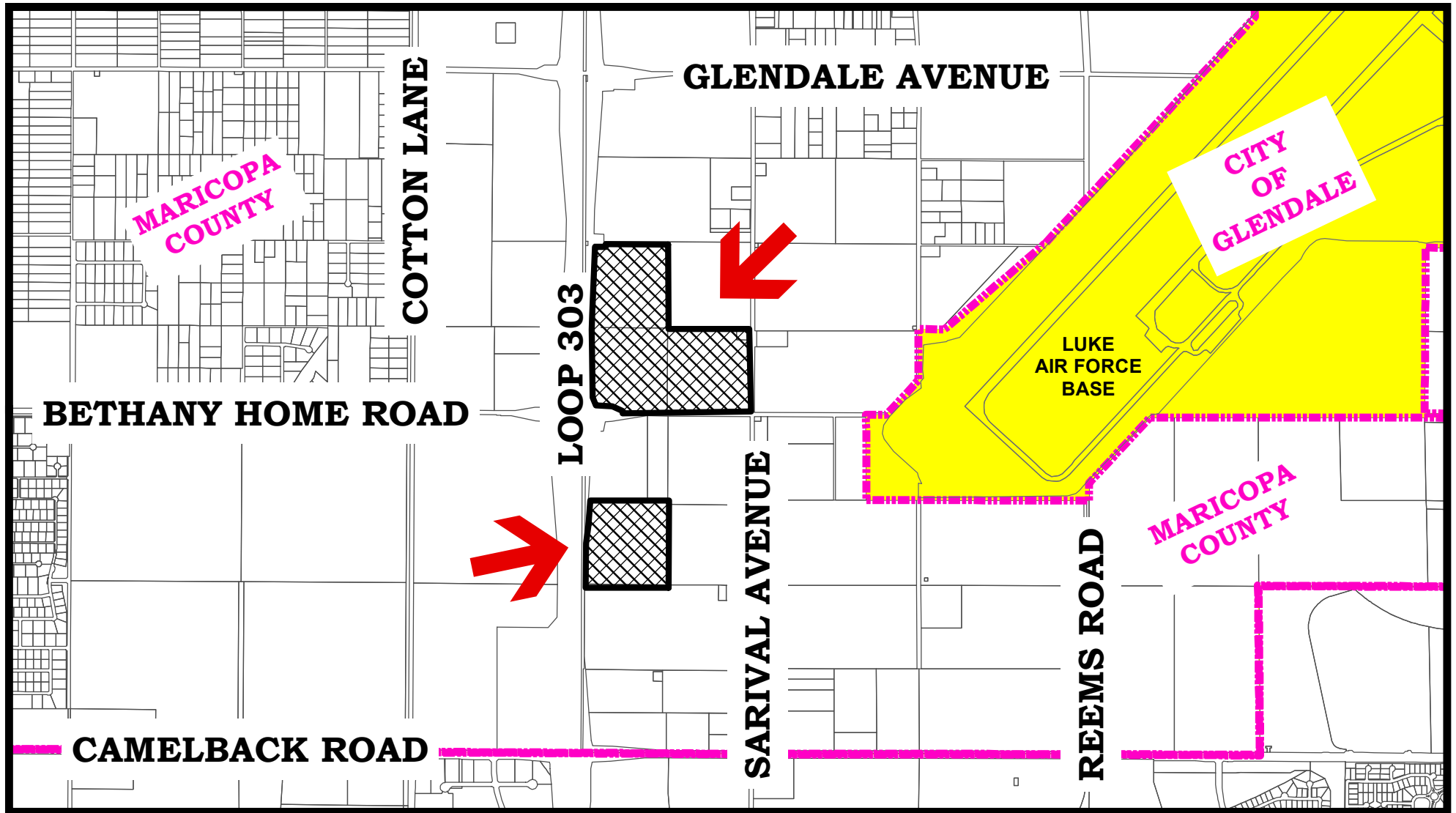
\_\_\_\_\_  
Notary Public

My Commission Expires:

November 14, 2015







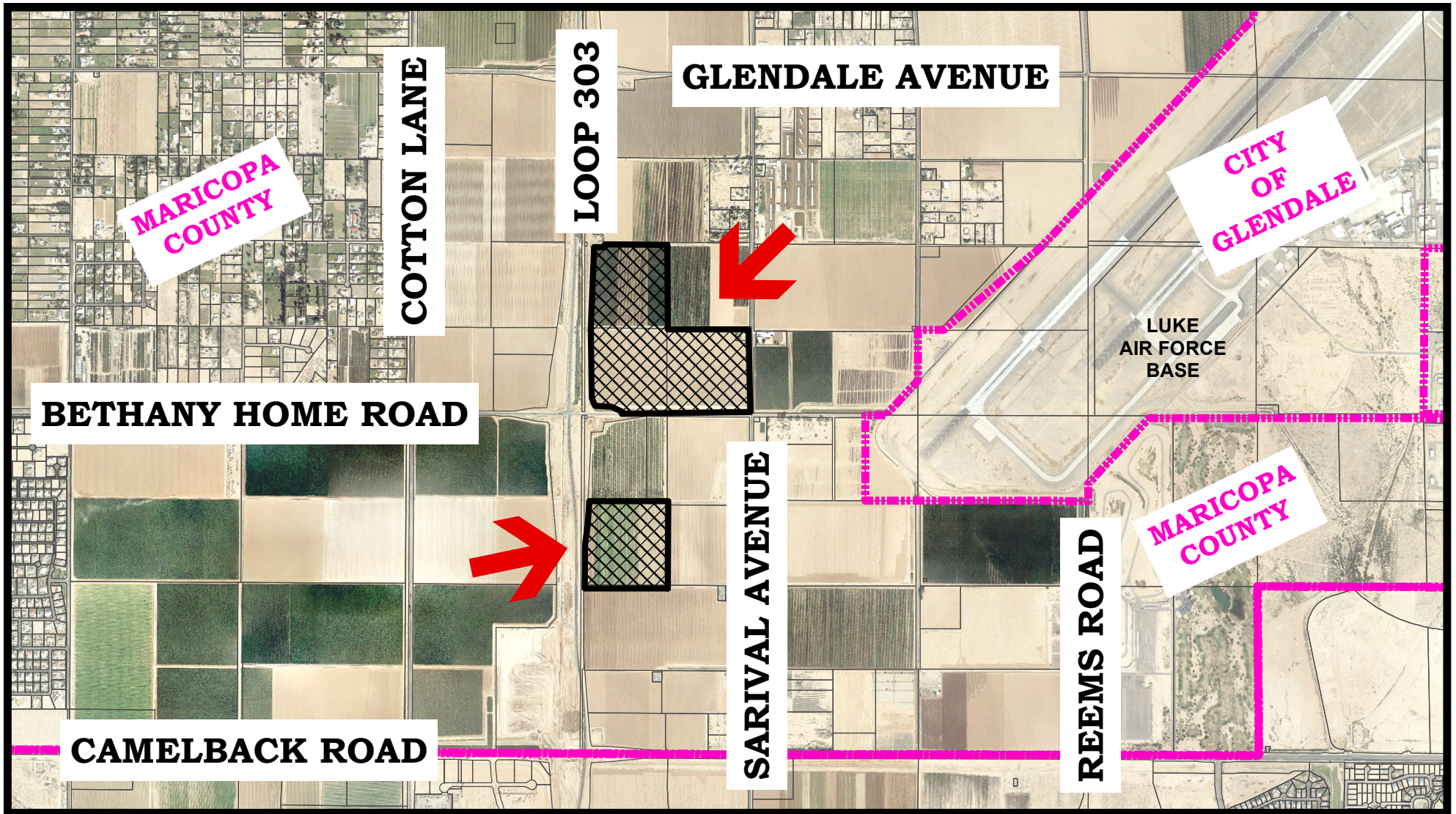
## CASE NO. AN-173

PROPOSED ANNEXATION OF APPROXIMATELY 147 ACRES  
AT THE NORTHEAST CORNER OF STATE ROUTE 303 AND BETHANY HOME ROAD.



- Glendale City Boundaries
- City of Glendale
- Proposed Annexation





## CASE NO. AN-173

PROPOSED ANNEXATION OF APPROXIMATELY 147 ACRES  
AT THE NORTHEAST CORNER OF STATE ROUTE 303 AND BETHANY HOME ROAD.



- Glendale City Boundaries
- Proposed Annexation







## Legislation Description

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**File #: 14-033, Version: 1**

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### **AUTHORIZATION TO AMEND THE LAND LEASE WITH VALLEY AVIATION SERVICES, LLC**

Staff Contact: Jack Friedline, Interim 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 amend a lease with Valley Aviation Services, LLC (VAS). The lease amendment includes a five-year extension option that will maximize the allowable lease term, provide improvements to the property by VAS and create the portioning of the entire lease into 10 equal areas for the purpose of hangar association condominiumization agreements and other future development.

### **Background**

On January 28, 1986, the city entered into an 18.998-acre Airport land lease agreement with a general contractor for aircraft storage development. The lease term was for 25 years with two additional 10-year options. The contractor divided the leasehold into 10 sections and built four aircraft hangar buildings that provide 101 nested T-hangars, and four shaded tie-down buildings (shades). Two sections were never developed, as the contractor encountered financial difficulties after the initial buildout of hangars and shades.

The lease was acquired by Great American Federal Savings Association through foreclosure and was then acquired and assigned to the Resolution Trust Corporation. At auction, Smith Enterprises purchased the lease from the Resolution Trust Corporation on May 29, 1992. Smith Enterprises then assigned the lease to VAS on January 1, 1999. The VAS hangars and shades then began business as Glendale Airport Hangars, and leased aircraft parking spaces to individuals on a month-to-month or annual basis.

In December 2013, the VAS managing partner met with city staff to propose a new hangar condominiumization proposal with a 10-year lease extension. Staff met several times with VAS partners and completed a lease amendment for a five-year extension. While VAS requested a longer term, Federal Aviation Administration (FAA) regulations require a 50-year limitation on lease terms involving reversion of buildings such as hangars. The lease amendment identifies certain improvements VAS will make to the hangar buildings.

### **Analysis**

The proposal by VAS to condominiumize the hangars and extend the land lease to the maximum of 50 years was presented to the FAA who confirmed that the proposal would meet compliance guidelines, particularly with the facility improvements stipulated in the lease amendment. The lease amendment will not change the current revenue the Airport receives from the leased property, which totaled approximately \$143,000 in Fiscal Year 2013-14. In addition, the electrical improvements to the hangar buildings will enhance the

marketability of the hangar units and enhance the building value when the lease ends and the hangars become city property.

The lease amendment will now require the city to maintain the asphalt around the hangars. When the asphalt is repaired within the next five years, a 4.47% grant match of the total cost will be required, to be drawn from the city's GO Transportation Fund. Staff estimates this match will be approximately \$13,000. The benefit of the lease change is the city will have control of pavement maintenance and rehabilitation responsibilities, as stipulated in our federal grant assurances.

The VAS leasehold has had an average 10 percent occupancy rate for hangars and shades for the past several years. The proposal to condominiumize the hangars and attract developers to the remainder of the leasehold would likely increase the number of based aircraft and aircraft operations significantly, which would add revenue to the Airport with more tenant business activity. An increase in based aircraft and operations would help ensure funding of future FAA and Arizona Department of Transportation grant requests for Airport projects.

Through the lease amendment, VAS has agreed to release all existing and past claims against the city. The lease amendment promotes an opportunity for the city and VAS to enhance the economic viability of the Airport.

### **Previous Related Council Action**

On November 12, 1985, Council approved the lease agreement with Robert N. Ewing for the aircraft storage hangars and shaded tiedowns on the Airport.

### **Community Benefit/Public Involvement**

The Glendale Municipal Airport plays a major role in meeting the increased demand for aviation services in the West Valley and serves as a general aviation reliever airport for Phoenix Sky Harbor International Airport. The Valley Aviation Services lease amendment will provide the opportunity for an increase in the number of based aircraft, aircraft operations and overall business activity on the Airport. The Airport Administrator provides updates on this and other business development to the Aviation Advisory Commission during their monthly meetings.

### **Budget and Financial Impacts**

As previously mentioned, when the asphalt is repaired within the next five years, staff estimates the city's grant match will be approximately \$13,000.

ORDINANCE NO. 2903 NEW SERIES

AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF AN AMENDMENT TO THE LEASE AGREEMENT WITH VALLEY AVIATION SERVICES, L.L.P. OF APPROXIMATELY 18.998 ACRES LOCATED AT THE GLENDALE MUNICIPAL AIRPORT FOR AVIATION PURPOSES.

WHEREAS, the City is the owner of the Glendale Municipal Airport; and

WHEREAS, Valley Aviation Services, L.L.P. is the successor and current lessee of approximately 18.998 acres (827,540 sq. ft.) at the Glendale Municipal Airport; and

WHEREAS, the City desires to amend the lease with Valley Aviation Services, L.L.P.

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

SECTION 1. That the City Manager and the City Clerk are hereby authorized and directed to execute on behalf of the City of Glendale the Amendment to Lease Agreement with Valley Aviation Services, L.L.P. for approximately 18.998 acres located at the Glendale Municipal Airport for aviation purposes.

SECTION 2. That a copy of the Amendment to Lease Agreement with Valley Aviation Services, L.L.P. is now on file with the City Clerk of the City of Glendale.

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

\_\_\_\_\_  
M A Y O R

ATTEST:

\_\_\_\_\_  
City Clerk (SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

REVIEWED BY:

\_\_\_\_\_  
City Manager  
l\_valley aviation

When recorded, return to:

Baird, Williams & Greer  
6225 North 24<sup>th</sup> Street  
Suite 125  
Phoenix, Arizona 85016  
Attention: J. Ernest Baird, Esq.

### AMENDMENT TO LEASE AGREEMENT

This Amendment to Lease Agreement ("Amendment") is made and entered into effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between the City of Glendale, a municipal corporation of the State of Arizona ("Lessor" or "City") and Valley Aviation Services, L.L.P., an Arizona limited liability partnership ("Lessee") and is an amendment to that certain lease agreement dated January 28, 1986, by and between the City, as lessor, and Robert N. Ewing, General Contractor, Inc. and Robert N. Ewing and Amy L. Ewing pertaining to approximately 18.998 acres (827,540 sq. ft.) at the Glendale Municipal Airport (the "Lease").

### RECITALS

- A. Valley Aviation Services, L.L.P., an Arizona limited liability partnership, ("Lessee") is the successor and current lessee of the above described Lease. The Lease is currently scheduled to expire on January 27, 2031.
- B. The parties wish to amend the Lease as provided herein below in order to facilitate the marketing of the hangars, covered tie-downs /shades, and vacant apron areas, located on the leased premises, as demand warrants, to increase the number of planes based at the Glendale Municipal Airport, to increase the general business at the Airport and enhance its value as a contributor to the economic well-being of the City of Glendale.

Now, therefore, the Lease is amended as follows:

### AMENDMENTS

#### 1. Extension of Lease.

The term of the Lease is extended by five (5) years, and will terminate, unless previously terminated pursuant to the provisions of the Lease, on January 27, 2036. The area of the Lease (as depicted in Exhibit A) is occupied by four (4) aircraft storage hangar

buildings (the "Hangar Portion") 4 (four) tie-down/shade buildings (the "Shade Portion"), and two (2) vacant apron areas (the "Apron Portions"). As depicted in Exhibit A, each hangar building, shade building, or vacant apron area is referred to as a row ("Row").

2. Use of Premises.

Lessee, and Lessee's assigns and sublessors, are permitted to use the leasehold premises for any aeronautical related purpose allowed by the Airport Rules and Regulations and Minimum Operating Standards adopted by the City of Glendale.

- a. Subject to the Airport Rules and Regulations and Minimum Operating Standards as well as the City of Glendale's permitting process and all applicable federal, state and local building codes and regulations, Lessee and/or its successors in interest may make improvements to its hangars, such as additional electrical upgrades, drains, fire suppression systems (either installed or portable), as well as other necessary improvements. Further, Lessee may remove interior walls in order to create larger rental units, with either pull-through convenience or side-by-side configurations, all of which shall require permits from the City of Glendale.
- b. Lessee may use its unoccupied apron areas or acreage to park aircraft during special events, or otherwise, and may install tie downs for that purpose until such time as hangars are constructed on the available land.
- c. Upon written request from Lessor and no more than once per year, Lessee will allow temporary parking on any available space on the leasehold premises to accommodate so-called "mega-events" that may take place in or around the Phoenix metropolitan area. By way of example only, "mega-events" include but are not limited to the National Football League Super Bowl, the College Football Playoff championship or semifinal, or the Fiesta Bowl. Lessee and Lessor will develop a plan to accommodate such aircraft parking no later than thirty (30) days prior to a "mega-event," and such plan will include determinations regarding removing all parked aircraft from the leasehold premises within a reasonable time following the completion of a "mega-event." This obligation expires when Lessee's hangars are more than fifty-percent (50%) occupied for three (3) consecutive months.

3. Creation of Hangar Associations.

- a. Lessee may, in its sole discretion, elect to transfer its hangars by transferring its leasehold rights to third parties. Lessor agrees that Lessee may sell any and all of the individual hangars, tie-downs/shades, or Rows, by assigning to third parties subleases of each hangar, tie-downs/shades or Rows, and creating owners' associations and using covenants, conditions and restrictions pursuant to documents to be presented to and approved by the Lessor. In the event Lessee elects to transfer its hangars and tie-downs/shades and sell them, either individually, in groups, or by Row, no consent shall be required for the sale of individual hangars or tie-downs/shades or groups of hangars or tie-downs/shades, except in the case of where an entire Row is intended to be conveyed to a single entity, in which case consent is required as provided in b. and c. of this paragraph.
- b. In connection with its marketing of units, Lessee may create an owners' association, of which each hangar or tie-down/shade in the Row is represented (an "Association"). Such Associations will contractually assume the rights and obligations of Lessee under the Lease, including but not limited to a pro-rated obligation to pay rent to Lessor. All Associations are responsible for collecting rent from the individual hangar and tie-down/shade owners and making the ground lease payments to the City pertaining to its specific Row. The City will not have to collect rent from the individual owners, nor will any individual owners attempt to make payments directly to the City. Associations may consist of more than one Row, but no single Row will be comprised by more than one Association. The Lessee and its successors (including any Associations created pursuant to this paragraph) will collectively pay annual rent to the Lessor that is not less than the annual rent paid by Lessee at the time of the execution of this Amendment. Such annual rent will increase from time to time according to the provisions of the Lease and this Amendment.
- c. Except as provided in paragraph 3(b) above, for ground lease payments, upon assignment of all or part of Lessee's leasehold interest to a third party, including the sale of a hangar, group of hangars or Row of hangars, the City shall look to the new owner for performance under the Lease as it applies to the assigned hangars or ground and shall look to the assignee in enforcing all restrictions, duties and requirements imposed by applicable rules, regulations, or law. Once such a division of the leasehold interest is made by total or partial assignment, the City shall enforce these requirements only against the parcel that is out of compliance, and shall not attempt to forfeit the entire leased premises under the Lease. Lessee or its successor in interest shall provide the City with written notice and



continuing information concerning any portion of the leased premises that are conveyed to a third party in order to facilitate such enforcement by the City.

4. Improvements, Tear Down, Reconstruction, Construction of Additional Hangars and Facilities, Pavements.

- a. Within one (1) year of the effective date of this amendment, Lessee or Lessee's successors in interest, shall install electrical distribution upgrades to at least a 50-amp service per hangar with at least one (1) usage meter for each Row of hangars (but not any Row consisting of tie-down/shades or vacant apron areas). In the event such electrical distribution upgrades are not installed within one (1) year of the effective date of this amendment, the extension to the Lease term in paragraph 1 is rescinded.
- b. Lessee may remove existing hangars and replace them with new hangars, may remove shades and replace them with hangars, may construct hangars on currently vacant leasehold property, or may assign all or portions of the leasehold premises to third parties for that purpose subject to the reasonable consent of the City for the assignment as provided in paragraph 3 above. All such improvements to be constructed shall comply with the City's permitting and building code requirements, as well as any federal or state requirements. The City shall not unreasonably delay consideration and response to an application for approvals and permits. No response by the City within ninety (90) days of submittal of an application is considered unreasonable.
- c. As of the execution of this amendment, Lessor is responsible for all maintenance and repairs to the airport aprons, ramps, and taxi lanes. Such aprons, ramps, and taxi lanes are non-exclusive to Lessee and any of its successors (in accordance with paragraph II of the Lease) and Lessor, its agents, and any other parties may enter the aprons, ramps, and taxi lanes. The obligation to maintain the aprons, ramps and taxi lanes does not extend to maintenance or repair of any hangar or tie-down/shade floors. Lessee's obligations to pay rent are unmodified.

5. Plan of Development. Lessee shall, prior to implementing a development plan whenever the development plan changes in a material way, provide to Lessor a written plan of development for Lessor's review and comment. Any development

plan is subject to applicable local, state and federal law, including but not limited to city codes or Federal Aviation Administration regulations.

6. Consumer Price Index. The parties will calculate the adjustments to the annual lease payment(s) due pursuant to the Lease using the Phoenix-Mesa Consumer Price Index. All other methodology related to the computation of rent remains as described in paragraph IV(B) of the Lease and illustrated in Exhibit B.
7. Release. Except as provided in this paragraph 7, Lessee with the intention of binding itself, its successors, assigns, shareholders, directors, officers, employees and agents, ("Releasing Parties") releases and forever discharges Lessor and its respective councilmembers, representatives, owners, employees, spouses, agents, insurers, attorneys, assigns, successors, affiliated entities and subsidiaries ("Released Parties"), from any and all claims, causes of action, demands, any rights to recover damages, losses, costs, retentions, interests, attorneys' fees, judgments, executions, expenses and remuneration of any kind or nature whatsoever, either known or unknown, vested or contingent, which the Releasing Parties or any person claiming by, through or under them ever had, now has or may have against the Released Parties. Nothing in this paragraph 7 is deemed to release any claim, demand, damage, suit, cause of action, or liability arising out of a breach of the Lease between the Parties, as amended. It is expressly understood, acknowledged, and agreed that by reason of entering into this paragraph 7, neither the Releasing Parties nor the Released Parties admits, expressly or impliedly, any fact or liability of any type or nature with respect to any matter, whether or not referred to in the Lease, as amended, and neither the Releasing Parties nor the Released Parties has made any such admission. This paragraph 7 is entered into by way of compromise and settlement only.

Except as supplemented and amended by this Amendment, the Lease is hereby confirmed.

**[SIGNATURES ON FOLLOWING PAGE]**

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

City of Glendale,  
an Arizona municipal corporation

\_\_\_\_\_  
By: Brenda S. Fischer  
Its: City Manager  
ATTEST:

\_\_\_\_\_  
City Clerk (SEAL)

APPROVED AS TO FORM:

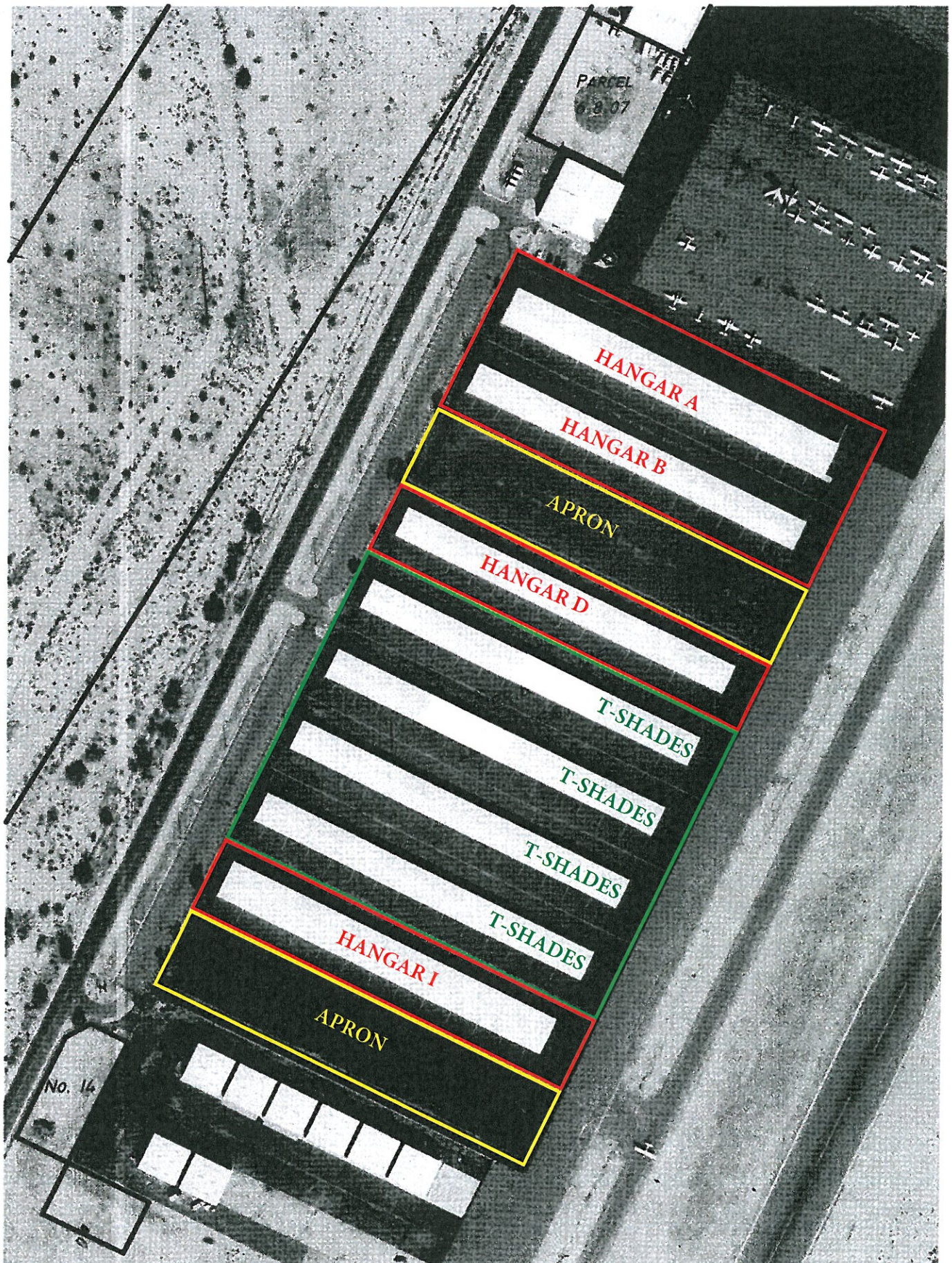
\_\_\_\_\_  
City Attorney

Valley Aviation Services, L.L.P.,  
An Arizona Limited Liability Partnership

By: George G. Van Houten  
George G. Van Houten  
Its: General Partner



EXHIBIT "A"





# EXHIBIT "B" VALLEY AVIATION SERVICES CPI 3-YEAR RATE CHANGE Consumer Price Index - All Urban Consumers 12-Month Percent Change

Series Id: CUUR00000SA0, CUUS00000SA0

Not Seasonally Adjusted

Area: U.S. city average

Item: All items

Base Period: 1982-84=100

Years: 2009 to 2013

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2010	2.6	2.1	2.3	2.2	2.0	1.1	1.2	1.1	1.1	1.2	1.1	1.5
2011	1.6	2.1	2.7	3.2	3.6	3.6	3.6	3.8	3.9	3.5	3.4	3.0
2012	2.9	2.9	2.7	2.3	1.7	1.7	1.4	1.7	2.0	2.2	1.8	1.7
2013	1.6	2.0	1.5	1.1	1.4	1.8						

20.2 1.68 11,340.65  
 35.4 2.95 x 6.63  
 24.0 2.00 751.89  
 6.63 % increase  
 11,340.65  
 751.89  
 12,092.54 new monthly rent

## Consumer Price Index - All Urban Consumers 12-Month Percent Change

Series Id: CUUSA429SA0

Not Seasonally Adjusted

Area: Phoenix-Mesa, AZ

Item: All items

Base Period: DECEMBER 2001=100

Years: 2009 to 2012

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
2010													0.6
2011													2.8
2012													2.2

Difference between two rates: 12,092.54 - 11,975.73 = 116.81  
 0.6 11,340.65  
 2.8 x 5.6  
 2.2 635.08  
 5.6 % increase  
 11,975.73 new monthly rent



## Legislation Description

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**File #:** 14-089, **Version:** 1

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### **RESOLUTION OF APPROVAL FOR THE SALE OF THE GLENDALE ARENA NAMING RIGHTS TO THE GILA RIVER INDIAN COMMUNITY**

Staff Contact: Tom Duensing, Director, Finance and Technology

#### **Purpose and Policy Guidance**

This is a request for City Council to waive reading beyond title and adopt a resolution of approval of the sale of the Glendale Arena naming rights by IceArizona Manager Co., LP to the Gila River Indian Community which would rename the Glendale Arena to the Gila River Arena.

#### **Background**

The Glendale Arena opened in December 2003. The intent of the Arena is to benefit the City by assuring a substantial, regular, and continuous utilization of the facility, provide additional employment opportunities within the City, increase the City's tax base, and stimulate development on properties in the vicinity of the Arena. In October 2006, Jobing.com purchased the naming rights and the facility become known as Jobing.com Arena.

Council approved the Professional Management Services and Arena Lease Agreement (Arena Agreement) with IceArizona Manager Co., LLC (Arena Manager) and IceArizona Hockey Co., LLC for the management and use of the City-owned Arena in July 2013. As part of the Arena Agreement, the Arena Manager has the sole and exclusive rights to sell and license all naming rights, subject to the approval of the City.

On August 13, 2014, the Coyotes announced the intent to rename the facility to Gila River Arena. Per the Arena Agreement, this renaming is subject to Glendale City Council approval.

#### **Analysis**

Section 8.6.4 of the Arena Agreement indicates that the sale of naming rights are subject to the approval of the City. Specifically this section of the Arena Agreement reads as follows:

##### ***8.6.4 Arena Facility Naming Rights.***

*(a) The Arena Manager, in consultation with the Team Owner, shall have the sole and exclusive rights to sell and license all Naming Rights to be effective during the Term; provided, however, that the sale or license of Naming Rights to the Arena (or any portion of the Arena Facility) shall be subject to the approval of the City, which shall not be unreasonably withheld; provided however, the City's rejection of (i) any entity with which the City is currently in litigation or litigation is overtly threatened, or (ii) any name incorporating the name of any other municipality in the State of Arizona, or (iii) any name likely to subject the City or its Council to ridicule or opprobrium, or involving any sexual, salacious or other generally objectionable term, shall be*

*deemed reasonable. The Arena Manager shall use commercially reasonable efforts to cause the name "Glendale" (for example: "XXXXXX ARENA in Glendale, Arizona") to be included in the use of name of the Arena Facility or a major component thereof; provided however, Arena Manager shall not be required to incur additional costs as a result of the inclusion of "Glendale" in the use of the Arena's Name.*

*(b) Naming Rights shall be sold or licensed only for money, and not be bartered or exchanged for any other form of consideration; provided, however, that payments for Naming Rights may be made in periodic equal installments during the term of any agreement under which Naming Rights are sold or licensed as may be agreed by the Arena Manager in its reasonable commercial discretion. The Arena Manager shall receive all revenue from the sale and licensing of Naming Rights, including any unpaid amount under the current Naming Rights Agreement and shall, within fifteen (15) days after receipt of any revenue received from the sale or licensing of Naming Rights for the Arena Facility, remit to the City an amount equal to (i) twenty percent (20%) of the revenue from the sale and/or license of Arena Naming Rights (excluding any revenue from the sale of Naming Rights for any other components of the Arena except as described in (ii) and (iii) herein); (ii) 100% of the revenue from the sale and/or license of Naming Rights that is attributable to signage for any new theater/stage/venue that is constructed by Arena Manager within the Arena Facility ("**Arena Theater**") ; and (iii) 100% of the revenue from the sale and/or license of Naming Rights that is attributable to signage for any stage for concert events.*

*(c) During such time that the Naming Rights have been sold or licensed under this Agreement, the Arena Manager shall use commercially reasonable efforts to cause "Glendale, Arizona" to be included in or after uses of the name of the Arena Facility.*

#### **Previous Related Council Action**

On July 2, 2013, Ordinance 2855 was adopted authorizing and directing the City Manager to enter into a Professional Management Services and Arena Lease Agreement with IceArizona Manager Co., LLC and IceArizona Hockey Co., LLC for the use of the city-owned Jobing.com Arena by the Phoenix Coyotes.

RESOLUTION NO. 4854 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF  
GLENDALE, MARICOPA COUNTY, ARIZONA,  
SUPPORTING THE SALE OF THE GLENDALE ARENA  
NAMING RIGHTS BY ICEARIZONA MANAGER CO., LP TO  
THE GILA RIVER INDIAN COMMUNITY AND APPROVING  
THE NAMING OF THE ARENA "GILA RIVER ARENA."

WHEREAS, the Glendale Arena opened in December 2003 for the purpose of benefiting the  
City; and

WHEREAS, in October 2006 the Arena became known as Jobing.com Arena; and

WHEREAS, the Professional Management Services and Arena Lease Agreement entered  
into July 2013 pursuant to Ordinance No. 2855 New Series and Resolution No. 4703 New Series,  
with IceArizona Manager Co. LLC and IceArizona Hockey Co., LLC, granted the Arena naming  
rights to the Arena Manager, in consultation with the Team Owner, and subject to the approval of  
the City; and

WHEREAS, the Arena Manager has requested the City's approval of the Arena to be named  
"Gila River Arena."

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

\_\_\_\_\_  
M A Y O R

ATTEST:

\_\_\_\_\_  
City Clerk (SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

REVIEWED BY:

\_\_\_\_\_  
City Manager

a\_arena\_naming rights



When recorded, return to:

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

**CITY CLERK  
ORIGINAL**

**C-8532  
07/08/2013**

**PROFESSIONAL MANAGEMENT SERVICES  
AND ARENA LEASE AGREEMENT**

by and among

**CITY OF GLENDALE,**

an Arizona municipal corporation (the "City")

and

**ICEARIZONA MANAGER CO., LLC,**

a Delaware limited liability company (the "Arena Manager")

and

**ICEARIZONA HOCKEY CO., LLC,**

a Delaware limited liability company (the "Team Owner")

Dated as of July 8, 2013

## TABLE OF CONTENTS

	Page
1. STATEMENT OF INTENT; DEFINITIONS; INTERPRETATION.....	4
1.1 STATEMENT OF INTENT.....	4
1.2 Definitions .....	5
1.3 Terms .....	21
2. PARTY REPRESENTATIVES .....	22
2.1 City Representative.....	22
2.2 Arena Manager Representative .....	22
2.3 Team Owner Representative .....	22
3. TERM.....	23
3.1 Binding Effect; Closing Date .....	23
3.2 Renewal .....	23
3.3 Early Termination by Arena Manager/Team Owner.....	23
4. ARENA MANAGER .....	24
4.1 Engagement of Arena Manager.....	24
4.2 Compliance with Management Performance Standards.....	24
5. DEMISE OF ARENA AND USE RIGHTS.....	25
5.1 Demise of Arena.....	25
5.2 Grant of Use Rights .....	26
5.3 Compliance with Law.....	26
6. LEASEHOLD INTEREST .....	26
6.1 Lease of Exclusive Team Spaces.....	26
6.2 Sublease of Exclusive Team Spaces.....	27
6.3 Further Sublease Agreements.....	28
6.4 Rights and Obligations of Team Owner as Subtenant.....	28
6.5 Team Sales.....	28
6.6 Base Rent.....	29
6.7 Taxes on Arena Manager's Interest.....	29
6.8 Quiet Enjoyment.....	29
6.9 City Access.....	29

## TABLE OF CONTENTS

(continued)

	Page
7. LICENSES.....	30
7.1 Arena Manager's Authority.....	30
7.2 Negotiations.....	30
7.3 Requirements.....	30
7.4 Execution and Performance.....	30
7.5 Existing Licenses.....	31
7.6 City Revenue Events.....	31
7.7 Enforcement of Licenses.....	32
7.8 Collection and Allocation of Revenues.....	32
8. ARENA MANAGEMENT.....	32
8.1 Management and Operations of the Arena Facility.....	32
8.2 Management and Operation of Parking.....	34
8.3 Event Requirements.....	35
8.4 Quality Standard.....	36
8.5 Concessions.....	37
8.6 Advertising and Media.....	39
8.7 Suites.....	42
8.8 Premium Seat Agreements.....	43
8.9 Scheduling.....	44
8.10 Arena Accounts.....	46
8.11 Impositions.....	47
8.12 Contracts and Agreements.....	47
8.13 Accounting Procedures.....	49
8.14 Annual Budget.....	50
8.15 Revisions and Reallocations.....	51
8.16 Financial Reports.....	52
8.17 Audits.....	53
8.18 Litigation.....	54
8.19 Use by the Team and Occurrence of Home Games.....	55

## TABLE OF CONTENTS

(continued)

	Page
9. CHARGES AND FEES.....	55
9.1 City Surcharge.....	55
9.2 Separate Statement of Fees on Tickets.....	57
10. MANAGEMENT FEE; TAXATION .....	58
10.1 Management Fee.....	58
10.2 Taxation of Transactions and Activities at Arena .....	58
11. CAPITAL IMPROVEMENTS.....	59
11.1 Arena Manager's Obligation .....	59
11.2 Renewal and Replacement Schedule.....	59
11.3 Funding of Capital Improvements.....	59
11.4 Budgeting for Capital Improvements .....	59
11.5 Renewal and Replacement Account.....	60
11.6 Emergencies.....	60
11.7 City Rights.....	61
11.8 Exclusive Team Spaces .....	61
11.9 Non-Budgeted Capital Improvements.....	62
11.10 Ownership of the Capital Improvements.....	62
11.11 Compliance with City Code; Procurement.....	62
11.12 Arena Manager or Team Owner-Caused Lien .....	62
12. LENDER PROTECTION.....	63
12.1 Team Owner Lenders' Protection.....	63
12.2 Arena Manager Lenders' Protection.....	65
12.3 Assignment of Arena Manager's Rights .....	65
12.4 Estoppel Certificates for City .....	67
12.5 Subordination to City Encumbrance.....	68
13. INSURANCE .....	68
13.1 Arena Manager Insurance.....	68
13.2 City Insurance.....	68
13.3 Team Owner Insurance.....	68
13.4 Waiver of Recovery.....	69

## TABLE OF CONTENTS

(continued)

	Page
13.5 Failure to Maintain Insurance.....	69
13.6 Notice.....	70
13.7 Provisions .....	70
13.8 Periodic Review and Adjustment .....	70
14. DAMAGE OR DESTRUCTION .....	70
14.1 Terms .....	70
14.2 Adequately Insured Damage .....	71
14.3 Insurance Deficiency and Termination.....	71
14.4 Damage or Destruction Near End of Term.....	73
14.5 Abatement of Certain Team Owner Obligations.....	73
15. EMINENT DOMAIN.....	73
15.1 Terms .....	73
15.2 Substantial Taking .....	73
15.3 Partial Taking .....	74
15.4 Partial Taking Near End of Term .....	75
15.5 Abatement of Certain Team Owner Obligations.....	75
16. REPRESENTATIONS, WARRANTIES AND COVENANTS .....	75
16.1 Arena Manager Representations and Warranties .....	75
16.2 Team Owner Representations and Warranties .....	76
16.3 City Representations and Warranties .....	77
16.4 Team Owner Covenant.....	79
16.5 City Covenants .....	79
16.6 Other Covenants of the Parties .....	79
17. DUE DILIGENCE; CONDITIONS TO CLOSING .....	80
17.1 Due Diligence.....	80
17.2 Conditions to Closing .....	80
18. CHALLENGE(S) .....	83
19. REMEDIES .....	84
19.1 Team Owner Remedies .....	84
19.2 Arena Manager Remedies .....	85

## TABLE OF CONTENTS

(continued)

	Page
19.3 City Remedies.....	86
19.4 Rights and Remedies are Cumulative.....	88
19.5 Costs, Expenses and Fees .....	88
19.6 Acceptance of Legal Process .....	88
20. INDEMNIFICATION .....	89
20.1 Arena Manager Indemnification of City .....	89
20.2 Team Owner Indemnification of City .....	89
20.3 City Indemnifications .....	89
21. DISPUTE RESOLUTION.....	89
21.1 Alternative Dispute Resolution—Mediation .....	89
21.2 Mediation Procedure.....	90
21.3 Equitable Litigation .....	90
22. ASSIGNMENT .....	91
22.1 Arena Manager Assignment .....	91
22.2 Team Owner Assignment .....	91
23. INTENTIONALLY DELETED .....	92
24. MISCELLANEOUS .....	92
24.1 Amendment; Waiver.....	92
24.2 Consents and Approvals .....	93
24.3 Additional Documents and Approval .....	93
24.4 Limited Severability .....	93
24.5 Binding Effect.....	93
24.6 Relationship of Parties.....	93
24.7 Notices .....	93
24.8 Applicable Law; Jurisdiction.....	95
24.9 Time is of the Essence .....	95
24.10 Antidiscrimination Clause .....	95
24.11 Counterparts.....	95
24.12 Entire Agreement: Conflict .....	95
24.13 Conflicts of Interest .....	96

## TABLE OF CONTENTS

(continued)

	<b>Page</b>
24.14 Saturday, Sunday or Holiday .....	96
24.15 Confidentiality of Proprietary Information.....	96
24.16 Attorneys' Fees .....	97
24.17 Force Majeure.....	97
24.18 Agreed Extensions .....	97
24.19 Survival.....	97
24.20 Third-Party Beneficiaries .....	97
24.21 Recordation.....	98
24.22 Provisions That Are Subject to Other Agreements .....	98
24.23 Immigration Law Compliance.....	98
24.24 Iran and Sudan Prohibitions .....	99

## PROFESSIONAL MANAGEMENT SERVICES AND ARENA LEASE AGREEMENT

**THIS PROFESSIONAL MANAGEMENT SERVICES AND ARENA LEASE AGREEMENT** (this "**Agreement**") is dated as of July 8, 2013 (the "**Effective Date**"), and is entered into by and among the City of Glendale, an Arizona municipal corporation (the "**City**"); IceArizona Manager Co., LLC, a Delaware limited liability company (the "**Arena Manager**"), and IceArizona Hockey Co., LLC, a Delaware limited liability company (the "**Team Owner**"). Each of City, Arena Manager and Team Owner may be referred to in this Agreement individually as a "**Party**," and collectively as the "**Parties**."

### RECITALS

As background to this Agreement, the Parties recite, state and acknowledge the following, each of which Recitals is fully incorporated into this Agreement and expressly made a material term and condition of this Agreement. The following Recitals shall constitute joint representation of the Parties, except where a statement or funding is specifically attributed to one Party:

A. The City is the owner of a sports and entertainment arena presently known as Jobing.com Arena (the "**Arena**") which has been the home to the Phoenix Coyotes (the "**Team**") National Hockey League ("**NHL**") club since the opening of the Arena on December 26, 2003.

B. The Arena Manager and Team Owner have represented to the City that, following the bankruptcy of a previous owner of the Team (the "**Previous Team Owner**"), and an affiliated entity that previously managed the Arena (the "**Previous Arena Manager**" and together with the Previous Team Owner, the "**Previous Owners**") certain assets of the Team, including the Team's NHL franchise (the "**Franchise**") and the Previous Team Owner's membership rights in the NHL, were acquired by Coyotes Newco, LLC, a Delaware limited liability company affiliated with the NHL ("**Coyotes Newco**") and certain rights with respect to certain assets of the Previous Arena Manager were acquired by Arena Newco, LLC, a Delaware limited liability company affiliated with the NHL ("**Arena Newco**"). However, neither Coyotes Newco nor Arena Newco assumed the obligations of the Previous Owners arising under that certain "Amended and Restated Arena Management, Use and Lease Agreement" dated November 29, 2001, by and among the City, the Previous Owners and certain other parties, filed with the Glendale City Clerk as Document No. C-4416 (the "**Former AMULA**"), and the Former AMULA has since been terminated by the City.

C. The City has informed the other Parties that, in the City's judgment, it has not waived any of its rights against the Previous Owners with respect to the Former AMULA, including the Previous Team Owner's covenant to cause the Team to play all of the Team's home games at the Arena in accordance with Section 9.5 of the Former AMULA.

D. The NHL has notified the City and all interested entities that, if the NHL franchise for the operation of the Team (the "**Franchise**") is not sold to a new ownership group that is committed to keeping the Team in Glendale, the NHL will allow the franchise to be sold



to a group that will be permitted to relocate the Team to another city. The NHL has also notified the City that it will not continue as the manager of the Arena.

E. The Arena Manager and Team Owner have further represented to the City as follows: (1) the Team Owner's parent entity, IceArizona AcquisitionCo. LLC, has negotiated an agreement with the entity that owns all the Coyotes Newco and Arena Newco (the "**NHL Purchase Agreement**") for the purchase of all of the membership interests in each of Coyotes Newco and Arena Newco; (2) substantially concurrently with the closing under the NHL Purchase Agreement, Coyotes Newco will be merged with the Team Owner, as a result of which the Team Owner will become a member of the NHL and will hold the Franchise for the operation of the Team as an NHL hockey team bearing the designation "Phoenix Coyotes" and thereafter the Team's designation will be changed to "Arizona Coyotes" as soon as possible pursuant to applicable NHL rules; (3) Team Owner accordingly is the only person that can assure the continued use of the Arena by a NHL hockey team; and (4) subsequent to their execution of this Agreement, Team Owner and Arena Manager, respectively, may be involved in (i) certain affiliated merger transactions with Coyotes Newco and Arena Newco, respectively, and (ii) transactions that involve converting the surviving entities into limited partnerships, with such transactions not requiring the consent of the City upon the assumption by such surviving entities of all obligations of Arena Manager and Team Owner in this Agreement, with such surviving entities thereafter being Arena Manager and Team Owner, respectively, for all purposes of this Agreement and the Non-Relocation Agreement.

F. Subject to the closing under the NHL Purchase Agreement, the City and the Team Owner desire that the Team will play all of its home games, commencing on the Closing Date and continuing for the term specified in this Agreement (together with any additional complete NHL hockey seasons as may occur during any extension of the Term pursuant to this Agreement), at the Arena subject to the terms and conditions set forth in this Agreement and the terms of the Non-Relocation Agreement, executed contemporaneously with this Agreement.

G. The Team Owner has an exclusive agreement with Arena Manager requiring the Team Owner to maintain the Team in Glendale for a period of years coincident with the Term of this Agreement, and requiring Arena Manager to make the Arena available to the Team as its "home" ice facility for the purpose of playing the Team's exhibition, regular and post-season games, guaranteeing the City the additional revenue associated with having an NHL hockey team use the Arena as its home ice facility.

