



City of Glendale

5850 West Glendale Avenue
Glendale, AZ 85301

Voting Meeting Agenda City Council

Mayor Jerry Weiers
Vice Mayor Ian Hugh
Councilmember Jamie Aldama
Councilmember Samuel Chavira
Councilmember Ray Malnar
Councilmember Lauren Tolmachoff
Councilmember Bart Turner

Tuesday, February 9, 2016

6:00 PM

Council Chambers

Voting

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

POSTING OF COLORS

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.

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.

APPROVAL OF THE MINUTES OF JANUARY 26, 2016 VOTING MEETING

1. **16-026** APPROVAL OF THE MINUTES OF THE JANUARY 26, 2016 VOTING MEETING
Staff Contact: Pamela Hanna, City Clerk

Attachments: Meeting Minutes of January 26, 2016

PROCLAMATIONS AND AWARDS

2. **16-021** PROCLAMATION OF RECOGNITION FOR GLENDALE POLICE DEPARTMENT EXPLORER POST #2469 AS A RECIPIENT OF THE BOY SCOUTS OF AMERICA 2015 NATIONAL EXPLORING JOURNEY TO EXCELLENCE GOLD AWARD
Staff Contact: Debora Black, Police Chief
Presented By: Office of the Mayor
Accepted By: Sergeant Frank Sankhagowit

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.

3. **16-022** DENY LIQUOR LICENSE NO. 1207A462, TASTE OF AFRICA RESTAURANT
Staff Contact: Vicki Rios, Interim Director, Finance and Technology

Attachments: Map
 Calls for Service
4. **16-028** AUTHORIZATION TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT FOR CONSULTING SERVICES WITH PAT WALKER CONSULTING, LLC, AND RATIFICATION OF EXPENDITURES
Staff Contact: Vicki Rios, Interim Director, Finance and Technology

Attachments: Professional Services Agreement
 Scope of Services
5. **16-025** AUTHORIZATION TO ENTER INTO A USE AGREEMENT WITH TACTICAL SERVICE, INC., DOING BUSINESS AS DESERT SNOW, FOR CONCESSION SERVICES AT FOOTHILLS SPORTS COMPLEX
Staff Contact: Erik Strunk, Director, Community Services

Attachments: Use Agreement
6. **16-023** AUTHORIZATION TO ENTER INTO A CONSTRUCTION AGREEMENT WITH ACHEN-GARDNER CONSTRUCTION, LLC AND APPROVE THE EXPENDITURE OF FUNDS FOR THE EMERGENCY REPAIR OF THE WATER LINE LOCATED AT THE INTERSECTION OF 43RD AVENUE AND MISSOURI AVENUE
Staff Contact: Craig Johnson, P.E. Director, Water Services

Attachments: Construction Agreement
7. [15-833](#) EXPENDITURE AUTHORIZATION FOR ADDITIONAL EXPENSES FOR MYRTLE AVENUE IMPROVEMENTS FROM 62ND AVENUE TO 66TH DRIVE
Staff Contact: Jack Friedline, Director, Public Works

Attachments: [Agreement Estimate Recapitulation](#)
[C-8675 - IGA with ADOT - 11/5/13](#)

8. **16-014** AUTHORIZATION TO ENTER INTO AMENDMENT NO. 1 TO THE LINKING AGREEMENT WITH DIVERSIFIED FLOORING SERVICES-PHOENIX, LLC FOR CARPET REPLACEMENT AT CITY FACILITIES
Staff Contact: Jack Friedline, Director, Public Works

Attachments: Amendment No. 1 to the Linking Agreement

9. **16-015** AUTHORIZATION TO ENTER INTO CONTRACT CHANGE ORDER NO. 1 TO A CONSTRUCTION AGREEMENT WITH TSG CONSTRUCTORS, LLC FOR CONSTRUCTION OF THE TRANSIT CENTER AT ARROWHEAD TOWNE CENTER
Staff Contact: Jack Friedline, Director, Public Works

Attachments: Contract Change Order

10. **16-016** AUTHORIZATION TO ENTER INTO A LINKING AGREEMENT WITH PROGRESSIVE SERVICES INC., DOING BUSINESS AS PROGRESSIVE ROOFING, FOR ROOFING REPAIRS AT CITY FACILITIES
Staff Contact: Jack Friedline, Director, Public Works

Attachments: Linking Agreement

CONSENT RESOLUTIONS

11. **15-785** RESOLUTION 5067: AUTHORIZATION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT (IGA) WITH SURPRISE FIRE-MEDICAL DEPARTMENT FOR STAFFING ON HELICOPTER AIR-MEDICAL AND LOGISTIC OPERATIONS (HALO), AND TO REQUEST RATIFICATION OF THE PAYMENTS MADE SINCE JUNE 26, 2015
Staff Contact: Terry Garrison, Fire Chief