H. As a result of the use of the Arena by the Team as its "home" ice facility, the City will realize the direct financial benefits associated with having, at a minimum, forty-one (41) home hockey games at the Arena, which benefits the City would not receive if any Person other than the Arena Manager (as a result of its express, contractual obligations to the Team Owner) was to be selected to manage the Arena for the City.

I. The City, acting through its City Council and Staff, has determined that the services to be provided by Arena Manager pursuant to this Agreement are "professional services." This Agreement requires the Arena Manager to provide professional management and consulting services, in accordance with the City's Code of Ordinances (Part II, Chapter 2, Article V, Division 2, Section 2-138).

J. The City, acting through its City Council and Staff, further has determined that Arena Manager is the only Person that has the ability not only to provide the professional management and consulting services and expertise required by the City in connection with the City's ownership of the Arena, but to also assure the continued use of the Arena by the Team. As such, engagement of Arena Manager through a sole source procurement is appropriate as no other potential vendor could provide the same services, benefits and assurances to the City. Such a sole source procurement is authorized by the City's Code of Ordinances (Part II, Chapter 2, Article V, Division 2, Section 2-148), if the procurement provisions of the Code of Ordinances are applicable to this Agreement notwithstanding the professional nature of the management and consulting services to be provided to the City by Arena Manager pursuant to this Agreement. The City's determination in this regard is supported by the written findings of the City Procurement Officer and City Manager as provided in the City's Code of Ordinances and in City Manager Directive No. 30 (3-19-01).

K. The City, acting through its City Council and Staff, further has determined that the professional management and consulting services and other benefits (including but not limited to the maintenance of the Franchise in the City and playing at the Arena, the periodic use of the Arena for City Sponsored Events, the opportunity to receive additional revenues as a result of City Revenue Sources and the City's avoidance of certain losses anticipated if no NHL team played its home games at the Arena) to be received by the City as a result of its entering into this Agreement and Arena Manager's and Team Owner's performance pursuant to and under the terms and conditions of this Agreement, have a value in excess of, equivalent to or, at a minimum, not grossly disproportionate to, the benefits conferred upon or provided to Arena Manager and Team Owner by the City pursuant to this Agreement.

L. The City has determined that it is in the best interest of the City and its residents to provide for the lease, professional management, and use of the Arena Facility, and to provide for professional consulting services to be provided by the Arena Manager, in the manner described in this Agreement. Such lease, professional management, management consultation and use will benefit the City and its residents by providing a substantial, regular, and continuing utilization of the Arena Facility by the Team Owner, by providing additional employment opportunities within the City, by increasing the City's tax base, by stimulating additional development on properties in the vicinity of the Arena Facility, and otherwise.

M. The respective obligations of each of the Arena Manager and the Team Owner under this Agreement and the Related Agreements, including the Team Owner's obligation to play all of the Team's home games at the Arena Facility, are unique and are important to the development and operation of properties in the vicinity of the Arena Facility and to the well-being of the City and its residents generally, and, with respect to the Team Owner, are personal to the Team Owner and may be discharged only by the Team Owner.

N. In reliance upon and in consideration of the City's obligations under this Agreement and the Related Agreements, subject to the closing of the NHL Purchase Agreement on or before August 5, 2013, (i) the Arena Manager will require the Team Owner to agree, pursuant to the Non-Relocation Agreement, to play all of its home games at the Arena Facility, and (ii) the Arena Manager and the Team Owner have undertaken their respective obligations under this Agreement and the Related Agreements.

## AGREEMENT

**NOW THEREFORE**, in consideration of the premises, covenants, agreements and obligations contained herein, the Parties enter into this Agreement and agree as follows:

### **1. STATEMENT OF INTENT; DEFINITIONS; INTERPRETATION.**

#### **1.1 STATEMENT OF INTENT**

The Parties agree that the following Statement of Intent reflects the objectives and certain of the principal economic terms of this Agreement which are more particularly described in this Agreement. In the event of any inconsistency between a specific provision of this Agreement and this Statement of Intent, the provisions of the specific provisions of this Agreement shall control. Unless the context otherwise requires, capitalized terms used herein shall have the meanings ascribed to such terms in Section 1.2 of this Agreement, or otherwise parenthetically in this Agreement.

1.1.1 Subject to an early termination right exercisable after five (5) years (and on specified terms and conditions) and only upon the occurrence of substantial post-Closing Date operating losses (see Section 3.3) and payment to the City of the amounts specified in Section 3.3. of this Agreement, the Team shall play all of its Home Games in the Arena Facility (see Section 8.3.1(a)).

1.1.2 With respect to the Arena Facility and Arena Parking Area, professional management and consulting services shall be provided by the Arena Manager, the Arena Sub-Manager or their approved subcontractors (see Section 8.1 and 8.2).

1.1.3 Except for capital expenditures to maintain and improve the Arena (see Section 11.3), all Operating Expenses shall be the responsibility of, and shall be paid by the Arena Manager (see Section 8.1).

1.1.4 The City shall pay the Management Fee to the Arena Manager during the Term (see Section 10.1).

1.1.5 The City shall receive (or, where noted, share in) certain anticipated revenues. The revenues to be received by the City include revenues derived from the following sources and activities:

(a) A City Surcharge of not less than \$3.00 on each Qualified Ticket for a Hockey Event at the Arena Facility, with increases in the City Surcharge based upon attendance (see Section 9.1.2(a)(i));

(b) A City Surcharge of \$5.00 on each qualified Ticket for a non-Hockey event (see Section 9.1.2(b));

(c) A Supplemental Surcharge of \$1.50 per Qualified Ticket throughout the Term applicable to all Events to be placed in an escrow account which may be drawn upon by City to fund certain revenue deficits on a Fiscal Year basis (see Section 9.1.3);

(d) Parking revenues of \$10 per car for each Hockey Event (above a \$20,000 per-Event base payable to the Arena Manager) (see Section 8.2.1(e));

(e) Seventy five percent (75%) of parking revenues of \$15 per car for each non-Hockey Event ) (see Section 8.2.1(e));

(f) Rent-free use of the Arena for certain City Sponsored Events and Community Events (see Sections 8.9.2 and 8.9.3);

(g) All revenues (net only of Event-specific operating expenses) for City Sponsored Events and Community Events (see Sections 8.9.2(e) and 8.9.3(c));

(h) Twenty percent (20%) of all income earned by Arena Manager or Team Owner, on or after the Effective Date, from the past and/or future sale of Arena Naming Rights (see Section 8.6.4(b)(i));

(i) All income received from the sale of naming rights for a new, smaller stage/theatre venue that may be constructed and used within the bowl (main seating area) of the Arena Facility (see Section 8.6.4(b)(ii)); and

(j) Annual fixed rent to be paid to the City in connection with the use by the Arena Manager and/or Team Owner of the use of the Arena Facility and Arena Parking Area in an initial amount of \$500,000 per year (see Section 6.6.1).

The foregoing revenues are in addition to sales/transaction privilege taxes received on admissions, concessions, construction, etc., relating to the Arena, as well as additional sales/transaction privilege taxes and "bed taxes" generated by Westgate area businesses or other businesses within the City and enhanced employment opportunities.

**1.2 Definitions.** As used in this Agreement, the following terms shall have the meanings indicated unless a different meaning is provided parenthetically or otherwise in the Agreement, or unless the context otherwise requires:

**"Account Records"** means accurate records relating to the management and operation of the Arena, including records establishing all amounts received by the Arena Manager (whether as Operating Revenues or otherwise) and all amounts paid by the Arena Manager (whether as Operating Expenses or otherwise) and records relating to the Arena Accounts, including any records maintained by any Arena Sub-Manager and including records of all sums payable and/or paid to the City.

**"Advertising"** means all permanent and temporary announcements, acknowledgments, banners, liquid electronic displays, monument and other signs, show bills and other audio or visual commercial messages of any nature displayed, announced, delivered (for example, by Wi-Fi or similar transmissions to phones, tablets or other portable devices) or otherwise presented at, in or on the Arena or any portion thereof, provided that Advertising shall not include (a) any Advertising contained in the broadcasts, reproductions or transmittals of Team games in any medium or any Advertising of the broadcasts, reproductions or transmittals of Team games in any medium, (b) the Naming Rights, (c) Arena announcements during the course of Team

games, or (d) the City's program advertisements. For clarity, (i) under this Agreement Advertising does not include any advertising relating to the Team or the events occurring in the Arena Facility which are published, displayed, announced or transmitted in any medium other than by display, announcement or presentation at, in or on the Arena or any portion thereof and (ii) any Advertising content transmitted on computers or other electronic communication devices owned by the Team Owner or Arena Manager shall not, by virtue of the fact that such computers or devices are Personal Property, be deemed to Advertising "displayed, announced or otherwise presented at, in or on the Arena Facility or any portion thereof" for purposes of this definition.

**"Advertising Agreement"** means any contract or agreement entered into by or on behalf of the Arena Manager for Advertising.

**"Affiliate"** of a specified Person means a Person who (a) controls, is directly or indirectly controlled by, or is under common control with, the specified Person; (b) owns, directly or indirectly, 10% or more of the equity interests of the specified Person; (c) is a general partner (if the specified Person is a partnership), managing member or manager (if the specified Person is a limited liability company), officer, director, non-financial institution trustee or fiduciary of the specified Person or of any Person described in clause (a) or (b) above; or (d) is a member of the Immediate Family (e.g., any spouse, son, daughter or parent of any individual (by blood, adoption or by marriage), or any trust, estate, partnership, joint venture, limited liability company, corporation, or any other legal entity directly or indirectly controlled by such spouse, son, daughter or parent) of the specified Person or the Person described in clauses (a) through (c) above. A Person shall be deemed to control another Person for the purposes of this definition if the first Person possesses, directly or indirectly, the power to direct, or cause the direction of, the management and policies of the second Person, whether through the ownership of voting securities, equitable interests, common directors, trustees or officers, by contract or otherwise.

**"Annual Budget"** means an annual budget (prepared by the Arena Manager in the form provided in Exhibit "G" and submitted to the City and the Team Owner for their reasonable approval as stated herein) for a given Fiscal Year or partial Fiscal Year, as applicable, projecting in reasonable detail for such Fiscal Year (i) the Operating Revenues and Operating Expenses estimated in good faith by the Arena Manager; (ii) expenditures for Capital Improvements estimated in good faith by the Arena Manager; (iii) cash flows and timing of cash flows estimated in good faith by the Arena Manager; (iv) projected revenues to be distributed to the City, and (v) such other amounts or information as may from time to time be reasonably required by the City within reasonable time limits while any Management Fee is payable hereunder.

**"Applicable Law"** means any law, statute, ordinance, rule, regulation, order or determination of any Governmental Authority, or any recorded restrictive covenant or deed restriction, affecting the Arena, including those applicable to environmental, zoning, building code, health and safety and other similar matters, as the same may be amended from time-to-time.

**"Arena"** means, collectively, the Arena Facility and Arena Parking Areas.

**"Arena Account"** means any one or more of the accounts described in Section 8.10.

**"Arena Facility"** shall mean the building in the City currently known as "Jobing.com Arena" and all foundations, structural elements, interior areas, all improvements, furnishings, fixtures and equipment (excluding all Personal Property and all furnishings and equipment owned by suite holders and temporary furnishings owned by Persons staging Events at the Arena) of whatever nature located therein or thereon and all exterior areas, including the plaza and other exterior areas adjacent to the Arena Facility, and located on Lot 9 of Westgate, and exclusively serving patrons attending Events at the Arena Facility, all as shown on Exhibit "A" and Exhibit "B" to this Agreement. The cooling plant serving the Arena is specifically included as part of the Arena Facility.

**"Arena Maintenance Standard"** means a standard of maintenance that, as of the time of application, meets or exceeds the quality of the maintenance of (i) the multi-purpose facility currently known as "US Airways Arena" in Phoenix, Arizona (to the extent that personal observations and/or records are available to the Parties for the purpose of determining the quality of maintenance; to the extent not available, any other comparable multi-purpose arena for which such records are available); or (ii) such other multi-purpose arena to which the Parties may from time to time, in their respective sole discretion, agree in writing. In the event of a conflict between the Management Performance Standards set forth on Exhibit "C" to this Agreement and any Arena Maintenance Standard, Exhibit "C" shall control.

**"Arena Manager Affiliate Contract"** means any contract or agreement relating to the Arena to which both the Arena Manager and an Affiliate of the Arena Manager or the Team Owner are parties, other than this Agreement, the Non-Relocation Agreement and the Related Agreements. For clarity, agreements on the contributions of capital by owners, allocations of distributions among owners, the allocations of internal rights and control among the managers and owners with respect to the Arena Manager or the Team Owner shall not be Arena Manager Affiliate Contracts, and no payments by Arena Manager pursuant to such agreements or contracts shall be deemed Operating Expenses.

**"Arena Manager Assignee"** shall have the meaning set forth in Section 12.3.

**"Arena Manager Default"** means the occurrence of any of the following events:

(a) If the Arena Manager fails to make any payment or distribution to be made by the Arena Manager hereunder at the time and in the manner required by this Agreement, and such failure is not cured within 30 days after the Arena Manager's receipt of notice of such failure from any other Party to this Agreement;

(b) If any representation or warranty made by the Arena Manager in this Agreement at any time proves to have been incorrect in any material respect as of the time made, and if the Arena Manager fails to cause such representation or warranty to become correct within 30 days after the Arena Manager's receipt of notice from any other Party to this Agreement that such representation or warranty was incorrect; provided, however, that if it is reasonably possible to cause such representation or warranty to become correct but it is not reasonably possible to cause such representation or warranty to become correct within such thirty-day period, then such cure period shall be for a period of time not to exceed 180 days so long as the Arena Manager (i) commences to cause such representation or warranty to become

correct within 30 days after the Arena Manager's receipt of such notice, and (ii) thereafter diligently continues to cause such representation or warranty to become correct; or

(c) If the Arena Manager materially breaches any covenant or provision of this Agreement, and such breach is not cured within 30 days after the Arena Manager's receipt from any other Party to this Agreement of notice of such breach; provided, however, that if it is reasonably possible to cure such breach but it is not reasonably possible to cure such breach within such thirty-day period, then such cure period shall be for a period of time not to exceed 180 days so long as the Arena Manager (i) commences to cure such breach within 30 days after the Arena Manager's receipt of such notice, and (ii) thereafter diligently continues to cure such breach.

**"Arena Manager Event"** means an Event other than a Hockey Event or a City Sponsored Event that the Arena Manager secures for the Arena.

**"Arena Manager Withdrawal"** means any of the following events:

(a) The Arena Manager resigns;

(b) The Arena Manager is dissolved;

(c) An Arena Manager Default or Team Owner Default exists under this Agreement or a Team Default exists under the Non-Relocation Agreement, and the City elects to secure a Replacement Arena Manager or the City elects to act as Replacement Arena Manager, subject to the Team Owner's first right to secure a Replacement Arena Manager as set forth under Section 19.3.3;

(d) The Arena Manager commences, or has commenced against it, any case, proceeding or other action under the United States Bankruptcy Code, or any other Applicable Law relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking (i) to have an order for relief entered with respect to the Arena Manager; (ii) to adjudicate the Arena Manager bankrupt or insolvent or seeking reorganization, winding up, liquidation, dissolution, discharge, composition, or other relief with respect to the Arena Manager or the debts of the Arena Manager; or (iii) the appointment of a receiver, trustee, custodian, or similar official for the Arena Manager and such action is not discharged within one-hundred twenty(120) days of having been filed; provided, however, such action shall not constitute an Arena Manager Withdrawal for so long as Arena Manager is paying the Base Rent and other sums required to be paid under this Agreement and is performing all of its other covenants, agreements, obligations, liabilities and duties under this Agreement; or

(e) The Arena Manager is determined by a court order to be insolvent; provided, however, such action shall not constitute an Arena Manager Withdrawal for so long as Arena Manager is paying the Base Rent and all other sums required to be paid under this Agreement and is performing all of its other covenants, agreements, obligations, liabilities and duties under this Agreement; provided however that the City does not waive any right or remedy with respect to any Arena Manager Default.

**"Arena Naming Rights"** means the right to name the building (and not any components thereof) in the City currently known as "Jobing.com Arena".

**"Arena Parking Area"** means the areas shown on Exhibit "A" and Exhibit "B" to this Agreement, which shall include no less than 5,500 parking spaces located within 2,640 feet of any point on the exterior of the Arena Facility which shall be used for parking of the vehicles of Arena patrons for each Event during the Term.

**"Arena Parking Area Revenue"** means as described in Section 8.2.1(e).

**"Arena Parking Rights"** means (i) the right to directly charge for parking in any space or area which is a part of the Arena Parking Area; (ii) the right to negotiate and enter into agreements for the sale or license of Parking Advertising the Arena Parking Area; and (iii) the right to negotiate and enter into agreements for the sale or license of Naming Rights in connection with all or part of that portion of the Arena Parking Area.

**"Arena Sub-Manager"** means a qualified arena manager acceptable to and approved by the City in its reasonable discretion, to whom the Arena Manager may, from time to time, delegate all or a portion of its duties and responsibilities under this Agreement.

**"Arena Theater"** means as defined in Section 8.6.4(b).

**"Business Day"** means any day other than a Saturday, a Sunday or a public or bank holiday or the equivalent for banks under the laws of the State of Arizona or observed by the City of Glendale. Use of the word "day", as opposed to "Business Day", means a calendar day.

**"Capital Improvements"** means any or all installations, alterations or improvements of or to, and all purchases of additional or replacement furniture, fixtures, machinery or equipment for, the Arena Facility, the depreciable life of which, according to GAAP, is in excess of one (1) year.

**"City Default"** means the occurrence of any of the following events:

(f) If the City fails to pay when due, for any reason, any amount payable by the City hereunder, including any portion of the Management Fee, and such failure is not cured within 30 days after the City's receipt of notice of such failure from any other Party to this Agreement;

(g) If any representation or warranty made by the City herein at any time proves to have been incorrect in any material respect as of the time made, and if the City fails to cause such representation or warranty to become correct within 30 days after the City's receipt of notice from any other Party to this Agreement that such representation or warranty was incorrect; provided, however, that if it is reasonably possible to cause such representation or warranty to become correct but it is not reasonably possible to cause such representation or warranty to become correct within such thirty-day period, then such cure period shall be for an unlimited period of time so long as the City (i) commences to cause such representation or warranty to become correct within 30 days after the City's receipt of such



notice, and (ii) thereafter diligently continues to cause such representation or warranty to become correct;

(h) If the City commences a proceeding under Chapter 9 of the United States Bankruptcy Code; or

(i) If the City materially breaches any covenant or provision of this Agreement, and such breach is not cured within 30 days after the City's receipt from any other Party to this Agreement of notice of such breach; provided, however, that if it is reasonably possible to cure such breach (excluding any failure to pay any portion of the Management Fees, which shall only be subject to subpart a. above) but it is not reasonably possible to cure such breach within such thirty-day period, then such cure period shall be for an unlimited period of time so long as the City (i) commences to cure such breach within 30 days after the City's receipt of such notice, and (ii) thereafter diligently continues to cure such breach.

**"City Revenue Event"** shall have the meaning set forth in Section 7.6.

**"City Revenue Sources"** means (i) the receipts from the City Surcharge, (ii) the receipts from the Supplemental Surcharge amounts to which City is entitled pursuant to the terms of this Agreement, (iii) the City's share of Arena Parking Area Revenue, (iv) the City's portion of revenues received by the Arena Manager with respect to the sale or license of Naming Rights pursuant to Section 8.6.4; and (v) revenues derived from City Sponsored Events.

**"City Sponsored Event"** shall mean a City Revenue Event or a Community Event.

**"City Sponsored Event Expenses"** means those expenses that are directly attributable to City Sponsored Events, *i.e.*, those that would not have been incurred but for the City Sponsored Events, including the cost and expense of utilities, insurance, cleaning, repairs and personnel, but not including rent or other charges relating to the use of the Arena Facilities. For clarity, only payments or other considerations to be made or provided by the Arena Manager that (i) are calculated solely on the basis of sales made or transactions completed during a City Sponsored Event directly relating to such City Sponsored Event or (ii) are payable solely because a given City Sponsored Event is held shall be "directly attributable" to such City Sponsored Event.

**"City Shortfall"** means as defined in Section 3.3.

**"City Surcharge"** shall have the meaning set forth in Section 9.1.

**"City Surcharge Account"** means an account established and maintained for the benefit of the City as one or more trust accounts that require the signature of only the City for withdrawals at a federally-insured institution(s) having offices in the State of Arizona for the deposit and disbursement of City Surcharge.

**"City's Knowledge"** means the actual knowledge of the City Manager, the Acting City Manager (if applicable), or the Glendale City Council as a whole.

**"Claim or Loss"** means any claim, cost damage, demand, judgment, award, expense, loss, obligation or other liability (including reasonable attorneys' fees), including those relating

to property, injury to or death of persons, loss of income and losses under workers' compensation laws and benefits.

**"Closing"** is the occurrence of the satisfaction or waiver of all conditions to closing set forth in Section 17.2, as evidenced by a written acknowledgement of all Parties.

**"Closing Date"** means the date of Closing.

**"Community Event"** means an Event at the Arena Facility (i) which is sponsored or co-sponsored by the City; (ii) which is conducted or presented as a service to the City, its residents, or a non-profit organization; or (iii) which does not feature performers or performances normally booked in arenas comparable to the Arena Facility; or (iv) which the financial benefits (if any) of which are received or distributed to the City or to a non-profit, civic or other community organization or to the City for community-oriented programs or purposes; and (v) which in all cases are reasonably approved by the Arena Manager.

**"Concessions"** means the sale, furnishing or renting of foods, beverages (including alcoholic beverages), apparel, souvenirs, programs (excluding program Advertising) or other goods or merchandise by a Person (other than the Team Owner at the Team Retail Stores) in, at, from or in connection with the operation of the Arena, whether sold, furnished or rented from shops, kiosks or by individual vendors circulating in or about the Arena, including any restaurant (whether open to the public or restricted to members thereof), club, membership dining room or other facility for the sale of food and beverages, and including sales to fill orders for any such items by any Person other than the Team Owner at the Arena Facility (whether received by mail, facsimile, telephone or other medium of communication).

**"Concessions Agreement"** means any agreement or contract for the right to engage in or conduct one or more Concessions.

**"Deficit Amount"** means as defined in Section 9.1.3.

**"Early Termination Date"** means as defined in Section 3.3.

**"Emergency"** means any condition or situation that presents an imminent and significant threat (or if not immediately acted upon will present an imminent and significant threat) to the health or safety of users of the Arena or to the structural integrity of the Arena Facility.

**"Event"** means any revenue or non-revenue producing sports, entertainment, cultural or civic event or other activity (including related event set-up and take-down) which is either (i) presented or held in the bowl (main seating) portion of the Arena Facility or any part thereof, or (ii) presented or held in any other portion of the Arena Facility in a manner that precludes the use of the bowl (main seating) portion of the Arena Facility for other events or activities; or (iii) held within any portion of the Arena and which involves a Fee activity, any form of entry (*i.e.*, ticket sales, admissions), the sale of goods, displays or gatherings (such as conventions, trade shows, etc.) even if they do not involve use of the bowl area. If such event or activity is presented in its entirety more than once during a given day, all such presentations during such day shall be deemed one Event. If such event or activity is presented in its entirety on more than one

consecutive day, each day on which such event or activity is presented shall be deemed a separate Event. For purposes of this paragraph, any event or activity that commences on a given day and is completed within the four hours immediately following the end of such day shall be deemed to have been presented in its entirety on the day such event or activity commenced.

**"Event of Default"** means a Team Owner Default, Arena Manager Default, or City Default and refers to an event that exists after the expiration of all applicable notice and cure periods and periods of Force Majeure.

**"Exclusive Arena Manager Revenues"** means revenues that are not Exclusive City Revenues or derived from City Revenue Sources, and that are (i) revenues from or in connection with Concessions at Hockey Events and, as applicable, other Events, (ii) revenues from or in connection with food and beverage services provided by Arena Manager at Hockey Events and, as applicable, other Events, (iii) revenues from or in connection with Naming Rights other than revenues to be distributed to the City pursuant to Section 8.6.4(b); (iv) revenues from or in connection with any Advertising, (v) Suite License Revenues and revenues from the licensing of Premium Seats, including any "premium," "premium fee," or "personal seat license fee", (vi) but are not Exclusive Team Revenues or Exclusive City Revenues.

**"Exclusive City Revenues"** means (i) all Impositions of the City, (ii) City Surcharge, (iii) the Supplemental Surcharge receipts to which City is entitled pursuant to the terms of this Agreement, and (iv) interest or other income derived from the investment of any of the foregoing.

**"Exclusive Team Revenues"** means all (i) Hockey Ticket Receipts (minus City Surcharge and Impositions); (ii) revenues from or in connection with the operation of Team Sales generated by Team Retail Stores; and (iii) sponsorship revenues and receipts, including television and radio broadcasting, promotional and other sponsorship fees received or collected in connection with the conduct of Hockey Events (excluding, for clarity, the Naming Rights); all of which shall be excluded from Operating Revenues.

**"Exclusive Team Spaces"** means the portions of the Arena Facility designed and constructed for the exclusive use by the Team Owner, including the Team locker room (the space in the Arena Facility designed and constructed for the exclusive use by the Team Owner as a home team locker room, including dressing, locker, shower, lounge, training, exercise and video coaching areas), the Team Owner's office, the Team's storage areas, and the Team Retail Stores.

**"Exculpatory Language"** means the following language:

[Insert name of exculpating Person] acknowledges and agrees that (i) this [insert title of contract or agreement] imposes no contractual obligation on the City of Glendale; (ii) in the event of a default under this [insert title of contract or agreement], of any kind or nature whatsoever, [insert name of exculpating Person] shall look solely to [insert name of the Arena Manager or the Team Owner, as applicable] at the time of the default for remedy or relief; and (iii) no elected official, officer, employee, agent, independent contractor or consultant of the City of Glendale shall be liable to [insert name of exculpating Person], or any

successor in interest to [insert name of exculpating Person], with respect to this [insert title of contract or agreement].

**"Fee Activity"** means any Event or other activity at the Arena Facility, the admission to which is controlled by a Ticket.

**"Fiscal Quarter"** means a three month period commencing on the first day of January, April, July or October, and ending on the last day of March, June, September or December, respectively.

**"Fiscal Year"** means a 12 month period commencing on July 1 and ending on June 30.

**"Force Majeure"** means any of the following that prohibits, materially interferes with or delays the occupancy of the Arena Facility or prohibits or materially interferes with the occupancy, operation or use of the Arena Facility or any material portion thereof or the performance of any applicable duty of a Party under this Agreement after the Effective Date: NHL Players strikes and labor disputes; lock-outs; acts of the public enemy; the enactment, imposition or modification of any Applicable Law which occurs after the Effective Date; confiscation or seizure by any government or public authority; injunction, restraining order or other court order or decree, initiative or referendum action, wars or war-like action (whether actual and pending or expected, and whether de jure or de facto); blockades; insurrections; riots; civil disturbances; unusual or extraordinary governmental restrictions; epidemics; landslides; earthquakes; fires; hurricanes; floods; wash-outs; explosions; failure of major equipment or machinery (other than that cause by ordinary wear and tear or failure of adequate maintenance and repair), or shortages of material or labor (excluding those caused by lack of funds), where such equipment or machinery, material or labor is critical to the occupancy, operation or use of the Arena Facility for its intended purposes; nuclear reaction or radiation; radioactive contamination; or any other cause, whether of the kind herein enumerated or otherwise, which is not reasonably within the control of the Party claiming the right to alter, delay or postpone performance on account of such occurrence, but specifically excluding any financial condition, lack of funds, lack of financing, insolvency or bankruptcy of such Party.

**"GAAP"** means Generally Accepted Accounting Principles as determined by the Financial Accounting Standards Board and the Governmental Accounting Standards Board.

**"Governmental Authority"** means any federal, state, and local agency, department, commission, board, bureau, administrative or regulatory body or other governmental instrumentality having jurisdiction over the Arena Facility (or any portion thereof) and the transactions contemplated by this Agreement.

**"Hazardous Material"** means any chemical, element, compound, mixture, solution, or other substance that is prohibited, limited, governed, or regulated by any applicable federal, state or county, municipal, local or other statute, law, ordinance or regulation that related to or deals with the protection of human health, safety or the environment, and any rules, regulations or guidelines adopted or promulgated pursuant to any of the foregoing as they may be amended or replaced as of the Effective Date or the Closing Date, including by way of example and not limitation substances designated as "hazardous" or "toxic" under Section 102 of the

Comprehensive Environmental Response, Compensation, and Liability Act; any hazardous substance or toxic pollutant designated under Section 311(b)(2)(a) or Section 307(a) of the Clean Water Act; and any imminently hazardous chemical substance or mixture with respect to which the Environmental Protection Agency Administrator has "taken action under" Section 7 of the Toxic Substances Control Act.

**"Hockey Event"** means any of the following when played or conducted at the Arena Facility: (i) any Home Game (including any related warm-up sessions); (ii) any All-Star Game (including any related warm-up sessions); or (iii) any Hockey-Related Event, including pre-season games, exhibitions, games between two visiting teams, playoff games, other post-season hockey games.

**"Hockey Event Permitted Uses"** include the following:

- (j) Hockey Events;
- (k) The use by the media for watching, broadcasting, and reporting on Hockey Events and other Team Owner activities; and
- (l) The sale and distribution of Hockey Tickets.

**"Hockey Event Spaces"** means all portions of the Arena Facility, other than the Exclusive Team Spaces.

**"Hockey-Related Event"** means any Event (other than a Pre-season Game, Regular Season Game, Play-off Game or All-Star Game) conducted, authorized, permitted, sponsored or co-sponsored by the Team Owner, including any award ceremony, championship celebration, promotional performance or festival, breakfast, luncheon, dinner, ball, demonstration, exhibition, instruction or workshop. Notwithstanding the foregoing, the Hockey-Related Events described in this definition shall not exceed four (4) such Hockey-Related Events in any Fiscal Year without the consent of the City (which consent may not be unreasonably withheld), and shall be subject to the Scheduling Procedures.

**"Hockey Rules"** means all then applicable NHL policies, procedures, provisions, rules, regulations, by-laws, contracts and directives that govern the rights, duties, privileges and obligations of members of the NHL.

**"Hockey Season"** means a period beginning on the date officially promulgated by the NHL as the first day of training camp for a given NHL hockey season and ending on the date on which the last NHL Play-off Game is played for such season.

**"Hockey Ticket"** means a Ticket for a Hockey Event.

**"Hockey Ticket Receipts"** means the gross amount of money received by the Team Owner from the sale of Hockey Tickets, including Hockey Tickets for Suites and for Premium Seats and any City Surcharge assessed on or charged with respect to any Hockey Ticket.

**"Home Game"** means an NHL Pre-season Game, an NHL Regular Season Game or an NHL Play-off Game in which the Team is designated as the "home team".

**"Imposition(s)"** means all governmental assessments, franchise fees, transaction privilege and use taxes, excise taxes, license and permit fees, levies, charges and taxes, general and special, ordinary and extraordinary, of every kind and nature whatsoever (irrespective of the nature thereof, including all such charges based on the fact of a transaction, irrespective of how measured) which at any time during the Term may be assessed, levied, confirmed or imposed upon: (a) the Arena or any portion thereof; and (b) any payments received by the Arena Manager or the Team Owner from any Person using or occupying the Arena or any portion thereof.

**"Interest Rate"** means the annual interest rate that is announced from time to time by Wells Fargo Bank, N.A. or its successor as its "prime" lending rate, plus 2%. If, at any time during the Term, Wells Fargo Bank, N.A. or its successor no longer announces a "prime" lending rate, then the Interest Rate shall be the annual interest rate that is announced by a national bank reasonably selected by the Parties and having an office in Phoenix, Arizona as such national bank's "prime" lending rate, plus 2%. The Interest Rate shall change and be adjusted upon each announcement by Wells Fargo Bank, N.A. or its successor (or any substitute national bank selected by the Parties pursuant to this definition) of each change in the "prime rate" used to determine the Interest Rate in the manner described in this definition. Except as otherwise expressly required by the terms of this Agreement, all interest to be paid pursuant to this Agreement shall be paid at the Interest Rate and shall be computed on the basis of a 360-day year consisting of 12 months of 30 days each and the actual number of days in any partial month.

**"Land"** shall mean the land parcels on which any portion of the Arena Facility and Arena Parking Area are located.

**"License"** means any agreement or contract (other than Tickets) entered into by the Arena Manager pursuant to the terms of this Agreement for the use of the Arena Facility (or any portion thereof) with any Party (other than the Team Owner with respect to Hockey Events and the City with respect to City Sponsored Events) for a limited period of time (no more than 14 consecutive days), including any agreement or contract with a promoter or sponsor for Events or other activities at the Arena (other than Hockey Events and City Sponsored Events), but excluding the following: (i) this Agreement; (ii) Concessions Agreements; (iii) Suite License Agreements; (iv) Premium Seat Agreements; (v) Advertising Agreements; and (vi) Naming Rights Agreements. **"Licensee"** means a Person entitled to use the Arena or a portion thereof pursuant to a License.

**"Management Fee"** shall mean Fifteen Million Dollars (\$15,000,000) per Fiscal Year payable pursuant to Section 10.1, subject to all other terms and conditions of this Agreement.

**"Management Performance Standards"** shall mean the performance standards for the Arena Manager and any Arena Sub-Manager, as set forth and described in Exhibit "C" attached to this Agreement.

**"Mediation"** means the process by which a mediation takes place under this Agreement, as provided in Section 21 below.

**"Mediator"** means the individual selected by the Parties in accordance with the Mediation procedures established herein to attempt to resolve a dispute.

**"Naming Rights"** means the exclusive rights to designate or assign a brand, company, product or other name to, or have a name association with or sponsorship of, the following: one or more portions (or all) of the Arena Facility and Arena Parking Area including the Arena Facility and Arena Parking Area; concourses within the Arena Facility; the rink in the Arena Facility; panels, walls; media boards; scoreboards; equipment; entrances; exits; landscaping; pavilions; theaters, stages, attractions; service areas; Team Owner Retail Stores; clubs; seating; communication systems; audio and video systems; Team mascots; Zambonis®; Team performers; Team ticket stock; and directional signage.

**"Naming Rights Agreement"** means any contract or agreement entered into by or on behalf of the Arena Manager for Naming Rights.

**"NHL"** means the National Hockey League, and any successor or assignee of the National Hockey League, or, if there is no National Hockey League or successor or assignee then operating, any other hockey-related association, league or other group or entity with which the Team Owner is affiliated.

**"Non-Relocation Agreement"** means the Non-Relocation Agreement, dated as of the Effective Date, by and among the City, the Arena Manager and the Team Owner.

**"Non-Hockey Events"** means Events other than Hockey Events.

**"Notice of Team Owner Assignment"** shall have the meaning set forth in Section 12.1.3.

**"Operating Account"** means one or more depository accounts established and maintained for the benefit of the Arena Manager, the Team Owner, and the City at a federally-insured institution(s) having offices in the State of Arizona for the deposit and disbursement of Operating Revenues.

**"Operating Expenses"** means all expenses or obligations paid directly or incurred by or on behalf of the Arena Facility or the Arena Manager with respect to, or which are reasonably allocated to, the management and operation of the Arena Facility during the Term (all of which shall be the responsibility of the Arena Manager except to the extent specifically otherwise set forth herein), including: costs incurred in performing agreements and contracts pertaining to the management and operation of the Arena Facility; Impositions; all expenses incurred to obtain Operating Revenues; salaries, wages and benefits of all personnel engaged in connection with the operation of the Arena Facility, including event staff and temporary staff; human resource support services and training and development expenses; contract labor expenses; maintenance and repair expenses; utility costs and expenses; deposits for utilities; common area maintenance expenses payable pursuant to any covenants, conditions or restrictions applicable to the land upon which the Arena Facility is located (as described in Exhibit "B") or any portion thereof when used for Events; the Arena Parking Area or any portion thereof; telephone expenses; expenses incurred under Licenses; telescreen, video or scoreboard operation expenses; dues,

membership and subscription expenses; security expenses (including expenses incurred under the Safety and Security Agreement); management fees; audit fees; legal fees; other professional fees; refuse removal expenses; cleaning expenses; sales taxes; costs of office and other materials, supplies and equipment; Ticket commissions (other than Ticket commissions for Hockey Events and City Sponsored Events); insurance premiums and bond charges (including premiums and charges for fidelity/employee dishonesty bonds); data and information processing and storage expenses; advertising, marketing and public relations expenses; expenses and costs incurred in the production and promotion of Events and other activities at the Arena Facility (other than expenses and costs incurred in the promotion of Hockey Events and City Sponsored Events); pest control expenses; Arena Facility related entertainment expenses; employment fees; freight and delivery expenses; expenses for leasing, maintaining and repairing equipment; credit and debit facility costs and expenses and telecheck fees and expenses; travel, lodging and related out-of-pocket expenses properly allocable to the operation of the Arena Facility, including promotion of the Arena Facility, conferences, facility management seminars and classes; and any Claim or Loss (other than as expressly set forth in this Agreement) relating to the Arena Facility; provided, however, that amounts on account of the Exclusive City Revenues or Exclusive Team Revenues that are received for and paid to the City or the Team Owner respectively by the Arena Manager shall not be included as Operating Expenses; further provided that expenses or obligations, to the extent incurred or paid on behalf of Team Owner or to the extent reasonably allocable to the operation of the Team Owner's business, shall not be included as Operating Expenses. Operating Expenses do not include expenses allocable to the Team Owner under Generally Accepted Accounting Principles or other reasonable allocation principles, including but not limited to allocations pursuant to the NHL's Collective Bargaining Agreement.

Any Operating Expenses that relate to a period of time after the Termination Date shall be prorated between the City and the Arena Manager so that the City shall pay the portion of the Operating Expenses applicable to the period after the Termination Date, and the Arena Manager shall pay, pursuant to this Agreement, the portion of the Operating Expenses applicable to the period during the Term.

**"Operating Revenues"** means all revenues collected or otherwise received by the Arena Manager from the management and operation of the Arena Facility (including all Exclusive Arena Manager Revenues, but excluding amounts received on account of the Exclusive City Revenues and Exclusive Team Revenues and any interest earned on any of the foregoing), as determined on an accrual basis in accordance with GAAP. Operating Revenues do not include revenues allocable to the Team Owner under GAAP or other reasonable allocation principles, including but not limited to allocations pursuant to the NHL's Collective Bargaining Agreement.

**"Parking Advertising"** means advertising on all or part of the Arena Parking Area.

**"Parking Profits"** means the gross revenue received by Arena Manager from the Arena Parking Areas from all revenue sources other than Parking Advertising and Arena Naming Rights governed by Section 8.6.4(b) of this Agreement.

**"Person"** means an individual, general or limited partnership, corporation, joint stock company, trust (including a business trust), unincorporated association, joint venture, limited liability company, Governmental Authority or other entity.



**"Personal Property"** means all movable items (not fixtures) owned by the Arena Manager, the Team Owner, any Affiliate of the Arena Manager or Team Owner, or the Team Owner's players located within or on any portion of the Arena Facility or Arena Parking Areas.

**"Play-off Game"** means any ice hockey game (i) in which the Team is a participant; (ii) which, under the Hockey Rules, is classified as a "play-off game for the NHL (Stanley Cup) championship; and (iii) which is, under the Hockey Rules, a "home game" of the Team, including, in the Team Owner's sole discretion, any related pre-event, intermission or post-event promotion, competition, performance, autograph session, show or other entertainment or activity presented at the Arena Facility for which there is no admission charge other than the price of the related Hockey Ticket.

**"Premium Seat"** means any seat (excluding any seat in a Suite, but including restaurant, bar and similar seating) in the Arena Facility that has services or amenities that are not available to general seating in the Arena Facility and for which the licensee thereof pays a premium over the price for general seating pursuant to a Premium Seat Agreement.

**"Premium Seat Agreement"** means written contracts or agreements for (i) the use of Premium Seat(s) for Hockey Events, and (ii) the first right to purchase the use of such Premium Seat(s) for all other Events except Community Events, during the Term.

**"Pre-season Game"** means any ice hockey game (i) in which the Team is a participant; (ii) which is scheduled to be played prior to the portion of the Hockey Season promulgated by the NHL as the regular season; and (iii) which is, under the Hockey Rules, a "home game" of the Team, including, in the Team Owner's sole discretion, any related pre-event, intermission or post-event promotion, competition, performance, autograph session, show or other entertainment or activity presented at the Arena Facility for which there is no admission charge other than the price of the related Hockey Ticket.

**"Qualified Ticket"** means a Ticket to a Fee Activity for which (i) the Team Owner, with respect to Hockey Events; (ii) the Arena Manager or sponsor or promoter, with respect to Team Revenue Events, City Revenue Events and other Fee Activities that are not Events; or (iii) the City, with respect to City Sponsored Events, receives valuable consideration (whether in money, services, goods or other value). Any Ticket for which (i) the Team Owner, with respect to Hockey Events; (ii) the Arena Manager or the sponsor or promoter with respect to Team Revenue Events, City Revenue Events and other Fee Activities that are not Events; or (iii) the City with respect to City Sponsored Events, (a) receives no value, or (b) receives money (but not any other services, goods or other value) for such Ticket in an amount less than 25% of the retail price stated on the face of such Ticket, shall not be a "Qualified Ticket"; provided, however, that, if the average number of Tickets described in the immediately preceding clauses (a) and (b) that are distributed by the Team Owner for each Hockey Event (other than Hockey-Related Events) in a given Hockey Season exceeds 1,000, then the number of Tickets by which the average number of Tickets described in the immediately preceding clauses (a) and (b) distributed by the Team Owner for each Hockey Event in such Hockey Season exceeds the average of 1,000 Tickets per Hockey Event in such Hockey Season shall be deemed "Qualified Tickets", unless the City and the Team Owner mutually agree otherwise.

**"Regular Season Game"** means any ice hockey game (i) in which the Team is a participant; (ii) which is scheduled to be played during the portion of the Hockey Season promulgated by the NHL as the regular season; and (iii) which is, under the Hockey Rules, a "home game" of the Team, including any related pre-event, intermission or post-event promotion, competition, performance, autograph session, show or other entertainment or activity presented at the Arena Facility for which there is no admission charge other than the price of the related Hockey Ticket.

**"Related Agreements"** means the Non-Relocation Agreement, the Safety and Security Agreement, and any agreement that is included as an Exhibit to this Agreement or otherwise specifically contemplated by this Agreement.

**"Renewal and Replacement Account"** means one or more accounts, requiring the signatures of the Arena Manager and the City for withdrawals, maintained at a federally insured institution(s) having offices in the State of Arizona for the deposit of Capital Improvement Contributions and disbursement of Capital Improvement Expenditures as defined in Section 11.

**"Replacement Arena Manager"** means, in the event of an Arena Manager Withdrawal, a qualified arena manager designated by the Team Owner or the City, as applicable under Section 19.3.3, that agrees to assume the obligations of the Arena Manager under this Agreement.

**"Safety and Security Agreement"** means that certain Safety and Security Agreement in the form attached to this Agreement as Exhibit "E", to be entered into as of the Closing Date by and among the City, the Arena Manager and the Team Owner prior to the Closing Date.

**"Scheduling Procedures"** means the scheduling procedures for the Arena Facility attached to this Agreement as Exhibit "F", as the same may be amended, from time to time, by agreement among the City, the Arena Manager and the Team Owner.

**"Substantial Taking"** means a Taking of the Arena Facility that, in the reasonable estimation of Arena Manager, will render the Arena Facility unsuitable for the Arena Manager's operations as contemplated by this Agreement.

**"Suite"** means any portion of the Arena Facility that is constructed as a "suite" within the Arena Facility and designated by the Team Owner as a "suite", including specialty suites, such as opera suites, party suites and "under stands" suites.

**"Suite License Agreement"** means written contracts or agreements for the license or use of Suites.

**"Suite License Revenues"** means the revenues received by the Arena Manager in connection with the licensing or rental of Suites.

**"Supplemental Surcharge"** means as defined in Section 9.1.3.

**"Supplemental Surcharge Escrow Accounts"** means as defined in Section 9.1.3.

**"Supplemental Surcharge Procedures"** means as defined in Section 9.1.3, to be entered into as of the Closing Date by and among the City, Arena Manager and the "Escrow Agent" to be named therein.

**"Taking"** means the exercise of the right of eminent domain, with or without litigation, or the transfer in lieu or under the threat of eminent domain.

**"Team Owner Assignee"** means a Person to which the Team Owner intends to make an assignment in accordance with the terms and conditions of this Agreement, including without limitation Section 12 hereof.

**"Team Owner Default"** means the occurrence of any of the following events:

(m) If the Team Owner fails to pay when due any amount payable by the Team Owner hereunder, and such failure is not cured within 30 days after the Team Owner's receipt of notice of such failure from any other Party to this Agreement;

(n) If any representation or warranty made by the Team Owner in this Agreement at any time proves to have been incorrect in any material respect as of the time made, and if the Team Owner fails to cause such representation or warranty to become correct within 30 days after the Team Owner's receipt of notice from any other Party to this Agreement that such representation or warranty was incorrect; provided, however, that if it is reasonably possible to cause such representation or warranty to become correct but it is not reasonably possible to cause such representation or warranty to become correct within such thirty-day period, then such cure period shall be for a period of time (not to exceed 180 days), so long as the Team Owner (i) commences to cause such representation or warranty to become correct within 30 days after the Team Owner's receipt of such notice, and (ii) thereafter diligently continues to cause such representation or warranty to become correct;

(o) If the Team Owner is determined by a court order to be insolvent; or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of a receiver or trustee for it or for a substantial part of its property or business, provided, however, such action shall not constitute a Team Owner Default for so long as Team Owner is timely paying any sums required to be paid under this Agreement and is performing all of its other covenants, agreements, obligations, liabilities and duties under this Agreement; or

(p) If the Team Owner materially breaches any covenant or provision of this Agreement, and such breach is not cured within 30 days after the Team Owner's receipt from any other Party to this Agreement of notice of such breach; provided, however, that if it is reasonably possible to cure such breach but it is not reasonably possible to cure such breach within such thirty-day period, then such cure period shall be for a period of time (not to exceed 180 days), so long as the Team Owner (i) commences to cure such breach within 30 days after the Team Owner's receipt of such notice, and (ii) thereafter diligently continues to cure such breach.

**"Team Locker Room"** means the space in the Arena Facility designed and constructed for the exclusive use by the Team Owner as a home team locker room, including dressing, locker, shower, lounge, training, exercise and video coaching areas.

**"Team Revenue Event"** means a revenue-producing Event, other than Hockey Events, Community Events, or City Sponsored Events, that is sponsored or co-sponsored by the Team Owner or that is conducted under, with, or in the Team's name.

**"Team Retail Stores"** means any the area or areas in the Arena facility designed and exclusive use by the Team Owner for Team Sales, as described on Exhibit "A".

**"Team Sales"** means sales by the Team Owner which result in Exclusive Team Revenues only.

**"Term"** means the period commencing on the Closing Date and ending on the Termination Date or, if earlier, the date on which this Agreement otherwise is terminated on the terms set forth herein.

**"Termination Date"** means the 30<sup>th</sup> day after the last day of the NHL hockey season commencing in 2028.

**"Third Party"** means a third party that is not the Team Owner, the Arena Manager or an Affiliate of the Team Owner or the Arena Manager.

**"Ticket"** means the ticket or other indicia by which admission to the Arena Facility for an Event or other activity at the Arena Facility is permitted and controlled.

**1.3 Terms.** Whenever the context shall so require, all words herein in any gender shall be deemed to include the masculine, feminine or neuter gender, and all singular words shall include the plural, and all plural words shall include the singular.

1.3.1 The words "herein," "hereof," "hereunder," "hereby," "this Agreement" and other similar references shall mean and include this Agreement and all amendments to this Agreement and supplements to this Agreement, unless the context clearly indicates or requires otherwise.

1.3.2 The words "include," "including," and other similar references, shall mean "include, without limitation," and "including, without limitation," respectively.

1.3.3 The words "sole discretion" and other similar references shall mean "sole, absolute and unfettered discretion."

1.3.4 **Exhibits.** Each exhibit referred to herein shall be considered a part of this Agreement as fully, and with the same force and effect, as if such exhibit had been included herein in full.

1.3.5 Language. The language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

## 2. **PARTY REPRESENTATIVES.**

2.1 City Representative. The City Manager shall be the City's authorized representative who shall act as liaison and contact person among the City and the other Parties in administering and implementing the provisions of this Agreement. The City shall have the right to designate a substitute City Representative by providing notice of such designation to the other Parties. The City Representative, or his authorized designee, shall respond to a request for the City Representative's approval, consent or waiver under this Agreement within 10 days after receipt of such request or within such other period as may be expressly required by this Agreement or agreed to in writing by the Parties. Except as expressly stated otherwise in this Agreement, the City Representative's failure to respond to any such request within such ten-day or other applicable period shall be conclusively deemed the City's denial of such request.

2.2 Arena Manager Representative. The Arena Manager's then current general manager of Arena Facility operations shall be the Arena Manager's authorized representative who shall act as liaison and contact person among the Arena Manager and the other Parties in administering and implementing the provisions of this Agreement. The Arena Manager shall have the right to designate a substitute Arena Manager Representative by providing notice of such designation to the other Parties. The Arena Manager Representative, or his authorized designee, shall respond to a request for the Arena Manager's approval, consent or waiver under this Agreement within 10 days after receipt of such request or within such other period as may be expressly required by this Agreement or agreed to in writing by the Parties. Except as expressly stated otherwise in this Agreement, the Arena Manager Representative's failure to respond to any such request within such ten-day or other applicable period shall be conclusively deemed the Arena Manager's denial of such request.

2.3 Team Owner Representative. The Team Owner's then current chief operating officer shall be the Team Owner's authorized representative who shall act as liaison and contact person among the Team Owner and the other Parties in administering and implementing the provisions of this Agreement. The Team Owner shall have the right to designate a substitute Team Owner Representative by providing notice of such designation to the other Parties. The Team Owner Representative, or his authorized designee, shall respond to a request for the Team Owner's approval, consent or waiver under this Agreement within 10 days after receipt of such request or within such other period as may be expressly required by this Agreement or agreed to in writing by the Parties. Except as expressly stated otherwise in this Agreement, the Team Owner Representative's failure to respond to any such request within such ten-day or other applicable period shall be conclusively deemed the Team Owner's denial of such request.

## 3. **TERM.**

3.1 Binding Effect; Closing Date. This Agreement shall be binding on the Parties as of the Effective Date, but the obligations of the Parties to perform under this Agreement are subject to the conditions set forth in Section 17.2. Specifically but without limitation, the

provisions of this Agreement pertaining to the commencement of the demise and lease to the Arena Manager of the leasehold interest in the Arena pursuant to Section 5 and the commencement of the grant of the subleasehold to the Team Owner pursuant to Section 6 and the commencement of all rights and obligations associated with such leasehold and subleasehold, do not commence until the Closing Date. This Agreement shall terminate on the Termination Date, unless earlier terminated pursuant to the terms and conditions set forth in this Agreement.

**3.2 Renewal.** If this Agreement has not been earlier terminated, after the end of the 2026-2027 NHL hockey season, the Arena Manager, the Team Owner, and the City will begin discussions to extend upon mutual agreement this Agreement for five years beyond the Termination Date, which discussions shall include the terms and conditions of the renewal; provided however, there shall be no renewal or extension of the Term unless there is a corresponding renewal or extension of the Non-Relocation Agreement, and unless and until renewal is approved by the City Council, which renewal may be denied or conditioned in the sole, absolute and unfettered discretion of the City Council.

**3.3 Early Termination by Arena Manager/Team Owner.** Notwithstanding the other terms and provisions of this Agreement, Team Owner and Arena Manager jointly shall have the right to terminate this Agreement (i) by delivery of written notice to the City at any time within 180 days following the end of the fifth (5<sup>th</sup>) Hockey Season after the Effective Date (the "**Early Termination Notice**"), and (ii) subject to a payment to the City of the City Shortfall; but only if (iii) neither a Team Owner Default or Arena Manager Default has occurred and is continuing beyond the applicable cure periods, and (iv) Team Owner has incurred a cumulative operating loss of Fifty Million Dollars (\$50,000,000) or more, calculated in accordance with GAAP as the sum of Team Owner's operating income/loss for each of the Fiscal Year periods then ended. A Termination by Team Owner and Arena Manager under this Section 3.3 shall be effective as of the date set forth in the Early Termination Notice (the "**Early Termination Date**"), provided that if the Early Termination Notice is given during a NHL Hockey Season, the Early Termination Date may not be until the end of the applicable Hockey Season, including all Home Games and play-off games associated with such Hockey Season, In this regard: (x) Team Owner shall deliver to the City, not later than ninety (90) days following the end of each Fiscal Year, a statement (certified to the City by the Team Owner's chief financial officer or the Team Owner's certified public accountants, at the option of Team Owner) of the Team Owner's claimed operating income or loss for such Fiscal Year. The Team Owner's statement shall be subject to audit by the City, and the result of such audit shall thereafter be conclusive upon Team Owner with respect to the determination of operating losses in the absence of manifest or intentional error or fraud; and (y) the City shall deliver to Team Owner and Arena Manager, not later than ninety (90) days following the end of each Fiscal Year, a statement (certified by the City's Chief Financial Officer or the City's certified public accountant, at the option of the City), of the City's claimed loss for such Fiscal Year, which statement shall thereafter be conclusive upon Arena Manager and Team Owner in the absence of manifest or intentional error or fraud. Following their delivery of the Early Termination Notice, Team Owner and Arena Manager shall be jointly liable and responsible to pay to the "City Shortfall," if any, incurred by the City during the five (5) Fiscal Years prior to termination. The City Shortfall shall equal Forty-Five Million Dollars (\$45,000,000), minus the revenues actually received by the City as described in Section 1.1.5 during the five (5) Fiscal Years prior to termination, excluding revenues from City Sponsored Events. Payment of the City Shortfall shall be due and payable by Arena Manager and Team

Owner to the City within thirty (30) days following the City's delivery to Arena Manager and Team Owner of the City's statement reflecting the total City Shortfall; provided, however, that such payment shall not be due prior to the Early Termination Date. Payment of the City Shortfall, if any, shall be a condition to the effectiveness of any Notice of Early Termination of this Agreement pursuant to this Section 3.3. City and Arena Manager shall perform an accounting and shall prorate expenses as of the Early Termination Date pursuant to customary business practices; provided, however, that all revenues from whatever sources (including, but not limited to, ticket sales, surcharges, parking and concessions) associated with Events that occur or are held after the Early Termination Date shall be the sole property of the City, free of any claim of or by Arena Manager or Team Owner.

#### **4. ARENA MANAGER.**

**4.1 Engagement of Arena Manager.** The City and the Team Owner hereby engage the Arena Manager to be the sole and exclusive manager of the Arena Facility during the Term, with the responsibility for the operation, direction, management and supervision of the Arena Facility and its staff, subject to, and as more fully described in, this Agreement.

#### **4.2 Compliance with Management Performance Standards.**

**4.2.1** Arena Manager shall manage the Arena during the Term in a manner that is consistent with the Management Performance Standards.

(a) If the City notifies the Arena Manager that it has failed to comply with the Management Performance Standards (which claim shall be in writing and describe the bases therefor in reasonable detail), the Arena Manager shall, within 30 days after the Arena Manager's receipt of the City's notice of such breach, (i) cure the failure claimed by the City, or (ii) if it is reasonably possible to cure but it is not reasonably possible to cure within such thirty-day period, then such cure period shall be for an a period of time not to exceed 180 days so long as the Arena Manager (a) commences to cure within 30 days after the Arena Manager's receipt of such notice, and (b) thereafter diligently continues to complete such cure as soon as practicable thereafter, (iii) retain an Arena Sub-Manager, subject to the reasonable approval of the City, for the duties and responsibilities of the Arena Manager for which the City claims the Arena Manager has failed to comply with the Management Performance Standards, or (iv) notifies the City that it disputes the alleged breach and describing the basis for its dispute of the allegations.

(b) In the event that the Arena Manager disputes such breach, the Parties shall attempt to resolve such dispute by Mediation, pursuant to this Agreement.

**4.2.2** The Arena Manager and the City acknowledge that a material consideration for this Agreement is the Arena Manager's ability to ensure that an NHL franchise shall be a primary tenant of the Arena during the Term; therefore, the Arena will be maintained and managed in a manner that facilitates that tenant's operations and is consistent with the Hockey Rules.

4.2.3 Arena Sub-Manager. The Arena Manager may, from time to time, delegate all or a portion of its duties and responsibilities to an Arena Sub-Manager that shall comply with all of the Arena Manager's obligations under this Agreement with respect to the duties and responsibilities delegated.

4.2.4 Delegation. Any delegation of the Arena Manager's duties under this Section:

(a) Shall not release or discharge the Arena Manager from any of its duties or responsibilities under this Agreement;

(b) Shall not increase the amount of the Management Fees; and

(c) Shall be subject to the approval of the City, which approval shall not be unreasonably withheld or delayed; and

(d) Shall be to a Person with experience in providing professional management services to facilities similar to the Arena Facility.

(e) The Arena Manager shall cause any Arena Sub-Manager to perform the duties and responsibilities of the Arena Manager that are delegated to such Arena Sub-Manager in compliance with the Management Performance Standards.

(f) If the City claims that the Arena Sub-Manager has failed to comply with the Management Performance Standards, the City shall give the Arena Manager and the Team Owner notice of such claim.

(g) The Arena Manager shall, within 30 days after the Arena Manager's receipt of the City's notice, (i) cause the Arena Sub-Manager to cure the failure claimed by the City, or if incapable of cure within 30 days, commence cure within such period and use good faith efforts to complete such cure as soon as practicable thereafter, or (ii) discharge the Arena Sub-Manager and assume responsibility for the duties and responsibilities of the Arena Manager that had been delegated to the discharged Arena Sub-Manager.

## **5. DEMISE OF ARENA AND USE RIGHTS.**

**5.1 Demise of Arena.** The City hereby (i) demises and lets to the Arena Manager, and the Arena Manager hereby takes and leases from the City, effective on the Closing Date, for the Term and upon the provisions hereinafter specified, the Exclusive Team Spaces, (ii) grants to Arena Manager and Arena Manager hereby takes from the City, a non-exclusive right to use the balance and remainder of the Arena Facility, and (iii) leases, subleases, licenses, sub-licenses or otherwise makes available to the Arena Manager (pursuant to Section 6 of this Agreement) the Arena Parking Area, subject to (x) the Team Owner's exclusive use of the Exclusive Team Spaces as provided herein; (y) all Events scheduled for or at the Arena Facility as of the Effective Date; and (z) with respect to the Arena Parking Area, all pre-existing commitments of the City identified on Exhibit "M" to this Agreement. Further, use of the Arena Parking Area by Arena Manager shall be limited to use for Arena-related events, with all other rights of use expressly reserved to the City.



**5.2 Grant of Use Rights.** In addition to the rights granted by the City to the Arena Manager in the other provisions of this Agreement, the City hereby grants to the Arena Manager, and approves the right of the Arena Manager to grant to the Team Owner, during the Term, the exclusive right and obligation to use and occupy the Hockey Event Spaces during all Hockey Events for Hockey Event Permitted Uses, in accordance with and subject to the terms and conditions set forth in this Agreement.

5.2.1 The Arena Manager shall have the exclusive right (subject to the Arena Manager's grant to the Team Owner as set forth in Section 6.2 below) to use the Hockey Event Spaces for Hockey Event Permitted Uses for a reasonable time before, during, and for a reasonable time after the Hockey Event.

5.2.2 Subject to the rights of the Team Owner under this Agreement, the Arena Manager shall retain possession and control of all portions of the Hockey Event Spaces; provided, however, in exercising its control over the Hockey Event Spaces, the Arena Manager (i) shall not interfere in any material respect with Hockey Event Permitted Uses; and (ii) shall not allow any Person to enter the Hockey Event Spaces during any Hockey Event without a Hockey Ticket.

**5.3 Compliance with Law.** Neither the Arena Manager nor the Team Owner shall knowingly cause or permit the use of the Arena Facility in a manner that violates Applicable Law.

## **6. LEASEHOLD INTEREST.**

**6.1 Lease of Exclusive Team Spaces.** In addition to the rights granted by the City to the Arena Manager in the other provisions of this Agreement, effective as of the Closing Date, but subject in all events to the provisions of Section 5.1, (i) the City hereby leases the Exclusive Team Spaces to the Arena Manager, and the Arena Manager leases the Exclusive Team Spaces from the City, and (ii) the City hereby grants to the Arena Manager the exclusive right to use the common areas at the Arena Facility for all purposes reasonably necessary and convenient for the exercise of the Arena Manager's and the Team Owner's reasonable exercise of rights and performance of obligations under this Agreement, including without limitation for reasonably convenient access to and from the Exclusive Team Spaces, all for the duration of the Term, and in accordance with and subject to the terms and conditions set forth in this Agreement. Notwithstanding the foregoing, or anything in this Agreement to the contrary, this Agreement is fully contingent on the continued existence of, and performance of the Parties under, the Non-Relocation Agreement; and the termination or expiration of the Non-Relocation Agreement for any reason shall automatically, and without further act or notice required, terminate this Agreement and subleases described in this Section 6, subject solely to the following remaining obligations and liabilities under this Agreement: (i) payments then owing to the City pursuant to the terms and conditions hereof, (ii) any payments then owing to Arena Manager by the City pursuant to the terms and conditions hereof and (iii) any obligations of indemnity that are stated in this Agreement which survive the termination of this Agreement.

**6.2 Sublease of Exclusive Team Spaces.** The Arena Manager hereby subleases the Exclusive Team Spaces to the Team Owner, and the Team Owner subleases the Exclusive Team

Spaces from the Arena Manager, and the Arena Manager grants to the Team Owner (i) the exclusive right and obligation to use and occupy the Hockey Event Spaces during all Hockey Events for Hockey Event Permitted Uses; and (ii) the non-exclusive right to use the common areas at the Arena Facility for reasonably convenient access to and from the Exclusive Team Spaces, subject to all terms and conditions of this Agreement and the Non-Relocation Agreement, all for the duration of the Term, and in accordance with and subject to the terms and conditions set forth in this Agreement.

6.2.1 The Team Owner, as the approved subtenant, shall pay all expenses of furnishing the Exclusive Team Spaces. The Arena Manager (or the Team Owner as its subtenant) shall have the right to use the Exclusive Team Spaces for any lawful purpose, consistent with and subject to the provisions of this Agreement.

6.2.2 The Arena Manager and City shall have the right to enter the Exclusive Team Spaces only as reasonably necessary to perform its obligations under this Agreement upon at least three days' notice to the Team Owner, except in the case of an Emergency, in which event the Arena Manager or City may enter the Exclusive Team Spaces upon reasonable notice. In exercising its right of entry to the Exclusive Team Spaces, the Arena Manager and City shall not interfere in any material respect with the Team Owner's operations or activities.

6.2.3 Team Equipment.

(a) The Team Owner may, as the approved subtenant, at the Team Owner's expense and risk, place such Team Owner equipment, furniture, fixtures and other moveable and non-moveable equipment owned or leased by the Team Owner and used exclusively by the Team Owner ("**Team Equipment**"), as the Team Owner may from time to time deem necessary or appropriate (i) in the Exclusive Team Spaces at any time and, (ii) with the prior approval of Arena Manager, in the Hockey Event Spaces at any time during which the Team Owner has the right to use the Hockey Event Spaces.

(b) The City acknowledges the Team Equipment is the property of the Team Owner and may be removed by the Team Owner at any time, provided that Team Owner shall immediately repair any damage resulting from such removal and restore the Arena to the condition existing on the Effective Date.

(c) The Team Owner shall be responsible for obtaining, at the Team Owner's expense, whatever insurance covering the Team Equipment the Team Owner deems appropriate.

(d) The Team Owner acknowledges and agrees that the City shall have no liability or responsibility for any Team Equipment placed within the Arena, and the Team Owner releases the City for and from any and all Claims and Losses in connection with such Team Equipment; provided, however, such release shall not apply to any Claims and Losses made or resulting from the negligence or intentional misconduct of City, its employees, agents or contractors.

**6.3 Further Sublease Agreements.** Upon the written request of the Team Owner, the Arena Manager or the City, the Team Owner and the Arena Manager shall enter into a written sublease agreement more specifically setting forth the terms and conditions of the sublease of the Exclusive Team Spaces from the Arena Manager to the Team Owner; provided however that such any such written sublease agreement (or amendment or modification thereto) shall be consistent with the terms of this Agreement and shall be subject to the prior written consent of the City, which shall not be unreasonably withheld as to provisions that are consistent with this Agreement. Neither the Arena Manager nor the Team Owner shall (a) further sublease any portion of the Arena Facility, including the Exclusive Team Spaces, to any third party without the City's prior written consent, or (b) purport to grant any rights in excess of the rights granted by the City hereunder.

**6.4 Rights and Obligations of Team Owner as Subtenant.** The Team Owner, as subtenant of the Arena Manager pursuant to Section 6.2 above, shall be responsible only for those obligations expressly set forth in this Agreement and in the Non-Relocation Agreement as obligations applicable to the Team Owner, and the Team Owner shall not otherwise be responsible for performing any act or obligation, and shall not assume or incur any liability for or in connection with, any act or obligation in this Agreement and in the Non-Relocation Agreement based on the terms of this Agreement and the Non-Relocation Agreement. No Sublease shall relieve, release or limit the Arena Manager of, or with respect to, any of its obligations under this Agreement.

**6.5 Team Sales.** The Team Owner shall have the sole and exclusive right, at all times during the Term, to engage in and conduct all Team Sales and to receive, as Exclusive Team Revenues, all revenue therefrom. Accordingly, neither the Arena Manager nor the City shall take any action with respect to, or have any authority over, Team Sales other than at the express direction of the Team Owner; provided, however, nothing in this Section shall be construed as a limitation on the City's governmental powers. The Team Owner shall bear and pay, from the Team Owner's own monies, all direct expenses attributable to Team Sales, including vendors and other personnel, equipment, costs of goods sold, advertising and promotional costs and rights fees.

**6.6 Base Rent.** As part of the consideration for the leasehold interests granted to the Arena Manager under this Agreement, during the Term the Arena Manager shall pay to the City rent in the following amounts, which shall be paid in equal quarterly installments, the first installment due and payable on the commencing on the Closing Date and thereafter each installment due and payable on or before each quarterly (on a three calendar month basis) anniversary of the Closing Date during the Term:

6.6.1 For the five years following the Closing Date, \$500,000 per year; provided however, the Base Rent for the first Fiscal Year shall be \$500,000 prorated (based on a 365-day year) if the period from the Closing Date to the end of the Fiscal Year on which the Closing occurs is less than 365 days.

6.6.2 Beginning of the sixth anniversary of the Closing Date and continuing until the day before the thirteenth anniversary of the Closing Date, \$650,000 per year (prorated for partial years as set forth in Section 6.6.1); and

6.6.3 Beginning of the thirteenth anniversary of the Closing Date and continuing until the day before the fifteenth anniversary of the Closing Date, \$800,000 per year.

6.7 Taxes on Arena Manager's Interest. The Parties acknowledge and agree that the Arena Manager's leasehold interest in the Arena under this Agreement is exempt, under A.R.S. §42-6208(4), from the government property lease excise tax imposed under A.R.S. §42-6201 through §42-6210, but if such leasehold interest ceases or is found not to be exempt from such taxation, or is determined for any reason (including, but not limited to, amendments to such statutes from and after the date of this Agreement) to be subject to any other taxation (including, but not limited to, *ad valorem* or real property taxation), the Arena Manager shall pay (or cause to be paid) prior to delinquency all government property lease excise taxes, rental occupancy taxes, transaction privilege taxes, *ad valorem* or other form of real property taxes, and other taxes or fees that may be lawfully imposed on the leasehold interest of the Arena Manager under this Agreement (including any real or personal property taxes and any other taxes imposed with respect to such leasehold interest). Any payment of such taxes shall constitute an Operating Expense hereunder for which Arena Manager shall be solely responsible.

6.8 Quiet Enjoyment. Subject to any limitation on use set forth in this Agreement, so long as the Arena Manager performs all of its obligations under this Agreement, the City shall do nothing (other than the acts permitted or required by this Agreement) that will prevent the Arena Manager or its licensees or subtenants from peaceably and quietly enjoying, using, and occupying the Arena Facility during the Term in the manner described in this Agreement, and shall defend the Arena Manager's quiet enjoyment, use and occupancy of the Arena Facility in the manner described in this Agreement against the claims of all Persons claiming by, under or through the City.

#### 6.9 City Access.

6.9.1 The City, through appropriate designees, as landlord, reserves the right to enter the portions of the Arena Facility, upon reasonable advance notice to the Arena Manager and, with respect to the Exclusive Team Spaces, the Team Owner, during the Arena Manager's regular business hours or other hours when the Arena Manager is open for business (other than during Events); provided however, that in exercising the City's rights under this Section the City shall not unreasonably interfere with the operations of the Arena Facility.

6.9.2 Notwithstanding any provision of this Agreement, the City does not in any manner limit its governmental rights, authority, responsibilities, or powers, including but not limited to the City's right and obligation to enforce Applicable Law and to fully and timely address public health or safety concerns, and all provisions of this Agreement shall be deemed subject to such rights and obligations of the City.

### 7. LICENSES.

7.1 Arena Manager's Authority. Effective as of the Closing, the Arena Manager shall have the sole and exclusive right to grant, negotiate, and enter into Licenses during the Term, subject to and in accordance with the provisions of this Agreement and the Scheduling Procedures.

7.2 Negotiations. The Arena Manager shall make commercially reasonable efforts to seek potential Licenses and shall, prior to negotiating the terms and conditions of a given License, determine the proposed manner of providing the Arena Manager with sufficient monies to pay the applicable City Surcharge with respect to the proposed License.

7.3 Requirements.

7.3.1 The Arena Manager shall cause:

(a) The terms, conditions and performance of each License to not, in any event, conflict with any provisions of this Agreement, any other License, or any Concessions Agreement, Suite License Agreement, Premium Seat Agreement, Advertising Agreement or Naming Rights Agreement.

(b) Each License for a Fee Activity to require that the Licensee pay to the Arena Manager an amount not less than the aggregate City Surcharge and Supplemental Surcharge for such Fee Activity.

(c) Each License for any Activity in the Arena Facility to include the Exculpatory Language.

7.3.2 If, under the circumstances contemplated by a given License, it is commercially reasonable to do so in order to attract an Event, the Team Owner shall agree in such License to close or limit the operations of the Team Retail Stores during the Event that is the subject of such License.

7.4 Execution and Performance. The Arena Manager shall (in the name of the Arena Manager and not of the City) execute the License and thereafter perform the licensor's obligations under such License.

7.5 Existing Licenses. The Arena Manager shall use commercially reasonable efforts to comply with and perform the obligations under Licenses or other agreements relating to the Arena assumed under the NHL Purchase Agreement and existing on the Closing Date until such Licenses expire or are terminated in accordance with their respective terms.

7.6 City Revenue Events.

7.6.1 The Arena Manager has the sole discretion under this Agreement to approve or disapprove all License applications for Events that are submitted by prospective Licensees, provided that no License shall be granted to a Licensee or an Event reasonably likely to be deemed by the City to be unacceptable in the community because of explicit adult (sexual) content or otherwise. The Arena Manager shall promptly deliver notice (which notice may be oral) to the City of its disapproval of any completed License application together with the terms and conditions of such proposed License. Subject to the Scheduling Procedures, all Concessions Agreements, all Suite License Agreements, all Premium Seat Agreements, all Advertising Agreements, all Naming Rights Agreements and the requirements set forth in this Section, the City shall have the right, to the extent the prospective Licensee remains willing to enter into a License upon such terms and conditions as are set forth in the License application, to cause the

Arena Manager to enter into such proposed License, notwithstanding the disapproval of such proposed License by the Arena Manager, by giving the Arena Manager notice of the City's agreement to pay to the Arena Manager the amount by which the expenses that are directly attributable to the Event contemplated by the proposed License exceeds the revenues directly attributable to such Event (which shall then be a "**City Revenue Event**"). The Arena Manager shall use commercially reasonable efforts to either approve or disapprove such License application quickly enough to provide the City with a reasonable opportunity to exercise its rights under this Section 7.6.

7.6.2 The City's notice pursuant to Section 7.6.1 shall be given to the Arena Manager within such time as the Arena Manager reasonably designates when the Arena Manager provides notice to the City of its disapproval of a License application pursuant to Section 7.6.1.

7.6.3 The Arena Manager shall maintain separate records of all revenues and all expenses directly attributable to each City Revenue Event, and all amounts received for deposit and deposited into the City Surcharge Account with respect to such City Revenue Event. For clarity, only payments or other considerations to be made or provided that (i) are calculated solely on the basis of sales made or transactions completed during a City Revenue Event directly relating to such City Revenue Event or (ii) are payable solely because a given City Revenue Event is held shall be "directly attributable" to such City Revenue Event.

7.6.4 The Arena Manager, at the time the quarterly financial report for such Fiscal Quarter is submitted to the Parties pursuant to Section 8.16, shall either:

(a) If the aggregate of the expenses directly attributable to the City Revenue Events held during a given Fiscal Quarter exceeds the aggregate of the revenues directly attributable to the City Revenue Events, set-off against any distributions or payments to be made to the City for such Fiscal Quarter the amount by which the aggregate of such expenses exceeds the aggregate of such revenues and submit to the City an invoice for any shortfall for which the City will provide reimbursement within 30 days , or

(b) If the aggregate of the revenues directly attributable to the City Revenue Events exceeds the aggregate of the expenses directly attributable to the City Revenue Events held during a given Fiscal Quarter, remit to the City within 30 days after the end of the Fiscal Quarter the excess of the revenue over the expenses.

7.6.5 In no event shall any License entered into by the Arena Manager pursuant to this Section 7.6 be a Team Revenue Event.

7.6.6 In no event shall any Facility rental or similar use charge be imposed on the City with respect to any City Revenue Event or be included in determining the expenses attributable to that event for purposes of the computations required by Section 7.6.4 of this Agreement.

**7.7 Enforcement of Licenses.** The Arena Manager shall make commercially reasonable efforts to enforce all Licenses.

**7.8**     Collection and Allocation of Revenues.     The Arena Manager shall make commercially reasonable efforts to collect revenues under and generated by all Licenses.

**8.     ARENA MANAGEMENT.**

**8.1**     Management and Operations of the Arena Facility.     From and after the Closing Date, the Arena Manager shall take all actions necessary for the management of the Arena Facility in accordance with this Agreement, the Management Performance Standards, and the applicable Annual Budget, and the Arena Manager shall perform all of the obligations described in this Agreement without charge to the City, except for the Management Fee provided for in this Agreement. Without limiting the generality of the foregoing, the Arena Manager is authorized to and shall, in a commercially reasonable manner, do the following:

8.1.1     Collect Operating Revenues and pay Operating Expenses in the manner required by this Agreement;

8.1.2     Maintain and furnish, in the manner required by this Agreement, all financial records and information required by this Agreement;

8.1.3     Employ, pay, train and supervise, as employees of the Arena Manager and not of the City or the Team Owner, all personnel (other than fire and police personnel, which are to be provided by and employees of the City) that are necessary for the operation of the Arena Facility; determine all matters with regard to such personnel, including compensation, bonuses, employee benefit plans, hiring, training and replacement; and prepare, on the Arena Manager's behalf, and file when due, all forms, reports and returns required by Applicable Law relating to the employment of such personnel;

8.1.4     Other than security to be provided pursuant to the terms of the Safety and Security Agreement, provide or arrange for security and paramedics for the Arena Facility for the purpose of maintaining public order and safety in and around the Arena Facility, including the enforcement of safety policies and procedures and the determination of appropriate safety and security staffing levels and patterns, the review and approval of security measures and the exclusion or ejection from the Arena Facility of persons or items in the interest of safety or security;

8.1.5     Maintain, repair and replace all materials, tools, machinery, equipment and supplies necessary for the maintenance and operation of the Arena;

8.1.6     Operate and maintain the Arena in good, clean order, condition and repair and in compliance with (i) the Arena Maintenance Standard; (ii) all Applicable Law; (iii) all NHL requirements in effect from time to time; and (iv) the provisions of this Agreement, and provide for, either directly or by reimbursement, cleaning of, and trash removal for, properties in the vicinity of the Arena following Events and other activities at the Arena Facility;

8.1.7     Coordinate and administer a preventative maintenance program for the Arena ;

8.1.8     Coordinate and administer a safety program for the Arena Facility;

8.1.9 Arrange for all utility and other services for the Arena (including electricity for Hockey Events in compliance with applicable NHL requirements and sufficient to light the Arena Facility with the degree of illumination required for color televising and broadcast of Hockey Events), and pay or cause to be paid when due all charges for water, sewer, gas, light, heat, cooling, telephone, electricity and other utilities and services rendered to or used in connection with the operation of the Arena ;

8.1.10 Maintain or cause to be maintained all necessary licenses, permits and authorizations for the Arena Manager's management of the Arena in accordance with this Agreement and Applicable Law;

8.1.11 Furnish to the City the reports and other information regarding the Arena and the management as required herein;

8.1.12 Other than Tickets and credentials issued by the Team Owner or any promoter or sponsor of any Event or other activity at the Arena Facility, or any agent thereof, issue all Tickets and credentials for Events and other activities at the Arena Facility;

8.1.13 Verify (and require certificates with respect thereto) that (i) each Licensee has obtained and is maintaining the insurance required by the applicable License; (ii) each concessionaire under a Concessions Agreement has obtained and is maintaining the insurance required by the applicable Concessions Agreement; (iii) the Arena Manager has obtained or caused to be obtained, and is maintaining or causing to be maintained, the insurance required to be obtained and maintained by the Arena Manager pursuant to this Agreement; (iv) the Team Owner has obtained and is maintaining the insurance required to be obtained and maintained by the Team Owner pursuant to this Agreement; and (v) with respect to each City Sponsored Event, the City has obtained the insurance, or has made adequate arrangements for self-insurance, for such Event as required by this Agreement;

8.1.14 Establish and maintain bookings, calendars and schedules for Events and other activities at the Arena Facility booked or scheduled in accordance with the Scheduling Procedures, and use commercially reasonable efforts to schedule and book such Events and other activities in order to utilize the Arena Facility as much as possible in accordance with this Agreement and the Scheduling Procedures; and

8.1.15 To the extent Home Games are cancelled or a Hockey Season is shortened or cancelled, diligently use further commercially reasonable efforts to schedule and book such Events and other activities in order to utilize the Arena Facility as much as possible in accordance with this Agreement and the Scheduling Procedures.

8.1.16 Manage City Revenue Events and Community Events in accordance with this Agreement.

8.1.17 Take all other actions (and refrain from taking certain actions, when appropriate), and enter into all other agreements reasonably necessary to assure that the Arena is properly, safely and professionally managed and maintained in a manner consistent with the



Management Performance Standards, Applicable Law, this Agreement and all Related Agreements.

## **8.2     Management and Operation of Parking.**

8.2.1     Parking Rights. In consideration of the covenants by the Arena Manager in this Agreement and of the execution and delivery of the Non-Relocation Agreement by the Team Owner and Arena Manager, on the Closing Date and subject to any rights reserved to the City within this Agreement, the City will lease, sublease, license, sublicense or otherwise make available to the Arena Manager all of the City's rights and obligations with respect to the Arena Parking Area, including the Arena Parking Rights. The City shall not take any action to reduce the Arena Parking Area, and will ensure that the Arena Parking Area or other parking areas provided by City (including areas leased by the City or parking spaces provided in parking structures that may be constructed by City or on City-owned or leased land in the Westgate/University of Phoenix stadium area) provides 5,500 parking spaces for each Event during the Term within the Arena Parking Area.

(a)     Except as provided in Section 8.2.1(c), the Arena Manager shall take all actions necessary to provide, manage and operate, for the benefit of the Arena Facility, the Arena Parking Areas and/or for the benefit of the City as provided in this Agreement.

(b)     The Arena Manager shall cause the Arena Parking Areas to be available for each Event at a reasonable time prior to the commencement of such Event and continuing until a reasonable time after the completion of such Event.

(c)     The Arena Manager shall be responsible for the sweeping and cleaning of the Arena Parking Areas promptly after an Event; however, the Renewal and Replacement Account, Section 11.5, may be used for capital maintenance and repair of the Arena Parking Areas, including but not limited to patching, resurfacing, sealing and striping.

(d)     All costs and expenses incurred by the Arena Manager in managing and operating the Arena Parking Area shall be paid by the Arena Manager; provided, however, that all costs and expenses incurred by the City pursuant to its obligations in Section 8.2.1(c) and Section 11 shall be paid by the City.

(e)     Arena Manager shall charge for the use of all spaces within the Arena Parking Area for all Hockey Events and Non-Hockey Events (but not City Sponsored Events where the charges, if any, shall be property of the City and determined by the City except for Supplemental Surcharges, which shall not be charged with respect to City Sponsored Events, unless the City advises Arena Manager of its desire to impose such charges on one or more such events at least ten (10) days in advance of any such City Sponsored Event). Commencing with the 2013/2014 NHL hockey season, minimum parking rates shall be \$10.00 per vehicle for Hockey Events and \$15.00 per vehicle for Non-Hockey Events, with the rates for all Events to be established by Arena Manager in its reasonable discretion. Within fifteen (15) days following each quarter during the Term, Arena Manager shall remit to City and Team Owner their respective shares of the "Arena Parking Area Revenue" as provided in this Section 8.2.1(e).

Team Owner shall be paid the first \$20,000.00 of Parking Profits generated from each NHL Regular Season Home Hockey Game and City shall be paid the balance of Parking Profits generated from each such game. City shall be paid seventy five percent (75%) of the Parking Profits generated from any Pre-season Game, Play-off Game, All-Star Game and Non-Hockey Events. City shall be paid 100% of the Parking revenues associated with any City Sponsored Event. Other than as provided in this Section 8.2.1(e), the Arena Manager shall not be obligated to remit any revenue from the Arena Parking Areas to the City (subject to remittance of all applicable taxes, and further provided that this Section 8.2.1(e) shall not limit the Arena Manager's obligations to remit amounts to the City pursuant to Sections 7.6.4(b) or 8.9.2(d) or any other provision of this Agreement including those provisions relating to the City Surcharge and Supplemental Surcharges).

(f) As soon as practicable after the Closing, the Arena Manager and the City will develop a set of mutually acceptable policies and procedures for the operation, maintenance and improvement of the Arena Parking Areas including, but not limited to, the process for relocating any portion of the Arena Parking Areas when that is necessary.

8.2.2 Traffic Control and Parking Security. Pursuant to the terms and conditions of the Safety and Security Agreement, the Arena Manager shall cooperate with the City and the Team Owner to develop, and to from time to time revise, a traffic management and parking security plan to facilitate the ingress and egress of traffic to and from, and the security in Arena Parking Areas for, all Events.

### 8.3 Event Requirements.

#### 8.3.1 Hockey Events.

(a) Arena Manager and Team Owner shall cause the Team to play all of its home and playoff games, including not fewer than 41 Regular Season Games, at the Arena during each annual Hockey Season, subject, however, to Force Majeure events and Hockey Rules which shall excuse such performance in accordance with this Agreement.

(b) In the event that the Team does not play 41 Regular Season Games, unless such performance is excused due to Force Majeure events or Hockey Rules (as described in Section 8.3.1 above), the Arena Manager and Team Owner, jointly and severally, will pay to the City, as its sole and exclusive remedy for noncompliance with the provisions of Section 8.3.1(a) notwithstanding any other provisions of this Agreement or the Non-Relocation Agreement, an amount equal to \$150,000 multiplied by a number that results from taking the Regular Season Games required by this Section and subtracting the Regular Season Games actually played, which payment shall be deemed to cure such noncompliance. The payment required by this Section 8.3.1(b) shall be paid within 30 days following the date of the last Regular Season Game during each NHL season of the Term, if applicable. In the event of a breach under the Non-Relocation Agreement by Arena Manager and/or Team Manager, the City shall have the rights and remedies provided in the Non-Relocation Agreement and in this Agreement; provided, however, that the payments required in this Section 8.3.1(b) shall apply with respect to all Regular Season Games not played, except Regular Season Games not played as a consequence of the relocation.

8.3.2 Arena Manager Events. The Arena Manager is not obligated or required to schedule or provide any events at the Arena other than the Hockey Events; but Arena Manager is required to use diligence and commercially reasonable efforts to maximize use of the Arena and the scheduling of as many revenue-generating events as possible. The anticipation of such Events, based on Arena Manager's projections and management skills, was an inducement to the City to enter into this Agreement as such additional Event-related revenues will reduce the costs, and increase potential revenues, associated with this Agreement to the City.

#### 8.4 Quality Standard.

8.4.1 Standard. In performing its obligations under this Agreement, the Arena Manager shall manage and operate the Arena Facility in a manner consistent with the Management Performance Standards and the Arena Maintenance Standard and with a level of skill and expertise reasonably expected of a professional management organization.

8.4.2 Consultation with the Team Owner. The Arena Manager shall, in managing the Arena Facility pursuant to this Agreement, solicit the Team Owner's input on, and recommendations regarding, maintenance, repairs, safety, staffing and operation and service standards, and shall, consistent with this Agreement, make commercially reasonable efforts to implement such recommendations.

8.4.3 Staffing for Events. The Arena Manager shall furnish trained event staff and personnel sufficient for the operation and maintenance of the Arena Facility and Arena Parking Areas for each Event (and with respect to Hockey Events, in such number and with such qualifications as the Team Owner may reasonably require consistent with Hockey Rules) and other activities at the Arena Facility, including an event coordinator, security personnel, ticket takers, ushers, first aid attendants, janitors, cleaning personnel, plumbers, electricians, carpenters, maintenance crew and supervisors qualified to operate the Arena Facility, which expenses shall be Operating Expenses.

(a) The Arena Manager shall adopt and enforce such grooming, dressing, and identification and cleanliness standards for event staff and other Arena Manager employees who will have contact with guests and patrons during Events and other activities at the Arena Facility as the Team Owner may from time to time reasonably require.

(b) The Arena Manager shall implement such customer service, security and hospitality training for event staff as the Team Owner may from time to time reasonably require.

(c) All expenses incurred by the Arena Manager in connection with the event staff shall be Operating Expenses.

#### 8.5 Concessions.

8.5.1 Concessions Agreements. The Arena Manager has the sole and exclusive right during the Term to negotiate and enter into all Concessions Agreements, and shall assume, to the extent required under the NHL Purchase Agreement, any existing

Concessions Agreement entered into prior to the Closing Date to the extent permitted by such Concessions Agreement; provided that, unless prohibited by any License or Concessions Agreement existing as of the Effective Date, any License or Concessions Agreement shall permit City-authorized vendors at City Sponsored Events and Community Events (for example, local vendors and food purveyors at community-oriented events).

(a) Concession Agreements shall be made upon such commercially reasonable terms and conditions as the Arena Manager deems appropriate in its reasonable discretion. Without the consent of the Arena Manager, the Team Owner shall not take any action with respect to, or have any authority over, Concessions and Concessions Agreements.

(b) Arena Manager shall retain as Exclusive Arena Manager Revenues all payments and other consideration to be made to or provided pursuant to a given Concessions Agreement to the extent not directly attributable to a Team Revenue Event or a City Sponsored Event and Community Event (in which case such revenues shall be property of the City).

(c) The Arena Manager shall cause, and shall cause each Concessions Agreement to require that, all payments and other consideration to be made to or provided by the concessionaire under a Concessions Agreement (i) be paid initially to the Arena Manager, as Operating Revenues, to the extent directly attributable to a Team Revenue Event, and (ii) be paid to the City, to the extent directly attributable to a City Sponsored Event or Community Event. For clarity, only payments or other considerations to be made or provided pursuant to a Concessions Agreement that (A) are calculated solely on the basis of sales made or transactions completed during a Team Revenue Event or a City Sponsored Event directly relating to such Team Revenue Event or City Sponsored Event, or (B) are payable solely because a given Team Revenue Event or City Sponsored Event is held shall be "directly attributable" to such Team Revenue Event or City Sponsored Event.

(d) The Arena Manager shall, within 10 days after the execution of a Concessions Agreement, give to the City notice of the execution of the Concessions Agreement, the name of the concessionaire that is a Party to such Concessions Agreement, and the products or services to be offered by such concessionaire under such Concessions Agreement.

(e) The Arena Manager shall cause all Concessions Agreements to contain the Exculpatory Language and a provision requiring that food and beverage service for the City Suite shall be provided at the same cost and manner as food and beverage service provided to the "Owner's Suite" or any suite licensed to or used by the Arena Manager, the Team Owner, or their respective Affiliates, whichever is lowest.

(f) The Arena Manager shall maintain a copy of each Concessions Agreement during the term of such Concessions Agreement and for a period of six years thereafter (or such longer time as may be required by Applicable Law) and the City shall have the right to inspect a copy of each Concessions Agreement, after reasonable notice to the Arena Manager, at the Arena Manager's office during normal business hours.

8.5.2 Food and Beverage Services. Subject to the terms of any Concessions Agreement, License, Advertising Agreement, Naming Rights Agreement and this Agreement, the Arena Manager shall have the right to offer food and beverage services directly to consumers at the Arena Facility in lieu of, or in addition to, food and beverage services that are offered pursuant to Concessions Agreements.

(a) The Arena Manager shall, if it is commercially reasonable to do so in order to attract a given Event (other than a Hockey Event or a Team Revenue Event), permit the distribution (without charge) of food and beverage samples by a Licensee for such Event during such Event.

(b) All revenues received by the Arena Manager from food and beverage services offered by the Arena Manager pursuant to this Section shall, to the extent not directly attributable to a Team Revenue Event be retained by the Arena Manager as Exclusive Arena Manager Revenues.

(c) The Arena Manager shall cause all revenues received by the Arena Manager from such food and beverage services, (i) to be paid to the Arena Manager, as Operating Revenues, to the extent directly attributable to a Team Revenue Event, and (ii) to be paid to the City for City Sponsored Events, less the City Sponsored Event Expenses. For clarity, only payments or other considerations to be made or provided that (A) are calculated solely on the basis of sales made or transactions completed during a Team Revenue Event or a City Sponsored Event directly relating to such Team Revenue Event or City Sponsored Event, or (B) are payable solely because a given Team Revenue Event or City Sponsored Event is held shall be "directly attributable" to such Team Revenue Event or City Sponsored Event.

(d) Notwithstanding anything to the contrary in this Section, the provisions of this Section shall not apply to Team Sales.

8.5.3 Arena Manager Provision of Food and Beverage Services. If the Arena Manager elects to provide food and beverage services at the Arena, then the benefits to the City from the Arena Manager's offering of such services with respect to City Sponsored Events shall be no less favorable than could be obtained from a Third Party with respect to such Events. In such event, the Arena Manager shall, at least 15 Business Days prior to the commencement of the Arena Manager's provision of any such food or beverage services, give the City notice of the services to be offered by the Arena Manager, together with reasonable evidence that the benefits to the City from the Arena Manager's offering of such services with respect to City Sponsored Events will be no less favorable than could be obtained from a Third Party with respect to such Events.

(a) The City shall have fifteen (15) Business Days after receipt of such notice to give the Arena Manager notice that either (i) the City agrees that the benefits to the City from the Arena Manager's offering of such services with respect to City Sponsored Events are no less favorable than could be obtained from a Third Party, or (ii) the City claims that such benefits are less favorable than could be obtained from a Third Party with respect to such Events.

(b) If the City does not give such notice within such fifteen (15) Business Day period, the City shall be deemed to have agreed that such benefits are no less favorable than could be obtained from a Third Party with respect to such Events.

(c) If the City notifies the Arena Manager that the City claims that the benefits to the City from the Arena Manager's offering of such services are less favorable than could be obtained from a Third Party with respect to such Events, the Arena Manager shall obtain *bona fide* bids for comparable services from not less than two Third Parties and then the City in its reasonable judgment, taking into consideration not only price, but also quality, reliability, experience, expertise, ability to perform and similar factors, shall determine whether the proposed benefits to the City from the Arena Manager's offering of such services are fair and acceptable.

## 8.6 Advertising and Media.

8.6.1 Arena Manager Advertising. Except as provided in this Section, the Arena Manager shall have the sole and exclusive rights to post, exhibit, display and otherwise present, and to sell and license, all Advertising during the Term. Accordingly, neither the Team Owner nor the City, except as provided in this Section, shall take any action with respect to, or have any authority over, the posting, exhibition, display, sale or license of Advertising or Advertising Agreements, other than at the express direction of the Arena Manager.

8.6.2 Advertising Revenue. Except as expressly provided in this Section 8, the Arena Manager shall receive all revenue from Advertising at the Arena and shall not be obligated to remit any such revenue to the City (subject to applicable taxes).