Attachments: Resolution 5067
Intergovernmental Agreement

12. **15-786** RESOLUTION 5068: AUTHORIZATION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT (IGA) WITH NORTH COUNTY FIRE & MEDICAL DISTRICT FOR STAFFING ON HELICOPTER AIR-MEDICAL AND LOGISTIC OPERATIONS (HALO), AND TO REQUEST RATIFICATION OF THE PAYMENTS MADE SINCE JUNE 26, 2015
Staff Contact: Terry Garrison, Fire Chief

Attachments: Resolution 5068
Intergovernmental Agreement

REQUEST FOR FUTURE WORKSHOP AND EXECUTIVE SESSION

COUNCIL COMMENTS AND SUGGESTIONS

ADJOURNMENT

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

- (i) discussion or consideration of personnel matters (A.R.S. § 38-431.03(A)(1));
- (ii) discussion or consideration of records exempt by law from public inspection (A.R.S. § 38-431.03(A)(2));
- (iii) discussion or consultation for legal advice with the city's attorneys (A.R.S. § 38-431.03(A)(3));
- (iv) discussion or consultation with the city's attorneys regarding the city's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation, or in settlement discussions conducted in order to avoid or resolve litigation (A.R.S. § 38-431.03(A)(4));
- (v) discussion or consultation with designated representatives of the city in order to consider its position and instruct its representatives regarding negotiations with employee organizations (A.R.S. § 38-431.03(A)(5)); or
- (vi) discussing or consulting with designated representatives of the city in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property (A.R.S. § 38-431.03(A)(7)).



Legislation Description

File #: 16-026, **Version:** 1

APPROVAL OF THE MINUTES OF THE JANUARY 26, 2016 VOTING MEETING

Staff Contact: Pamela Hanna, City Clerk

City of Glendale

*5850 West Glendale Avenue
Glendale, AZ 85301*



Meeting Minutes - Draft

Tuesday, January 26, 2016

6:00 PM

Voting Meeting

Council Chambers

City Council

Mayor Jerry Weiers

Vice Mayor Ian Hugh

Councilmember Jamie Aldama

Councilmember Samuel Chavira

Councilmember Ray Malnar

Councilmember Lauren Tolmachoff

Councilmember Bart Turner

CALL TO ORDER

Present: 7 - Mayor Jerry Weiers, Vice Mayor Ian Hugh, Councilmember Jamie Aldama, Councilmember Samuel Chavira, Councilmember Ray Malnar, Councilmember Lauren Tolmachoff, and Councilmember Bart Turner

[Councilmember Chavira appeared telephonically.]

Also present were Jennifer Campbell, Assistant City Manager; Tom Duensing, Interim Assistant City Manager; Michael Bailey, City Attorney; Pamela Hanna, City Clerk; and Darcie McCracken, Deputy City Clerk.

PLEDGE OF ALLEGIANCE**PRAYER/INVOCATION**

High Priest Jeff Blake from the Arrowhead Ranch Ward of the Church of Jesus Christ of Latter Day Saints offered the invocation.

Mayor Weiers recognized Kevin Phelps, soon to be Glendale's new City Manager.

CITIZEN COMMENTS

James Deibler, a Phoenix resident, thanked Phoenix Mayor Greg Stanton for solving the recent bus strike. He spoke about the six teenagers from Desert Vista High School and said they should be punished for using a bad word. He wanted the city of Glendale to create a transit tax for its residents to create more bus service extension, such as 15 minutes bus service on weekdays.

APPROVAL OF THE MINUTES OF JANUARY 12, 2016 VOTING MEETING

1. [16-013](#) APPROVAL OF THE MINUTES OF THE JANUARY 12, 2016 VOTING MEETING

Staff Contact: Pamela Hanna, City Clerk

A motion was made by Councilmember Malnar, seconded by Vice Mayor Hugh, that this agenda item be approved. The motion carried by the following vote:

Aye: 7 - Mayor Weiers, Vice Mayor Hugh, Councilmember Aldama, Councilmember Chavira, Councilmember Malnar, Councilmember Tolmachoff, and Councilmember Turner

BOARDS, COMMISSIONS AND OTHER BODIES**APPROVE RECOMMENDED APPOINTMENTS TO BOARDS, COMMISSIONS AND OTHER BODIES**

PRESENTED BY: Councilmember Lauren Tolmachoff

2. [16-011](#) BOARDS, COMMISSIONS & OTHER BODIES
Staff Contact: Brent Stoddard, Director, Intergovernmental Programs

A motion was made by Councilmember Tolmachoff, seconded by Councilmember Turner, to approve the recommended appointments as well as extending the terms of the members of the General Plan Steering Committee until September 1, 2016. The motion carried by the following vote:

Aye: 7 - Mayor Weiers, Vice Mayor Hugh, Councilmember Aldama, Councilmember Chavira, Councilmember Malnar, Councilmember Tolmachoff, and Councilmember Turner

CONSENT AGENDA

Mr. Tom Duensing, Interim Assistant City Manager, read agenda item numbers 3 through 8.

Ms. Pamela Hanna, City Clerk, read consent agenda resolution item numbers 9 through 12 by number and title.

Councilmember Aldama requested item number 10 be heard separately.