8.6.3 City Advertisements. The Team Owner shall cause all printed game programs produced by the Team Owner at Home Games and at All-Star Games (subject to the Hockey Rules) to include a one-page advertisement acknowledging the City's role in providing facilities for the Team and promoting other attributes of the City, in form and content reasonably requested by the City. No advertisement permitted by this Section shall be applicable to programs produced by third parties or increase the cost to the Team of producing the program in which the advertisement is to appear (other than by adding a page to the program). The text and design for each such advertisement shall be prepared by the City, at the City's expense, and shall be provided to the Team Owner with sufficient lead time to allow the Team Owner a commercially reasonable time to arrange for the inclusion of such advertisement in such program.

## 8.6.4 Arena Facility Naming Rights.

(a) The Arena Manager, in consultation with the Team Owner, shall have the sole and exclusive rights to sell and license all Naming Rights to be effective during the Term; provided, however, that the sale or license of Naming Rights to the Arena (or any portion of the Arena Facility) shall be subject to the approval of the City, which shall not be unreasonably withheld; provided however, the City's rejection of (i) any entity with which the City is currently in litigation or litigation is overtly threatened, or (ii) any name incorporating the name of any other municipality in the State of Arizona, or (iii) any name likely to subject the

City or its Council to ridicule or opprobrium, or involving any sexual, salacious or other generally objectionable term, shall be deemed reasonable. The Arena Manager shall use commercially reasonable efforts to cause the name "Glendale" (for example: "XXXXXX ARENA in Glendale, Arizona") to be included in the use of name of the Arena Facility or a major component thereof; provided however, Arena Manager shall not be required to incur additional costs as a result of the inclusion of "Glendale" in the use of the Arena's Name.

(b) Naming Rights shall be sold or licensed only for money, and not be bartered or exchanged for any other form of consideration; provided, however, that payments for Naming Rights may be made in periodic equal installments during the term of any agreement under which Naming Rights are sold or licensed as may be agreed by the Arena Manager in its reasonable commercial discretion. The Arena Manager shall receive all revenue from the sale and licensing of Naming Rights, including any unpaid amount under the current Naming Rights Agreement and shall, within fifteen (15) days after receipt of any revenue received from the sale or licensing of Naming Rights for the Arena Facility, remit to the City an amount equal to (i) twenty percent (20%) of the revenue from the sale and/or license of Arena Naming Rights (excluding any revenue from the sale of Naming Rights for any other components of the Arena except as described in (ii) and (iii) herein); (ii) 100% of the revenue from the sale and/or license of Naming Rights that is attributable to signage for any new theater/stage/venue that is constructed by Arena Manager within the Arena Facility ("**Arena Theater**"); and (iii) 100% of the revenue from the sale and/or license of Naming Rights that is attributable to signage for any stage for concert events.

(c) During such time that the Naming Rights have been sold or licensed under this Agreement, the Arena Manager shall use commercially reasonable efforts to cause "Glendale, Arizona" to be included in or after uses of the name of the Arena Facility.

#### 8.6.5 Names, Logo and Schedule.

(a) Team.

(i) At the request of the Team Owner, the Arena Manager shall prominently display the Team's name, logo and schedule in areas around the Arena Facility. The size, location and appearance of such displays shall be developed and mutually agreed upon by the Team Owner and the Arena Manager. No display or any other material prepared or permitted by the Arena Manager or the City shall use the name, any logo or any trade or service mark of the Team without the Team Owner's prior consent, which consent may be given or withheld by the Team Owner in its sole discretion.

(ii) The Team Owner shall change the Team's designation to "Arizona Coyotes" as soon as possible under applicable NHL rules.

(b) City. At the request of the City, the Arena Manager shall display the City's name and logo at the Arena Facility in a manner and at locations reasonably acceptable to the Arena Manager and the City; provided however, that no display or any other material prepared or permitted by the Arena Manager or the Team Owner shall use the name,

any logo or any trade or service mark of the City without the City's prior consent, which consent may be given or withheld by the City in its sole discretion.

8.6.6 Broadcasts. The Team Owner has and shall retain the sole and exclusive rights to control, and to receive as Exclusive Team Revenues all revenue from, all radio, television and other media broadcasts, reproductions and transmittals of the pictures, descriptions and accounts of Hockey Events and all other activities of the Team, the Team Owner and the visiting teams incidental to Hockey Events, regardless of the nature of the technology or the medium and whether distributed locally, nationally or otherwise.

(a) The Team Owner's rights shall apply to, without limitation, cable television, pay television, direct broadcast satellite television, subscription television, master antenna and satellite antenna television, closed circuit television, Internet and broadband distribution and any other technology now in existence or hereafter developed.

(b) The Team Owner's rights include the right to, from time to time, enter into agreements or other arrangements with other parties (including agreements with "truck producers") pursuant to which such other parties may exercise any or all of the rights of the Team Owner to control and receive revenue from such broadcasts, reproductions, transmittals and distributions.

8.6.7 Use of Communication Systems. The City shall have the right to use (without charge) the Communication Systems for a reasonable number of times (to be mutually agreed upon by the City and the Team Owner) during each Hockey Event solely for the purpose of making public service announcements, and for a reasonable number of times (to be mutually agreed upon by the City and the Team Owner) during each Hockey Event solely for the purpose of making announcements concerning future City Sponsored Events.

(a) Subject to the terms of any License, the City shall have the right to use (without charge) the Communication Systems for a reasonable number of times (to be mutually agreed upon by the City and the Arena Manager) during each Event (other than a Hockey Event) solely for the purpose of making public service announcements, and for a reasonable number of times (to be mutually agreed upon by the City and the Arena Manager) during each Event (other than a Hockey Event) solely for the purpose of making announcements concerning future City Sponsored Events. The City acknowledges that Licenses for Events (other than Hockey Events) may prohibit the City's use of the Communication Systems during such Events.

(b) No announcement permitted by this Section shall exceed a reasonable time (to be mutually agreed upon by the City and the Team Owner or the Arena Manager, as applicable) in duration. The City shall be responsible, at the City's expense, for the creation of all announcements to be made pursuant to this Section.

(c) For the purposes of this Agreement, "Communications Systems" refers to all audio and visual Communication Systems that are owned by the City and that are located at, in or on the Arena Facility, including scoreboards, satellite hook-ups, television and loudspeaker systems, public address systems, outdoor speakers, timers, clocks,



message centers and video screens, specifically excluding, however, any Advertising and any Parking Advertising displayed or otherwise presented on, in or by any portion of such audio and visual communication systems.

**8.7 Suites.**

**8.7.1 Suite License Agreements.** The Arena Manager shall have the sole and exclusive right to the following:

(a) To enter into Suite License Agreements upon such terms and conditions consistent with this Agreement and as the Arena Manager in its reasonable discretion deems appropriate; and

(b) To receive Suite License Revenues.

(c) The Arena Manager shall cause each Suite License Agreement to include the following:

(i) The Exculpatory Language;

(ii) A commercially reasonable provision requiring that the licensee under such Suite License Agreement execute and deliver, from time to time at the request of the Arena Manager, the Team Owner, or the City, accurate estoppel certificates regarding such Suite License Agreement;

(iii) A commercially reasonable provision requiring that the licensee under such Suite License Agreement obtain and maintain, during the term of such Suite License Agreement, insurance covering any damage to or destruction of the corresponding Suite caused by or attributable to any act or omission of such licensee and any agent, employee, guest or invitee of such licensee;

(iv) A commercially reasonable provision providing that the licensee under such Suite License Agreement shall be liable for any damage to or destruction of the corresponding Suite or any other portion of the Arena Facility caused by or attributable to any act or omission of such licensee and any agent, employee, guest or invitee of such licensee; and

(v) A commercially reasonable provision providing for (A) the waiver by the licensee under such Suite License Agreement of any Claim or Loss arising from or attributable to the use of such Suite by such licensee and its agents, employees, guests and invitees, and (B) such licensee's agreement to indemnify, hold harmless and defend the Arena Manager, the Team Owner, the City and the NHL, and their respective city council members and elected officials (with respect to the City), agents, directors, employees, other officials and officers, against any Claim or Loss arising from or attributable to the use of such Suite by such licensee and its agents, employees, guests and invitees.

(vi) A provision expressly authorizing the City to enter any suite for purposes of exercising its safety, fire prevention, police or other law enforcement responsibilities or otherwise as permitted by Applicable Law.

8.7.2 Services to Suites. The Arena Manager shall provide to each Suite (with the cost thereof being an Operating Expense) (i) heating, ventilation and air-conditioning so as to provide a temperature in the Suite during the use thereof that is reasonably comfortable; (ii) electricity for lighting and use of the appliances and equipment in the Suite; (iii) water; (iv) cleaning after each use and at other times reasonably necessary to keep the Suite in a clean and neat condition; and (v) maintenance and repair of the Suite as required to maintain the Suite in a first-class condition.

8.7.3 City Suite. The City shall have the right to continue to use the existing Suite used by the City (Suite Nos. 1238 and 1239), including Tickets (for seating and standing room in such Suite) to all Events, all at no cost to the City. Food and beverage service for such Suite shall be provided at the same cost and manner as food and beverage service provided to the "Owner's Suite" or any suite licensed to or used by the Arena Manager, the Team Owner, or their respective Affiliates, whichever is lowest.

8.8 Premium Seat Agreements. The Arena Manager shall have the sole and exclusive right to enter Premium Seat Agreements.

8.8.1 The Arena Manager shall have the sole and exclusive right to receive, as Exclusive Arena Manager Revenues, all Premium Seat revenues.

8.8.2 The Arena Manager shall cause each Premium Seat Agreement to include the following:

(a) The Exculpatory Language;

(b) A commercially reasonable provision requiring that the licensee under such Premium Seat Agreement execute and deliver, from time to time at the request of the Arena Manager, the Team Owner, or the City, accurate estoppel certificates regarding such Premium Seat Agreement;

(c) A commercially reasonable provision providing for (a) the waiver by the licensee under such Premium Seat Agreement of any Claim or Loss arising from or attributable to the use of such Premium Seat by such licensee and its agents, employees, guests and invitees, and (b) such licensee's agreement to pay, indemnify, hold harmless and defend the Arena Manager, the Team Owner, the City and the NHL, and their respective city council members and elected officials (with respect to the City), agents, directors, employees, officials and other officers against any Claim or Loss arising from or attributable to the use of such Premium Seat by such licensee and its agents, employees, guests and invitees; and

(d) A commercially reasonable provision providing that the licensee under such Premium Seat Agreement shall have the right to purchase a Ticket for the Premium Seat described in such Premium Seat Agreement for each Event, other than a Hockey

Event, City Sponsored Event or Community Event, at the Ticket price established by and to be paid to the sponsor or promoter of such Event (including any applicable City Surcharge and Supplemental Surcharge), pursuant to the procedures from time to time established by the Arena Manager for the exercise of such right.

8.8.3 Procedures. The Arena Manager shall establish, and from time to time revise, the procedures requiring the licensee under a Premium Seat Agreement to exercise, with respect to each Event other than a Hockey Event, a City Sponsored Event and a Community Event, the licensee's right to purchase a Ticket for the Premium Seat described in such Premium Seat Agreement for such Event sufficiently in advance of such Event so as to provide the sponsor or promoter of such Event with a reasonable opportunity to sell such Ticket if such licensee has not exercised its right to purchase such Ticket within the time period specified by such procedures.

8.9 Scheduling. The Arena Manager shall schedule all events and other activities at the Arena Facility in accordance with the Scheduling Procedures.

8.9.1 Hockey Event Responsibilities.

(a) Condition of Arena Facility for Hockey Events. The Arena Manager shall cause, not later than a reasonable time prior to the commencement of a given Hockey Event, the Arena Facility to be in a condition suitable for the Team's use of the Arena Facility for such Hockey Event, including, to the extent applicable:

(i) furnishing of the ice playing surface in accordance with all NHL requirements for Hockey Events; and

(ii) furnishing in good operating order, condition and repair, in accordance with all NHL requirements, all required goals and backup goals, nets, lines and striping, dasher boards, protective glass systems, replacement glass, photographers and media areas, time keeper areas, player penalty boxes, on-ice officials box, goal judge boxes, goal lights, ice surfacing equipment, signs and markers, team benches, tables and chairs, lighting, the Arena Communication Systems, remote broadcast systems, coach phone hookups and all other special equipment and facilities necessary or desirable for the Hockey Event.

(b) Ice Surface.

(i) The Arena Manager shall, at the request of the Team and subject to scheduling of other Events, remove and replace the ice surface in the Arena Facility, as an Operating Expense, if such surface does not meet any NHL requirement or requirement of the Hockey Rules.

(ii) In addition, the Arena Manager, as an Operating Expense, shall (A) remove and replace (or cover) the ice surface in the Arena Facility as necessary to accommodate the preparation for, or conduct of, Events other than Hockey Events, and (B) restore the ice surface to meet NHL requirements and all of the Hockey Rules prior to each Hockey Event.

(c) Hockey Tickets. Subject to the imposition of the City Surcharge and Supplemental Surcharge, the Team Owner (i) shall control the pricing, the advertising of and on, and the distribution (including the distribution for no charge) of Hockey Tickets, whether Hockey Tickets are issued directly by the Team Owner, through agencies, or other designees authorized by the Team Owner; and (ii) shall receive and retain, as Exclusive Team Revenues, all Hockey Ticket Receipts (other than any such revenues constituting Exclusive City Revenues). Neither the City nor the Arena Manager shall issue any Hockey Ticket or authorize anyone else to do so or admit any Person to a Hockey Event without a valid Hockey Ticket.

8.9.2 City Sponsored Events. Subject to the Scheduling Procedures, all Concessions Agreements, all Suite License Agreements, all Premium Seat Agreements, all Advertising Agreements and all Naming Rights Agreements, the City shall have the non-assignable right to use the Arena Facility, except for the Exclusive Team Spaces, for not more than four City Sponsored Events each Fiscal Year.

(a) Prior to the scheduling of a City Sponsored Event that is a Fee Activity, the City shall give the Arena Manager notice of whether the City elects to waive the City Surcharge and/or Supplemental Surcharge with respect to such City Sponsored Event, and if such notice is not provided it shall be deemed an election by the City not to waive such Surcharges with respect to that City Sponsored Event.

(b) The City shall take such actions as are required to cause the payment to the Arena Manager of an amount not less than the aggregate amount of City Surcharge and Supplemental Surcharge for each such City Sponsored Event, except to the extent that the City has waived, pursuant to this Agreement, either or both of such Surcharges. Arena Manager, in turn, shall pay the City Surcharge and Supplemental Surcharge to the City as required by this Agreement.

(c) The Arena Manager shall maintain separate records of all revenues and all expenses directly attributable to each City Sponsored Event, and all amounts received for deposit and deposited into the City Surcharge Account with respect to each City Sponsored Event. For clarity, only payments or other considerations to be made or provided that (A) are calculated solely on the basis of sales made or transactions completed during a City Sponsored Event directly relating to such City Sponsored Event or (ii) are payable solely because a given City Sponsored Event is held shall be "directly attributable" to such City Sponsored Event.

(d) The Arena Manager shall, at the time the quarterly financial report for such Fiscal Quarter is submitted to the Parties pursuant to Section 8.16:

(i) If the aggregate of the expenses directly attributable to all City Sponsored Events held during a given Fiscal Quarter exceeds the aggregate of the revenue directly attributable to City Sponsored Events, set-off against any distributions or payments to be made to the City for such Fiscal Quarter the amount by which the aggregate of such expenses exceeds the aggregate of such revenues and submit an invoice for the shortfall to

the City for reimbursement within 30 days (any such set-off and/or reimbursed amounts constituting Operating Revenues), or

(ii) If the aggregate of the revenues directly attributable to City Sponsored Events held during a given Fiscal Quarter exceeds the aggregate of the expenses directly attributable to City Sponsored Events held during a given Fiscal Quarter, remit to the City the amount by which the aggregate of such revenues exceeds the aggregate of such expenses within 30 days after the end of the Fiscal Quarter.

(e) In no event shall any rent or facility use charge for a City Sponsored Event be charged to the City or included as an expense item directly attributable to such events. Use of the Arena for such events is to be without charge to the City and all associated revenues shall be property of the City subject only to charges for event-specific variable operating expenses.

8.9.3 Community Events. Subject to the Scheduling Procedures, all Concessions Agreements, all Advertising Agreements and all Naming Rights Agreements, the City shall have the non-assignable right to use the Arena Facility, except for the Exclusive Team Spaces, for Community Events up to six times per Fiscal Year.

(a) The Arena Manager and the City shall take such actions as are required to cause all revenues generated by Community Events to be paid directly to the City, and such revenues shall not be Operating Revenues.

(b) Prior to the scheduling of a Community Event that is a Fee Activity, the City shall give the Arena Manager notice of whether the City elects to waive the City Surcharge and/or the Supplemental Surcharge with respect to such Community Event, and if such notice is not provided it shall be deemed an election by the City not to waive such Surcharges with respect to that Community Event.

(c) The City shall take such actions as are required to cause the payment to the Arena Manager of an amount not less than the aggregate amount of City Surcharge and Supplemental Surcharge for each such Community Event, except to the extent that the City has waived, pursuant to this Agreement, either or both of such Surcharges. Arena Manager, in turn, shall pay the City Surcharge and Supplemental Surcharge to the City as required by this Agreement.

(d) In no event shall any rent or facility use charge for a Community Event be charged to the City or included as an expense item directly attributable to such events. Use of the Arena for such events is to be without charge to the City and all associated revenues shall be property of the City subject only to charges for event-specific variable operating expenses.

#### 8.10 Arena Accounts.

8.10.1 Operating Account. The Arena Manager shall, prior to the Closing Date, establish and maintain the Operating Account and make commercially reasonable efforts to

collect Operating Revenues and, upon collection, deposit all Operating Revenues collected into the Operating Account not later than two Business Days after receipt.

8.10.2 Application of Monies in Operating Account. The Arena Manager shall cause the monies in the Operating Account to be applied to the payment of Operating Expenses as and when they become due and payable; such monies shall otherwise be available to the Arena Manager and the Team Owner as needed from time to time.

8.10.3 City Surcharge Account. The Arena Manager shall, prior to the Closing Date, establish and maintain the City Surcharge Account, and shall make deposits into the City Surcharge Account of all City Surcharge not later than two Business Days after the date on which such City Surcharge was deemed to have been earned. For purposes of this Agreement, the date on which a City Surcharge is deemed to have been earned shall be the date of the Fee Activity actually occurs, in which case there was no cancellation or postponement of the Fee Activity.

(a) Interest and other income earned on amounts held in the City Surcharge Account shall not be Operating Revenues and shall be the property of the City.

(b) The City shall make withdrawals from the City Surcharge Account at any time and from time to time in the City's sole discretion.

## 8.11 Impositions.

8.11.1 The Arena Manager shall pay or cause to be paid, as Operating Expenses, any and all Impositions that accrue after the Closing Date and during the Term, as and when they become due and payable, and before any fine, penalty, interest or cost may be added thereto or become due or be imposed by operation of law for the nonpayment thereof, except for Impositions being contested in good faith by appropriate proceedings diligently pursued and for which the Arena Manager has made adequate reserves for the Imposition and any additional fees, interest, or penalties.

8.11.2 Subject to Section 8.11.1 above, the Arena Manager may contest the legal validity or amount of any Imposition to be paid by the Arena Manager hereunder, and may institute such proceedings as the Arena Manager considers necessary therefor.

8.11.3 The City may require the Arena Manager to contest any Imposition; provided, however, that the Arena Manager shall not be required to proceed with any such contest that would cause the Arena Manager to suffer undue financial burden.

8.11.4 All costs and expenses incurred by the Arena Manager under this Section shall be Operating Expenses.

## 8.12 Contracts and Agreements.

8.12.1 Exculpatory Language. The Arena Manager shall cause all contracts or agreements entered into by the Arena Manager or the Team Owner and relating in any way to the Arena Facility (including Licenses, Concessions Agreements, Suite License Agreements,

Premium Seat Agreements, Advertising Agreements, Naming Rights Agreements and vendor contracts) to contain the Exculpatory Language.

8.12.2 Assignment and Transfer. The Arena Manager shall cause every contract or agreement to which the Arena Manager or the Arena Sub-Manager is a Party that (a) pertains to the management, operation and use of the Arena Facility, (b) provides for consideration in excess of \$100,000, and (c) has a term of more than one (1) year, including any options to renew or extend (excluding this Agreement, any Related Agreement, any agreement between the Arena Manager and the Arena Sub-Manager, and any employment agreements entered into by the Arena Manager or the Arena Sub-Manager), to provide for the following:

(a) The right of the Arena Manager or the Arena Sub-Manager (as applicable), in connection with a replacement of the Arena Manager or the Arena Sub-Manager (as applicable) under this Agreement, to transfer and assign such contract or agreement, or the Arena Manager's or the Arena Sub-Manager's (as applicable) interest in such contract or agreement, to an assignee or transferee approved by the Team Owner and the City, provided that

(i) such transfer or assignment fully assigns all of the rights and delegates all of the duties of the Arena Manager or the Arena Sub-Manager (as applicable) under such contract or agreement to such assignee or transferee, and

(ii) such assignee or transferee assumes (without novation) the Arena Manager's or the Arena Sub-Manager's (as applicable) duties thereunder.

8.12.3 City's Right to Cure.

(a) The Arena Manager shall cause any contract or agreement entered into by the Arena Manager or the Arena Sub-Manager with respect to the management, operation and use of the Arena Facility (other than this Agreement, any Related Agreement, any agreement between the Arena Manager and the Arena Sub-Manager and any employment agreements entered into by the Arena Manager or the Arena Sub-Manager), which agreement or contract provides for consideration in excess of \$100,000 and has a non-terminable term of more than one year (including any option to renew or extend), to provide that, if a material default is asserted against the Arena Manager or the Arena Sub-Manager(if any), then the City shall have the right, but not the obligation, to cure such default, as set forth in the immediately following sentence;

(b) The City shall not exercise such right if the Arena Manager or the Arena Sub-Manager is taking action to contest or cure the asserted default unless the City reasonably determines that the actions of Arena Manager or Arena Sub-Manager will not effectively or timely cure the default.

(c) The Arena Manager shall cause each such contract or agreement entered into after the Closing Date to provide that (i) any default asserted against the Arena Manager or the Arena Sub-Manager shall require written notice to the Arena Manager or the Arena Sub-Manager and to the Team Owner and the City; and that (ii) the City has fifteen

(15) days after the expiration of the cure time permitted the Arena Manager or the Arena Sub-Manager to exercise the City's right to cure any asserted default.

(d) If the City fails to timely exercise its right to cure, the City shall be deemed to have waived such right.

(e) If the City elects to cure an asserted default in accordance with this Section, the City shall be entitled to reimbursement by the Arena Manager of all reasonable costs and expenses incurred by the City in curing such default from Operating Revenues without limiting the City's other remedies against the Arena Manager or Arena Sub-Manager.

#### 8.12.4 Arena Manager Affiliate Contracts.

(a) No Arena Manager Affiliate Contract shall be less favorable to Arena Manager than could be obtained from a Third Party, provided that the foregoing requirement and the City's right to demand compliance with subsection (b)-(d) below shall not apply with respect to an Arena Manager Affiliate Contract if the Arena Manager certifies that such contract (i) can have no adverse effect on the performance by the Arena Manager of its obligations under this Agreement, (ii) cannot increase Operating Expenses, and (iii) cannot decrease Operating Revenues. The Arena Manager shall maintain a separate and distinct file with complete copies of all Arena Manager Affiliate Contracts available for inspection by the City (or a representative thereof) at the Arena Facility at any time during normal business hours.

(b) City and the Team Owner separately shall have fifteen (15) Business Days after receipt of such copy to give the Arena Manager (and the other Parties) notice that either (i) the Party giving notice agrees that the terms and conditions of the Arena Manager Affiliate Contract are no less favorable than could be obtained from a Third Party, or (ii) the Party giving notice claims that such terms and conditions are less favorable than could be obtained from a Third Party.

(c) Except in the circumstances where a reasonable determination can be made that the terms and conditions are clearly less favorable, if the City or Team Owner does not give such notice within such 15 Business Day period, then the City or Team Owner shall be deemed to have agreed that such terms and conditions are no less favorable than could be obtained from a Third Party.

(d) If either the City or the Team Owner notifies the Arena Manager that the notifying Party claims that the terms and conditions of an Arena Manager Affiliate Contract do not appear to have been made on a fair market, arms-length equivalent basis, the Arena Manager shall obtain *bona fide* bids for comparable services from not less than two Third Parties, then the City, taking into consideration not only price, but also quality, reliability, experience, expertise, ability to perform and similar factors shall determine, in its reasonable judgment, whether the proposed Affiliate contract is fair and acceptable.

**8.13 Accounting Procedures.** The Arena Manager shall establish and maintain accounting procedures for the Arena Accounts on an accrual basis, in accordance with GAAP applied on a consistent basis throughout the periods indicated.



#### 8.14 Annual Budget.

8.14.1 Requirement. The Arena Manager shall, not later than May 31 of each year, prepare and submit to the City and the Team Owner for their respective review and approval, a proposed Annual Budget (including expense and revenue projections), for the period beginning on the July 1 following the end of the first full Fiscal Year and ending on June 30 of the following year, and for each Fiscal Year thereafter during the Term.

8.14.2 Initial Period and First Fiscal Year. The Arena Manager will prepare and submit to the City within 30 days of the Closing Date, in consultation with the City and the Team Owner, (i) an Annual Budget for the period commencing on the Closing Date and ending on the last day of the Fiscal Year during which the Closing Date occurs and (ii) an Annual Budget for the first full Fiscal Year of the Term; the form (not content) of such Annual Budgets are attached to this Agreement as Exhibit "G".

8.14.3 Review. Each of the City and the Team Owner shall review each proposed Annual Budget (and any revised proposed Annual Budget submitted to the City and the Team Owner pursuant to this Section) and give a notice of approval or disapproval thereof to the Arena Manager (with a copy to the other of the City or the Team Owner, as applicable).

(a) The City shall review the Annual Budget to assure it is substantially in accord with the obligations of the Parties set forth in this Agreement and is not substantially inconsistent with budget of other similar arena facilities. The Arena and Team shall agree upon the standard of the Team's review of the Annual Budget and provide written notice of that standard to the City.

(b) The City and Team shall provide the Arena Manager its notice of approval or disapproval of the budget within 15 days after receipt of such proposed Annual Budget; provided, however, that the failure by the City or the Team to deliver an approval of the proposed Annual Budget within such time period shall be deemed to be approval thereof.

8.14.4 Disapproval. Any notice of disapproval of a given proposed Annual Budget shall state in detail the basis for such disapproval.

(a) Upon disapproval of a given proposed Annual Budget pursuant to this Section, the Arena Manager shall revise such proposed Annual Budget and submit the revised proposed Annual Budget to the City and the Team Owner for review and approval or disapproval under this Section.

(b) Beginning with the second full Fiscal Year of the Term, if the Annual Budget for a given Fiscal Year is not approved by the City and the Team Owner pursuant to this Section prior to the commencement of such Fiscal Year, then the expenditures in the approved Annual Budget for the immediately preceding Fiscal Year, increased by the greater of (i) 5% and (ii) if positive, the increase in the Consumer Price Index for all Urban Consumers for the prior year, per line item per Fiscal Year, shall remain in effect until a replacement Annual Budget is approved by the City and the Team Owner.

## 8.15 Revisions and Reallocations.

(a) The Arena Manager may from time to time, after notice to the City and the Team Owner, revise the approved Annual Budget as reasonably necessary to reflect any unanticipated circumstances; and such revised Annual Budget shall be subject to approval or disapproval by the City and Team Owner, as provided in Section 8.14 of this Agreement.

(b) The Arena Manager may from time to time, after notice to the City and the Team Owner, reasonably reallocate all or part of the amounts allocated to one or more expense line items in the then applicable Annual Budget so long as such reallocations do not increase the total aggregate amount of all of the expense items in such Annual Budget or materially change the projected timing of revenues and expenses.

### 8.15.2 Unbudgeted Expenses.

(a) Circumstances may arise that require, in the reasonable judgment of the Arena Manager, unbudgeted expenses (whether as Operating Expenses or expenditures for Capital Improvements), and in each such case, the Arena Manager shall within a reasonable time provide notice to the City and the Team Owner of such unbudgeted expenses and, if and only if the quarterly variance for such unbudgeted expenses is more than 10% of the amount budgeted for Operating Expenses for such Fiscal Quarter (which, for the avoidance of doubt, will not be cumulative with any prior Fiscal Quarter), the Arena Manager shall provide a reasonably detailed explanation of the circumstances giving rise to such expenses.

(b) If the City refuses to recognize such unbudgeted expenses as Operating Expenses or expenditures for Capital Improvements, the Parties shall attempt to resolve such dispute by Mediation, pursuant to this Agreement.

8.15.3 Emergencies. The Arena Manager shall, promptly after acquiring knowledge that an Emergency exists, give notice to the City and the Team Owner of the existence of such Emergency and a description of the circumstances of such Emergency.

(a) If the Arena Manager reasonably determines that Capital Improvements are required to alleviate such Emergency, the Arena Manager shall promptly notify the City and the Team Owner of the need to make such Capital Improvements and the nature of the same; and

(b) The Arena Manager shall undertake the emergency Capital Improvements, subject, in each case, to the City's responsibility to provide for, and to reimburse the Arena Manager for its incurrence of any reasonable costs relating to, such Capital Improvements.

(c) If the City refuses to recognize such expenditures as Capital Improvements necessary to alleviate an Emergency, the Parties shall attempt to resolve such dispute by Mediation, pursuant to this Agreement.

8.15.4 Monitoring of Budget. The Arena Manager shall, on an ongoing basis during each Fiscal Year, (i) monitor all actual expenses and revenues; (ii) compare such actual

revenues and expenses to the corresponding categories of budgeted expenses and projected revenues for such Fiscal Year; and (iii) promptly give notice to the City and the Team Owner of any circumstances that indicate to the Arena Manager that there may be a need to incur unbudgeted expenses.

#### 8.16 Financial Reports.

8.16.1 Periodic Reports. Commencing on the Closing Date and continuing during the Term, the Arena Manager shall provide to the Parties the following financial reports in a format and with a level of detail reasonably acceptable to the Parties:

(a) Monthly Financial Reports. Not later than the last day of each calendar month, (a) a statement setting forth the prior calendar month's Operating Revenues, Operating Expenses, and expenditures for Capital Improvements; and (b) a statement setting forth the end of the month balances for each of the Arena Accounts (other than the City Surcharge Account) and describing the reasons for any transfers between or among accounts (other than withdrawals by the City from the City Surcharge Account) during the prior calendar month.

(b) Quarterly Financial Reports. Not later than 60 days after the end of each of the first three Fiscal Quarters of each Fiscal Year, a balance sheet relating to Arena Facility operations as of the end of such Fiscal Quarter, and statements of income and cash flows relating to Arena Facility operations for the period commencing at the end of the previous Fiscal Year and ending with the end of such Fiscal Quarter.

(c) Annual Financial Reports. Not later than 90 days after the end of each Fiscal Year, provided, that if all necessary information from the NHL related to the following items (a), (b) and (c) shall not have been received by the date which is 30 days after the end of each Fiscal Year, then interim reports shall be provided within the normal time frame and final reports shall be provided within 60 days after the receipt of all necessary information from the NHL related thereto): (a) a balance sheet relating to Arena Facility operations as of the end of such Fiscal Year, (b) a statement of profit or loss for Arena Facility operations during such Fiscal Year, and (c) a statement of changes of financial condition for Arena Facility operations during such Fiscal Year, each prepared in accordance with GAAP as consistently applied (if there are multiple interpretations of the application of GAAP, GAAP as traditionally interpreted by the Arena Manager and the Team Owner shall apply) (collectively, the "**Annual Financial Reports**"), and accompanied by a report containing an opinion of the Arena Manager's accountants, stating that such Annual Financial Reports fairly present, in all material respects, the activities to which such Annual Financial Reports relate, that such Annual Financial Reports have been prepared in accordance with GAAP as consistently applied and that the examination by the Arena Manager's accountants in connection with such financial reports was made in accordance with GAAP.

(d) Accountants. The Arena Manager's independent certified public accounting firm shall be a nationally recognized public accounting firm selected by the Arena Manager. Following not less than a 30-day notice to the other Parties, the Arena Manager may from time to time engage replacement accountants.

(e) GAAP. All financial statements shall be prepared in accordance with GAAP, except that the unaudited financial statements need not contain all footnotes required by generally accepted accounting principles. The financial statements shall fairly present in all material respects the financial condition and operating results as of the dates, and for the periods, indicated therein, subject in the case of the unaudited financial statements to normal year-end audit adjustments.

#### 8.16.2 Inspection.

(a) The Arena Manager shall, for a period of five years after the end of the Fiscal Year to which they pertain (or such longer time as may be required by Applicable Law), keep and maintain complete Account Records.

(b) The Arena Manager shall require any Arena Sub-Manager to comply with the provisions of this Section and the inspection and audit rights of the Parties granted herein.

(c) The Arena Manager shall keep the Account Records separate and identifiable from any other records of the Arena Manager.

(d) Upon not less than five Business Days' notice to the Arena Manager and the other Parties, each of the City and the Team Owner (including their respective accountants and attorneys) shall be entitled to inspect the Account Records, during the period the Arena Manager is required to maintain them, at the Arena Manager's office during normal business hours.

#### 8.17 Audits.

8.17.1 The City shall have the right to conduct an independent audit of the management and operation of the Arena (or any part thereof) and the Account Records (or any part thereof) and the Team Owner Records (or any part thereof) by City Staff or by an independent certified public accounting firm selected by the City.

(a) Any such audit shall be conducted after reasonable notice to the Arena Manager during the Arena Manager's normal business hours and at the City's sole expense.

(b) Notwithstanding any provisions to the contrary in this Agreement, the City's right to conduct such an independent audit after the Termination Date shall survive any termination of this Agreement for a period of 12 months.

#### 8.17.2 Overpayments/Underpayments.

(a) If any such audit reveals an overpayment or an underpayment of any amount to be paid or distributed under this Agreement, then the City shall deliver to the Arena Manager a copy of the report of such audit prepared by the City's Staff or independent certified public accounting firm.

(b) The Arena Manager shall have the right to review such report and provide within 30 days of the receipt of the report information supporting an amount different from that set forth in the report, which different amount may indicate that there has been no overpayment or underpayment; and the Parties shall in that event proceed in good faith to resolve any disagreement regarding such amount.

(c) Within 30 days after the resolution of any such disagreement, if an overpayment or underpayment shall have occurred, in the case of an underpayment, the Arena Manager shall make a payment to rectify such underpayment, or, in the case of an overpayment, the City shall make a payment to rectify such overpayment.

8.17.3 Disputes. In the event of a dispute between or among the Parties regarding the accuracy of the results of an audit conducted pursuant to this Section, the Parties shall attempt to resolve such dispute by Mediation pursuant to this Agreement.

8.17.4 No Limitation on Governmental Powers. Nothing in this Section shall be construed as a limitation on the City's governmental powers to audit and review tax reports and tax returns.

## 8.18 Litigation.

### 8.18.1 Litigation Reports.

(a) The Arena Manager shall deliver to the City and the Team Owner each month a report describing any of the following incidents that have occurred during the prior month of which the Arena Manager has knowledge:

(i) Any injury to any Person at the Arena Facility that requires either immediate on site, or subsequent off-set medical attention; or

(ii) Any incident that the Arena Manager reasonably determines is likely to lead to the commencement of one or more legal actions or proceedings by a Person.

(iii) Any incident involving damage to property of Third Parties in which the estimated amount of damage exceeds \$5,000.

(b) The Arena Manager shall notify the City no less than one Business Day following any fatality or serious bodily injury to any patrons or employees working at the Arena Facility, assaults or incidents involving five or more individuals, and theft or property damage greater than, in a single instance, \$5,000.

8.18.2 Notices and Information. The Arena Manager shall, promptly after acquiring knowledge of the commencement of any legal action or proceeding relating to the Arena Facility, give any insurer and the other Parties' notice of such commencement, and keep the other Parties reasonably advised of the status of, and all significant developments in, any such legal action or proceeding.

8.18.3 Retention of Counsel. In consultation with the other Parties, the Arena Manager shall, in good faith, retain counsel reasonably acceptable to the City (and, where applicable, any appropriate insurer) with respect to the defense, settlement, or tender of defense to an applicable insurer, with respect to all legal actions or proceedings regarding the Arena Facility.

8.18.4 Costs. Unless the costs and expenses are incurred as a result of an intentional breach of this Agreement, the negligence, gross negligence, intentional misconduct or criminal acts of the Arena Manager or the Team Owner or any of their respective agents, employees, officials or other representatives, all costs and expenses incurred by the Arena Manager in defending, settling, or prosecuting such legal actions and proceedings shall be Operating Expenses.

8.18.5 Participation. The City or Team Owner shall have the right to participate, at their own respective expense, and not as an Operating Expense, in any legal action or proceeding described in this Section; unless the City is named as a party to such action solely because of its ownership of the Arena, in which case such expenses shall be paid by the Arena Manager (or its insurer) and shall be deemed subject to the Indemnification Provisions of Section 20 of this Agreement.

8.19 Use by the Team and Occurrence of Home Games. In connection with the Arena Manager's management of the Arena Facility, the Arena Manager shall secure the substantial, regular and continuing use by the Team and the occurrence of Home Games at the Arena Facility during the Term as provided in the Non-Relocation Agreement by causing the Team Owner to execute and deliver the Non-Relocation Agreement. The Arena Manager shall cause Team Owner to fully comply with the terms of the Non-Relocation Agreement.

## 9. CHARGES AND FEES.

### 9.1 City Surcharge.

9.1.1 The Arena Manager shall take the following actions to collect and hold in trust for the City for the purposes of depositing into the City Surcharge Account, and which shall not be Operating Revenue, a surcharge in the amount described in this Section 9.1 for each Qualified Ticket (the "**City Surcharge**") and an additional surcharge in the amount described in Section 9.13 of this Agreement for each Qualified Ticket (the "**Supplemental Surcharge**"):

9.1.2 Amount of the City Surcharge. The City Surcharges shall be in the following amounts:

(a) For all Hockey Events that are Fee Activities during the 2013-2014 Season, \$3.00 per Qualified Ticket with respect to each Fee Activity (for which the City has not waived the City Surcharge), subject to increase for subsequent seasons during the Term as follows:

(i) If per game attendance averages less than 15,000 in any one season, the City Surcharge during the immediately succeeding season will be \$3.00 per Qualified Ticket;

(ii) If per game attendance averages between 15,000 and 15,999 in any one season, the City Surcharge will be \$3.25 per Qualified Ticket for the immediately succeeding season;

(iii) If per game attendance averages 16,000 and 17,000 in any one season, the City Surcharge will be \$3.50 per Qualified Ticket for the immediately succeeding season; and

(iv) If per game attendance averages more than 17,000 in any one season, the City Surcharge will be \$3.75 per Qualified Ticket for the immediately succeeding season.

Notwithstanding the foregoing, the City Surcharge per Qualified Ticket will not be decreased in the event that per game attendance in the preceding season decreases or falls below the level used to calculate in any season the City Surcharge amount.

(b) For non-Hockey Events during the Term, \$5.00 per Qualified Ticket with respect to each Fee Activity (for which the City has not waived the City Surcharge).

9.1.3 Supplemental Surcharge. In addition, throughout the Term, a Supplemental Surcharge of \$1.50 per Qualified Ticket ("**Supplemental Surcharge**") shall be imposed by the Arena Manager for all Hockey and non-Hockey Events. The Supplemental Surcharge shall be deposited by Arena Manager into one or more escrow accounts (as permitted by Applicable Law) in the name of Arena Manager and the City, and shall be the property of each Party to the extent each is entitled to such monies under this Agreement as determined by Arena Manager and the City jointly (the "**Supplemental Surcharge Escrow Accounts**"); provided that such deposits shall be held in accordance with and subject to audit pursuant to the procedures described on Exhibit "N" attached hereto (the "**Supplemental Surcharge Procedures**"). City shall have the right to draw upon its Supplemental Escrow Account within 60 days following the last day of each Fiscal Year, to the extent City received less than \$9,000,000 in total revenue from operations at the Arena pursuant to this Agreement during the immediately preceding Fiscal Year (the "**Deficit Amount**"), as further described in the Supplemental Surcharge Procedures and in an amount not to exceed the total funds available in the Supplemental Surcharge Escrow Account at the end of such Fiscal Year. The funds remaining in the Supplemental Surcharge Escrow Account following payment of the Deficit Amount, if any, to City shall belong to Arena Manager free and clear of all claims of City and shall be disbursed to Arena Manager such that said escrow account is reset to a zero balance following the reconciliation pursuant to the Supplemental Surcharge Procedures at the beginning of each Fiscal Year. These Supplemental Surcharge amounts imposed by the Arena Manager which are the property of Arena Manager pursuant to this Section 9.1.3 are pledged to the City, as more fully described in the Supplemental Surcharge Procedures, to the extent of the City's interest, with the City claiming no interest in the balance of such account. The Supplemental Surcharge Escrow Account shall be held in one or more (FDIC insured) accounts of the Arena

Manger and the City jointly, at one or more Third Party financial institutions agreed to by the City and Arena Manager. To the extent of any inconsistency between this Section 9.1.3 and the terms of the Supplemental Surcharge Procedures, the terms of this Section 9.1.3 shall control.

9.1.4 Ownership. Subject to the foregoing, all City Surcharge and Supplemental Surcharge revenues shall at all times, be property of the City, free and clear of all claims or interests of any other Party (or any lender).

9.1.5 Hockey Events. The Arena Manager shall, with respect to each Hockey Event that is a Fee Activity, deposit into the City Surcharge Account all amounts payable as City Surcharge pursuant to this Section with respect to such Hockey Event, within two Business Days after such City Surcharge is deemed to have been earned (as provided in Section 8.10.3 hereof).

9.1.6 Team Revenue Events and City Revenue Events. The Arena Manager shall, with respect to each Team Revenue Event and City Revenue Event that is a Fee Activity, deposit into the City Surcharge Account all amounts payable as City Surcharge and Supplemental Surcharge pursuant to this Section with respect to such Team Revenue Event and City Revenue Event, within two Business Days after such City Surcharge and Supplemental Surcharge is deemed to have been earned (as provided in Section 8.10.3 hereof).

9.1.7 City Sponsored Events and Community Events. The Arena Manager shall, with respect to each City Sponsored Event that is a Fee Activity and for which the City has not waived the City Surcharge and/or Supplemental Surcharge, deposit into the City Surcharge Account all amounts payable as City Surcharge and Supplemental Surcharge pursuant to this Section with respect to such City Sponsored Event, within two Business Days after such City Surcharge or Supplemental Surcharge is deemed to have been earned (as provided in Section 8.10.3 hereof).

9.1.8 Licenses for Other Fee Activities. With respect to a Fee Activity that is not a Hockey Event, Team Revenue Event, City Revenue Event or City Sponsored Event, the Arena Manager shall deposit into the City Surcharge Account all amounts payable as City Surcharge or Supplemental Surcharge pursuant to this Section with respect to such Fee Activity, within two Business Days after such City Surcharge or Supplemental Surcharge is deemed to have been earned (as provided in Section 8.10.3 hereof).

9.2 Separate Statement of Fees on Tickets. To facilitate the verification of City Surcharge and Supplemental Surcharge:

9.2.1 The Team Owner shall cause the retail price of each Hockey Ticket to be stated on the face of such Hockey Ticket, and shall require that admission for a Hockey Event (including for Suites and Premium Seats) be pursuant to a Hockey Ticket;

9.2.2 The Arena Manager shall cause each License for a Team Revenue Event or a City Revenue Event to require that the retail price of each Ticket for such Event be stated on the face of such Ticket, and that admission for each such Event (including for Suites and Premium Seats) be pursuant to a Ticket;



9.2.3 The Arena Manager and the City (as applicable) shall cause the retail price of each Ticket for a City Sponsored Event to be stated on the face of such Ticket, and shall require that admission for each City Sponsored Event (including for Suites and Premium Seats) be pursuant to a Ticket; and

9.2.4 With respect to a Fee Activity that is not a Hockey Event, Team Revenue Event, City Revenue Event or City Sponsored Event, the Arena Manager shall cause each License for such a Fee Activity to require that the retail price of each Ticket for such Fee Activity be stated on the face of such Ticket, and that admission for each such Fee Activity (including for Suites and Premium Seats) be pursuant to a Ticket.

## **10. MANAGEMENT FEE; TAXATION.**

**10.1 Management Fee.** During the Term, in consideration of the Arena Manager's agreement to perform the management and other services set forth in this Agreement and to pay all operating and maintained costs associated with the Arena Facility (other than capital costs as provided herein), provided there is no breach by the Team Owner of the obligations under the Non-Relocation Agreement or a material breach by the Arena Manager of its obligations under this Agreement, the City shall pay to the Arena Manager, by wire transfer of immediately available funds to an account specified by the Arena Manager, a Management Fee, paid in quarterly (on a three calendar month basis) installments in arrears on or before each October 1<sup>st</sup>, January 1<sup>st</sup>, April 1<sup>st</sup> and July 1<sup>st</sup> during the Term the following amounts or a pro-rata portion of such amounts based upon the number of days in such quarter:

10.1.1 On October 1, 2013, for the period beginning on the Closing Date and ending on the last day of the calendar quarter in which the Closing Date occurs, an amount equal to \$15,000,000.00 multiplied by a factor equal to the number of days from the Closing Date to the end of such quarter divided by 365, which for the purposes of clarity shall be calculated as follows:

$$\text{\$15,000,000 X } \left( \frac{\text{Number of Days from Closing Date to September 30, 2013}}{365} \right)$$

10.1.2 Commencing January 1, 2014, \$3,750,000.00 per quarter, in arrears, during the balance of the Term.

In no event shall the Management Fee exceed \$15,000,000.00 per year. The City may, during the continuation of any Arena Manager Default, and following the expiration of any applicable notice and cure period, by written notice to Arena Manager, require that any revenues owed to the City, and/or any amount in the City Surcharge Account, be applied to the City's obligation to pay the Management Fee.

**10.2 Taxation of Transactions and Activities at Arena.** The Parties acknowledge and agree that transactions and activities at the Arena Facility (including without limitation Arena Manager revenues described in Sections 8.2.1(d) and 8.5.2) (i) are, and shall continue during the Term to be, subject to taxes imposed by the City under Applicable Law, (ii) will be subject to such City-wide taxes as apply to retail and entertainment activities conducted in the City, and (iii) will be subject to future changes in the tax rates that apply under Applicable Law.

## 11. CAPITAL IMPROVEMENTS.

**11.1 Arena Manager's Obligation.** The Arena Manager shall, in addition to the Arena Manager's obligation for on-going repair and maintenance of the Arena Facility, have the obligation to make necessary and prudent Capital Improvements to the Arena Facility in accordance with this Section, provided however, that the Arena Manager's obligation to undertake and complete Capital Improvement projects under this Section is limited by the availability of funds in the Renewal and Replacement Account or, in the event funds are not available in the Renewal and Replacement Account, additional assured funding provided by the City. Notwithstanding the foregoing, capital expenses for construction of the Arena Theater in the Arena shall be paid by the Arena Manager.

**11.2 Renewal and Replacement Schedule.** The current Renewal and Replacement Schedule for the Arena is attached to this Agreement as Exhibit "L" and reflects project capital expenditures (but not routine repair and maintenance which remains the obligation of the Arena Manager) that are anticipated for the Arena Facility.

**11.2.1** The City and Arena Manager shall meet and confer within the first six months following the Closing Date to make any adjustments to the Renewal and Replacement Schedule that the Parties mutual agree to be necessary or reasonable prudent and advisable.

**11.2.2** In the event the City and Arena Manager cannot agree upon adjustments, if any, to the Renewal and Replacement Schedules that are necessary or reasonable prudent and advisable, the Parties shall attempt to resolve such dispute by Mediation, pursuant to this Agreement.

**11.3 Funding of Capital Improvements.** In order to fund the Renewal and Replacement Schedule, the City shall provide the following amounts (collectively, the "**Capital Improvement Contributions**"), which shall be paid into and held in the Renewal and Replacement Account on the first day of the applicable Fiscal Year (and for the first year of the Term, on the Closing Date):

**11.3.1** \$500,000 during each Fiscal Year of the Term through June 30, 2019, prorated as provided in Section 6.6.1 for Partial Years; and

**11.3.2** \$1,000,000 during each Fiscal Year beginning July 1, 2020 and ending June 30, 2027.

**11.3.3** Any portion of the Capital Improvement Contribution made in a given Fiscal Year that is not utilized for Capital Improvement Expenditures in such Fiscal Year shall be retained in the Renewal and Replacement Account and may be utilized by the Arena Manager for Capital Improvement Expenditures in subsequent Fiscal Years. Such unused Capital Improvement Contribution shall not be credited towards the Capital Improvement Contribution for any subsequent Fiscal Year.

**11.4 Budgeting for Capital Improvements.** The Arena Manager shall in each Annual Budget identify all Capital Improvement expenditures ("**Capital Improvement**

**Expenditures**”), including those that will require Capital Improvement Contributions, that are: (a) necessary to comply with mandatory governmental requirements; (b) necessary or appropriate for the safe operation of the Arena Facility or its maintenance or repair; (c) reasonably required by any License, Concessions Agreement, Suite License Agreement or Premium Seat Agreement (it being understood that these Capital Improvement Expenditures shall not be an expense chargeable to the City); or (d) in the Arena Manager’s reasonable opinion, will materially improve the Arena Facility, increase Operating Revenues or reduce Operating Expenses or which are reasonably expected to ensure the economic competitiveness of the Arena Facility. Upon installation, any modifications or installations funded by the Capital Improvement Contributions shall become a part of the Arena Facility and the property of the City.

**11.5 Renewal and Replacement Account.** The Arena Manager shall, prior to the Closing Date, establish and maintain the Renewal and Replacement Account which shall at all times remain the property of the City until disbursed in accordance with this Section.

11.5.1 Interest earned on the Renewal and Replacement Account shall not be Operating Revenues and shall be considered part of the Renewal and Replacement Account.

11.5.2 Monies shall be disbursed from the Renewal and Replacement Account for Capital Improvement Expenditures pursuant to the provisions of this Agreement.

11.5.3 The City shall take such actions as are required to cause such disbursements to be made as and when required by the provisions of this Agreement.

11.5.4 The amounts on deposit in the Renewal and Replacement Account pursuant to this Section shall not be Operating Revenues.

11.5.5 The City shall provide Capital Improvements Contributions subject to and in accordance with the City’s capital improvements budget process.

**11.6 Emergencies.** In the event of an Emergency:

11.6.1 The Arena Manager shall make the repairs necessary to alleviate such Emergency, in which event the Arena Manager shall pay for or be reimbursed for the cost of the work from the Renewal and Replacement Account or such other City funds that may be legally expended. Such payment or reimbursement shall be made to the Arena Manager within seven business days from the Arena Manager’s submission of appropriate documentation.

11.6.2 The City and the Arena Manager will meet immediately to determine the extent of the work necessary and the funding for such work.

11.6.3 The Arena Manager shall comply with all of the governmental requirements pertaining to the work performed.

11.6.4 The Arena Manager may use monies from any Arena Account (other than the Renewal and Replacement Account) to pay for Capital Improvement Expenditures in the event of an Emergency requiring Capital Improvements.

## 11.7 City Rights.

11.7.1 The City shall have the right, without the prior consent of the Team Owner, but with the prior consent of the Arena Manager which shall be properly and reasonably provided (and not unreasonably withheld, conditioned or delayed), to make Capital Improvements or other repairs to the Arena Facility (other than the Exclusive Team Spaces) using the Renewal and Replacement Account if the Capital Improvements or other repairs are in the City's estimation reasonable and necessary and improve the structural integrity of the Arena Facility and do not fundamentally alter the character or suitability of the Arena Facility for use as a multi-purpose arena facility in compliance with all applicable NHL requirements and Applicable Law, and are done in a manner as to not unreasonably interfere with the operation of the Arena Facility.

11.7.2 The City shall provide the Arena Manager with not less than 30-day notice of, and a schedule for, any such Capital Improvements or other repairs.

11.7.3 All work shall be performed pursuant to a schedule reasonably approved in advance by Arena Manager to minimize any interference with operations of the Arena Facility. The location of any staging area shall be subject to approval by Arena Manager, which approval shall not be unreasonably withheld, conditioned or delayed.

11.7.4 The City's design and construction contractors and subcontractors shall comply with reasonable security and identification procedures established by Arena Manager for access to the Arena.

11.7.5 The City will prevent any type of encumbrance, security interest, pledge, claim, mechanics' or other lien arising out of work performed for, materials furnished to, or obligations incurred by the City in the construction of any permitted Capital Improvements or repairs and will cause any such encumbrance, security interest, pledge, claim, mechanics' or other lien to be removed or bonded over within 15 days after receipt of notice thereof.

11.7.6 Upon installation, any such Capital Improvement shall become a part of the Arena Facility and the property of the City, subject to the Arena Manager's and the Team Owner's use rights under this Agreement.

11.7.7 The City shall maintain and require all contractors and subcontractors to maintain insurance and bond coverages during construction as described on Exhibit "H".

11.7.8 The City shall defend, indemnify and hold the Arena Manager and Arena Sub-Manager, and their agents, employees, officials and other representatives harmless for, from and against any Claim or Loss that arises from or relates to the performance of such Capital Improvements or repairs by or on behalf of the City in accordance with Section 20.1. Any and all costs and expenses incurred by the Arena Manager to discharge its obligations under this Section shall be included as Operating Expenses.

11.8 Exclusive Team Spaces. Subject to the City's reasonably, prior written approval, The Team Owner shall have the right to make, or cause to be made, certain nonstructural

alterations, installations, decorations, additions and improvements to the Exclusive Team Spaces, provided that all such alterations, installations, decorations, additions and improvements, including the preparation of plans, specifications and engineering reports therefore, shall be done solely at the Team Owner's expense, in a good and workmanlike manner, shall not weaken or impair the structural integrity of the Arena Facility or fundamentally alter the character or suitability of the Arena Facility for use as a multipurpose arena facility, shall be in compliance with all applicable NHL requirements and Applicable Law and shall be done in a manner as to not unreasonably interfere with the operation of the Arena Facility.

#### 11.9 Non-Budgeted Capital Improvements.

11.9.1 In addition to the Capital Improvements detailed in the Renewal and Replacement Schedule and approved in the Annual Budget, the Arena Manager shall further have the right to make Capital Improvements if necessary to comply with governmental requirements appropriate for the safe operation of the Arena Facility or its maintenance or repair.

11.10 Ownership of the Capital Improvements. Upon installation, and notwithstanding the source of payment, any capital improvement shall automatically be and become a part of the Arena Facility and shall be the sole and exclusive property of the City, subject to the Arena Manager's or the Team Owner's use rights under this Agreement.

11.11 Compliance with City Code; Procurement. Nothing in this Agreement with respect to any work performed on the Arena Facility by the Arena Manager or the Team Owner limits, restricts, or waives any requirement of law with respect to construction on public buildings or limits, restricts, or waives the City's building safety requirements, including, but not limited to, permitting, inspections, and plan review. To the extent that any Capital Improvements are undertaken by or on behalf of Arena Manager, Arena Manager shall comply with all procurement requirements of the State of Arizona and the City that are applicable to such Capital Improvements.

#### 11.12 Arena Manager or Team Owner-Caused Lien.

11.12.1 The Arena Manager and the Team Owner shall, prior to any work being performed, inform any entity performing work on the Arena Facility that the Arena Facility is a public facility and that Arizona law prohibits any lien being placed against the Arena Facility.

11.12.2 The Arena Manager and the Team Owner will prevent any type of encumbrance, security interest, pledge, claim, mechanics' or other lien arising out of work performed for, materials furnished to, or obligations incurred by the Arena Manager or Team Owner in the construction of any permitted Capital Improvements or other alterations, installations, decorations, additions and improvements and will immediately cause any such encumbrance, security interest, pledge, claim, mechanics' or other lien to be removed. Further, the Arena Manager and Team Owner shall pay, defend, indemnify and hold harmless the City against any Loss, Claim or expense arising from or relating to any lien or claim asserted against the City or the Arena by a Third Party, if such Loss, Claim or expense is the result of any action by the Arena Manager or Team Owner.

## 12. LENDER PROTECTION.

### 12.1 Team Owner Lenders' Protection.

12.1.1 City Estoppel Certificates for Team Owner. The City shall from time to time, within 15 Business Days after receipt from the Team Owner of a request, deliver to the Team Owner (or to such other Party as the Team Owner may designate in such request, including any lender providing or considering providing financing to the Team Owner), a certificate, signed by the City Representative designated in accordance with Section 2.1, stating, as of the date of such certificate: (i) whether this Agreement is in full force and effect; (ii) whether this Agreement has been amended and, if so, the date and substance of each such amendment; (iii) whether, to the City Representative's knowledge after reasonable inquiry, there exists (or with the passage of time and the giving of notice there will exist) any Team Owner Default and, if so, the nature of such Team Owner Default; and (iv) such other information pertaining to this Agreement and then available to the public as the Team Owner may reasonably request in such request. The Team Owner may give any such certificate to, and any such certificate may be relied upon by, the Person to whom it is addressed.

12.1.2 Arena Manager Estoppel Certificates for Team Owner. The Arena Manager shall from time to time, within 15 Business Days after receipt from the Team Owner of a request, deliver to the Team Owner (or to such other party as the Team Owner may designate in such request, including any lender providing or considering providing financing to the Team Owner), a certificate, signed by the Arena Manager Representative designated in accordance with Section 2.2, stating, as of the date of such certificate: (i) whether this Agreement is in full force and effect; (ii) whether this Agreement has been amended and, if so, the date and substance of each such amendment; (iii) whether, to the Arena Manager Representative's knowledge after reasonable inquiry, there exists (or with the passage of time and the giving of notice there will exist) any Team Owner Default by the Team Owner and, if so, the nature of the Team Owner Default; and (iv) such other information pertaining to this Agreement and then available to the public as the Team Owner may reasonably request in such request. The Team Owner may give any such certificate to, and any such certificate may be relied upon by, the Person to whom it is addressed.

12.1.3 Assignment of Team Owner Rights. Subject to the terms and conditions of the Non-Relocation Agreement, the Team Owner shall have the right, without any additional consent or approval of the other Parties, to assign, pledge, transfer or sell to any one or more lenders providing financing to the Team Owner or any of its Affiliates, as security for such financing, the entirety of the rights of the Team Owner under this Agreement, provided that, if applicable, the NHL has approved or consented to such assignment.

(a) The Team Owner shall, not later than 30 days after such assignment becomes effective, give the other Parties notice (the "**Notice of Team Owner Assignment**") of such assignment, and the Notice of Team Owner Assignment shall include the name and address of the Team Owner Assignee.

(b) Each of the other Parties agrees, upon request from the Team Owner or the Team Owner Assignee, to deliver to the Team Owner Assignee an

acknowledgement, executed by the City Representative and the Arena Manager Representative of receipt of a given Notice of Team Owner Assignment; provided however, nothing in this Section shall alter, amend, reduce or excuse the Team Owner from performing the Team Owner's obligations under this Agreement.

(c) Following receipt of a Notice of Team Owner Assignment, none of the City and the Arena Manager shall enter into or consent to any amendment, waiver, modification or termination of this Agreement by agreement of the Parties to this Agreement without the prior consent of the Team Owner Assignee named in such Notice of Team Owner Assignment.

(d) The Team Owner hereby authorizes and directs each of the other Parties, following such other Party's receipt of (i) a Notice of Team Owner Assignment; (ii) the Team Owner Assignee's notice of a default by the Team Owner under the terms and conditions of the financing secured by the assignment described in such Notice of Team Owner Assignment; and (iii) the Team Owner Assignee's request for payment, to make any payments to be made by such other Party to the Team Owner under this Agreement directly to the Team Owner Assignee. No such other Party shall have any obligation to verify or investigate the existence of any claimed default described in the Team Owner Assignee's notice. City is entitled to rely upon any notice directing payments to a Team Owner Assignee. The Team Owner agrees that any such payment by the City will discharge any obligation to pay such payment to Team Owner; in no event will City be required to pay to any Person (including Team Owner) any sums previously paid to a Team Owner Assignee.

12.1.4 Notices to Team Owner Assignee. Following receipt from the Team Owner of a Notice of Team Owner Assignment, each of the other Parties shall, contemporaneously with giving any notice to the Team Owner under this Agreement, send a copy of such notice to the Team Owner Assignee named in such Notice of Team Owner Assignment and addressed to such Team Owner Assignee at the address of such Team Owner Assignee set forth in such Notice of Team Owner Assignment.

12.1.5 Team Owner Assignee's Right to Cure Team Owner Default. Following the receipt by a Party to this Agreement (other than the Team Owner) from the Team Owner of a Notice of Team Owner Assignment, the Team Owner Assignee named therein shall have the right, but not the obligation, to cure any Team Owner Default, whether then existing or thereafter arising.

(a) No such Party shall exercise any remedy under this Agreement or otherwise with respect to any such Team Owner Default until at least 60 days after such Party has given such Team Owner Assignee notice of the Team Owner Default and the Team Owner Assignee's right to cure the Team Owner Default; provided, however, that if such Team Owner Assignee commences such a cure within such 60 day period, such Party shall not exercise any such remedy with respect to the Team Owner Default so long as such Team Owner Assignee is diligently pursuing such cure.

(b) If a Team Owner Assignee succeeds to the interest of the Team Owner under this Agreement, such Team Owner Assignee shall not be (i) bound by any

amendment, modification or termination of this Agreement by agreement of the Parties to this Agreement (entered into after the date on which the Notice of Team Owner Assignment was given) made without such Team Owner Assignee's written consent, or (ii) bound by, or liable for the cure of, any failure by the Team Owner to perform any obligation under this Agreement that arose prior to the date on which such Team Owner Assignee succeeded to the interest of the Team Owner under this Agreement (except to the extent such obligation continues after the date on which such Team Owner Assignee succeeded to the interest of the Team Owner under this Agreement) provided, however, that the City is not obligated to approve, accept or acknowledge any assignment at the time of any existing Team Owner Default or Arena Manager Default unless such breach or Default is properly cured and all sums due to the City are paid; or the Team Owner Assignee assumes responsibility for all such payments and defaults in a form (and content) of assumption that is acceptable to the City in its sole discretion.

## **12.2 Arena Manager Lenders' Protection.**

12.2.1 City Estoppel Certificates for Arena Manager. The City shall from time to time, within 15 Business Days after receipt from the Arena Manager of a request, deliver to the Arena Manager (or to such other party as the Arena Manager may designate in such request, including any lender providing or considering providing financing to the Arena Manager), a certificate, signed by the City Representative designated in accordance with Section 2.1 stating, as of the date of such certificate: (i) whether this Agreement is in full force and effect; (ii) whether this Agreement has been amended and, if so, the date and substance of each such amendment; (iii) whether, to the City Representative's knowledge after reasonable inquiry, there exists (or with the passage of time and the giving of notice there will exist) any Arena Manager Default and, if so, the nature of the Arena Manager Default; and (iv) such other information pertaining to this Agreement and then available to the public as the Arena Manager may reasonably request in such request. The Arena Manager may give any such certificate to, and any such certificate may be relied upon by, the Person to whom it is addressed.

12.2.2 Team Owner Estoppel Certificates for Arena Manager. The Team Owner shall from time to time, within 15 Business Days after receipt from the Arena Manager of a request, deliver to the Arena Manager (or to such other party as the Arena Manager may designate in such request, including any lender providing or considering providing financing to the Arena Manager), a certificate, signed by the Team Owner Representative designated in accordance with Section 2.3 stating, as of the date of such certificate: (i) whether this Agreement is in full force and effect; (ii) whether this Agreement has been amended and, if so, the date and substance of each such amendment; (iii) whether, to the Team Owner Representative's knowledge after reasonable inquiry, there exists (or with the passage of time and the giving of notice there will exist) any Arena Manager Default and, if so, the nature of the Arena Manager Default; and (iv) such other information pertaining to this Agreement and then available to the public as the Arena Manager may reasonably request in such request. The Arena Manager may give any such certificate to, and any such certificate may be relied upon by, the Person to whom it is addressed.

**12.3 Assignment of Arena Manager's Rights.** Subject to the terms and conditions of the Non-Relocation Agreement, the Arena Manager shall have the right, without any additional consent or approval of the other Parties, to assign, pledge, transfer or sell to any one or more



lenders providing financing to the Arena Manager or any of its Affiliates (an "Arena Manager Assignee"), as security for such financing, the entirety of the rights of the Arena Manager under this Agreement,

(a) The Arena Manager shall, not later than 30 days after such assignment becomes effective, give the other Parties notice (the "Notice of Arena Manager Assignment") of such assignment, and the Notice of Arena Manager Assignment shall include the name and address of the Arena Manager Assignee.

(b) Each of the other Parties agrees, upon request from the Arena Manager or the Arena Manager Assignee, to deliver to the Arena Manager Assignee an acknowledgement, executed by the City Representative and the Team Owner Representative of receipt of a given Notice of Arena Manager Assignment; provided however, nothing in this Section shall alter, amend, reduce or excuse the Arena Manager from performing the Arena Manager's obligations under this Agreement.

(c) Following receipt of a Notice of Arena Manager Assignment, none of the City and the Team Owner shall enter into or consent to any amendment, waiver, modification or termination of this Agreement by agreement of the Parties to this Agreement without the prior consent of the Arena Manager Assignee named in such Notice of Arena Manager Assignment.

(d) The Arena Manager hereby authorizes and directs each of the other Parties, following such other Party's receipt of (i) a Notice of Arena Manager Assignment; (ii) the Arena Manager Assignee's notice of a default by the Arena Manager under the terms and conditions of the financing secured by the assignment described in such Notice of Arena Manager Assignment; and (iii) the Arena Manager Assignee's request for payment, to make any payments to be made by such other Party to the Arena Manager under this Agreement directly to the Arena Manager Assignee. No such other Party shall have any obligation to verify or investigate the existence of any claimed default described in the Arena Manager Assignee's notice. City is entitled to rely upon any notice directing payments to an Arena Manager Assignee. The Arena Manager agrees that any such payment by the City will discharge any obligation to pay such payment to Arena Manager; in no event will City be required to pay to any Person (including Arena Manager) any sums previously paid to an Arena Manager Assignee.

12.3.2 Notices to Arena Manager Assignee. Following receipt from the Arena Manager of a Notice of Arena Manager Assignment, each of the other Parties shall, contemporaneously with giving any notice to the Arena Manager under this Agreement, send a copy of such notice to the Arena Manager Assignee named in such Notice of Arena Manager Assignment and addressed to such Arena Manager Assignee at the address of such Arena Manager Assignee set forth in such Notice of Arena Manager Assignment.

12.3.3 Arena Manager Assignee's Right to Cure Arena Manager Default. Following the receipt by a Party to this Agreement (other than the Arena Manager) from the Arena Manager of a Notice of Arena Manager Assignment, the Arena Manager Assignee named therein shall have the right, but not the obligation, to cure any Arena Manager Default, whether then existing or thereafter arising.

(a) No such Party shall exercise any remedy under this Agreement or otherwise with respect to any such Arena Manager Default until at least 60 days after such Party has given such Arena Manager Assignee notice of the Arena Manager Default and the Arena Manager Assignee's right to cure the Arena Manager Default; provided, however, that if such Arena Manager Assignee commences such a cure within such 60 day period, such Party shall not exercise any such remedy with respect to the Arena Manager Default so long as such Arena Manager Assignee is diligently pursuing such cure.

(b) If an Arena Manager Assignee succeeds to the interest of the Arena Manager under this Agreement, such Arena Manager Assignee shall not be (i) bound by any amendment, modification or termination of this Agreement by agreement of the Parties to this Agreement (entered into after the date on which the Notice of Arena Manager Assignment was given) made without such Arena Manager Assignee's written consent, or (ii) bound by, or liable for the cure of, any failure by the Arena Manager to perform any obligation under this Agreement that arose prior to the date on which such Arena Manager Assignee succeeded to the interest of the Arena Manager under this Agreement (except to the extent such obligation continues after the date on which such Arena Manager Assignee succeeded to the interest of the Arena Manager under this Agreement) provided, however, that the City is not obligated to approve, accept or acknowledge any assignment at the time of any existing Team Owner Default or Arena Manager Default unless such breach or Default is properly cured and all sums due to the City are paid; or the Arena Manager Assignee assumes responsibility for all such payments and defaults in a form (and content) of assumption that is acceptable to the City in its sole discretion.

#### **12.4 Estoppel Certificates for City.**

12.4.1 Arena Manager Estoppel Certificates for City. The Arena Manager shall from time to time, within 15 Business Days after receipt from the City of a request, deliver to the City (or to such other party as the City may designate in such request), a certificate, signed by the Arena Manager's Representative designated in accordance with Section 2.2 stating, as of the date of such certificate: (i) whether this Agreement is in full force and effect; (ii) whether this Agreement has been amended and, if so, the date and substance of each such amendment; (iii) whether, to the Arena Manager's Representative's knowledge after reasonable inquiry, there exists (or with the passage of time and the giving of notice there will exist) any City Default and, if so, the nature of the City Default; and (iv) such other information pertaining to this Agreement and then available to the public as the City may reasonably request in such request. The City may give any such certificate to, and any such certificate may be relied upon by, the Person to whom it is addressed.

12.4.2 Team Owner Estoppel Certificates for the City. The Team Owner shall from time to time, within 15 Business Days after receipt from the City of a request, deliver to the City (or to such other party as the City may designate in such request), a certificate, signed by the Team Owner Representative designated in accordance with Section 2.3 stating, as of the date of such certificate: (i) whether this Agreement is in full force and effect; (ii) whether this Agreement has been amended and, if so, the date and substance of each such amendment; (iii) whether, to the Team Owner Representative's knowledge after reasonable inquiry, there exists (or with the passage of time and the giving of notice there will exist) any City Default and, if so,

the nature of the City Default; and (iv) such other information pertaining to this Agreement and then available to the public as the City may reasonably request in such request. The City may give any such certificate to, and any such certificate may be relied upon by, the Person to whom it is addressed.

**12.5 Subordination to City Encumbrance.** The rights of each of the Arena Manager and the Team Owner under this Agreement shall, at the City's option, be made subordinate to any City Encumbrance. For purposes of this Section, "**City Encumbrance**" shall mean means any ground or other lease, mortgage, deed of trust or other hypothecation for security placed on all or any portion of the City's interest in the Arena, and all advances thereunder, all renewals, modifications, consolidations, replacements and extensions thereof.

**12.5.1** Such subordination shall be effective only if the holder of the City Encumbrance agrees, by written subordination, non-disturbance and attornment agreement in form and with substance reasonably satisfactory to the Arena Manager and the Team Owner to be bound by this Agreement and to recognize and not disturb the rights of the Arena Manager or the Team Owner, (or the rights of other users of the Arena Facility) under this Agreement.

**12.5.2** The Team Owner and the Arena Manager shall, within a reasonable time after the City's request, and subject to satisfaction of Section 12.5.1 execute any agreement reasonably required to implement or evidence the subordination of this Agreement in the manner described in this Section.

**12.5.3** If the holder of any City Encumbrance desires that this Agreement have priority over the lien of such City Encumbrance, such holder shall give notice of such priority to the Arena Manager and the Team Owner and this Agreement shall thereafter be deemed to have priority over such lien.

### **13. INSURANCE.**

**13.1 Arena Manager Insurance.** The Arena Manager shall, as an Operating Expense and during the Term, obtain and cause to be maintained in full force and effect, the insurance and bond coverages described in Exhibit "H" attached to this Agreement (including the identity of the insurer, types and amounts of coverage, non-cancellation provisions, contractual indemnity provisions, subrogation waiver, and other matters specified in Exhibit "H").

**13.2 City Insurance.** The City shall, at the City's expense and during the Term, obtain and cause to be maintained in full force and effect, the insurance coverages or elect to self-insure for the amount described in Exhibit "I" attached to this Agreement.

**13.3 Team Owner Insurance.** The Team Owner shall, at the Team Owner's expense and during the Term, obtain and cause to be maintained in full force and effect, the insurance coverages described in Exhibit "J" attached to this Agreement (including the identity of the insurer, types and amounts of coverage, non-cancellation provisions, contractual indemnity provisions, subrogation waiver, and other matters specified in Exhibit "H").

13.4 Waiver of Recovery. Notwithstanding any provision to the contrary in this Agreement, no Party shall be liable to any other Party to this Agreement, or to any insurance company (by way of subrogation or otherwise) insuring any other Party to this Agreement, for any Claim or Loss, even though such Claim or Loss might have been occasioned by the responsible Party's negligence, or the negligence of its agents or employees, if and to the extent such Claim or Loss is covered by insurance benefiting the Party suffering such Claim or Loss or against whom such Claim or Loss is made.

13.5 Failure to Maintain Insurance.

13.5.1 Arena Manager Failure. If the Arena Manager fails or refuses to procure or maintain the required insurance, after notice by the City or the Team Owner to the Arena Manager of such failure, the City or the Team Owner shall have the right, but not the obligation, to procure and maintain such insurance, and any reasonable premium paid by the City or the Team Owner, plus interest thereon at the Interest Rate computed from the date such premium is paid, shall be due and payable and reimbursed by the Arena Manager to the City or the Team Owner as an Operating Expense, on the first day of the month following the date on which the City or the Team Owner provides to the Arena Manager written evidence of payment of such premium.

13.5.2 City Failure. If the City fails or refuses to procure or maintain the required insurance or maintain an appropriate self-insurance retention, the Arena Manager shall have the right, but not the obligation, to seek equitable relief from a court of competent jurisdiction mandating the required insurance be procured or an appropriate self-insurance retention be established.

13.5.3 Team Owner Failure. If the Team Owner fails or refuses to procure or maintain the required insurance, after notice by the Arena Manager or the City to the Team Owner of such failure, the Arena Manager or the City shall have the right but not the obligation to procure and maintain insurance, in which event, any reasonable premium paid by the Arena Manager or the City, plus interest thereon at the Interest Rate computed from the date such premium is paid, shall:

(a) If paid by the Arena Manager, be an Operating Expense, and (i) the Arena Manager shall make a demand on the Team Owner for reimbursement of such payment by the Team Owner to the Arena Manager; (ii) the Team Owner shall make such reimbursement to the Arena Manager; and (iii) the Arena Manager shall deposit such reimbursement in the Operating Account and include such amount in Operating Revenues; or

(b) If paid by the City be reimbursed by the Arena Manager to the City as an Operating Expense on demand by the City accompanied by evidence of payment of such premium, after which (i) the Arena Manager shall make a demand on the Team Owner for reimbursement of such payment by the Team Owner to the Arena Manager; (ii) the Team Owner shall make such reimbursement to the Arena Manager; and (iii) the Arena Manager shall deposit such reimbursement in the Operating Account and include such amount in Operating Revenues.

**13.6 Notice.** A Party procuring insurance on behalf of another Party as a result of the failure of the other Party shall promptly give notice of such procurement to each other Party to this Agreement.

**13.7 Provisions.**

13.7.1 All insurance required hereby shall be by valid and enforceable policies issued by insurance companies rated not lower than A-VII in Best's Rating Guide (most current edition) and authorized to do business in Arizona.

13.7.2 Each such policy of insurance obtained by a Party to this Agreement shall be endorsed: (a) to provide that the coverage shall not be invalid due to any act or omission of any other Party to this Agreement or its agents or employees; (b) except for worker's compensation, to name each other Party to this Agreement as an additional insured; (c) to be primary as to any insurance maintained by each other Party to this Agreement, so that the latter shall be excess and not contributory to insurance provided by the insuring Party; (d) to provide that the waiver of subrogation set forth above shall not invalidate or have any adverse effect on such insurance policy or liability of the insurer under such policy; and (e) to provide that no termination or cancellation may occur, for any reason, absent thirty (30) days' advance written notice to the other Parties to this Agreement as further provided in Section 13.7.3.

13.7.3 The insurance companies issuing such policy shall agree to notify each other Party to this Agreement in writing of any cancellation, alteration or nonrenewal of such policy at least thirty (30) days prior thereto.

13.7.4 Within thirty (30) days before the Closing Date and thereafter before a policy period expires, each Party required to obtain insurance hereunder shall deliver to each other Party to this Agreement certificates evidencing the insurance coverage (or an appropriate notice of election to self-insured issued by the City) required of the delivering Party and consenting to the waiver of subrogation as herein provided.

**13.8 Periodic Review and Adjustment.**

13.8.1 The Parties agree that the insurance required by this Section shall be subject to adjustment from time to time at the reasonable request of the Arena Manager, the Team Owner or the City so as to be in such amounts as are customarily provided with respect to comparable multi-purpose sports and entertainment arena facilities.

13.8.2 Further, regardless of whether any such requests have been made, the Parties shall in good faith review the insurance coverages required by this Section no less frequently than every three years during the Term, with such reviews to be conducted concurrently with the preparation and review of the Annual Budget.

**14. DAMAGE OR DESTRUCTION.**

14.1 Terms. For the purposes of this Section, the following terms shall have the meanings set forth below:

14.1.1 **"Insurance Proceeds"** means all monies paid by an insurer under a casualty insurance policy as a result of a casualty event, the money paid from a Party responsible for the casualty, and any money paid directly by a Party required under this Agreement to maintain insurance and failed to do so.

14.1.2 **"Casualty Deficiency"** means the amount of the difference between (i) the cost to restore the Arena Facility to the Casualty Restoration Standard in the event of damage or destruction, and (ii) the amount available in the Renewal and Replacement Account, after deposit of all available insurance proceeds.

14.1.3 **"Casualty Restoration Standard"** means a condition as nearly the same as the condition of the Arena Facility immediately prior to an event of damage or destruction as is reasonably possible and which is in compliance with all applicable NHL requirements and Applicable Law.

14.2 Adequately Insured Damage. If, on or after the Closing Date and during the Term, any portion of the Arena Facility is damaged or destroyed, and such damage or destruction is covered by a casualty insurance policy maintained hereunder, Insurance Proceeds, which for the purposes of this Section refers to all insurance proceeds paid (or to be paid) under such casualty insurance policy, shall be deposited into the Renewal and Replacement Account.

14.2.1 If the Insurance Proceeds are, in the reasonable estimation of the Arena Manager (which estimation is reasonably approved by the City), sufficient to restore the damaged or destroyed portion of the Arena Facility to the Casualty Restoration Standard, such Insurance Proceeds shall be disbursed from the Renewal and Replacement Account to pay the costs of such restoration in accordance with the Casualty Restoration Standard as soon as is reasonably possible. In such event, this Agreement and the Non-Relocation Agreement shall continue in full force and effect without abatement, credit or delay.

14.2.2 Any Insurance Proceeds remaining after the payment of the costs of such restoration in accordance with the Casualty Restoration Standard shall be deposited or remain in the Renewal and Replacement Account.

14.3 Insurance Deficiency and Termination. If, on or after the Closing Date, any portion of the Arena Facility is damaged or destroyed, and such damage or destruction is not covered by a casualty insurance policy maintained hereunder or, if so covered, the Insurance Proceeds are insufficient, in the reasonable estimation of the Arena Manager, to pay the costs of restoration of such damage or destruction in accordance with the Casualty Restoration Standard, and if there are amounts in the Renewal and Replacement Account other than the Insurance Proceeds deposited pursuant to Section 11, in an amount sufficient, in the reasonable estimation of the Arena Manager and the City, to pay the costs of such restoration that exceed the Insurance Proceeds, the Insurance Proceeds and such amount in the Renewal and Replacement Account shall be disbursed to pay the costs of such restoration in accordance with the Casualty Restoration Standard as soon as is reasonably possible. In such event, this Agreement and the Non-Relocation Agreement shall continue in full force and effect without abatement; credit or delay.

14.3.1 If the amount in the Renewal and Replacement Account (after the deposit of the Insurance Proceeds) are insufficient to pay the costs of such restoration, then, within 90 days after the date such damage or destruction occurred, the Arena Manager shall give the other Parties notice of the Casualty Deficiency, and the Arena Manager shall, within 30 days after providing such notice, give notice to the other Parties that either (i) the Arena Manager will provide, within 30 days after providing such notice, additional monies in the amount of the Casualty Deficiency, or (ii) the Arena Manager elects to terminate this Agreement and the Non-Relocation Agreement.

14.3.2 If the Arena Manager gives notice that the Arena Manager will provide the amount of the Casualty Deficiency, the Arena Manager shall provide such amount within such thirty-day period. The Arena Manager shall deposit such amount, and the monies shall be disbursed to pay the costs of such restoration in accordance with the Casualty Restoration Standard as soon as is reasonably possible. In such event, this Agreement and the Non-Relocation Agreement shall continue in full force and effect without credit, abatement or delay. The Arena Manager shall be reimbursed from amounts in the Renewal and Reimbursement Account for the amounts provided pursuant to this Section (plus interest at the Interest Rate from the date of provision to the date of reimbursement), when, as and if monies become available.

14.3.3 If the Arena Manager gives notice of the Arena Manager's election to terminate this Agreement and the Non-Relocation Agreement, the City shall have the right (within 30 days after the City's receipt of the Arena Manager's notice) to give notice to the other Parties of the City's intent to pay the amount of the Casualty Deficiency, in which event, the City shall deliver, within 30 days after the date of the City's notice, the amount of the Casualty Deficiency to the Arena Manager for deposit. Upon such deposit, the Arena Manager's notice of the Arena Manager's election to terminate shall be deemed rescinded and void, and monies so deposited shall be disbursed to pay the costs of such restoration in accordance with the Casualty Restoration Standard as soon as is reasonably possible. In such event, this Agreement and the Non-Relocation Agreement shall continue in full force and effect.

14.3.4 If the City does not give such notice of the City's intent to pay the Casualty Deficiency amount within 30 days after the City's receipt of the Arena Manager's notice of the Arena Manager's election to terminate, or does not deliver the Casualty Deficiency amount to the Arena Manager within the thirty-day period for delivery described above, then the Arena Manager shall, within 15 days after the expiration of the applicable thirty-day period, give notice to the other Parties that either (i) the Arena Manager will provide, within 30 days thereafter, additional monies in the amount of the Casualty Deficiency, or (ii) this Agreement and the Non-Relocation Agreement shall be terminated as of a date not later than 30 days following such Notice.

14.3.5 If the Arena Manager gives notice that this Agreement and the Non-Relocation Agreement shall be terminated, then this Agreement and the Non-Relocation Agreement shall, without further action or notice by any Party to this Agreement, terminate, and the Insurance Proceeds, if any, shall be distributed to the City. All insurance proceeds relating to casualty, destruction or damage to the Arena shall be utilized for repair as provided herein, or

shall be paid to, and be property of, the City, whether deposited in the Renewal and Replacement Account or otherwise.

**14.4 Damage or Destruction Near End of Term.** If, during the last two Fiscal Years of the Term, the Arena Facility or any portion thereof is destroyed or damaged to the extent that restoration to the Casualty Restoration Standard will, in the Arena Manager's or the City's reasonable estimation, not be completed prior to the commencement of the last Hockey Season during the Term, then the Arena Manager or the City shall have the right to terminate this Agreement and the Non-Relocation Agreement by giving notice of such termination to the other Parties, and the Insurance Proceeds, if any, shall be distributed to the City. Such termination shall be effective upon the date set forth in the Notice, but in no event more than 30 days after Notice and 60 days after the damage or destruction is sustained.

**14.5 Abatement of Certain Team Owner Obligations.** If the damage or destruction of the Arena Facility or any portion thereof, or the restoration of such damage or destruction to the Casualty Restoration Standard, prevents or materially interferes with the playing of Home Games at the Arena Facility (including by reason of the inadequacy of parking), then, until the Arena Facility has been restored to the Casualty Restoration Standard, the Team Owner shall not be required pursuant to the Non-Relocation Agreement to play Home Games at the Arena Facility and the City shall not be required to pay the Management Fee due hereunder.

## **15. EMINENT DOMAIN.**

**15.1 Terms.** For the purposes of this Section, the following terms shall have the meanings set forth below:

**15.1.1 "Condemnation Award"** means the payment or other award to be paid by the condemnor attributable to the value of the Arena Facility.

**15.1.2 "Condemnation Deficiency"** means the amount of the difference between (i) the cost to restore the Arena Facility in the event of condemnation, and (ii) the amount available in the Renewal and Replacement Account, after deposit of all available insurance proceeds.

**15.1.3 "Condemnation Restoration Standard"** means a condition as nearly the same as the condition of the Arena Facility immediately prior to an event of damage or destruction as is reasonably possible and which is in compliance with all applicable NHL requirements and Applicable Law.

**15.2 Substantial Taking.** If during the Term the Arena Facility is subject to a Taking, and the Taking is a Substantial Taking, the Arena Manager shall have the right, at its option exercisable at any time within 90 days after the date of the Taking to terminate this Agreement and the Non-Relocation Agreement by notice of termination given by the Arena Manager to the other Parties. The Condemnation Award shall be paid in its entirety to, and shall be the property of, the City, free and clear of any claims or interests of any other Party. Relocation benefits, if any, payable to the Team Owner or Arena Manager shall be property of such entity, free and clear of any claim or interest of the City.



### 15.3 Partial Taking.

15.3.1 If during the Term the Arena Facility is the subject of a Taking that is not a Substantial Taking, or if a Substantial Taking occurs but this Agreement and the Non-Relocation Agreement are not terminated and the Condemnation Award is, in the reasonable estimation of the Arena Manager (which estimation is reasonably approved by the City), sufficient to restore the remainder of the Arena Facility to the Condemnation Restoration Standard, such Condemnation Award shall be deposited in the Renewal and Replacement Account for the benefit of the City or for use in accordance with the Agreement. In such event, the Condemnation Award shall be disbursed from said account to pay the costs of such restoration in accordance with the Condemnation Restoration Standard, as soon as is reasonably possible and this Agreement and the Non-Relocation Agreement shall continue in full force and effect. The City shall not be required to pay any sum or to supplement any condemnation award in connection with such repair or restoration.

15.3.2 If during the Term (a) the Arena Facility is the subject of a Taking that is not a Substantial Taking; (b) the Condemnation Award is, in the reasonable estimation of the Arena Manager (which estimation is reasonably approved by the City), insufficient to pay the costs of restoration of the Arena Facility to the Condemnation Restoration Standard; and (c) monies received under Sections 15.3.4 and 15.3.5 below (together with the Condemnation Award), are sufficient in the reasonable estimation of the Arena Manager (which estimation is reasonably approved by the City) to pay the amount by which the costs of such restoration exceed the Condemnation Award, the Condemnation Award and such monies shall be disbursed from the account into the foregoing account to pay the costs of such restoration in accordance with the Condemnation Restoration Standard as soon as is reasonably possible. In such event, this Agreement and the Non-Relocation Agreement shall continue in full force and effect.

15.3.3 If the monies in the account specified by Arena Manager (after the deposit of the Condemnation Award therein), are insufficient to pay the costs of such restoration, then, within 90 days after the date of the Taking, the Arena Manager shall give the Team Owner and the City notice of the Condemnation Deficiency, and the Arena Manager shall elect to either (i) provide, within 30 days after providing such notice, additional monies in the amount of the Condemnation Deficiency, or (ii) terminate this Agreement and the Non-Relocation Agreement by notice of termination to the other Parties.

15.3.4 If the Arena Manager elects to provide the amount of the Condemnation Deficiency, the Arena Manager shall deposit such amount in the account specified by Arena Manager, and monies shall be disbursed from said account to pay the costs of such restoration in accordance with the Condemnation Restoration Standard as soon as is reasonably possible. In such event, this Agreement and the Non-Relocation Agreement shall continue in full force and effect. The Arena Manager shall be reimbursed for the amount provided to the Arena Manager pursuant to this Section (plus interest at the Interest Rate from the date of provision to the date of reimbursement) from the Renewal and Replacement Account, when, as and if, monies become available from such account.

15.3.5 If the Arena Manager is entitled to and does elect to so terminate this Agreement and the Non-Relocation Agreement, the City shall have the right (within 30 days

after the City's receipt of notice of the Arena Manager's election to so terminate) to give notice to the other Parties of the City's intent to pay the amount of the Condemnation Deficiency, in which event the City shall deliver, within thirty (30) days after the date of the City's notice, the amount of the Condemnation Deficiency to the Renewal and Replacement Account. Upon such deposit, the Arena Manager's election to terminate shall be deemed rescinded and void, and monies shall be disbursed from such account to pay the costs of such restoration in accordance with the Condemnation Restoration Standard as soon as is reasonably possible. In such event, this Agreement and the Non-Relocation Agreement shall continue in full force and effect.

15.3.6 If the City does not give such notice to the City's intent to pay the Condemnation Deficiency amount within 30 days after the City's receipt of the Arena Manager's notice of election to terminate, or does not deliver the Condemnation Deficiency amount to the Arena Manager within the thirty-day period for delivery described above, this Agreement and the Non-Relocation Agreement shall be terminated at the expiration of the applicable thirty-day period, and the Condemnation Award shall be paid to the City.

15.4 Partial Taking Near End of Term. If the Arena Facility is the subject of a Taking during the last two Fiscal Years of the Term that is not a Substantial Taking, and restoration of the Arena Facility to the Condemnation Restoration Standard will, in the Arena Manager's reasonable estimation, not be completed prior to the commencement of the last Hockey Season during the Term, then the Arena Manager shall have the right to terminate this Agreement and the Non-Relocation Agreement by giving notice not more than thirty (30) days' notice of the effective date of such termination to the other Parties, and the Condemnation Award shall be paid to the City.

15.5 Abatement of Certain Team Owner Obligations. If a Taking, or the restoration of the Arena Facility to the Condemnation Restoration Standard, prevents or materially interferes with the playing of Home Games at the Arena Facility (including by reason of the inadequacy of parking), then, until the Arena Facility has been restored to the Condemnation Restoration Standard, the Team Owner shall not be required pursuant to the Non-Relocation Agreement to play Home Games at the Arena Facility and the City shall not be required to pay the Management Fee due under this Agreement.

## 16. REPRESENTATIONS, WARRANTIES AND COVENANTS.

All covenants, representations and warranties contained in this Agreement shall survive the execution and delivery of this Agreement and the Closing. No action taken pursuant to or related to this Agreement shall be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, condition or agreement herein.

16.1 Arena Manager Representations and Warranties. The Arena Manager represents and warrants to the other Parties that, as of the Effective Date and the Closing Date:

16.1.1 Organization; Authorization. The Arena Manager is a limited liability company, duly organized and validly existing under the laws of the State of Delaware; the Arena Manager has all requisite power and authority to enter into and perform this Agreement; and the

execution, delivery and consummation of this Agreement by the Arena Manager have been duly authorized.

16.1.2 No Violation. The execution, delivery and performance of this Agreement by the Arena Manager will not result in the breach of or constitute a default under any loan or credit agreement, or any other agreement, instrument, judgment or decree or Applicable Law, to which the Arena Manager is a Party or by which the Arena Manager or its assets may be bound or affected. All consents and approvals of any Person (including members of the Arena Manager) required in connection with the Arena Manager's execution, delivery and performance of this Agreement have been obtained.

16.1.3 Litigation. Other than as disclosed by the Arena Manager to the other Parties, no suit is pending against the Arena Manager which could reasonably have a material adverse effect upon the Arena Manager's performance under this Agreement. There are no outstanding judgments, injunction or restraining orders against the Arena Manager which could reasonably have a material adverse effect upon the Arena Manager's performance under this Agreement.

16.1.4 No Conflicts. This Agreement is not prohibited by, and does not conflict with, any other agreement, judgment or decree to which the Arena Manager is a party or is otherwise subject.

16.1.5 No Violation of Laws. As of the Closing Date, the Arena Manager has received no notice asserting any noncompliance in any material respect by the Arena Manager with Applicable Law relating to the transactions contemplated hereby; and the Arena Manager is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency or other Governmental Authority which is in any respect material to the transactions contemplated hereby.

16.2 Team Owner Representations and Warranties. The Team Owner represents and warrants to the other Parties that, as of the Effective Date and the Closing Date:

16.2.1 Organization: Authorization. The Team Owner is a limited liability company, duly organized and validly existing under the laws of the State of Delaware, and is duly authorized to do business in Arizona; the Team Owner has all requisite power and authority to enter into and perform this Agreement; and the execution, delivery and consummation of this Agreement by the Team Owner have been duly authorized.

16.2.2 No Violation. The execution, delivery and performance of this Agreement by the Team Owner will not violate the NHL Constitution or Bylaws or any written rule, regulation or policy of the NHL, or result in the breach of or constitute a default under any loan or credit agreement, or any other agreement, instrument, judgment or decree or Applicable Law, to which the Team Owner is a party or by which the Team Owner or its assets may be bound or affected. All consents and approvals of any Person (including members of the Team Owner) required in connection with the Team Owner's execution, delivery and performance of this Agreement have been obtained.

16.2.3 Litigation. Other than as disclosed by the Team Owner to the other Parties, no suit is pending against the Team Owner which could reasonably have a material adverse effect upon the Team Owner's performance under this Agreement. There are no outstanding judgments, injunctions or restraining orders against the Team Owner which could reasonably have a material adverse effect upon the Team Owner's performance under this Agreement.

16.2.4 No Conflicts. This Agreement is not prohibited by, and does not conflict with, any other agreement, judgment or decree to which the Team Owner is a party or is otherwise subject.

16.2.5 No Violation of Laws. As of the Closing Date, the Team Owner has received no notice asserting any noncompliance in any material respect by the Team Owner with Applicable Law relating to the transactions contemplated hereby; and the Team Owner is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency or other Governmental Authority which is in any respect material to the transactions contemplated hereby.

16.2.6 Team Ownership; NHL Good Standing. The Team Owner has entered into the NHL Purchase Agreement concurrently with the closing of the NHL Purchase, shall be a member in good standing of the NHL and, shall hold the Franchise and shall operate the Team.

16.3 City Representations and Warranties. The City represents and warrants to the other Parties that, as of the Effective Date:

16.3.1 Authority. The execution and delivery and performance of this Agreement by the City have been duly authorized by the Glendale City Council, and no additional or further procedural act by any other Governmental Authority is required to authorize such execution and delivery and performance; provided however that the performance of certain obligations under this Agreement shall remain subject to approvals required under Applicable Law (such as the approval of annual budgets by the Glendale City Council for amounts to be paid hereunder and the application of Article 9, Section 7 of the Arizona Constitution to any payments to be made by the City hereunder).

16.3.2 No Conflicts. This Agreement is not prohibited by, and does not conflict with, any other agreement, judgment or decree to which the City is a party or is otherwise subject. Notwithstanding any provision of this Agreement to the contrary, performance by the City is subject to Applicable Law, including the requirement of annual appropriation.

16.3.3 No Violation of Laws. The execution, delivery and performance of this Agreement by the City will not violate the City Charter, the Glendale City Code or any other ordinance or resolution of the City. As of the Closing Date, the City has not received any notice asserting any noncompliance in any material respect by the City with Applicable Law relating to the transactions contemplated hereby; although the City has disclosed to the other Parties certain litigation and threatened litigation relating to the City's performance of a prior-approved agreement for management of the Arena Facility. The City is not in default with respect to any

judgment, order, injunction or decree of any court, administrative agency or other Governmental Authority issued to the City or with respect to the Arena Facility which is in any respect material to the transactions contemplated hereby. Notwithstanding the foregoing provisions of 16.3.3, no Party makes any representation or warranty with respect to the compliance of this Agreement with any public bidding or procurement provision; both Parties believing that the Agreement complies with all public bidding and procurement requirements and both Parties agreeing that they will jointly defend (through counsel of their own choosing, at their own expense) any challenge to this Agreement based upon non-compliance with any public bidding or procurement requirement.

16.3.4 Litigation. Other than as disclosed by the City to the other Parties (and as noted in Section 16.3.3), no suit is pending against the City which could reasonably have a material adverse effect upon the City's performance under this Agreement. There are no outstanding judgments against the City that could reasonably have a material adverse effect upon the City's performance under this Agreement.

16.3.5 Condition of the Arena Facility.

(a) The City has not received notice from any governmental agency or official, whether federal, state or local, that the Arena Facility or any part thereof or any operations conducted thereon, is or may be in violation of any Applicable Law, including without limitation the Americans with Disabilities Act.

(b) The City has not received notice from any official or representative of the NHL that the Arena Facility or any part thereof fails to comply or may not comply with any NHL rule or regulation.

(c) To the City's Knowledge, there is no item of maintenance, repair, or replacement which is or may be required to rectify any non-compliance of the Arena Facility with Applicable Law, including without limitation the Americans with Disabilities Act, or the NHL rules and regulations.

(d) To the City's Knowledge, there are no material defects associated with the condition of the Arena Facility that would materially adversely affect with Arena Manager's intended use thereof.

(e) To the City's Knowledge, no Hazardous Materials have been used, generated, manufactured, stored or disposed of in, on, or under the Arena in violation of Applicable Law, and there are on the Closing Date no claims, litigation, administrative or other proceedings, whether actual or threatened, or judgments or orders relating to the use, generation, manufacture, storage or disposal of Hazardous Materials in or on the Arena.

(f) There are no actions, suits, proceedings or investigations pending against the City by any person or entity, including, without limitation, any owner or occupant of property located adjacent to the Arena Facility, with respect to or in any manner affecting ownership or operation of all or any portion of the Arena Facility or any Arena Parking Area.

(g) There are no tenancies or other rights of parties in possession affecting all or any portion of the Arena Facility.

(h) The City is not a party to any concession agreement, service or maintenance contract, or other contract with respect to or affecting the Arena Facility or any Arena Parking Area which will not be terminated prior to the Closing Date.

16.3.6 City's Real Property. The City owns in fee the Arena Facility, and is the owner in fee, or the holder of an enforceable leasehold or sub-leasehold interest, or is the licensee or sub-licensee with respect to, or otherwise has exclusive or non-exclusive rights to use the Arena Parking Areas, and has the authority to demise and let to Arena Manager a leasehold interest in the Exclusive Team Spaces, and to grant a leasehold, sub-leasehold, license, sub-license, use, occupancy or similar interest, as applicable, in the Arena Facility and Arena Parking Areas. No consent of any Third Party is required in order for the City to demise, let or grant such interests, or any required consent has been obtained or will be obtained prior to Closing.

16.4 Team Owner Covenant. The Team Owner covenants with the other Parties that the Team Owner shall maintain the Franchise and Team in good standing with the NHL at all times during the Term.

16.5 City Covenants. The City covenants with the other Parties as follows:

16.5.1 Third Party Warranties. City shall assign to or enforce for the benefit of the City and Arena Manager any construction warranties for the Arena and any manufacturer's warranties for any Arena Facilities which remain in effect on the Closing Date.

16.5.2 Arena Facility Records. City shall make available to Arena Manager throughout the Term during business hours, for inspection and copying, at City's office address or some other location mutually convenient to the Parties, reasonably requested books, records, and other information relating to the use, ownership or operation of the Arena Facility reasonably within the City's possession or control.

16.6 Other Covenants of the Parties. The Parties covenant and agree as follows:

16.6.1 Notice of Matters. If any of the Parties acquires knowledge of any matter that may constitute a breach of any of its representations, warranties or covenants set forth herein which arises after the Closing Date, it shall promptly give notice of the same to the other Parties.

16.6.2 Compliance With Laws. During the Term, each of the Parties shall, in connection with this Agreement and its respective use of, and the exercise of its respective rights with respect to, the Arena Facility, comply with all Applicable Law.

16.6.3 Defense of Agreement. The Parties will jointly defend the validity and enforceability of this Agreement in the event of any notice, proceeding or litigation challenging its validity or enforceability that names any Party as a party or which challenges the authority of any Party to enter into or perform any of its obligations in this Agreement, with each Party to bear the costs of its own selected attorneys; and each of the Parties will cooperate with the City

in connection with any other action by a Third Party in which the City is a party and in which the benefits of this Agreement to the City are challenged.

16.6.4 Consultation with NHL. The NHL currently operates the Team and manages the Arena Facility. Both the Arena Manager and Team Owner warrant and represent that they have had adequate opportunity to confer with the NHL regarding all aspects of the Team and Arena that such Parties deemed, in their sole judgment, to be germane to the decision to enter into this Agreement and the Related Agreements.

## 17. DUE DILIGENCE; CONDITIONS TO CLOSING.

### 17.1 Due Diligence.

17.1.1 Due Diligence Review. The Arena Manager and Team Owner shall have until the Closing (the "**Due Diligence Review Period**") to conclude its due diligence review (the "**Arena Manager Due Diligence Review**") of all aspects of the Team and the Arena, including without limitation all financial, legal, regulatory, business and operational matters, and to obtain any third party consents required under leases, service or maintenance contracts and agreements or other agreements of the NHL and its Affiliates affecting the Team and the Arena (the "**Key Contracts**"). During the Due Diligence Review Period, the City shall reasonably cooperate with such due diligence as reasonably requested by the Arena Manager, including, but not limited to, permitting the Arena Manager and its agents reasonable access to materially relevant information reasonably requested by the Arena Manager. The Arena Manager shall have the right, in its sole discretion, to terminate this Agreement and the Non-Relocation Agreement by written notice to the City at any time on or before the end of the Due Diligence Review Period if it is not satisfied with the results of its Due Diligence Review, if it is unable to obtain, on reasonable terms, any third party consents required under any Key Contracts, or for any other reason or no reason (a "**Due Diligence Termination Notice**"). Delivery by the Arena Manager of a Due Diligence Termination Notice under this Section 17.1.1 shall terminate all obligations of the Parties under this Agreement and the Non-Relocation Agreement; provided, however, that in no event shall any payment obligation of City hereunder arise or accrue prior to Closing and in no event shall Arena Manager or Team Owner have any interest the Arena or rights under this Agreement prior to Closing. In the event that the Arena Manager does not provide such Due Diligence Termination Notice by or before the end of the Due Diligence Review Period, the Arena Manager shall be deemed to have waived all rights of termination set forth in this Section 17.1.1 and the Arena Manager shall thereafter have no right to terminate this Agreement or the Non-Relocation Agreement based on the Arena Manager Due Diligence Review; provided however that such waiver of these termination rights shall be without prejudice to the Arena Manager's other termination rights provided for in this Agreement.

17.2 Conditions to Closing. The Closing and Closing Date shall occur upon the satisfaction or waiver of the following conditions to the obligations of the Parties, but in no event later than August 5, 2013 and failure to Close by such date shall render this Agreement and the City's approval hereof null and void and of no further force or effect:

17.2.1 Conditions to the Obligations of the Arena Manager. The Arena Manager's obligation to consummate the transactions contemplated in this Agreement shall be subject to the following conditions precedent having been satisfied on and as of the Closing Date, to the reasonable satisfaction of Arena Manager or the waiver thereof by Arena Manager, which waiver shall be binding upon Arena Manager only to the extent made in writing and dated as of the Closing Date:

(a) The City shall have duly and timely performed and fulfilled in all material respects its duties, obligations, promises, covenants and agreements hereunder with respect to the period between the Effective Date and the Closing.

(b) The representations and warranties given by the City to the Arena Manager hereunder shall be true and correct in all material respects as of the Closing Date, except that litigation, notices or other proceedings may have been initiated, in which case the City shall promptly provide the other Parties with notice of such matters.

(c) No condition shall have changed or event shall have occurred which can reasonably be expected to have a Material Adverse Effect on the Arena or the operating, maintenance or other expenses or obligations relating to the operation of the Arena. "Material Adverse Effect" means an event, change or occurrence that individually, or together with any other event, change or occurrence, has a material adverse impact on the financial position, business or results of operations of such business; provided, however, that the term "Material Adverse Effect" shall not include (i) changes in the overall industry or markets in which the business operates, (ii) changes in GAAP; (iii) actions or omissions of such business taken with the prior written consent of the other Party to this Agreement, (iv) any change relating to the economy or securities markets in general, or (v) any change, effect, event, occurrence, state of facts or development resulting from any action required to be taken or performed by the Parties to this Agreement after execution of this Agreement.

(d) Arena Manager and Team Owner shall have (a) entered into the NHL Purchase Agreement on terms acceptable to them in their sole discretion for the acquisition of the Team and the Franchise and the assumption of such related agreements as shall be acceptable to them in their sole discretion, and (b) shall have secured financing on terms acceptable to them in their sole discretion sufficient to consummate the transactions set forth under the NHL Purchase Agreement and this Agreement, to pay all related expenses, and to operate the Arena and the Team post-Closing (collectively, the "NHL Purchase and Financing Condition").

(e) All conditions to the consummation of the transactions contemplated under the NHL Purchase and Financing Condition shall have been satisfied or waived and the NHL Purchase Agreement shall have closed, resulting in transfer by the NHL of the rights to the Team and Franchise to Team Owner.

(f) The Related Agreements shall have been executed and delivered by the City and the Team Owner subject only to the terms of such agreements and to the Closing of this Agreement.



(g) The City's ordinance and/or resolution approving this Agreement shall have become operative pursuant to Arizona law; provided, however, that the commencement of litigation, referendum, or any similar proceeding shall not extend the Closing Date set forth in Section 17.2 of this Agreement, unless the City, through action of the City Council, agrees in writing to such extension.

17.2.2 Conditions to the Obligations of the Team Owner. The Team Owner's obligation to consummate the transactions contemplated in this Agreement shall be subject to the following conditions precedent having been satisfied on and as of the Closing Date, to the reasonable satisfaction of Team Owner or the waiver thereof by Team Owner, which waiver shall be binding upon Team Owner only to the extent made in writing and dated as of the Closing Date:

(a) The City shall have duly and timely performed and fulfilled in all material respects its duties, obligations, promises, covenants and agreements hereunder with respect to the period between the Effective Date and the Closing.

(b) The representations and warranties given by the City to the Team Owner hereunder shall be true and correct in all material respects as of the Closing Date, except that litigation, notices or other proceedings may have been initiated, in which case the City shall promptly provide the other Parties with notice of such matters.

(c) No condition shall have changed or event shall have occurred which can reasonably be expected to have a Material Adverse Effect on the Arena or the operating, maintenance or other expenses or obligations relating to the operation of the Arena. **"Material Adverse Effect"** means an event, change or occurrence that individually, or together with any other event, change or occurrence, has a material adverse impact on the financial position, business or results of operations of such business; provided, however, that the term "Material Adverse Effect" shall not include (i) changes in the overall industry or markets in which the business operates, (ii) changes in GAAP; (iii) actions or omissions of such business taken with the prior written consent of the other Party to this Agreement, (iv) any change relating to the economy or securities markets in general, or (v) any change, effect, event, occurrence, state of facts or development resulting from any action required to be taken or performed by the Parties to this Agreement after execution of this Agreement.

(d) The NHL Purchase and Financing Condition.

(e) All conditions to the consummation of the transactions contemplated under the NHL Purchase and Financing Condition shall have been satisfied or waived.

(f) The Related Agreements shall have been executed and delivered by the City and the Arena Manager, subject only to the terms of such agreements and to the Closing of this Agreement.

(g) The City's ordinance and/or resolution approving this Agreement shall have become operative pursuant to Arizona law; provided, however, that the

commencement of litigation, referendum, or any similar proceeding shall not extend the Closing Date set forth in Section 17.2 of this agreement, unless the City, through action of the City Council, agrees in writing to such extension.

17.2.3 Conditions to the Obligations of the City. The City's obligation to consummate the transactions contemplated in this Agreement shall be subject to the following conditions precedent having been satisfied on and as of the Closing Date, to the reasonable satisfaction of the City or the waiver thereof by the City, which waiver shall be binding upon the City only to the extent made in writing and dated as of the Closing Date:

(a) The Arena Manager and the Team Owner shall have duly and timely performed and fulfilled in all material respects its duties, obligations, promises, covenants and agreements hereunder with respect to the period between the Effective Date and the Closing.

(b) The representations and warranties given by Arena Manager and the Team Owner to the City hereunder shall be true and correct in all material respects as of the Closing Date.

(c) The NHL Purchase and Financing Condition.

(d) All conditions to the consummation of the transactions contemplated under the NHL Purchase and Financing Condition shall have been satisfied or waived.

(e) The Related Agreements shall have been executed and delivered by the Arena Manager and the Team Owner.

(f) The Closing Date shall have occurred on or before August 5, 2013 (the "**Outside Closing Date**"), unless extended by the City in its sole discretion.

(g) To the satisfaction of the City, all conditions to Closing have been satisfied or waived, and all required consents or approvals have been received or waived.

(h) The City's ordinance and/or resolution approving this Agreement shall have become operative pursuant to Arizona law; provided, however, that the commencement of litigation, referendum, or any similar proceeding shall not extend the Closing Date set forth in Section 17.2 of this agreement, unless the City, through action of the City Council, agrees in writing to such extension.

## 18. CHALLENGE(S).

18.1 The Parties shall, in good faith contest any challenge to the validity, authorization, and enforceability of this Agreement (each, a "**Challenge**").

18.2 Each Party shall bear the costs and expenses of contesting the Challenge on its own behalf that are incurred by that Party using counsel of its own selection.

**18.3** Each of the Parties shall take all actions and institute or defend such proceedings necessary or appropriate to remedy any alleged invalidity of, lack or defect in authorization of, or illegality of, or to cure any other defect of, this Agreement which has been asserted or threatened in any Challenge, provided that no Party shall be obligated to forego, defer, or accept the forfeiture of any substantial economic benefit or legal right that is a part of the bargained-for consideration for the transactions contemplated by this Agreement. The Parties shall jointly defend any Challenge utilizing counsel of their own choosing, at each Party's own expense. Arena Manager and Team Owner shall assist, at the expense of each such Party, in the defense of any Challenge that is instituted against the City alone, or against the City and one or more other Parties. The Arena Manager and the Team Owner shall seek to intervene in any court proceeding involving a Challenge.

**18.4** Each of the Parties shall promptly give notice to the other Parties of any Challenge of which the Party giving notice acquires knowledge.

**18.5** The provisions of this Section 18 are subject to, and do not limit, the obligations of the Parties stated elsewhere in this Agreement, including Section 16.6.3 of this Agreement.

## **19. REMEDIES.**

### **19.1 Team Owner Remedies.**

**19.1.1 For City Default.** Following a City Default, the Team Owner shall have the right to seek direct, actual compensatory damages, but not indirect, consequential, punitive or multiple damages (which are in any event prohibited against the City under Arizona law), arising out of such City Default.

(a) In furtherance, and not in limitation, of the foregoing, the Team Owner shall have the right to (i) seek an award or order requiring specific performance by the City of the City's obligations under this Agreement and (ii) solely with respect to a "City Default" which occurs under subclause (a) of the definition thereof in this Agreement, terminate this Agreement, upon 60 days' written notice to the City during which time the City shall have the right to cure the alleged City Default. All efforts to cure a City Default will be confirmed in writing and submitted to the Team Owner by the City.

(b) The Team Owner hereby waives, with respect to any City Default, any claim or right to indirect, consequential, multiple or punitive damages (which may not be awarded in any event) and acknowledges that the other Parties are relying upon such waiver in entering into this Agreement. Team Owner acknowledges that its sole and exclusive remedies are to seek specific performance and/or to seek recovery only of direct, actual, compensatory damages arising from a City Default.

**19.1.2 For Arena Manager Default.** Following an Arena Manager default, the Team Owner shall have the right to seek direct, actual compensatory damages, but not indirect, consequential, punitive or multiple damages, arising out of such Arena Manager Default.

(a) In furtherance, and not in limitation, of the foregoing, the Team Owner shall have the right to seek an award or order requiring specific performance by the Arena Manager of the Arena Manager's obligations under this Agreement.

(b) The Team Owner hereby waives, with respect to any Arena Manager Default, any right to terminate this Agreement (or any other agreement among the Parties) or the rights of the Arena Manager under this Agreement (or under any other agreement among the Parties), and acknowledges that the other Parties are relying on such waiver in entering into this Agreement.

(c) The Team Owner further acknowledges that the Team Owner may seek damages from the Arena Manager only from the Arena Manager's own funds and shall not have any right to recover damages from the Arena Manager from the City or out of Arena Accounts, barring fraud or other improper conduct with regard to any of those other Accounts.

(d) The Team Owner hereby waives, with respect to any Arena Manager Default, any claim or right to indirect, consequential, multiple or punitive damages and acknowledges that the other Parties are relying on such waiver in entering into this Agreement.

## **19.2 Arena Manager Remedies.**

19.2.1 For Team Owner Default. Following a Team Owner Default, the Arena Manager shall have the right to seek direct, actual compensatory, but not indirect, consequential, punitive or multiple damages arising out of such a Team Owner Default.

(a) In furtherance, and not in limitation, of the foregoing, the Arena Manager shall have the right to seek an award or order requiring specific performance by the Team Owner of the Team Owner's obligations under this Agreement.

(b) The Arena Manager hereby waives, with respect to any Team Owner Default, any right to terminate this Agreement (or any other agreement among the Parties) or the rights of the Team Owner under this Agreement (or under any other agreement among the Parties), and acknowledges that the other Parties are relying on such waiver in entering into this Agreement.

(c) The Arena Manager hereby waives, with respect to any Team Owner Default, any claim or right to indirect, consequential, multiple or punitive damages and acknowledges that the other Parties are relying on such waiver in entering into this Agreement.

19.2.2 For City Default. Following a City Default, the Arena Manager shall have the right to seek direct, actual compensatory damages, but not indirect, consequential, punitive or multiple damages (which are in any event prohibited against the City under Arizona law), arising out of such City Default.

(a) In furtherance, and not in limitation, of the foregoing, the Arena Manager shall have the right to (i) seek an award or order requiring specific performance by the City of the City's obligations under this Agreement and (ii) solely with respect to a "City Default" which occurs under subclause (a) of the definition thereof in this Agreement, terminate

this Agreement, upon 60 days' written notice to the City during which time the City shall have the right to cure the alleged City Default. All efforts to cure a City Default must be confirmed in writing and submitted to the Arena Manager by the City.

(b) The Arena Manager hereby waives, with respect to any City Default, any claim or right to indirect, consequential, multiple or punitive damages (which may not be awarded in any event) and acknowledges that the other Parties are relying on such waiver in entering into this Agreement. The Arena Manager acknowledges that its sole and exclusive remedies are to seek specific performance and/or to seek recovery only of direct, actual, compensatory damages arising from a City Default.

### 19.3 City Remedies.

19.3.1 For Team Owner Default. Following a Team Owner Default, the City shall, in addition to all other remedies available at law, in equity or under this Agreement, have the right to seek compensatory damages, but not punitive or multiple damages arising out of such Team Owner Default.

(a) In furtherance, and not in limitation, of the foregoing, the City shall have the right to seek an award or order requiring specific performance by the Team Owner of the Team Owner's obligations under this Agreement.

(b) The City hereby waives, with respect to any Team Owner Default, any claim or right to punitive or multiple damages and acknowledges that the other Parties are relying on such waiver in entering into this Agreement.

(c) The Parties acknowledge that in the Event of a Team Owner Default, the City's actual damages may include, but not be limited to, revenues anticipated by the City from Arena Use.

19.3.2 For Arena Manager Default. Following an Arena Manager Default, the City shall, in addition to all other remedies available at law, in equity, or under this Agreement, have the right to seek compensatory damages, but not punitive or multiple damages, arising out of such Arena Manager Default.

(a) In furtherance, and not in limitation, of the foregoing, the City shall have the right to seek an award or order requiring specific performance by the Arena Manager of the Arena Manager's obligations under this Agreement.

(b) The City hereby waives, with respect to any Arena Manager Default, any claim or right to indirect damages or punitive damages and acknowledges that the other Parties are relying on such waiver in entering into this Agreement.

(c) The Parties acknowledge that in the Event of an Arena Manager Default, the City's actual damages may include, but not be limited to, revenues anticipated by the City from Arena Use.

### 19.3.3 Replacement Arena Manager.

(a) In the event of an Arena Manager Withdrawal, the City may elect to secure a Replacement Arena Manager and with respect to the Arena Manager's obligation to the Team Owner, provided the Team Owner has not breached its obligations under the Non-Relocation Agreement, this Agreement shall remain in effect in accordance with its terms and subject to Applicable Law, and the Replacement Arena Manager will assume the obligations to the Team Owner of the Arena Manager under this Agreement.

(b) If the City elects to secure a Replacement Arena Manager, the City shall so notify the Team Owner in writing and, if but only if permitted by Applicable Law, grant the Team Owner a first option to secure a Replacement Arena Manager (which may be the Team Owner, an Affiliate of the Team Owner, or a Third Party) within 60 days following such notice; provided however that the City shall not be required to grant a first option to the Team Owner more than three times during the Term. To the extent the Team Owner has waived its first option hereunder, the applicable sixty-day period expires without the securing by the Team Owner of a Replacement Arena Manager or the Team Owner otherwise no longer has a first right under this Section 19.3.3(b), the City shall be entitled to secure a Replacement Arena Manager. Notwithstanding any other provision of this Section 19.3, any Replacement Arena Manager shall be subject to the reasonable approval of the City; shall assume all obligations of Arena Manager under this Agreement and all Related Agreements, without novation; and shall be, or have engaged for such purposes, a party experienced in the provision of professional arena management services.

(c) Upon designation of a Replacement Arena Manager pursuant to this Agreement, the Arena Manager shall:

(i) Deliver to the City, the Team Owner and the Replacement Arena Manager, immediately after the Arena Manager's receipt of notice of the designation of the Replacement Arena Manager (or such termination), a final accounting reflecting the balance of income and expenses as of the effective date of such designation (or such termination);

(ii) Deliver to the Replacement Arena Manager, immediately after the Arena Manager's receipt of notice of such designation (or such termination), all monies in Arena Accounts or otherwise held by the Arena Manager on behalf of the Team Owner or the City, together with an accounting therefor which shall also be delivered to the City;

(iii) Deliver to the Replacement Arena Manager, immediately after the Arena Manager's receipt of notice of such designation (or such termination), all keys, security codes, books and records of account, agreements and contracts, Licenses, receipts for deposits, unpaid bills and other papers or documents relating to the Arena Facility and this Agreement; and

(iv) For a reasonable period of time after the effective date of such designation (or such termination), make itself available to consult with and advise the City, the Team Owner, and the Replacement Arena Manager regarding the operation,

management and maintenance of the Arena Facility and all transition-related issues, questions and concerns.

(d) The City, the Replacement Arena Manager, and the Team Owner shall thereafter be bound by the terms, conditions and agreements set forth herein, with the same force and effect as if the Replacement Arena Manager were the original Arena Manager hereunder, including the need for any subsequent Replacement Arena Manager as a result of an Arena Manager Withdrawal.

(e) The City, the Arena Manager and the Team Owner shall take such actions, without novation of the Arena Manager, as are required to cause the Replacement Arena Manager to succeed to all rights, and assume all existing contracts of the current Arena Manager under this Agreement all Licenses and all other contracts or agreements entered into by the Arena Manager pursuant to this Agreement.

**19.4 Rights and Remedies are Cumulative.** Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, including the waivers of indirect, consequential, punitive and multiple damages and the waivers of termination rights set forth therein, the rights and remedies of the Parties are cumulative, and the exercise by any Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies under Applicable Law for the same Event of Default or any other Event of Default.

**19.5 Costs, Expenses and Fees.** In the event of any litigation, mediation, arbitration or other dispute resolution proceeding (including Mediation proceedings discussed in this Agreement) in connection with this Agreement, involving a claim by any Party to this Agreement against any other Party to this Agreement (a "**Proceeding**"), (i) no Party shall be entitled to advances from or to be reimbursed from Operating Revenues for any costs or expenses incurred by it in such Proceeding, including reasonable attorneys' fees or costs; (ii) no such costs and expenses shall be treated as Operating Expenses; (iii) the prevailing Party in arbitration or litigation proceeding shall be entitled to recovery from the non-revealing Party or Parties (but not from Operating Revenues) for all costs and expenses incurred in such Proceeding, including reasonable attorneys' fees and costs as may be fixed by the court or the Arbitrator, in such manner and from such Parties as may be directed by such court or Arbitrator; and (iv) any award granted to a Party in such Proceeding shall be treated as the sole property of such Party.

**19.6 Acceptance of Legal Process.**

**19.6.1 Service on the Arena Manager.** In the event any legal or equitable action is commenced against the Arena Manager by any other Party to this Agreement, service of process on the Arena Manager may be made by personal service upon the President of the Arena Manager or in such other manner as may be authorized by law.

**19.6.2 Service on the Team Owner.** In the event any legal or equitable action is commenced against the Team Owner by any other Party to this Agreement, service of process

on the Team Owner may be made by personal service upon the Chairman or Chief Executive Officer of the Team Owner or in such other manner as may be authorized by law.

19.6.3 Service on City. In the event that any legal or equitable action is commenced against the City by any other Party to this Agreement, service of process on the City shall be as then required by law.

## **20. INDEMNIFICATION.**

20.1 Arena Manager Indemnification of City. Except to the extent attributable to the negligence or willful misconduct of the City, its officials, representatives, employees, agents or contractors, the Arena Manager shall pay, defend, indemnify and hold the City and its City Council members, elected officials, agents, employees, other officials and other representatives harmless for, from and against any Claim or Loss that arises from or relates to the Arena Manager's management, operation, use or occupancy of the Arena or any portion thereof or the performance (or failure to perform) and of Arena Manager's responsibilities under this Agreement. No costs and expenses incurred by the Arena Manager to discharge its obligations under this Section shall be included as Operating Expenses.

20.2 Team Owner Indemnification of City. Except to the extent attributable to the negligence or willful misconduct of the City, its officials, representatives, employees, agents or contractors, the Team Owner shall pay, defend, indemnify and hold the City and its City Council members, elected officials, agents, employees, officials and other representatives harmless for, from and against any Claim or Loss that arises from or relates to the Team Owner's use or occupancy of the Arena or any portion thereof or its ownership or management of the Team or its affiliates.

### **20.3 City Indemnifications.**

20.3.1 Arena Manager. Except to the extent attributable to the negligence or willful misconduct of the Arena Manager or any of its agents, employees, officials, contractors or other representatives, the City shall pay, defend, indemnify and hold the Arena Manager and its agents, employees, officials and other representatives (and their respective spouses) harmless for, from and against any Claim or Loss that arises from the City's use or occupancy of the Arena or any part thereof pursuant to the terms of this Agreement.

20.3.2 Team Owner. Except to the extent attributable to the negligence or willful misconduct of the Team Owner or any of its agents, employees, officials, contractors or other representatives, the City shall pay, defend, indemnify and hold the Team Owner and its agents, employees, officials and other representatives (and their respective spouses) harmless for, from and against any Claim or Loss that arises from the City's use or occupancy of the Arena or any portion thereof pursuant to the terms of this Agreement.

## **21. DISPUTE RESOLUTION.**

21.1 Alternative Dispute Resolution—Mediation. Any dispute, including any dispute as to whether a proposed Capital Improvement is necessary to ensure the economic



competitiveness of the Arena Facility pursuant to Section 11.4(d), and any dispute related to a challenge of any claim or default or breach of this Agreement, shall be submitted to Mediation in accordance with this Section. If a dispute is not resolved by Mediation, the Parties may, but are not required to, agree that the dispute be submitted to arbitration upon terms to be agreed upon by the Parties.

## **21.2 Mediation Procedure.**

21.2.1 **Mediation on Expedited Basis.** It is agreed that if any Party to this Agreement determines that there is a dispute that requires resolution under the terms of the Agreement, that they will notify the other relevant Parties of their demand for mediation in writing. The Parties shall, within 10 days of notice of a demand for mediation, exchange a list of at least three mediators who would be acceptable for mediation. The Parties shall then act in good faith to determine a mutually agreeable mediator within five (5) days.

(a) If the Parties are unable to agree on a mediator within five (5) days, then each Party to the dispute will select one name from each of the other Parties' lists and those names will be placed into a blind drawing by an independent party, and the person whose name is drawn shall be the Mediator.

(b) For purposes of this Section 21.2, the Arena Managers and the Team Owner shall be deemed to be, and shall be treated as, one Party.

21.2.2 **Location.** The Mediation shall be conducted by the Mediator at a location in Maricopa County, Arizona mutually agreed to by the Parties or as selected by the Mediator.

21.2.3 **Mediation Process.** The Parties shall endeavor to work with the Mediator to schedule and conduct the Mediation on as expedited a basis as is reasonable under the circumstances. The Parties agree that any Mediation will be conducted in good faith and that each Party shall be represented in person at the Mediation by the highest level decision maker necessary to resolve the Dispute, to the extent practicable. The Mediation shall be conducted and concluded within 40 days of the initial demand for mediation.

**21.3 Equitable Litigation.** Notwithstanding any other provision of this Section to the contrary, any Party may engage an Equitable Litigation to seek interim equitable relief with respect to any issue that will be subject to Mediation under this Agreement.

21.3.1 Nothing herein shall be construed to suspend or terminate the obligation of any Party to this Agreement to promptly proceed with Mediation concerning the Dispute that is the subject of such Equitable Litigation while such Equitable Litigation (and any appeal therefrom) is pending.

21.3.2 Regardless of whether such interim relief is granted or denied, or whether such Equitable Litigation is pending or any appeal is taken from the grant or denial of such relief, the Parties shall at all times diligently proceed to complete the Mediation.

21.3.3 Subject to the provisions of Section 24.8 of this Agreement, the Parties agree that any Equitable Litigation shall be filed and maintained (without removal or transfer) exclusively in the state or federal courts in Maricopa County, Arizona. The Parties consent and agree to the exclusive jurisdiction and venue in of the courts located in Maricopa County, Arizona for any Equitable Litigation. No Party will argue or contend that it is not subject to the jurisdiction of the courts located in Maricopa County, Arizona or that venue in Maricopa County, Arizona is improper with respect to any Equitable Litigation.

21.3.4 For the purposes of this Section, "**Equitable Litigation**" means an action to secure a temporary restraining order, preliminary injunction or other interim equitable relief concerning a Dispute, including specific performance, provisional remedies, stay of proceedings in connection with special action relief or any similar relief of an interim nature.

## 22. ASSIGNMENT.

### 22.1 Arena Manager Assignment.

22.1.1 The Arena Manager may not assign, pledge, transfer, or otherwise attempt to transfer the Arena Manager's duties and obligations under this Agreement, in whole or in part, without the prior consent of each of the City and the Team Owner (which consent may be granted or withheld in each of the City's and Team Owner's sole discretion) and any such transfer or attempted transfer to which the City or the Team Owner does not consent pursuant to this Section is void and not voidable, and the purported assignee, pledgee, or transferee shall acquire no rights as a consequence of that purported transfer.

22.1.2 Nothing in this Section shall be construed or deemed to limit or restrict the rights of the Arena Manager to (a) delegate all or a portion of the Arena Manager's duties hereunder in accordance with the terms of this Agreement or (b) complete the transactions described in Recital E of this Agreement. Arena Manager shall promptly advise the City, in accordance with the requirements of Section 24.7, of all such delegees (with respect to Section 22.2.2(a) above), or assignees (with respect to Section 22.1.2(b) and Recital E).

22.1.3 The Arena Manager may not assign, transfer, convey or encumber all or any portion of the Arena Parking Area or the Arena Parking Rights without the prior written consent of the City, which may be granted or withheld in the City's sole discretion, and any such transfer or attempted transfer to which the City does not consent pursuant to this Section is void and not voidable, and the purported assignee, pledgee, or transferee shall acquire no rights in this Agreement.

22.1.4 No assignment or other permitted transfer by Arena Manager shall constitute a novation or discharge in any respect by obligation of the Arena Manager or Team Owner.

### 22.2 Team Owner Assignment.

22.2.1 Subject further to the terms and conditions of the Non-Relocation Agreement, the Team Owner shall have the right to assign, pledge and otherwise transfer the

rights and obligations of the Team Owner under this Agreement (in whole or in part), without the consent of the City, to any Person so long as (i) the Franchise is included in such assignment, pledge or transfer; (ii) such assignment, pledge or transfer is approved by the NHL or permitted by the Hockey Rules; and (iii) the assignee assumes all of the rights and obligations of Team Owner in and under this Agreement, the Non-Relocation Agreement, and all Related Agreements.

22.2.2 The Team Owner shall give the City and the Arena Manager notice of the submission of any request for the NHL's approval of any such assignment promptly after the Team Owner acquires knowledge of such submission, which notice shall include the name of the proposed transferee.

22.2.3 Immediately upon any such transfer becoming effective, the transferor and the transferee of the Team Owner's obligations under this Agreement and the Non-Relocation Agreement shall execute an assignment and assumption agreement evidencing such transferee's assumption of such obligations in such form and content as is reasonably acceptable to the City and the Arena Manager.

22.2.4 Any other transfer of the rights and obligations of the Team Owner under this Agreement shall require the prior consent of the City (which consent may be granted or withheld in the City's sole and absolute discretion), and any such transfer or attempted transfer to which the City does not consent is void and not voidable, and the purported assignee shall acquire no rights in this Agreement.

22.2.5 No assignment or other permitted transfer by Team Owner shall constitute a novation or discharge in any respect of any obligation of the Arena Manager or Team Owner.

## **23. INTENTIONALLY DELETED.**

## **24. MISCELLANEOUS.**

### **24.1 Amendment; Waiver.**

24.1.1 No alteration, amendment or modification hereof shall be valid unless evidenced by a written instrument executed by the Parties with the same formality as this Agreement.

24.1.2 The failure of any Party to this Agreement to insist in any one or more instances upon the strict performance of any of the covenants, agreements, terms, provisions or conditions of this Agreement, or to exercise any election or option herein contained, shall not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision, condition, election or option, but the same shall continue and remain in full force and effect.

24.1.3 No waiver by any Party to this Agreement of any covenant, agreement, term, provision or condition of this Agreement shall be deemed to have been made unless expressed in writing and signed by an appropriate official or officer on behalf of such Party.

**24.2 Consents and Approvals.** Unless otherwise specifically provided herein, no consent or approval by any Party permitted or required under the terms of this Agreement shall be valid unless the same shall be in writing, signed by the Party by or on whose behalf such consent or approval is given. Unless a higher standard is expressly provided for pursuant to any provision of this Agreement, any consent or approval required to be given or otherwise provided for in this Agreement shall not be unreasonably withheld, delayed or conditioned by the Party giving such consent or approval.

**24.3 Additional Documents and Approval.** Each of the Parties, whenever and as often as each shall be reasonably requested to do so by any other Party to this Agreement, shall execute or cause to be executed any additional documents, take any additional actions and grant any additional approvals consistent with the provisions of this Agreement as may be necessary or expedient to consummate the transactions provided for in, and to carry out the purpose and intent of, this Agreement.

**24.4 Limited Severability.** Each of the Parties believes that the execution, delivery and performance of this Agreement are in compliance with all Applicable Laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring City to do any act in violation of any Applicable Laws, constitutional provision, law, regulation, City Code or City Charter), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement provides essentially the same rights and benefits (economic or otherwise) to the Parties as if such severance and reformation were not required. Unless prohibited by Applicable Laws, the Parties further shall perform all acts and execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed. Notwithstanding the foregoing, the obligations of the City to pay the Management Fee and the obligations of the Arena Manager and Team Owner to cause the Team to use the Arena Facility as its home for at least 41 games per Hockey Season are so material that such obligations shall not be severable and this Agreement shall terminate if any portion or amount of the Management Fee shall be invalid (or avoided or recovered pursuant to A.R.S. § 44-1007) or if for any reason the Arena Manager and/or Team Owner cannot fulfill the obligations to utilize the Arena Facility for the purposes provided herein.

**24.5 Binding Effect.** Except as may otherwise be provided herein to the contrary, this Agreement and each of the provisions hereof shall be binding upon and inure to the benefit of the Parties, and their respective permitted successors and assigns.

**24.6 Relationship of Parties.** No partnership or joint venture is established between or among the Parties under this Agreement, or any other agreement referred to in this Agreement. Neither the Team Owner nor the Arena Manager, nor any of their respective Affiliates, employees, agents, contractors nor guests, shall be considered agents or employees of the City or to have been authorized to incur any expense on behalf of the City or to act for or to bind the City.

**24.7 Notices.**

24.7.1 All notices, demands, disclosures, acknowledgments, consents, approvals, statements, requests, responses and invoices to be given under this Agreement shall be in writing, signed by the Party or officer, agent or attorney of the Party giving such notice, demand, disclosure, acknowledgment, consent, approval, statement, request, response, or invoice, and shall be deemed effective (i) upon receipt if hand delivered or sent by overnight courier service; or (ii) as of the earlier of actual receipt or the second business day after mailing if sent by the United States mail, postage prepaid, certified mail, return receipt requested, in either case addressed as follows:

To the Arena  
Manager: IceArizona Management Co. LLC  
c/o IceArizona Acquisition Co. LLC  
5709 Val Verde Street  
Suite 100  
Houston Texas, 77057  
Attn: Avik Dey

with copy to: Snell & Wilmer L.L.P.  
One Arizona Center  
Phoenix, AZ 85004-2202  
Attn: Nicholas J. Wood  
Joyce Kline Wright

To the City: City Manager  
City of Glendale  
5850 West Glendale Avenue  
Glendale, Arizona 85301

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

To the Team Owner: IceArizona Hockey Co. LLC  
c/o IceArizona Acquisition Co. LLC  
5709 Val Verde Street  
Suite 100  
Houston Texas, 77057  
Attn: Avik Dey

with copy to: Snell & Wilmer L.L.P.  
One Arizona Center  
Phoenix, AZ 85004-2202  
Attn: Nicholas J. Wood  
Joyce Kline Wright

24.7.2 Any Party to this Agreement may from time to time, by notice given to the other Parties pursuant to the terms of this Section 24.7, change the address to which notices, demands, disclosures, acknowledgments, consents, approvals, statements, requests, responses

and invoices to such Party are to be sent or designate one or more additional Persons to whom notices, demands, disclosures, acknowledgments, consents, approvals, statements, requests, responses and invoices are to be sent. A Party giving a notice, demand, disclosure, acknowledgment, consent, approval, statement, request, response or invoice under this Agreement shall, contemporaneously with the giving of the same, give a copy of such notice, demand, disclosure, acknowledgment, consent, approval, statement, request, response or invoice to each Party to this Agreement that is not a named recipient thereof.

**24.8 Applicable Law; Jurisdiction.** This Agreement has been prepared in the State of Arizona and shall be governed in all respects by the laws of the State of Arizona, without regard to principles of conflicts of law. Any claim, action, suit or proceeding between or among the Parties that arises from or relates to this Agreement and that is not subject to an agreed-upon arbitration procedure shall be brought and conducted solely and exclusively in the Superior Court of the State of Arizona in and for the County of Maricopa; and the Parties expressly disclaim any right to bring any action in a Federal forum because of diversity jurisdiction or otherwise, unless required by Applicable Law (e.g., in the case of exclusive jurisdiction in the federal courts, in which case any action shall be filed and maintained in the United States District Court for the District of Arizona). In no event shall this Section 24.8 be construed as a waiver by City of any form of defense or immunity, whether based on sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the United States Constitution or otherwise. Each of Arena Manager and Team Owner, by its execution and delivery of this Agreement, (i) consents to exclusive, personal jurisdiction and venue in the Maricopa County Superior Court (unless otherwise precluded by Applicable Law) and covenants not to seek remand, transfer or change of venue based on diversity or any other theory, and (ii) acknowledges that the foregoing provisions regarding exclusivity of jurisdiction have been bargained for and constitute material and additional consideration to the City for the City's entering into this Agreement.

**24.9 Time is of the Essence.** Time is of the essence of this Agreement and every term or performance hereunder. The Parties agree that a City Default for the failure pay any portion of the Management Fee would be a material breach of this Agreement, and that Arena Manager and Team Owner are expressly relying upon the timely payment of the Management Fee as a material inducement to enter into this Agreement, subject, however, to the Force Majeure (Section 24.17) and notice and cure provisions of this Agreement.

**24.10 Antidiscrimination Clause.** The Arena Manager and the Team Owner shall comply with all applicable state, local and federal laws, rules, regulations, executive orders and agreements pertaining to discrimination in employment and unlawful employment practices.

**24.11 Counterparts.** 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 one and the same instrument.

**24.12 Entire Agreement: Conflict.** This Agreement and the Related Agreements supersede any prior understanding or written or oral agreements between the Parties respecting the within subject matter and contains the entire understanding among the Parties with respect to

this Agreement. In the event of any conflict between any provision in the Recitals to this Agreement and any provision in the Agreement, the provision in the Agreement shall govern.

**24.13 Conflicts of Interest.**

24.13.1 Each Party, including direct (not remote) each member, official, representative and employee of the City shall, at all times while this Agreement is in effect, be bound by all Applicable Law pertaining to conflicts of interest, and, to the extent prohibited by such laws, no City representative shall have any direct (not remote) personal interest in this Agreement or participate in any decision relating to this Agreement that relates to his or her personal interest or the interest of any entity in which he or she is, directly or indirectly, interested.

24.13.2 A.R.S. § 38-511 provides political subdivisions of the State of Arizona, including the City, with the right to cancel contracts under certain circumstances.

24.13.3 The Parties acknowledge that the provisions of A.R.S. § 38-511, which are hereby incorporated in this Agreement by this reference, may create a situation in which the City might have a right to cancel this Agreement pursuant to A.R.S. §38-511.

**24.14 Saturday, Sunday or Holiday.** If the final date of any period provided for herein for the performance of an obligation or for the taking of any action falls on a day other than a Business Day, then the time of such period shall be deemed extended to the next Business Day.

**24.15 Confidentiality of Proprietary Information.**

24.15.1 The Parties acknowledge that certain records and information of or in possession of the Arena Manager and the Team Owner relating to the use, management, and operation of the Arena Facility (including the terms and conditions of Licenses and Concessions Agreements, and any Arena Manager Affiliate Contracts inspected pursuant to Section 8.12.4(a)) and budgets, financial results of operations, and financial projections that are delivered to, audited, examined or inspected by the City pursuant to this Agreement, may be proprietary and may place the Team Owner and the Arena Manager at a competitive disadvantage if disclosed to any third party, including competitors and potential users of the Arena.

24.15.2 The Parties shall, at all times during the Term and subject to Applicable Law, take all precautions reasonably necessary to ensure that the proprietary information of any Party is not released or disclosed to Persons other than the Parties without the prior consent of the Party to which such information pertains.

24.15.3 Each of the Parties further agrees to notify the other Parties upon receipt of a request for disclosure of any such proprietary information so that each Party to this Agreement may take appropriate actions to protect such proprietary information.

24.15.4 In the event of any claim or litigation related to the City's efforts to protect from disclosure the private, propriety information of any other Party to this Agreement, the Party desiring the information be protected will accept the tender of the defense of this claim,

defend the City against the claim, and fully indemnify and hold the City and each of its officials harmless from all costs, fees, penalties that may be assessed.

#### **24.16 Attorneys' Fees.**

24.16.1 Each Party shall bear its own costs and expenses (including attorneys' fees and costs) incurred with respect to the negotiation, execution, delivery and this Agreement, the Related Agreements and the consummation of the transactions at Closing contemplated hereby and thereby ("**Transaction Costs**").

24.16.2 In the event of any controversy, claim or dispute between or among the Parties arising from or relating to this Agreement, the prevailing Party or Parties shall be entitled to recover reasonable costs, expenses, court costs, expert witness fees, litigation-related expenses and attorneys' fees.

24.16.3 For all purposes of this Agreement and any other documents relating to this Agreement, the terms "attorneys' fees" or "counsel fees" shall be deemed to include paralegals and legal assistants' fees, and wherever provision is made herein or therein for the payment of attorneys' or counsel fees or expenses, such provision shall include such fees and expenses (and any applicable sales taxes thereon) incurred in any and all Mediations, arbitrations, judicial, bankruptcy, reorganization, administrative or other proceedings, including appellate proceedings, whether such fees or expenses arise before proceedings are commenced or after entry of a final judgment.

**24.17 Force Majeure.** Failure in performance by any Party hereunder shall not be deemed an Event of Default, and the non-occurrence of any condition hereunder shall not give rise to any right otherwise provided herein, when such failure or non-occurrence is due to Force Majeure. To the extent a Party believes any failure or non-occurrence is due to Force Majeure, such Party shall promptly notify the other Parties accordingly. An extension of time for the performance by any Party hereunder attributable to Force Majeure shall be limited to the period of delay due to such Force Majeure, which period shall be deemed to commence from the time of the commencement of the Force Majeure. Notwithstanding the foregoing, however, no Force Majeure shall discharge the Arena Manager's obligation to pay the rent at the time required by this Agreement.

**24.18 Agreed Extensions.** Times of performance under this Agreement may also be extended as mutually agreed upon in writing by the Parties. However, any failure to agree to a proposed extension of time for performance shall not be deemed grounds for delay or failure to timely cure an Event of Default hereunder.

**24.19 Survival.** All duties and obligations of each Party that by their terms are to be performed after the Termination Date or which set forth rights or obligations that are effective after the Termination Date shall survive the expiration or other termination of this Agreement.

**24.20 Third-Party Beneficiaries.** The provisions of this Agreement are for the exclusive benefit of the Parties express named in this Agreement and not for the benefit of any third person, and this Agreement shall not be deemed to have conferred any rights, express or implied,



upon any third Person, other than any person entitled to indemnification under any indemnification provision of this Agreement.

**24.21 Recordation.** The Parties acknowledge that this Agreement is a public record of the City and, promptly following the Closing, shall be recorded in the Official Records of Maricopa County, Arizona.

**24.22 Provisions That Are Subject to Other Agreements.** Various provisions in this Agreement are subject to the provisions of any one or more of the following agreements: Licenses, Concessions Agreements, Suite License Agreements, Premium Seat Agreements, Advertising Agreements, Naming Rights Agreements and Non-Relocation Agreement. The Parties agree not to enter into or extend the term of any agreement that is inconsistent with any provision of this Agreement or unreasonably interferes with the Arena Manager's performance of its obligations under this Agreement or with the City's rights under this Agreement.

**24.23 Immigration Law Compliance.**

24.23.1 The Arena Manager and the Team Owner, on behalf of themselves and any subcontractor, warrant, 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.

24.23.2 A breach of the warranty set forth in this Section 24.23 may be considered a material breach of this Agreement which could be subject to penalties up to and including termination of this Agreement to the extent such breach, under the facts and circumstances of such breach would have a material and adverse effect on the Arena or the City.

24.23.3 To the extent permitted by Applicable Law, the City retains the legal right to inspect the papers of the Arena Manager and the Team Owner or any employee subcontractor employee who performs work under this Agreement to ensure that the Arena Manager and the Team Owner or any subcontractor is compliant with the warranty under this Section.

(a) The City may conduct random inspections, and upon the request of the City, the Arena Manager and the Team Owner will provide copies of papers and records of the Arena Manager and the Team Owner demonstrating continued compliance with the warranty under this Section.

(b) The Arena Manager and the Team Owner agree to keep papers and records available for inspection by the City during normal business hours and will cooperate with the City in the exercise of its statutory duties and not deny access to their business premises or applicable papers or records for the purposes of enforcement of this Section.

24.23.4 The Arena Manager and the Team Owner agree to incorporate into any subcontracts under this Agreement the same obligations imposed upon the Arena Manager and the Team Owner and expressly accrue those obligations directly to the benefit of the City. The Arena Manager and the Team Owner also agree to require any subcontractor to incorporate into

each of its own subcontracts under this Agreement the same obligations imposed in this Section 24 and expressly accrue those obligations to the benefit of the City.

(a) The Arena Manager and the Team Owner's warranty and obligations under this Section to the City are continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this Section is no longer a requirement.

(b) The "E-Verify Program" as used in this Section 24 means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

**24.24 Iran and Sudan Prohibitions.** The Arena Manager and the Team Owner certify under A.R.S. §§ 35-391 *et seq.* and 35-393 *et seq.*, (the "Act") that neither have, and during the term of this Agreement will not have, "scrutinized" business operations, as defined By the Act, in the countries of Sudan or Iran.

*[Signatures appear on following pages.]*

IN WITNESS WHEREOF, the Parties have hereunto set their hands to be effective as of the Effective Date.

**ARENA MANAGER:**

ICEARIZONA MANAGER CO., LLC, a Delaware limited liability company

By: Renaissance Sports & Entertainment, LLC, a Delaware limited liability company

Its: Manager

By: 

Name: Avik Dey

Its: Director

CANADA

PROVINCE OF BRITISH COLUMBIA

TO WIT:

) TO ALL WHOM THESE PRESENTS  
)  
) MAY COME BE SEEN OR KNOWN  
)  
)  
)

I, Sima Mazarei, a Notary Public by Royal Authority duly appointed, in the City of Vancouver, in the Province of British Columbia, do certify and attest that the forgoing instrument was acknowledged before me on this 5 day of July, 2013, by Avik Dey, the Director of Renaissance Sports & Entertainment, LLC, a Delaware limited liability company, on behalf of said company as the manager of IceArizona Manager Co., LLC, a Delaware limited liability company, on behalf of said company, and on oath Avik Dey stated before me that he was authorized to execute the foregoing instrument for and on behalf of said limited liability companies.

<sup>North</sup>  
DATED at Vancouver, British Columbia, this 5 day of <sup>July</sup>, 2013.

S. Mazarei  
A Notary Public in and for the Province of British Columbia

**SIMA MAZAREI**  
NOTARY PUBLIC  
#159 15TH STREET E.  
NORTH VANCOUVER,  
B.C. V7L 2P7  
PHONE: (604) 929-2902

TEAM OWNER:

ICEARIZONA HOCKEY CO., LLC, a Delaware  
limited liability company

By: Renaissance Sports & Entertainment, LLC, a  
Delaware limited liability company

Its: Manager

By: 

Name: Avik Dey

Its: Director

CANADA

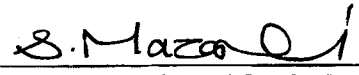
PROVINCE OF BRITISH COLUMBIA

TO WIT:

) TO ALL WHOM THESE PRESENTS  
)  
) MAY COME BE SEEN OR KNOWN  
)  
)  
)

I, Sima Mazarei, a Notary Public by Royal Authority  
duly appointed, in the City of Vancouver, in the Province of British Columbia, do certify and attest that  
the forgoing instrument was acknowledged before me on this 5 day of July, 2013, by Avik  
Dey, the Director of Renaissance Sports & Entertainment, LLC, a Delaware limited liability company, on  
behalf of said company as the manager of IceArizona Hockey Co., LLC, a Delaware limited liability  
company, on behalf of said company, and on oath Avik Dey stated before me that he was authorized to  
execute the foregoing instrument for and on behalf of said limited liability companies.

<sup>North</sup>  
DATED at Vancouver, British Columbia, this 5 day of <sup>July</sup>, 2013.

  
A Notary Public in and for the Province of  
British Columbia

SIMA MAZAREI  
NOTARY PUBLIC  
#159 15TH STREET E.  
NORTH VANCOUVER,  
B.C. V7L 2P7  
PHONE: (604) 929-2902

**CITY:**

CITY OF GLENDALE, an Arizona municipal corporation

By: 

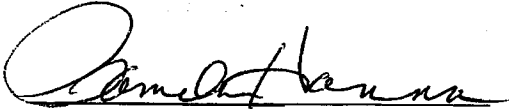
Name:

RICHARD A. BOWERS

Its:

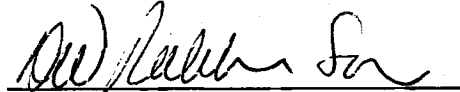
ACTING CITY MANAGER

**ATTEST:**



Pam Hanna, City Clerk

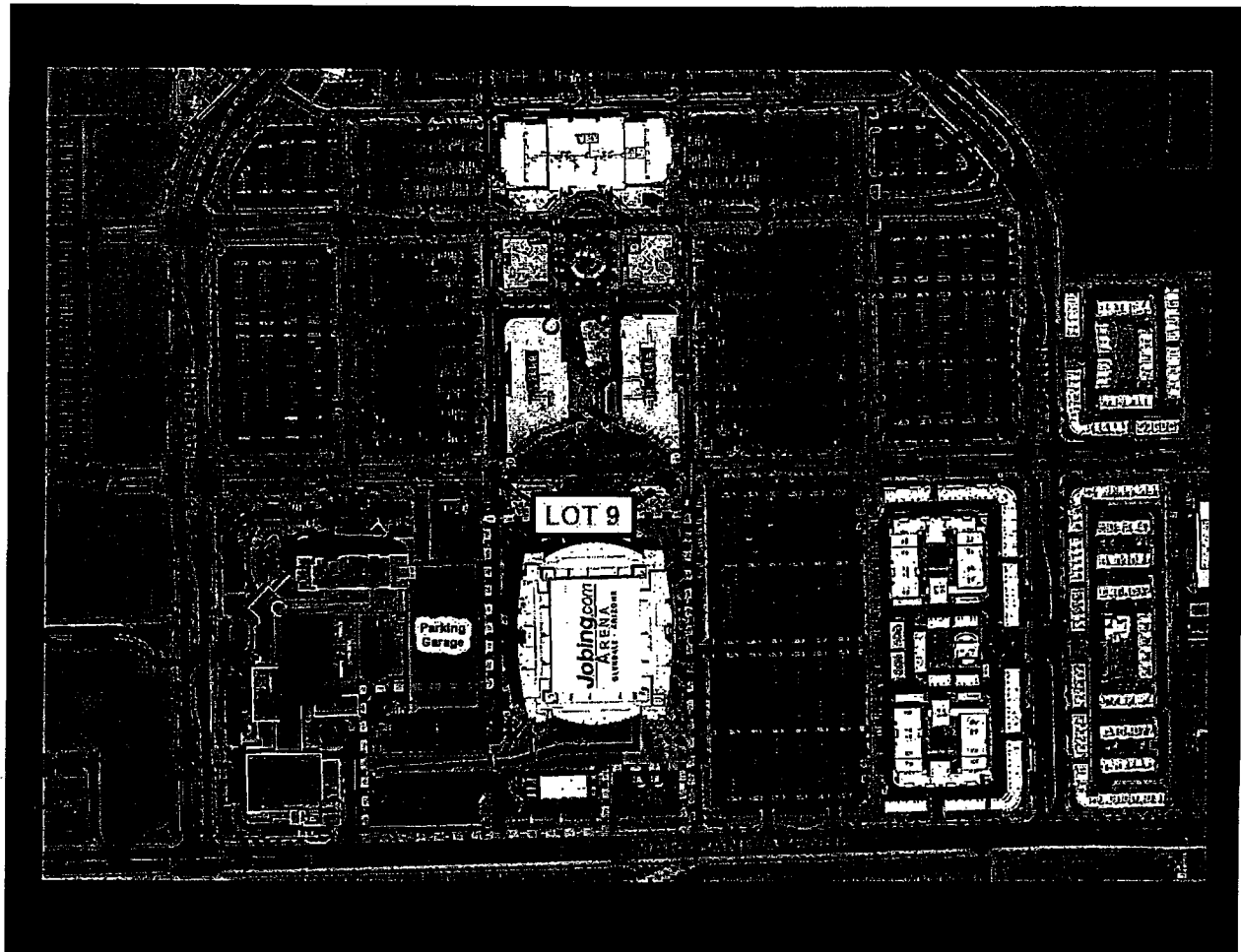
**APPROVED AS TO FORM:**



Nicholas C. DiPiazza, Acting City Attorney

**EXHIBIT "A"**

**Arena Facility Description**



**DEPICTION OF ARENA FACILITY IS ON FILE WITH ALL PARTIES TO THIS AGREEMENT AND IS AVAILABLE UPON WRITTEN REQUEST.**

**EXHIBIT "B"**

**Arena Land**

**Arena Facility:**

Lot 9, of the Final Plat of Westgate recorded on May 2, 2005 in Book 745, Map 14 of the Official Records of the Office of the Maricopa County Recorder's Office.

**Arena Parking Area:**

Parking fields located within the area bounded by Glendale Avenue to the north; 91<sup>st</sup> Avenue to the east; Maryland Avenue to the south; and Loop 101 to the west, which shall include no less than 5,500 parking spaces located within 2,640 feet of any point on the exterior of the Arena Facility to be used for parking of vehicles of Arena patrons for each Event during the Term including, without limitation:

- a. All rights, benefits and easements for parking as set forth in Parking Replacement Agreement recorded September 25, 2006 as Instrument 2006-1261679 of Official Records of Maricopa County, Arizona;
- b. All rights, benefits and easements as set forth in Declaration of Easements recorded September 25, 2006 as Instrument 2006-1261681 of Official Records of Maricopa County, Arizona; and
- c. All rights, benefits and easements for parking as set forth in Mixed-Use Development Agreement Recorded December 7, 2001 as Instrument 2001-1155422, thereafter Amended and Restated Agreement for the Replacement of Temporary parking recorded January 31, 2011 as Instrument 2011-0086547 and First Amendment to Mixed-Use Development Agreement Recorded January 31, 2011 as Instrument 2011-086619 of Official Records of Maricopa County, Arizona.

## EXHIBIT "C"

### Management Performance Standards

The Arena Manager will manage, operate, utilize and maintain the Arena Facility to a standard of quality or performance and practices that is consistent with the performance and practices following arenas considered collectively (collectively, the "**Comparable Facilities**"):

- (i) US Airways Center located in Phoenix, AZ;
- (ii) Nationwide Arena located in Columbus, OH; and
- (iii) Xcel Energy Center located in St. Paul, MN.

In the event that any of the Comparable Facilities:

- (a) is closed and not regularly used with a 90 period for events,
- (b) permanently ceases to host a national professional sports franchise as a primary tenant or,
- (c) ceases to be maintained and operated in accordance with the standards of service and quality generally accepted within the arena/events center industry for first class arenas and events centers, provide the City and Arena Manager agree the condition in (c) exists or, if the City and Arena Manager are unable to agree, the condition in (c) is determined to exist by an Arbitrator (in accordance with the Arena Lease and Management Agreement)

in which case the specific Comparable Facility shall be deleted from the list of Comparable Facilities and the City, the Arena Manager and the Team will agree upon substitute Comparable Facility with appropriate adjustments to reflect newer buildings and technology than that possessed by the Arena Facility. Until such substitution is made, the Comparable facilities not deleted shall constitute the Management Performance Standards.

If the City or the Arena Manager cannot agree on a substitute Comparative Facility, either party to this Arena Lease and Management Agreement may seek arbitration to select the substitute Comparable Facility most consistent with the standard of quality established under this Agreement.

In applying the Management Performance Standards to operation, management and customer service issues, due consideration shall be given to Glendale's unique competitive market conditions, climate, topography and the age of the Arena Facility.



**EXHIBIT "E"**

**Safety and Security Agreement**

(Exhibit "E" attached following this page)

## **EXHIBIT "E"**

### **SAFETY AND SECURITY AGREEMENT**

**This Safety and Security Agreement** (this "**Agreement**") is dated as of \_\_\_\_\_, 2013 (the "**Effective Date**"), and is entered into by and among the City of Glendale, an Arizona municipal corporation (the "**City**"); and IceArizona Manager Co., LLC, a Delaware limited liability company ("**Arena Manager**").

#### **RECITALS**

- A. The City and the Arena Manager are parties to that certain Professional Management Services and Arena Lease dated July 8, 2013 (the "**Arena Management Agreement**"), which provides for the management and use of the Arena.
- B. The City and the Arena Manager desire to enter into this Agreement for the purposes of providing for the safety and security of visitors and patrons to the Arena and traffic control in and around the Arena during Events through the use of the services of police officers, off-duty civilian police assistants, paramedics and similar qualified personnel (each as hereinafter defined and, collectively, the "**Public Safety Personnel**").
- C. During Events, the City is willing to provide Public Safety Personnel on the terms and conditions set forth herein in order to assure public safety in and around the Arena and to respond to incidents requiring the response of Public Safety Personnel.

#### **AGREEMENT**

**NOW THEREFORE**, in consideration of the premises, covenants, agreements and obligations contained herein, the parties enter into this Agreement and agree as follows:

- 1. **Definitions.** All capitalized terms shall have the meaning assigned to them in the Arena Management Agreement unless a definition of that term is otherwise specified herein.
- 2. **Term of Agreement.** This Agreement shall commence on the Effective Date and shall continue through the term of the Arena Management Agreement.
- 3. **Services.**

##### **3.1 Traffic Control.**

a. The City, through its Police Department, shall assign an on-duty Sergeant to supervise and coordinate traffic control services by Public Safety Personnel for each Event.

b. The City, through its Police Department and Transportation Department, shall assign Public Safety Personnel to provide traffic control at Events and the police assistants working traffic control shall be under the direction of the police officers assigned to the Event.

(1) The number of police officers and police assistants assigned to an Event and the appropriate intersections will be determined by the City's Transportation Department's traffic and barricade plan for the Arena (the "**Traffic Control Plan**"); provided

that Arena Management shall be consulted and advised on a regular basis as to the ongoing Traffic Control Plan.

(2) The police officers and police assistants working an Event shall be responsible for erecting barricades as designated on the Traffic Control Plan.

c. The Arena Manager, with input from the Team Owner for any Hockey Event, may request amendments or temporary modifications to the Traffic Control Plan by submitting a written proposal to the Glendale Police Chief and Transportation Department Director, who may approve or deny the proposal in their sole and reasonable discretion; provided however, the on-duty Sergeant assigned to traffic control under the Traffic Control Plan may make immediate changes in the Traffic Control Plan at the time of or during an Event if, in his or her discretion, traffic conditions or other tactical needs warrant such changes.

### 3.2 Security.

a. The number of police officers assigned to provide security, including but not limited to liquor control, within the Arena Facility, Arena Parking Area and areas immediately surrounding the Arena Facility and Arena Parking Area during Events will be jointly determined on an event-by-event basis by the Police Department and the Arena Manager; provided however, that the City shall have sole discretion in connection with issues that solely relate to public safety determinations.

b. Nothing herein shall preclude the Arena Manager from employing or engaging private, non-sworn personnel safety employees ("**Private Security Personnel**") at the Arena; provided however, the Private Security Personnel must work in cooperation with the Public Safety Personnel and respond to the responsible and reasonable requests of the Public Safety Personnel.

### 3.3 Medical Attention.

a. The City, through its Fire Department, will assign on-duty emergency medical services personnel ("**EMS Personnel**") in order to assure that emergency medical are available to patrons and employees at the Arena Facility and Arena Parking Area during Events.

b. The number of EMS Personnel assigned will be jointly determined on an event-by-event basis by an authorized representative of the City's Fire Department and the Arena Manager; provided however, that the City shall have sole discretion in connection with issues that solely relate to public safety determinations.

4. **Assignment of City Safety Personnel.** The City shall select the Public Safety Personnel assigned to perform services for Events and assure the provision of appropriate equipment as necessary for their duties within the City's sole discretion.

## 5. **Payment.**

5.1 Annual Fee. In consideration for the services to be provided by the City under this Agreement, the Arena Manager will pay the City, on or before the first day of each Fiscal Year, an estimated annual fee in an amount equal to the City's estimate of all costs incurred or to be incurred in providing the Services (exclusive of the Hourly Fee, which shall be billed separately), including but not limited to the City's overhead, with such estimated amount to be

adjusted annually (the **"Estimated Annual Fee"**). No less than ninety (90) days following the last day of each Fiscal Year, the City shall deliver to Arena Manager a written statement (in each case, a **"Reconciliation Statement"**) setting forth in reasonable detail its determination of actual costs incurred in providing the Services during said Fiscal Year (which were previously estimated in determining the Estimated Annual Fee for the applicable Fiscal Year) (the actual costs incurred in providing the Services (exclusive of the Hourly Fee, which shall be billed separately), including but not limited to the City's overhead, the **"Annual Fee"**). The Reconciliation Statement shall be used to (1) to determine any reimbursement the City owes the Arena Manager, or, alternatively, any additional costs owed to the City by the Arena Manager, for actual costs and expenses incurred by the City (excluding the Hourly Fee) that differ from those estimated costs and expenses contained in the Estimated Annual Fee and (2) to estimate the Estimated Annual Fee for the next Fiscal Year. The Parties shall use good faith in negotiating and reconciling each Estimated Annual Fee and in preparing and reviewing the Reconciliation Statement. Any reconciliation payment due to either the City or the Arena Manager based upon the Reconciliation Statement shall be made within fifteen (15) days of Arena Manager's receipt of the Reconciliation Statement.

5.2 **Hourly Fee.** As additional consideration for such services, the Arena Manager will pay the City within 30 days of the receipt of an itemized invoice the base hourly rates (i.e., regular hourly rates, not overtime rates), plus the City's share of any employment, FICA, or similar taxes related thereto, (collectively, the **"Hourly Fee"**) of the Public Safety Personnel for work performed for Events. The City shall timely provide the Arena Manager current information on "regular hourly rates" of its Public Safety Personnel and any changes related thereto.

a. The Hourly Fee shall be a minimum of three hours for each such Public Safety Personnel working at each Event.

b. At the request of the Arena Manager, the City shall submit an invoice to the Arena Manager at the time of an Event when the Arena Manager requires such invoice to pass the cost of such services on to a third party.

5.3 The Annual Fee and the Hourly Fee shall be paid by the Arena Manager as Operating Expenses under the Arena Management Agreement.

## **6. Responsibilities of the Arena Manager.**

6.1 The Arena Manager will timely provide a schedule of Events to the City upon the preparation thereof and will timely notify the City in writing of any changes thereto.

6.2 The Arena Manager will provide a barricade truck and trailer and the barricades necessary to implement the Traffic Control Plan in the immediate vicinity of the Arena.

6.2 The Arena Manager will be solely responsible for obtaining any reimbursement from any third party any agreed-upon share of the Estimated Annual Fee and the Hourly Fee, and any such agreement shall in no way affect the obligations of the Arena Manager to pay these fees to the City pursuant to the terms and conditions of this Agreement.

## **7. Joint Venture Disclaimer.**

7.1 This Agreement is not intended to and will not constitute, create, give rise to or otherwise recognize a joint venture, partnership, or formal business association or organization of any kind between the parties hereto, and the rights and obligations of the parties hereto shall be only those expressly set forth in this Agreement.

7.2 No Public Safety Personnel shall be deemed an employee of the Arena Manager, and the Arena Manager shall have no obligations with respect to the City's merit system, employee benefits or compensation including retirement and insurance, or personnel rules applicable to Public Safety Personnel, which shall be solely and completely the City's responsibility.

7.3 The City shall have total responsibility for all salaries, wages, bonuses, retirement benefits, tax withholding, workers' compensation benefits, occupational disease compensation, unemployment compensation, other employee benefits and taxes and premiums appurtenant thereto with respect to the Public Safety Personnel, and the City shall save and hold the Arena Manager harmless with respect thereto. The obligations of Arena Manager to pay the Hourly Fee to the City to reimburse the City for certain of its costs is a contractual arrangement between the City and Arena Manager and does not, and shall not be construed by the City to, create employee/employer obligations for Arena Manager.

7.4 No Private Security Personnel or other person employed or engaged by the Arena Manager shall be deemed an employee of the City. The City shall have no obligations with respect to the Arena Manager's personnel rules applicable to Private Security Personnel.

7.5 The Arena Manager shall have total responsibility for all salaries, wages, bonuses, retirement benefits, tax withholding, workers' compensation benefits, occupational disease compensation, unemployment compensation, other employee benefits, and taxes and premiums with respect to the Private Security Personnel, and the Arena Manager shall save and hold the City harmless with respect thereto.

8. **Indemnification.** Each party to this Agreement ("**Indemnitor**") shall have and hold harmless each of the other parties to this Agreement, and its city council members and elected officials (if applicable), officers, agents, servants, employees and spouses of each such person (collectively, "**Indemnitee**"), from any and all claims, demands, suits, actions, proceedings, losses, costs and damages of every kind, including, but not limited to attorneys' fees, which may be made or brought against the Indemnitee on account of any loss or damage to property of or for injury to or death of any person, to the extent that said loss, damage, injury or death is related to this Agreement and is the result of any error or omission or negligent act of the Indemnitor, its officials, officers, agents, servants, employees, or any representatives for which the Indemnitor is legally liable; provided that, subject to Applicable Law and immunities, the City (and not the Arena Manager) shall be legally liable for the acts or omissions of the Public Safety Personnel; and the Arena Manager (and not the City) shall be legally liable for the acts or omissions of Private Security Personnel, arising out of or incidental to the performance of this Agreement.

9. **Conflicts of Interest.** The Arena Manager understands and acknowledges that this Agreement is subject to cancellation without penalty or further obligation by the City pursuant to the provisions of A.R.S. § 38-511. Both parties represent and warrant that, as of the date hereof, each party is not aware of any such conflicts of interest.

## 10. Notices

10.1 All notices, demands, disclosures, acknowledgments, consents, approvals, statements, requests, responses and invoices to be given under this Agreement shall be in writing, signed by the party or officer, agent or attorney of the party giving such notice, demand, disclosure, acknowledgment, consent, approval, statement, request, response and/or invoice, and shall be deemed effective (i) upon receipt if hand delivered or sent by overnight courier service; or (ii) upon delivery or the date of refusal if sent by the United States mail, postage prepaid, certified mail, return receipt requested, in either case addressed as follows:

To the Arena Manager:      IceArizona Manager Co., LLC  
c/o IceArizona Acquisition Co. LLC  
5709 Val Verde Street  
Suite 100  
Houston, Texas 77057  
Attn: Avik Dey

with copy (which shall not  
constitute notice) to:      Snell & Wilmer L.L.P.  
400 East Van Buren Street  
Phoenix, Arizona 85004  
Attn: Nicholas J. Wood Esq.  
Joyce Wright Esq.

To the City:                      City Manager  
City of Glendale  
5850 West Glendale Avenue  
Glendale, Arizona 85301

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

10.2 Any party hereto may from time to time, by notice given to the other parties pursuant to the terms of this Section, change the address to which notices, demands, disclosures, acknowledgments, consents, approvals, statements, requests, responses and invoices to such party are to be sent or designate one or more additional Persons to whom notices, demands, disclosures, acknowledgments, consents, approvals, statements, requests, responses and invoices are to be sent.

10.3 A party giving a notice, demand, disclosure, acknowledgment, consent, approval, statement, request, response or invoice under this Agreement shall, contemporaneously with the giving of the same, give a copy of such notice, demand, disclosure, acknowledgment, consent, approval, statement, request, response or invoice to each party hereto that is not a named recipient thereof.

**11. Governing Law.** In all respects, including all matters of construction, validity and performance, including, without limitation, the rights and duties of the parties hereto, this Agreement shall be governed by, and construed and enforced in accordance with, the internal laws of the State of Arizona applicable to contracts made and performed in that state (without regard to the choice of law or conflicts of law provisions thereof) and any applicable laws of the United States of America.

**12. Entire Agreement**

12.1 This Agreement and the Arena Management Agreement constitute the full and complete understanding and agreement of the parties hereto with respect to the matters that are the subject of this Agreement.

12.2 This Agreement replaces any and all previous representations, understandings, and agreements, written or oral, relating to its subject matter.

12.3 This Agreement and its terms may not be modified, changed or waived except in writing signed by both parties.

**13. Breach and Default**

13.1 If any party to this Agreement materially breaches any provision of this Agreement and fails to cure such breach within 30 days after receiving written notice of such breach from any other party to this Agreement, the breaching party shall be in default.

13.2 Provided that if such matter cannot reasonably be cured within such 30 day period, the breaching party shall not be in default if, within 10 days of receiving the original written notice of breach, it begins to cure the breach, in good faith continues to attempt to cure the breach, and thereafter cures such breach within 120 days after receiving the original written notice of breach.

13.3 In the event any party breaches this Agreement and does not cure the breach within the time specified within this Section, the other party's sole remedy shall be an action at law for actual monetary damages, but not consequential or punitive damages.

**14. Immigration Law Compliance.**

14.1 The Arena Manager, on behalf of itself and any subcontractor, warrant, 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.

14.2 A breach of the warranty set forth in Section 14.1 may be considered a material breach of this Agreement which could be subject to penalties up to and including termination of this Agreement to the extent such breach, under the facts and circumstances of such breach would have a material and adverse effect on the Arena or the City.

14.3 To the extent permitted by Applicable Law, the City retains the legal right to inspect the papers of the Arena Manager or subcontractor employee who performs work under

this Agreement to ensure that the Arena Manager or any subcontractor is compliant with the warranty under this Section.

14.4 The City may conduct random inspections, and upon the request of the City, the Arena Manager will provide copies of papers and records of the Arena Manager demonstrating continued compliance with the warranty under this Section.

14.5 The Arena Manager agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with the City in the exercise of its statutory duties and not deny access to their business premises or applicable papers or records for the purposes of enforcement of this Section.

14.6 The Arena Manager agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon the Arena Manager and expressly accrue those obligations directly to the benefit of the City. The Arena Manager also agree to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.

14.7 The Arena Manager's warranty and obligations under this Section to the City are continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this Section is no longer a requirement.

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

15. **Iran and Sudan Prohibitions.** The Arena Manager certifies under A.R.S. §§ 35-391 *et seq.* and 35-393 *et seq.*, (the "Act") that neither have, and during the term of this Agreement will not have, "scrutinized" business operations, as defined By the Act, in the countries of Sudan or Iran.

*[Signatures on Following Page]*



**IN WITNESS WHEREOF**, the parties have hereunto set their hands to be effective as of the Effective Date.

**ARENA MANAGER:**

ICEARIZONA MANAGER CO., LLC, a Delaware limited liability company

By: Renaissance Sports & Entertainment, LLC, a Delaware limited liability company

Its: Manager

By: \_\_\_\_\_

Name: Avik Dey

Its: Director

**CITY:**

CITY OF GLENDALE, an Arizona municipal corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Pam Hanna, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Nicholas De Piazza, Interim City Attorney

## **EXHIBIT "F"**

### **Scheduling Procedures**

1. All Hockey Events, excepting regular practices, shall have priority over all other Events and other activities scheduled or proposed to occur at the Arena Facility.
2. The Arena Manager shall provide the City (i) a schedule of Hockey Events (other than Playoff Games and any Warm-up Session(s) not more than five (5) Business Days following the finalization of such schedule and (ii) a schedule of Playoff Games and any Warm-up Session(s) relating thereto not more than two (2) Business Days following the finalization of such schedule.
3. The City will be provided a reasonable opportunity to schedule City Sponsored Events with full recognition of the Arena Manager's need to schedule and reserve dates as described in the preceding two sentences.
4. Unforeseen scheduling needs of the Arena Manager, the Team, or the NHL may cause changes to the aforementioned schedules after the delivery thereof to the City, and the Arena Manager shall have the exclusive right to make such changes and shall provide the City notice of any such changes as soon as reasonably practicable.
5. The Arena Manager (and its designees) may schedule additional Team practices and media events, which are not limited to the Team Exclusive Use Areas, on any dates that remain open twenty-one (21) days in advance of each such date.

**EXHIBIT "G"**

**Form of Annual Budget**

(Exhibit "G" attached following this page)

**Arena Manager**  
**Annual Budget**  
**For the Fiscal Year Ending June 30, \_\_\_\_\_**

**REVENUE**

Rental and Co-pro. Revenue	\$0
Other Revenue	0
Reimbursed Labor	0
Reimbursed Expenses	0

<b>Total Revenue</b>	<b>0</b>
	=====

**EXPENSES**

Event Labor	0
Event Expenses	0

<b>Total Event Expenses</b>	<b>0</b>
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**Non-Event Expenses**

Event Services	0
Guest Services	0
Suite and Hospitality	0
Security	0
Parking	0
Housekeeping	0
Facilities/Engineering	0
Operations/Conversions	0
Booking and Marketing	0
Box Office	0
Productions	0
Finance and Administration	0
Insurance	0
Information Technology	0
Human Resources	0
Legal	0

<b>Total Non-Event Expenses</b>	<b>0</b>
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<b>Capital Expenditures</b>	<b>0</b>
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<b>Total Expenses</b>	<b>0</b>
	=====

<b>OPERATING LOSS</b>	<b>0</b>
	=====

**Arena Manager**  
**Sources and Uses of Cash**  
**For the Fiscal Year Ending June 30, \_\_\_\_**

**Sources of Cash from Operations**

Operating revenue	\$ -
Less non-cash revenue items:	
Coyotes reimbursed labor	-
Sting reimbursed labor	-
	<hr/>
Total Sources of Cash from Operations	-

**Uses of Cash in Operations**

Event expenses	-
Non-event expenses	-
Capital expenditures	-
less non-cash expenses	-
	<hr/>
Total Uses of Cash in Operations	-
Net Cash Requirement	<hr/> <hr/> \$ -

**Arena Manager**  
**ANNUAL DEPARTMENT BUDGET**  
**For the Fiscal Year Ending June 30, \_\_\_\_**

Event Services	\$	-
Guest Services		-
Suite and Hospitality		-
Security		-
Parking		-
Housekeeping		-
Facilities/Engineering		-
Operations/Conversions		-
Bookings and Marketing		-
Box Office		-
Productions		-
Arena Management		-
Total All Departments		-

**EVENT SERVICES - 100**

6300 FT Salary - Event Services	\$0
6500 SSI - Event Services	0
6540 MED - Event Services	0
6600 WC - Event Services	0
6700 FUTA - Event Services	0
6740 SUI - Event Services	0
6800 MED/DENTAL - Event Services	0
6910 401K - Event Services	0
6840 STD/LTD/ADD/LIFE - Event Services	0
Total Salaries and Benefits	0

**Other Expenses**

8630 Repairs & Maintenance	0
Total Other Expenses	0

**Total Event Services** **0**

**Guest Services - 110**

6305 FT Salary	\$0
6502 SSI	0
6542 MED	0
6602 WC	0

6702 FUTA	0
6742 SUI	0
6802 MED/DENTAL/LIFE	0
6912 401K	0
6842 STD/LTD/ADD	0

Total Salaries and Benefits	0
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#### Other Expenses

9100 Operating Supplies	0
9202 Uniforms/Laundry	0
9252 Training Expense	0

Total Other Expenses	0
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<b>Total Guest Services</b>	<b>0</b>
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### Suites and Hospitality - 120

#### Other Expenses

9206 Uniforms/Laundry	\$0
9254 Training Expense	0
9278 Business Conference Expense	0

Total Other Expenses	0
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<b>Total Suites and Hospitality</b>	<b>0</b>
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### Security - 130

6315 FT Salary - Security	\$0
6506 SSI - Security	0
6546 MED - Security	0
6606 WC - Security	0
6706 FUTA - Security	0
6746 SUI - Security	0
6806 MED/DENTAL/LIFE - Security	0
6916 401K - Security	0
6846 STD/LTD/ADD - Security	0

Total Salaries and Benefits	0
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6020 NE. PT Labor - Facility Security	0
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6020 - 6220 NE PT Wages and Taxes	0
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Other Expenses

8060 Office Supplies	0
8565 City of Glendale Annual Police Fee	0
8631 Repair and Maintenance	0
9102 Medical Supplies	0
9104 Operating Supplies	0
9210 Uniforms/Laundry	0
9256 Training Expense	0
9280 Business Conference Expense	0
9315 Travel/Lodging/Other	0

Total Other Expenses	0
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<b>Total Security</b>	<b>0</b>
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**PARKING - 140**

6325 FT Salary - Parking	\$0
6510 SSI - Parking	0
6550 MED - Parking	0
6610 WC - Parking	0
6710 FUTA - Parking	0
6750 SUI - Parking	0
6810 MED/DENTAL/LIFE - Parking	0
6920 401K - Parking	0
6850 STD/LTD/ADD - Parking	0

Total Security and Benefits	0
	0

Other Expenses

8065 Office Supplies	0
9212 Uniforms/Laundry	0
9090 Light Towers/Fuel	0
9258 Training Expense	0
9281 Business Conference Expense	0
8655 Repair and Maintenance	0
8703 Licenses and Fees	0
8203 Dues and Subscriptions	0
9320 Travel/Lodging/Other	0
9410 Meals and Entertainment	0

Total Other Expenses	0
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<b>Total Parking</b>	<b>0</b>
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## Housekeeping - 210

6335 FT Salary - Housekeeping	\$0
6514 SSI - Housekeeping	0
6554 MED - Housekeeping	0
6614 WC - Housekeeping	0
6714 FUTA - Housekeeping	0
6754 SUI - Housekeeping	0
6814 MED/DENTAL/LIFE - Housekeeping	0
6924 401K - Housekeeping	0
6854 STD/LTD/ADD - Housekeeping	0

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Total Salaries and Benefits	0
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6035 NE. PT Labor - Housekeeping	0
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6035 6035 NE PT Wages and Taxes	0
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### Other Expenses

8600 Contracted Services	0
8602 Hskping Equip. R & M	0
9108 Operating Supplies	0
9214 Uniforms/Laundry	0

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Total Other Expenses	0
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Total Housekeeping	0
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## Facilities/Engineering - 220

6340 FT Salary - Facilities/Engineering	\$0
6410 FT Salary OT - Facilities/Engineering	0
6516 SSI - Facilities/Engineering	0
6556 MED - Facilities/Engineering	0
6616 WC - Facilities/Engineering	0
6716 FUTA - Facilities/Engineering	0
6756 SUI - Facilities/Engineering	0
6816 MED/DENTAL/LIFE - Facilities/Engineering	0
6926 401K - Facilities/Engineering	0
6856 STD/LTD/ADD - Facilities/Engineering	0

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Total Salaries and Benefits	0
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6040 NE. PT Labor - Facilities/Eng.	0
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6040 6040 NE PT Wages and Taxes	0
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### Other Expenses

8610 Contracted Services	0
8612 Landscaping	0

8614 General Repair and Maint.	0
8705 Licenses & Permits	0
8880 Utilities - Electric	0
8882 Utilities - Gas	0
8884 Utilities - Water	0
9055 Light tower fuel / Vehicle gas	0
9065 Equipment Rental	0
9110 Operating Supplies	0
9114 Hockey Supplies	0
9216 Uniforms/Laundry	0
9262 Training Expense	0
9326 Travel/Lodging/Other	0
9435 Meals and Entertainment	0

Total Other Expenses	0
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<b>Total Facilities/Engineering</b>	<b>0</b>
	=====

### Operations/Conversions - 230

6345 FT Salary - Operations/Conversions	\$0
6518 SSI - Operations	0
6558 MED - Operations	0
6618 WC - Operations	0
6718 FUTA - Operations	0
6758 SUI - Operations	0
6818 MED/DENTAL/LIFE - Operations	0
6928 401K - Operations	0
6858 STD/LTD/ADD - Operations	0

6045 NE PT Labor - Operations	0
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6045 - 6345 NE PT Wages and Taxes	0
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### Other Expenses

8620 Contracted Services	0
8622 Repair and Maintenance	0
9070 Equipment Rental	0
9112 Operating Supplies	0
9218 Uniforms/Laundry	0
9264 Training Expense	0
9327 Travel/Lodging/Other	0
9440 Meals and Entertainment	0

Total Other Expenses	0
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<b>Total Operations/Conversions</b>	<b>0</b>
	=====

## Booking and Marketing - 310

6355 FT Salary - Bookings	\$0
6522 SSI - Bookings	0
6562 MED - Bookings	0
6622 WC - Bookings	0
6722 FUTA - Bookings	0
6762 SUI - Bookings	0
6822 MED/DENTAL/LIFE - Bookings	0
6932 401K - Bookings	0
6862 STD/LTD/ADD - Bookings	0

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Total Salaries and Benefits	0
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### Other Expenses

#### Booking

8215 Membshp Fees/Dues & Subscriptions	0
8429 Business Gifts	0
9286 Business Conference Expense	0
9350 Travel/Lodging/Other	0
9450 Meals and Entertainment	0

#### Marketing

8005 Postage	0
8120 Printing	0
8210 Membshp Fees/Dues & Subscriptions	0
8452 Marketing	0
8428 Business Gifts and Awards	0
8430 Website Costs	0
8432 Public Relations	0
8450 Design	0
8570 Photography	0
9284 Business Conference Expense	0
9345 Travel/Lodging/Other	0
9445 Meals and Entertainment	0

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Total Other Expenses	0
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Total Booking and Marketing	0
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## BOX OFFICE - 400

6360 FT Salary - Box Office	\$0
6524 SSI - Box Office	0
6564 MED - Box Office	0
6624 WC - Box Office	0
6724 FUTA - Box Office	0
6764 SUI - Box Office	0
6824 MED/DENTAL/LIFE - Box Office	0
6934 401K - Box Office	0
6864 STD/LTD/ADD - Box Office	0

Total Salaries and Benefits	0
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6060 NE. PT Labor - Box Office	0
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6060 - 6060 NE. PT Wages and Taxes	0
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Other Expenses

8010 Postage	0
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8125 Printing	0
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8220 Membshp Fees/Dues & Subscriptions	0
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8648 Equip. Repair and Maint.	0
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8860 Armored Car	0
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9118 Operating Supplies	0
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9225 Uniforms	0
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9268 Training Expense	0
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9288 Business Conference Expense	0
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9355 Travel/Lodging/Other	0
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9455 Meals and Entertainment	0
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Total Other Expenses	0
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<b>Total Box Office</b>	<b>0</b>
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**PRODUCTIONS - 500**

Other Expenses

8225 Membshp Fees/Dues & Subscriptions	\$0
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8650 Equip. Repair and Maint.	0
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9085 Equipment Rental	0
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9120 Operating Supplies	0
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9121 Small Tools	0
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9220 Uniforms	0
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9290 Business Conference Expense	0
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9360 Travel/Lodging/Other	0
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9460 Meals and Entertainment	0
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Total Other Expenses	0
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<b>Total Productions</b>	<b>0</b>
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**Arena Management - 650**

6376 FT Salary	\$0
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6531 SSI	0
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6571 MED	0
----------	---

6631 WC	0
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6731 FUTA	0
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6771 SUI	0
6831 MED/DENTAL/LIFE	0
6942 401K	0
6871 Life Insurance	0

Total Salaries and Benefits	0
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**Other Expenses**

9295 Business Conferences	0
9371 Travel and Lodging	0
9471 Meals and Entertainment	0

Total Other Expenses	0
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<b>Total Arena Management</b>	<b>0</b>
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**Arena Manager**  
**ANNUAL EVENT BUDGET**  
**For the Fiscal Year Ending June 30, \_\_\_\_\_**

**REVENUE**

4010 Arena Rental Fees	\$0
4450 Individual Suite Rentals	0
4030 Arena Share of Promoter Profit	0
Ticket and Rental Taxes	0

Total Rental and Co-Pro. Ticket Revenue	0
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**Other Revenue**

4100 Concessions	0
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Total Concessions Revenue	0
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4200 Merchandise Revenue	0
4420 Facility Fee	0
4300 TM Convenience charge %	0
4400 Visiting Team Bldg. Brdcst Acc	0
4440 Event Sponsorships	0

Total Concessions and Other Revenue	0
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**Reimbursed Labor**

4570 Reimbursed Labor - Coyotes Games	0
4575 Reimbursed Labor - Sting Games	0
4545 Reimbursed Labor - Production and Rigging	0
Reimbursed Labor - Other Events	0

4500 - 4595 Reimbursed Labor	0
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**Reimbursed Expenses**

4610 Catering - Event	0
4625 Advertising - Print	0
4825 Credit Card Fees	0
Miscellaneous Reimbursed Expenses	0

4500 - 4905 Reimbursed Expenses	0
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<b>Total Revenue</b>	<b>0</b>
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## Expenses

### Event Labor

Front of House (GSRs, Suite Attend., Box Office)	\$0
Medical, Event Security & Police	0
5045 E. PT Labor - Production	0
5049 - 5055 Housekeeping	0
5065 E. PT Labor - Conversion Crew	0
5070 E. PT Labor - Facilities/Eng.	0
5075 E. PT Labor - Parking Attendant	0
5398 Contrd Srvs - Production	0

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Total Event Labor	0
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### Event Expenses

7001 Promoter Revenue Sharing Expense	0
7010 Catering - Event	0
7025 Advertising	0

### Miscellaneous Show Expenses

Total Miscellaneous Show Expenses	0
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Total Event Expenses	0
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<b>Total Expenses</b>	<b>0</b>
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<b>Net Event Income</b>	<b>0</b>
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## EXHIBIT "H"

### INSURANCE REQUIRED OF ARENA MANAGER

#### (SEE SECTION 13.1)

**Definitions.** Capitalized terms that are used but not otherwise defined in this Exhibit "H" (this "**Exhibit**") shall have the meanings set forth in Section 1.1 of the Arena Lease and Management Agreement (the "**Arena Management Agreement**") to which this Exhibit is attached.

The Arena Manager shall maintain the following insurance coverages during the Agreement 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:

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

**Commercial General Liability:** The Arena Manager shall maintain commercial general liability insurance covering all operations by or on behalf of the Arena Manager 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 the Arena Manager 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 Agreement Effective



Date. Coverage shall extend for at least five (5) years after termination of the Arena Management Agreement and shall be evidenced by annual certificates of insurance.

**Commercial Automobile Liability:** The Arena Manager shall maintain commercial automobile liability insurance with respect to all vehicles used in the performance of work at the Arena and away from the Arena, 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.

If hazardous materials or waste are to be transported, the commercial automobile liability insurance shall be endorsed with the MCS-90 endorsement in accordance with Applicable Law.

**Excess Liability:** The Arena Manager 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 the Arena Manager.

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

The Arena Manager shall cause all tenants and concessionaires, other than the Team, to acquire and maintain, during the full term of each such tenant's or concessionaire's contractual relationship, all insurance coverages required of the Team as set forth in Exhibit "O" to the Arena Management Agreement. Certificates of insurance evidencing the required coverages, conditions and limits are in full force and effect shall be provided by each such tenant or concessionaire to the Arena Manager.

## **EXHIBIT "I"**

### **INSURANCE REQUIRED OF CITY**

**(SEE SECTION 13.2)**

**Definitions.** Capitalized terms that are used but not otherwise defined in this Exhibit "I" (this "**Exhibit**") shall have the meanings set forth in Section 1.1 of the Arena Lease and Management Agreement (the "**Arena Management Agreement**") to which this Exhibit is attached.

The City shall maintain the following insurance coverages during the Agreement 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

The above coverages shall comply with the following:

**Statutory Workers' Compensation:** The City shall maintain statutory workers' compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over all employees of the City engaged in the performance of work relating to the Arena.

**Commercial General Liability:** The City shall maintain commercial general liability insurance covering all operations by or on behalf of the City 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 liability insurance required of the City 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 Agreement Effective Date. Coverage shall extend for at least five (5) years after termination of the Arena Management Agreement and shall be evidenced by annual certificates of insurance.

**Commercial Automobile Liability.** The City shall maintain commercial automobile liability insurance with respect to all vehicles used in the performance of work at the Arena and away from the Arena, 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.

If hazardous materials or waste are to be transported, the commercial automobile liability insurance shall be endorsed with the MCS-90 endorsement in accordance with Applicable Law.

**Self Insurance:** The City may satisfy its requirements under Sections 1.a, 1.b and 1.c above through its established program of self insurance, as authorized by its City Council. The City shall provide all other parties with a certificate of self insurance for the required amounts.

## **EXHIBIT "J"**

### **INSURANCE REQUIRED OF TEAM**

**(SEE SECTION 13.3)**

**Definitions.** Capitalized terms that are used but not otherwise defined in this Exhibit "J" (this "**Exhibit**") shall have the meanings set forth in Section 1.1 of the Arena Lease and Management Agreement (the "**Arena Management Agreement**") to which this Exhibit is attached.

The Team shall maintain the following insurance coverages during the Agreement 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

The above coverages shall comply with the following:

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

**Commercial General Liability:** The Team shall maintain commercial general liability insurance covering all operations by or on behalf of the Team 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 the Team 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 Agreement Effective

Date. Coverage shall extend for at least five (5) years after termination of the Arena Management Agreement and shall be evidenced by annual certificates of insurance.

**Commercial Automobile Liability:** The Team shall maintain commercial automobile liability insurance with respect to all vehicles used in the performance of work at the Arena and away from the Arena, 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

If hazardous materials or waste are to be transported, the commercial automobile liability insurance shall be endorsed with the MCS-90 endorsement in accordance with Applicable Law.

**Excess Liability:** The Team 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:

\$10,000,000 each occurrence

\$10,000,000 annual aggregate

\$10,000,000 products/completed operations (annual)

Total per occurrence limits of \$10,000,000 may be satisfied in any combination of primary and excess policies of insurance. Any applicable retention shall be the sole responsibility of the Team.

**All Risk Property:** The Team shall maintain all risk property insurance to insure against physical loss or damage to all personal property of the Team while at the Arena. Such coverage will be written on a replacement cost basis, include flood and earthquake coverage and shall not be subject to co-insurance.

**EXHIBIT "L"**

**Current Renewal and Replacement Schedule**

(Exhibit "L" attached following this page)

Squire, Sanders & Dempsey L.L.P.

**Squire, Sanders & Dempsey LLP.**



**Squire, Sanders & Dempsey LLP.**

**Squire, Sanders & Dempsey L.L.P.**

**EXHIBIT "M"**

**Pre-Existing Commitments of City (Arena Parking Area)**

Document Name: Management and Lease Agreement

Parties: City and JQH- Glendale AZ Development, LLC, a Missouri limited liability company

Date: January 30, 2008

Other information: City contract no. 6300

Document Name: Management and Lease Agreement

Parties: City; Tourism and Sports Authority, a corporate and political body of the state of Arizona; and B&B Holdings, Inc, an Arizona corporation dba Arizona Cardinals

Date: November 1, 2004

Other information: City contract no. 5228

Document Name: Arena Development Agreement

Parties: City; Coyote Center Development, LLC, a Delaware limited liability company; and Arena Development, LLC, a Delaware limited liability company

Date: November 29, 2001

Other information: City contract no. 4415

Recordation: 2001-1155421, Official Records of Maricopa County

Document Name: Agreement for the Replacement of Temporary Parking

Parties: City and Coyote Center Development, LLC, a Delaware limited liability company

Date: July 1, 2008

Other information: City contract no. 5575-1

Document Name: Amended and Restated Agreement for the Replacement of Temporary Parking

Parties: City and Coyote Center Development, LLC, a Delaware limited liability company

Date: January 25, 2011

Other information: City contract no. 5575-4

Document Name: Mixed-Use Development Agreement

Parties: City; Coyote Center Development, LLC, a Delaware limited liability company; and Gledale-101r Development, LLC, a Delaware limited liability company

Date: November 29, 2001

Other information: City contract no. 4418

Recordation: 2001-1155422, Official Records of Maricopa County

Document Name: First Amendment to Mixed-Use Development Agreement

Parties: City; Coyote Center Development, LLC, a Delaware limited liability company; and Gledale-101r Development, LLC, a Delaware limited liability company

Date: January 25, 2011

Other information: City contract no. 4418-4

**Note: This Exhibit M may be supplemented by the City at any time prior to the Closing.**

**EXHIBIT "N"**

**Supplemental Surcharge Procedures Escrow Agreement**

(Exhibit "N" attached following this page)

## Exhibit "N"

### SUPPLEMENTAL SURCHARGE PROCEDURES ESCROW AGREEMENT

**THIS SUPPLEMENTAL SURCHARGE PROCEDURES ESCROW AGREEMENT** (as the same may be amended or modified from time to time and including any and all written instructions given to "Escrow Agent" (hereinafter defined) pursuant hereto, this "Escrow Agreement") is made and entered into as of July \_\_, 2013 by and among the City of Glendale, an Arizona municipal corporation (the "City"), IceArizona Manager Co., LLC, a Delaware limited liability company (the "Arena Manager") and \_\_\_\_\_, a \_\_\_\_\_ (the "Escrow Agent"). Each of City and Arena Manager may be referred to in this Agreement individually as a "Party," and collectively as the "Parties." Terms not otherwise defined herein shall have the meaning ascribed to them in the Lease Agreement (as defined below).

#### BACKGROUND:

**WHEREAS**, City, Arena Manager and IceArizona Hockey Co., LLC, a Delaware limited liability company ("Team Owner") have entered into that certain Professional Management Services and Arena Lease Agreement dated as of the date hereof ("Lease Agreement") pursuant to which the Team will use the Arena for NHL hockey games.

**WHEREAS**, as set forth in the Lease Agreement, a Supplemental Surcharge Escrow Account shall be set up wherein Arena Manager shall deposit the Supplemental Surcharge in accordance with and subject to the audit procedures described in this Escrow Agreement.

**WHEREAS**, the Parties have requested Escrow Agent to act in the capacity of escrow agent under this Escrow Agreement, and Escrow Agent, subject to the terms and conditions hereof, has agreed so to do.

#### AGREEMENT:

**NOW, THEREFORE**, in consideration of the promises and mutual covenants and agreements contained herein, the parties hereto hereby agree as follows:

1. *Appointment of Escrow Agent.* The Parties hereby appoint the Escrow Agent as the escrow agent under this Escrow Agreement (the Escrow Agent in such capacity, the "Escrow Agent"), and Escrow Agent hereby accepts such appointment.

2. *Deposits.* Throughout the Term (as set forth in Section 19 hereof), Arena Manager shall deposit the Supplemental Surcharge (individually a "Deposit," in the aggregate "Deposits") in an escrow account (the "Escrow Account") to be held by Escrow Agent in accordance with the terms hereof. At the time of the deposit, all Deposits shall be the separate property of Arena Manager and the City (as described in Section 9.1.3 of the Lease Agreement) in accordance with their respective interest, pursuant to the Lease Agreement, until such time as a definitive determination is made regarding the Deposits pursuant to the procedures set forth in

this Section 2. The Deposits are subject to a first-priority, perfected security interest granted in favor of the City. Subject to and in accordance with the terms and conditions hereof, Escrow Agent agrees that it shall receive, hold in the Escrow Account, invest and release or distribute the Deposits. It is hereby expressly stipulated and agreed that all interest and other earnings on the Deposits, if applicable, shall become a part of the Deposits for all purposes.

3. *Investment of the Deposits.* Escrow Agent shall ensure that the Escrow Account is an interest bearing general escrow account (or accounts) at a bank (or banks) insured by the FDIC, unless otherwise instructed in writing by Arena Manager and the City. Such written instructions, if any, referred to in the foregoing sentence shall specify the type and identity of the investments, and such other information as Escrow Agent may require. Receipt and deposit in the Escrow Account of each Deposit shall be confirmed by Escrow Agent as soon as practicable.

4. *Disbursement Procedures for Escrow Account.* Escrow Agent is hereby authorized to make disbursements out of the Escrow Account during the Term only as follows:

(a) As soon as practicable following the end of each Fiscal Year, the City shall confirm total revenue received by the City from operations at the Arena pursuant to the Lease Agreement during the immediately preceding Fiscal Year and any Deficit Amount related thereto. The auditor shall be the City's Chief Financial Officer or the City's certified public accountant, as elected by the City.

(b) The auditor's determination of the existence of a Deficit Amount, if any, shall be conclusive and definitive, absent manifest or intentional error or fraud. In the event that the audit concludes a Deficit Amount exists, the Parties shall jointly issue the joint disbursement instructions set forth on Exhibit B, requesting (i) a disbursement from the Escrow Account to the City in an amount not to exceed (A) the Deficit Amount determined in the auditor's report, together with interest thereon to the extent such interest has been earned as is attributable to the funds in the Escrow Account to which the City is entitled; and (B) the total funds available in the Escrow Account and (ii) to the extent any funds remain in the Escrow Account following the Deficit Amount payment to the City, a disbursement from the Escrow Account to the Arena Manager of all remaining funds in the Escrow Account (a "**Joint Disbursement Request Upon a Deficit Amount**").

(c) In the event that the audit does not determine the existence of a Deficit Amount for the applicable Fiscal Year, then the Parties shall jointly issue the joint disbursement instructions set forth on Exhibit A (a "**Joint Disbursement Request**") to the Escrow Agent which shall provide the funds in the Escrow Account shall be immediately disbursed to Arena Manager.

(d) Upon the receipt of either a Joint Disbursement Request or a Joint Disbursement Request Upon a Deficit Amount, the Escrow Agent shall disburse out of the Escrow Account, the amount(s) set forth in such Joint Disbursement Request or Joint Disbursement Request Upon a Deficit Amount. The Escrow Agent shall have no obligation to distribute any Escrow Account funds unless and until it has received joint, written instructions from the Parties and until the Escrow Agent is satisfied, in its sole discretion, that the persons

executing said requests are authorized to do so. The Escrow Agent shall use its best efforts to make such payment(s) out of the Escrow Account within three (3) business days following the Escrow Agent's receipt of joint, written instructions from the Parties.

(e) For the sake of clarity, it is the intention of the Parties that the funds in the Escrow Account be disbursed at the end of each "Fiscal Year" (as such term is defined in the Lease Agreement) following the procedures set forth above and the Escrow Account shall reset annually with a zero balance to be reflected at the beginning of each "Fiscal Year."

(f) Any dispute between the Parties in connection with this Agreement shall be resolved pursuant to the Section 21 (Dispute Resolution) of the Lease Agreement.

5. *Tax Matters.* If the Deposits are held in an interest-bearing account, then the Parties shall provide Escrow Agent with appropriate taxpayer identification number documented by an appropriate Form W-8 or Form W-9 upon execution of this Escrow Agreement. Any payments of income shall be subject to applicable withholding regulations then in force in the United States or any other jurisdiction, as applicable.

6. *Scope of Undertaking.* Escrow Agent's duties and responsibilities in connection with this Escrow Agreement shall be purely ministerial and shall be limited to those expressly set forth in this Escrow Agreement. Escrow Agent shall not be liable for any error in judgment, any act or omission, any mistake of law or fact, or for anything it may do or refrain from doing in connection herewith, except for, subject to Section 7 herein below.

7. *Reliance; Liability; No Implied Covenants.* Escrow Agent may rely on, and shall not be liable for acting or refraining from acting in accordance with, any written notice, instruction or request or other paper furnished to it hereunder or pursuant hereto and believed by it to have been signed or presented by the proper party or parties. Escrow Agent shall be responsible for holding, investing and disbursing the Deposits pursuant to this Escrow Agreement; *provided, however,* that, except to the extent arising from Escrow Agent's gross negligence or willful misconduct, in no event shall Escrow Agent be liable for any lost profits, lost savings or other special, exemplary, consequential or incidental damages in excess of Escrow Agent's fee hereunder.

8. *Right of Interpleader.* Should any controversy arise involving the Parties and Escrow Agent hereto or any of them or any other person, firm or entity with respect to this Escrow Agreement or the Deposits, or should a substitute escrow agent fail to be designated as provided in this Escrow Agreement, or if Escrow Agent should be in doubt as to what action to take, Escrow Agent shall have the right, but not the obligation, either to (a) withhold delivery of the Deposits until the controversy is resolved, the conflicting demands are withdrawn or its doubt is resolved or (b) institute a petition for interpleader in any court of competent jurisdiction to determine the rights of the Parties hereto.

9. *Compensation and Reimbursement of Expenses.* The Parties hereby agree to pay Escrow Agent for its services hereunder in accordance with Escrow Agent's fee schedule as attached as Schedule I hereto as in effect from time to time and to pay all reasonably expenses

incurred by Escrow Agent in connection with the performance of its rights hereunder and otherwise in connection with the preparation, operation and administration of this Escrow Agreement.

10. *Notices.* Any notice or other communication required or permitted to be given under this Escrow Agreement by any party hereto to any other party hereto shall be considered as properly given if in writing and (a) delivered against receipt therefor, (b) mailed by certified mail, return requested and postage prepaid or (c) sent by recognized national courier service for next business day delivery, to the party at the addresses set forth below:

If to Escrow Agent:

[INSERT ESCROW AGENT DETAILS]

To the Arena  
Manager: IceArizona Management Co.  
LLC  
c/o IceArizona Acquisition Co.  
LLC  
5709 Cal Verde Street  
Suite 100  
Houston Texas, 77057  
Attn: Avik Dey

with copy to: Snell & Wilmer L.L.P.  
One Arizona Center  
Phoenix, AZ 85004-2202  
Attn: Nicholas J. Wood  
Joyce Kline Wright

To the City: City Manager  
City of Glendale  
5850 West Glendale Avenue  
Glendale, Arizona 85301

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

with copy to: Snell & Wilmer L.L.P.  
One Arizona Center  
Phoenix, AZ 85004-2202  
Attn: Nicholas J. Wood  
Joyce Kline Wright



Delivery of any communication given in accordance herewith shall be effective only upon actual receipt thereof by the party or parties to whom such communication is directed; provided, however, that any notice sent by certified mail shall be deemed delivered on the second business day after deposit with the United States Postal Service. Any party to this Escrow Agreement may change the address to which communications hereunder are to be directed by giving written notice to the other party or parties hereto in the manner provided in this section. All signatures of the parties to this Escrow Agreement may be transmitted by facsimile, and such facsimile will, for all purposes, be deemed to be the original signature of such party whose signature it reproduces, and will be binding upon such party; provided however that original signatures are produced and delivered no later than two (2) business days thereafter.

11. *Choice of Laws.* This Escrow Agreement shall be construed under, and governed by, the laws of the State of Arizona, without regard to principles of conflicts of laws.

12. *Resignation.* Escrow Agent may resign hereunder upon ten (10) days' prior notice to the Parties. Upon the effective date of such resignation, Escrow Agent shall deliver the Deposits to any substitute escrow agent designated by the Parties in writing. If the Parties fail to designate a substitute escrow agent within ten (10) days after the giving of such notice, Escrow Agent may institute a petition for interpleader. Escrow Agent's sole responsibility after such 10-day notice period expires shall be to hold the Deposits and to deliver the same to a designated substitute escrow agent, if any, or in accordance with the directions of a final order or judgment of a court of competent jurisdiction, at which time of delivery Escrow Agent's obligations hereunder shall cease and terminate.

13. *Assignment.* This Escrow Agreement may be assigned consistent with the Lease Agreement.

14. *Severability.* If one or more of the provisions hereof shall for any reason be held to be invalid, illegal or unenforceable in any respect under applicable law, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, and this Escrow Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein, and the remaining provisions hereof shall be given full force and effect.

15. *Term and Termination.* This Escrow Agreement shall have a term consistent with the Lease Agreement and shall terminate upon the expiration or termination of the Lease Agreement or upon mutual agreement of the Parties (the "**Term**"); and upon expiration or termination, the Escrow Account shall be disbursed in accordance with the terms of this Escrow Agreement.

16. *General.* The section headings contained in this Escrow Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Escrow Agreement. This Escrow Agreement and any affidavit, certificate, instrument, agreement or other document required to be provided hereunder may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute but one and the same instrument. The terms and provisions of this Escrow Agreement

and the Lease Agreement constitute the entire agreement among the parties hereto in respect of the subject matter hereof; provided however that nothing in this Escrow Agreement shall modify or amend, or be deemed to modify or amend, the obligations of Arena Manager under the Lease Agreement. This Escrow Agreement or any provision hereof may be amended, modified, waived or terminated only by written instrument duly signed by the Parties and the Escrow Agent hereto. This Escrow Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, devisees, executors, administrators, personal representative, successors, trustees, receivers and Permitted Assigns. This Escrow Agreement is for the sole and exclusive benefit of the Parties and the Escrow Agent, and nothing in this Escrow Agreement express or implied, is intended to confer or shall be construed as conferring upon any other person any rights, remedies or any other type or types of benefits.

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

**ARENA MANAGER:**

By: \_\_\_\_\_, a

Its: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**CITY OF GLENDALE:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Pam Hanna, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Nicholas C. DePiazza, Interim City Attorney

**ESCROW AGENT**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SCHEDULE I**  
**ESCROW AGENT FEES**

**EXHIBIT A**

**JOINT WRITTEN INSTRUCTIONS  
FOR RELEASE OF ESCROW FUNDS  
(NO DEFICIT AMOUNT)**

\_\_\_\_\_, 20\_\_

The City and Arena Manager hereby jointly instruct the Escrow Agent to release \$[\_\_\_\_\_] from the Escrow Account, which constitutes all of the funds in the Escrow Account as of the date hereof pursuant to the following instructions:

**Wire Instructions:**

Account Name: \_\_\_\_\_

Account Number: \_\_\_\_\_

Bank Name: \_\_\_\_\_

Bank ABA Number: \_\_\_\_\_

Bank Address: \_\_\_\_\_

For credit to: \_\_\_\_\_

Special Instructions: \_\_\_\_\_

**Bank Check:**

Payee Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

**ARENA MANAGER**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CITY OF GLENDALE:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Pam Hanna, City Clerk

\_\_\_\_\_  
Nicholas DePiazza, Interim City Attorney

**EXHIBIT B**

**JOINT WRITTEN INSTRUCTIONS  
FOR RELEASE OF ESCROW FUNDS  
UPON A DEFICIT AMOUNT**

\_\_\_\_\_, 20\_\_

The City and Arena Manager hereby jointly instruct the Escrow Agent to release  
\$[\_\_\_\_\_] from the Escrow Account to the City pursuant to the following instructions:

**Wire Instructions:**

Account Name: \_\_\_\_\_  
Account Number \_\_\_\_\_  
Bank Name: \_\_\_\_\_  
Bank ABA Number: \_\_\_\_\_  
Bank Address: \_\_\_\_\_

For credit to: \_\_\_\_\_  
Special Instructions: \_\_\_\_\_  
\_\_\_\_\_

**Bank Check:**

Payee Name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

***[THE FOLLOWING TO BE INCLUDED IF ESCROW ACCOUNT FUNDS REMAIN  
AFTER PAYMENT OF THE DEFICIT AMOUNT TO THE CITY.]***

Arena Manager and the City hereby jointly instruct the Escrow Agent to release \$[\_\_\_\_\_] from the Escrow Account to Arena Manager, which constitutes the remaining funds in the Escrow Account as of the date hereof pursuant to the following instructions:

**Wire Instructions:**

Account Name: \_\_\_\_\_  
Account Number: \_\_\_\_\_  
Bank Name: \_\_\_\_\_  
Bank ABA Number: \_\_\_\_\_  
Bank Address: \_\_\_\_\_

For credit to: \_\_\_\_\_  
Special Instructions: \_\_\_\_\_  
\_\_\_\_\_

**Bank Check:**

Payee Name:

Mailing Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ARENA MANAGER**

By: \_\_\_\_\_

Name:

Title:

**CITY OF GLENDALE:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Pam Hanna, City Clerk

\_\_\_\_\_  
Nicholas DePiazza, Interim City Attorney



## Legislation Description

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**File #: 14-127, Version: 1**

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### **2014 PRIMARY ELECTION CANVASS OF VOTE**

Staff Contact: Pamela Hanna, City Clerk

#### **Purpose and Recommended Action**

This is a request for City Council to adopt a resolution declaring and adopting the results of the August 26, 2014 Primary Election. Staff is requesting Council waive reading beyond the title and pass, adopt and approve a resolution containing the Primary Election results.

#### **Background**

A.R.S. § 16-642 (A) requires that “the governing body holding an election shall meet and canvass the election not less than six days nor more than twenty days following the election.”

#### **Previous Related Council Action**

On April 22, 2014, Council called for the Primary Election to be held on August 26, 2014, and for the General Election to be held November 4, 2014.



RESOLUTION NO. 4855 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, DECLARING AND ADOPTING THE RESULTS OF THE PRIMARY ELECTION HELD ON AUGUST 26, 2014; AND ORDERING THAT A CERTIFIED COPY OF THIS RESOLUTION BE RECORDED.

WHEREAS, the City Council of the City of Glendale, Maricopa County, Arizona, by Resolution No. 4786, New Series, adopted on April 22, 2014, did cause a notice to be submitted to the qualified electors of the City of Glendale (the "City") of a Primary Election called and held in and for the City on August 26, 2014 for the purpose of electing or nominating candidates for the office of Councilmember for the districts of Barrel, Cholla and Ocotillo; and

WHEREAS, the City Council did cause notice of the Primary Election to be given by the City Clerk publishing notice thereof in The Glendale Star newspaper as provided by law, such newspaper published in and having general circulation within said City. Said notice, as so published, did specify the place where such election was to be held and the offices to be voted upon. A copy of said notice, with the affidavit of publication attached thereto, is now on file and a part of the official records of the City Council of Glendale; and

WHEREAS, the election returns have been presented to and have been canvassed by the City Council.

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

SECTION 1. That the total number of ballots rejected was 120 (Exhibit A).

SECTION 2. That the total number of provisional ballots to be verified at said Primary Election, shown on Maricopa County's Provisional Ballots printout (Exhibit B) was 265. Of these 48 ballots to be verified were found to be invalid.

SECTION 3. That the total number of ballots cast at said Primary Election, as shown by the Precinct Canvass report was 12,398 (Exhibit C).

SECTION 4. That the votes cast for the candidates for Councilmember were as follows:

<b>District/Name</b>	<b>Total</b>
<b><u>CHOLLA DISTRICT</u></b>	
DiCarlo, Van	550
Deardorff, Gary	1,859
Petrone, Robert	707
Tolmachoff, Lauren	2,196

<b>District/Name</b>	<b>Total</b>
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**BARREL DISTRICT**

Benjamin, John	345
Martinez, Reginald M.	834
Miller, Randy	1,083
Patino, Michael R.	572
Turner, Bart	1,137

**OCOTILLO DISTRICT**

Aldama, Jamie	503
Alvarez, Norma S.	646
Hernandez, Michael Anthony	187
Zomok, Bud	295

SECTION 5. That it is hereby found, determined, and declared of record that a runoff election of the following candidates for the offices of Councilmember will be necessary as no candidate received a majority of votes cast in the Primary Election:

**District/Name**

**CHOLLA DISTRICT**

Deardorff, Gary  
Tolmachoff, Lauren

**BARREL DISTRICT**

Miller, Randy  
Turner, Bart

**OCOTILLO DISTRICT**

Aldama, Jamie  
Alvarez, Norma

SECTION 6. That Exhibits A through C attached to this resolution include a detailed canvass of vote for the August 26, 2014 Primary Election.

SECTION 7. That the City Clerk be instructed and authorized to forward a certified copy of this resolution for recording to the Maricopa County Recorder's Office.

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

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M A Y O R

ATTEST:

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City Clerk (SEAL)

APPROVED AS TO FORM:

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City Attorney

REVIEWED BY:

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City Manager

e\_primary\_canvass 2014

**EXHIBIT A**

EV36Batch-V10.rpt

Date: 9/4/2014

**MARICOPA COUNTY  
RECORDER'S INFORMATION SYSTEMS CENTER  
REJECTED BALLOTS BY PRECINCT / CPC**

Page: 1

Time: 9:31 am

**Election Title: MARICOPA COUNTY****Election Number: 1255****Election Date: 08/26/2014****GLENDAL 1 - CHOLLA; GLENDAL 3 - BARREL; GLENDAL 4 - OCOTILLO**

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<u>Precinct/CPC Number</u>	<u>Precinct/CPC Name</u>	<u>Reason</u>	<u>Number Rejected</u>
			0
0019	ANGELA	BAD SIGNATURE	1
		RETURNED LATE	3
		NO SIGNATURE	6
0029	ARROWHEAD RANCH	RETURNED LATE	2
0042	BEARDSLEY	BAD SIGNATURE	2
		RETURNED LATE	3
		NO SIGNATURE	4
0043	BERYL	RETURNED LATE	1
		NO SIGNATURE	1
0045	BETHANY PARK	RETURNED LATE	1
0068	BUTLER	RETURNED LATE	3
		NO SIGNATURE	9
0088	CARON	RETURNED LATE	2
		NO SIGNATURE	4
0098	CHALLENGER	RETURNED LATE	5
		NO SIGNATURE	2
0129	COPPERWOOD	NO SIGNATURE	2

**EXHIBIT A**  
**MARICOPA COUNTY**  
**RECORDER'S INFORMATION SYSTEMS CENTER**  
**REJECTED BALLOTS BY PRECINCT / CPC**

Election Title: MARICOPA COUNTY

Election Number: 1255

Election Date: 08/26/2014

GLENDALE 1 - CHOLLA; GLENDALE 3 - BARREL; GLENDALE 4 - OCOTILLO

<u>Precinct/CPC Number</u>	<u>Precinct/CPC Name</u>	<u>Reason</u>	<u>Number Rejected</u>
0244	GEMINI	BAD SIGNATURE	1
		RETURNED LATE	2
		NO SIGNATURE	4
0252	GLENCROFT	NO SIGNATURE	7
0324	JOHN CABOT	BAD SIGNATURE	1
		RETURNED LATE	2
		NO SIGNATURE	4
0373	LOS GATOS	RETURNED LATE	2
		NO SIGNATURE	8
0386	MANISTEE	BAD SIGNATURE	1
		RETURNED LATE	2
		NO SIGNATURE	5
0424	MONTEBELLO	NO SIGNATURE	2
0476	PECK	BAD SIGNATURE	1
		NO SIGNATURE	1
0529	RIVIERA	RETURNED LATE	4
0545	SAHUARO RANCH	RETURNED LATE	1
		NO SIGNATURE	5

**EXHIBIT A**  
**MARICOPA COUNTY**  
**RECORDER'S INFORMATION SYSTEMS CENTER**  
**REJECTED BALLOTS BY PRECINCT / CPC**

Election Title: MARICOPA COUNTY

Election Number: 1255

Election Date: 08/26/2014

GLENDALE 1 - CHOLLA; GLENDALE 3 - BARREL; GLENDALE 4 - OCOTILLO

<u>Precinct/CPC Number</u>	<u>Precinct/CPC Name</u>	<u>Reason</u>	<u>Number Rejected</u>
0582	SIERRA VERDE	NO SIGNATURE	3
0656	TUCKEY	BAD SIGNATURE	1
0683	WAHALLA	BAD SIGNATURE	1
		RETURNED LATE	1
		NO SIGNATURE	10
	<b>Bad Signature Total:</b>	<b>9</b>	
	<b>Returned Late Total:</b>	<b>34</b>	
	<b>No Signature Total:</b>	<b>77</b>	
	<b>Total Rejected:</b>	<b>120</b>	

**EXHIBIT B  
MARICOPA COUNTY****RECORDER'S INFORMATION SYSTEMS CENTER  
PROVISIONAL BALLOTS HAVA REQUIREMENTS****Election: 1255 MARICOPA COUNTY****GLENDALE 1 - CHOLLA, GLENDALE 3 - BARREL, GLENDALE 4 - OCOTILLO**

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ELECTION	1255	MARICOPA COUNTY
PRECINCT	0019	
BALLOTS COUNTED:	19	
BALLOTS NOT COUNTED:	<u>2</u>	
TOTAL BALLOTS:	21	

2	A1 NEW RESIDENT BALLOT
14	A2 EARLY BALLOT REQUESTED AND NOT RETURNED
3	A7 ID ADDRESS DOESN'T MATCH SIGNATURE ROSTER
2	B14 YOU WENT TO THE WRONG POLLING PLACE FOR THIS ELECTION.

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ELECTION	1255	MARICOPA COUNTY
PRECINCT	0029	
BALLOTS COUNTED:	1	
BALLOTS NOT COUNTED:	<u>1</u>	
TOTAL BALLOTS:	2	

1	A2 EARLY BALLOT REQUESTED AND NOT RETURNED
1	B14 YOU WENT TO THE WRONG POLLING PLACE FOR THIS ELECTION.

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ELECTION	1255	MARICOPA COUNTY
PRECINCT	0042	
BALLOTS COUNTED:	27	
BALLOTS NOT COUNTED:	<u>11</u>	
TOTAL BALLOTS:	38	

2	A1 NEW RESIDENT BALLOT
20	A2 EARLY BALLOT REQUESTED AND NOT RETURNED
1	A5 REGISTRATION RECEIVED TOO LATE TO BE PRINTED ON SIGNATURE ROSTER
4	A7 ID ADDRESS DOESN'T MATCH SIGNATURE ROSTER
1	B11 INCOMPLETE INFORMATION GIVEN ON YOUR PROVISIONAL BALLOT FORM.
1	B13 YOUR EARLY BALLOT WAS SENT, RETURNED AND COUNTED
9	B14 YOU WENT TO THE WRONG POLLING PLACE FOR THIS ELECTION.

**EXHIBIT B  
MARICOPA COUNTY****RECORDER'S INFORMATION SYSTEMS CENTER  
PROVISIONAL BALLOTS HAVA REQUIREMENTS****Election: 1255 MARICOPA COUNTY****GLENDALE 1 - CHOLLA, GLENDALE 3 - BARREL, GLENDALE 4 - OCOTILLO**

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ELECTION	1255	MARICOPA COUNTY
PRECINCT	0043	
BALLOTS COUNTED:	15	
BALLOTS NOT COUNTED:	4	
	<hr/>	
TOTAL BALLOTS:	19	

1	A1 NEW RESIDENT BALLOT
14	A2 EARLY BALLOT REQUESTED AND NOT RETURNED
4	B14 YOU WENT TO THE WRONG POLLING PLACE FOR THIS ELECTION.

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ELECTION	1255	MARICOPA COUNTY
PRECINCT	0045	
BALLOTS COUNTED:	4	
BALLOTS NOT COUNTED:	2	
	<hr/>	
TOTAL BALLOTS:	6	

1	A1 NEW RESIDENT BALLOT
3	A2 EARLY BALLOT REQUESTED AND NOT RETURNED
1	B13 YOUR EARLY BALLOT WAS SENT, RETURNED AND COUNTED
1	B14 YOU WENT TO THE WRONG POLLING PLACE FOR THIS ELECTION.

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ELECTION	1255	MARICOPA COUNTY
PRECINCT	0057	
BALLOTS COUNTED:	0	
BALLOTS NOT COUNTED:	0	
	<hr/>	
TOTAL BALLOTS:	0	

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ELECTION	1255	MARICOPA COUNTY
PRECINCT	0058	
BALLOTS COUNTED:	0	
BALLOTS NOT COUNTED:	1	
	<hr/>	
TOTAL BALLOTS:	1	

1	B14 YOU WENT TO THE WRONG POLLING PLACE FOR THIS ELECTION.
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**EXHIBIT B  
MARICOPA COUNTY****RECORDER'S INFORMATION SYSTEMS CENTER  
PROVISIONAL BALLOTS HAVA REQUIREMENTS****Election: 1255 MARICOPA COUNTY****GLENDALE 1 - CHOLLA, GLENDALE 3 - BARREL, GLENDALE 4 - OCOTILLO**

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ELECTION	1255	MARICOPA COUNTY
PRECINCT	0068	
BALLOTS COUNTED:	13	
BALLOTS NOT COUNTED:	<u>1</u>	
TOTAL BALLOTS:	14	

13	A2 EARLY BALLOT REQUESTED AND NOT RETURNED
1	B11 INCOMPLETE INFORMATION GIVEN ON YOUR PROVISIONAL BALLOT FORM.

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ELECTION	1255	MARICOPA COUNTY
PRECINCT	0088	
BALLOTS COUNTED:	4	
BALLOTS NOT COUNTED:	<u>3</u>	
TOTAL BALLOTS:	7	

1	A1 NEW RESIDENT BALLOT
3	A2 EARLY BALLOT REQUESTED AND NOT RETURNED
1	B11 INCOMPLETE INFORMATION GIVEN ON YOUR PROVISIONAL BALLOT FORM.
2	B14 YOU WENT TO THE WRONG POLLING PLACE FOR THIS ELECTION.

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ELECTION	1255	MARICOPA COUNTY
PRECINCT	0098	
BALLOTS COUNTED:	5	
BALLOTS NOT COUNTED:	<u>0</u>	
TOTAL BALLOTS:	5	

1	A1 NEW RESIDENT BALLOT
2	A2 EARLY BALLOT REQUESTED AND NOT RETURNED
2	A7 ID ADDRESS DOESN'T MATCH SIGNATURE ROSTER

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ELECTION	1255	MARICOPA COUNTY
PRECINCT	0129	
BALLOTS COUNTED:	6	
BALLOTS NOT COUNTED:	<u>0</u>	
TOTAL BALLOTS:	6	

6	A2 EARLY BALLOT REQUESTED AND NOT RETURNED
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**EXHIBIT B  
MARICOPA COUNTY****RECORDER'S INFORMATION SYSTEMS CENTER  
PROVISIONAL BALLOTS HAVA REQUIREMENTS****Election: 1255 MARICOPA COUNTY****GLENDALE 1 - CHOLLA, GLENDALE 3 - BARREL, GLENDALE 4 - OCOTILLO**

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ELECTION	1255	MARICOPA COUNTY
PRECINCT	0237	
BALLOTS COUNTED:	0	
BALLOTS NOT COUNTED:	<u>1</u>	
TOTAL BALLOTS:	1	

1 B14 YOU WENT TO THE WRONG POLLING PLACE FOR THIS ELECTION.

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ELECTION	1255	MARICOPA COUNTY
PRECINCT	0244	
BALLOTS COUNTED:	10	
BALLOTS NOT COUNTED:	<u>1</u>	
TOTAL BALLOTS:	11	

10 A2 EARLY BALLOT REQUESTED AND NOT RETURNED

1 B14 YOU WENT TO THE WRONG POLLING PLACE FOR THIS ELECTION.

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ELECTION	1255	MARICOPA COUNTY
PRECINCT	0252	
BALLOTS COUNTED:	15	
BALLOTS NOT COUNTED:	<u>2</u>	
TOTAL BALLOTS:	17	

4 A1 NEW RESIDENT BALLOT

10 A2 EARLY BALLOT REQUESTED AND NOT RETURNED

1 A7 ID ADDRESS DOESN'T MATCH SIGNATURE ROSTER

1 B10 YOU ARE NOT REGISTERED TO VOTE

1 B12 YOU WERE NOT ELIGIBLE TO VOTE IN THIS ELECTION.

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ELECTION	1255	MARICOPA COUNTY
PRECINCT	0324	
BALLOTS COUNTED:	7	
BALLOTS NOT COUNTED:	<u>0</u>	
TOTAL BALLOTS:	7	

7 A2 EARLY BALLOT REQUESTED AND NOT RETURNED

**EXHIBIT B  
MARICOPA COUNTY****RECORDER'S INFORMATION SYSTEMS CENTER  
PROVISIONAL BALLOTS HAVA REQUIREMENTS****Election: 1255 MARICOPA COUNTY****GLENDALE 1 - CHOLLA, GLENDALE 3 - BARREL, GLENDALE 4 - OCOTILLO**

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ELECTION	1255	MARICOPA COUNTY
PRECINCT	0373	
BALLOTS COUNTED:	12	
BALLOTS NOT COUNTED:	<u>2</u>	

TOTAL BALLOTS: 14

1	A1 NEW RESIDENT BALLOT
8	A2 EARLY BALLOT REQUESTED AND NOT RETURNED
1	A4 HARASSMENT CODED VOTER
2	A7 ID ADDRESS DOESN'T MATCH SIGNATURE ROSTER
1	B10 YOU ARE NOT REGISTERED TO VOTE
1	B15 THE SIGNATURE ON YOUR, PROVISIONAL BALLOT DID NOT MATCH THE SIGNATURE ON YOUR VOTER REGISTRATION RECORD

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ELECTION	1255	MARICOPA COUNTY
PRECINCT	0386	
BALLOTS COUNTED:	21	
BALLOTS NOT COUNTED:	<u>9</u>	

TOTAL BALLOTS: 30

2	A1 NEW RESIDENT BALLOT
13	A2 EARLY BALLOT REQUESTED AND NOT RETURNED
1	A5 REGISTRATION RECEIVED TOO LATE TO BE PRINTED ON SIGNATURE ROSTER
5	A7 ID ADDRESS DOESN'T MATCH SIGNATURE ROSTER
1	B11 INCOMPLETE INFORMATION GIVEN ON YOUR PROVISIONAL BALLOT FORM.
2	B12 YOU WERE NOT ELIGIBLE TO VOTE IN THIS ELECTION.
1	B13 YOUR EARLY BALLOT WAS SENT, RETURNED AND COUNTED
4	B14 YOU WENT TO THE WRONG POLLING PLACE FOR THIS ELECTION.
1	B15 THE SIGNATURE ON YOUR, PROVISIONAL BALLOT DID NOT MATCH THE SIGNATURE ON YOUR VOTER REGISTRATION RECORD

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ELECTION	1255	MARICOPA COUNTY
PRECINCT	0424	
BALLOTS COUNTED:	13	
BALLOTS NOT COUNTED:	<u>2</u>	

TOTAL BALLOTS: 15

1	A1 NEW RESIDENT BALLOT
3	A2 EARLY BALLOT REQUESTED AND NOT RETURNED
1	A6 NAME CHANGE
8	A7 ID ADDRESS DOESN'T MATCH SIGNATURE ROSTER
1	B12 YOU WERE NOT ELIGIBLE TO VOTE IN THIS ELECTION.
1	B14 YOU WENT TO THE WRONG POLLING PLACE FOR THIS ELECTION.

**EXHIBIT B  
MARICOPA COUNTY****RECORDER'S INFORMATION SYSTEMS CENTER  
PROVISIONAL BALLOTS HAVA REQUIREMENTS****Election: 1255 MARICOPA COUNTY****GLENDALE 1 - CHOLLA, GLENDALE 3 - BARREL, GLENDALE 4 - OCOTILLO**

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ELECTION	1255	MARICOPA COUNTY
PRECINCT	0476	
BALLOTS COUNTED:	3	
BALLOTS NOT COUNTED:	<u>1</u>	
TOTAL BALLOTS:	4	

3	A2 EARLY BALLOT REQUESTED AND NOT RETURNED
1	B11 INCOMPLETE INFORMATION GIVEN ON YOUR PROVISIONAL BALLOT FORM.

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ELECTION	1255	MARICOPA COUNTY
PRECINCT	0506	
BALLOTS COUNTED:	0	
BALLOTS NOT COUNTED:	<u>0</u>	
TOTAL BALLOTS:	0	

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ELECTION	1255	MARICOPA COUNTY
PRECINCT	0529	
BALLOTS COUNTED:	5	
BALLOTS NOT COUNTED:	<u>0</u>	
TOTAL BALLOTS:	5	

1	A1 NEW RESIDENT BALLOT
4	A2 EARLY BALLOT REQUESTED AND NOT RETURNED

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ELECTION	1255	MARICOPA COUNTY
PRECINCT	0545	
BALLOTS COUNTED:	9	
BALLOTS NOT COUNTED:	<u>0</u>	
TOTAL BALLOTS:	9	

6	A2 EARLY BALLOT REQUESTED AND NOT RETURNED
1	A3 OFFICE ERROR OCCURRED
2	A7 ID ADDRESS DOESN'T MATCH SIGNATURE ROSTER

**EXHIBIT B  
MARICOPA COUNTY****RECORDER'S INFORMATION SYSTEMS CENTER  
PROVISIONAL BALLOTS HAVA REQUIREMENTS****Election: 1255 MARICOPA COUNTY****GLENDALE 1 - CHOLLA, GLENDALE 3 - BARREL, GLENDALE 4 - OCOTILLO**

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ELECTION	1255	MARICOPA COUNTY
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PRECINCT	0582
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BALLOTS COUNTED:	5
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BALLOTS NOT COUNTED:	<u>1</u>
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TOTAL BALLOTS:	6
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2	A1 NEW RESIDENT BALLOT
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3	A2 EARLY BALLOT REQUESTED AND NOT RETURNED
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1	B15 THE SIGNATURE ON YOUR, PROVISIONAL BALLOT DID NOT MATCH THE SIGNATURE ON YOUR VOTER REGISTRATION RECORD
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ELECTION	1255	MARICOPA COUNTY
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PRECINCT	0656
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BALLOTS COUNTED:	7
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BALLOTS NOT COUNTED:	<u>1</u>
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TOTAL BALLOTS:	8
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1	A1 NEW RESIDENT BALLOT
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5	A2 EARLY BALLOT REQUESTED AND NOT RETURNED
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1	A7 ID ADDRESS DOESN'T MATCH SIGNATURE ROSTER
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1	B14 YOU WENT TO THE WRONG POLLING PLACE FOR THIS ELECTION.
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ELECTION	1255	MARICOPA COUNTY
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PRECINCT	0683
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BALLOTS COUNTED:	16
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BALLOTS NOT COUNTED:	<u>3</u>
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TOTAL BALLOTS:	19
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16	A2 EARLY BALLOT REQUESTED AND NOT RETURNED
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1	B12 YOU WERE NOT ELIGIBLE TO VOTE IN THIS ELECTION.
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2	B14 YOU WENT TO THE WRONG POLLING PLACE FOR THIS ELECTION.
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**EXHIBIT B  
MARICOPA COUNTY****RECORDER'S INFORMATION SYSTEMS CENTER  
PROVISIONAL BALLOTS HAVA REQUIREMENTS****Election: 1255 MARICOPA COUNTY****GLENDAL 1 - CHOLLA, GLENDAL 3 - BARREL, GLENDAL 4 - OCOTILLO**

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**SUMMARY REPORT TOTALS****BALLOTS COUNTED: 217****BALLOTS NOT COUNTED: 48****TOTAL BALLOTS: 265**

# EXHIBIT C

MRC\_20140826\_E

8/26/2014

Precinct Canvass

MARICOPA COUNTY

## 1 CITY OF GLENDALE COUNCILMEMBER - CHOLLA DISTRICT

				1	1	1	1	1	1	1					
	Registered	Ballots Cast	Turnout (%)	DICARLO, VAN	DEARDORFF, GARY	PETRONI, ROBERT	TOLMACHOFF, LAUREN	Write-In Candidate	Over Votes	Under Votes					
0019 ANGELA	4127	1065	25.81	67	331	159	373	3	11	121					
0029 ARROWHEAD RANCH	1814	514	28.34	42	120	69	223		9	51					
0042 BEARDSLEY	4495	1437	31.97	172	476	133	474	3	22	157					
0058 BREWER	662	57	8.61	4	11	7	27		3	5					
0324 JOHN CABOT	3195	681	21.31	57	213	59	241		8	103					
0373 LOS GATOS	4068	1165	28.64	116	391	113	377	1	36	131					
0582 SIERRA VERDE	1621	365	22.52	23	100	51	144	2	6	39					
0683 WAHALLA	3550	866	24.39	69	217	116	337		19	108					
	23532	6150	26.13	550	1859	707	2196	9	114	715					

**1 CITY OF GLENDALE COUNCILMEMBER - BARREL DISTRICT**

				1	1	1	1	1	1	1	1				
	Registered	Ballots Cast	Turnout (%)	BENJAMIN, JOHN	MARTINEZ, REGINALD M.	MILLER, RANDY	PATINO, MICHAEL R.	TURNER, BART	Write-In Candidate	Over Votes	Under Votes				
0043 BERYL	1708	480	28.10	36	84	107	56	131	1	8	57				
0068 BUTLER	4165	776	18.63	70	131	218	77	197	3	9	71				
0088 CARON	2586	668	25.83	64	139	149	69	176	5	14	52				
0129 COPPERWOOD	1623	399	24.58	27	55	83	64	121	4		45				
0244 GEMINI	3090	709	22.94	50	144	172	108	163		7	65				
0252 GLENCROFT	2264	488	21.55	45	47	150	51	122	3	5	65				
0529 RIVIERA	1706	454	26.61	21	88	92	86	122		5	40				
0545 SAHUARO RANCH	2093	520	24.84	32	146	112	61	105	2	7	55				
	19235	4494	23.36	345	834	1083	572	1137	18	55	450				



# EXHIBIT C

## 1 CITY OF GLENDALE COUNCILMEMBER - OCOTILLO DISTRICT

	1	1	1	1	1	1	1	1	1	1					
	Registered	Ballots Cast	Turnout (%)	ALDAMA, JAMIE	ALVAREZ, NORMA S.	HERNANDEZ, MICHAEL ANTHONY	ZOMOK, BUD	Write-In Candidate	Over Votes	Under Votes					
0045 BETHANY PARK	941	173	18.38	41	63	20	31	4		14					
0057 BONSALE PARK	140	8	5.71	3	2	1	1			1					
0098 CHALLENGER	2371	277	11.68	86	93	29	41	2	3	23					
0386 MANISTEE	2395	518	21.63	140	216	45	96	1	1	19					
0424 MONTEBELLO	1902	313	16.46	89	108	45	49	2	2	18					
0476 PECK	1581	267	16.89	70	100	29	44	1	2	21					
0656 TUCKEY	1320	198	15.00	74	64	18	33	1	1	7					
	10650	1754	16.47	503	646	187	295	11	9	103					