3. [15-834](#) AUTHORIZATION TO APPROVE THE PURCHASE OF ANNUAL MAINTENANCE SUPPORT FROM TCS AMERICA, INC., FOR THE TAX MANTRA SYSTEM
Staff Contact: Vicki Rios, Interim Director, Finance and Technology

This agenda item was approved.

4. [16-003](#) AUTHORIZATION FOR AN INCREASE IN EXPENDITURE OF FUNDS WITH SHI INTERNATIONAL CORP.
Staff Contact: Vicki Rios, Interim Director, Finance and Technology

This agenda item was approved.

5. [15-841](#) AUTHORIZATION TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH CAROLLO ENGINEERS, INC., AND APPROVE THE EXPENDITURE OF FUNDS FOR CITYWIDE WATER METER VAULT IMPROVEMENTS
Staff Contact: Craig A. Johnson, P.E., Director, Water Services

This agenda item was approved.

6. [16-012](#) AUTHORIZATION TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH BLACK & VEATCH CORPORATION AND APPROVE THE EXPENDITURE OF FUNDS FOR DESIGN AND CONSTRUCTION ADMINISTRATION SERVICES FOR FILTER AND FINISHED WATER PUMP STATION IMPROVEMENTS AT THE OASIS

WATER TREATMENT PLANT

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

This agenda item was approved.

7. [15-849](#) AUTHORIZATION TO ENTER INTO A CONSTRUCTION AGREEMENT
WITH SWAINE ASPHALT CORPORATION FOR SPEED CUSHION
INSTALLATION

Staff Contact: Jack Friedline, Director, Public Works

This agenda item was approved.

8. [15-850](#) AUTHORIZATION TO ENTER INTO A CONSTRUCTION AGREEMENT
WITH UTILITY CONSTRUCTION COMPANY, INC., FOR THE
STREETLIGHT INFILL PROJECT

Staff Contact: Jack Friedline, Director, Public Works

This agenda item was approved.**CONSENT RESOLUTIONS**

9. [15-848](#) RESOLUTION 5063: SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER DISTRICT RIGHT OF WAY LICENSE

Staff Contact: Jack Friedline, Director, Public Works

RESOLUTION NO. 5063 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 CITY MANAGER TO EXECUTE A RIGHT OF WAY LICENSE AGREEMENT WITH SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT FOR THE USE OF 95TH AND MISSOURI AVENUES FOR PUBLIC PURPOSES.

This agenda item was approved.

11. [16-005](#) RESOLUTION 5065: AUTHORIZATION TO ACCEPT A VICTIMS OF
CRIME ACT GRANT FOR CRIME VICTIM SERVICES 2015 FROM THE
ARIZONA DEPARTMENT OF PUBLIC SAFETY AND ENTER INTO
SUB-GRANT AWARD AGREEMENT NO. 2015-180

Staff Contact: Debora Black, Police Chief

RESOLUTION NO. 5065 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.

This agenda item was approved.

12. [16-006](#) RESOLUTION 5066: AUTHORIZATION TO ACCEPT A VICTIMS OF CRIME ACT GRANT FOR VICTIM ASSISTANCE CRISIS INTERVENTION PATROL EXPANDED PROGRAM FROM THE ARIZONA DEPARTMENT OF PUBLIC SAFETY AND ENTER INTO SUB-GRANT AWARD AGREEMENT NO. 2015-236

Staff Contact: Debora Black, Police Chief

RESOLUTION NO. 5066 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.

This agenda item was approved.

Approval of the Consent Agenda

A motion was made by Turner, seconded by Hugh, to approve the recommended actions on Consent Agenda Item Numbers 3 through 8, and Consent Resolutions 9, 11 and 12. The motion carried by the following vote:

Aye: 7 - Mayor Weiers, Vice Mayor Hugh, Councilmember Aldama, Councilmember Chavira, Councilmember Malnar, Councilmember Tolmachoff, and Councilmember Turner

10. [16-009](#) RESOLUTION 5064: AUTHORIZATION TO ENTER INTO AMENDMENT NO. 1 TO THE INDEPENDENT CONTRACTOR AGREEMENT WITH ARIZONA COMMUNITY ACTION ASSOCIATION FOR COMMUNITY ACTION PROGRAM FUNDING

Staff Contact: Erik Strunk, Director, Community Services

RESOLUTION NO. 5064 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 ENTERING INTO AMENDMENT NO. 1 TO THE INDEPENDENT AGREEMENT WITH ARIZONA COMMUNITY ACTION ASSOCIATION TO RECEIVE FUNDING FOR FY 2015 UTILITY ASSISTANCE PROGRAMS.

Mr. Strunk said this item was requesting authorization to enter into Amendment No. 1 to the independent contractor agreement with Arizona Community Action Association (ACAA) for Community Action Program funding in the amount of \$13,235. The Community Action Program provides residents energy payment assistance and crisis assistance for families. The ACAA is a statewide organization that supports the well-being and self-sufficiency of all Arizonans. This organization works with utility companies throughout the state to ensure fair and affordable energy costs and to provide assistance to those who need it. If approved, the existing ACAA agreement will provide additional funding for direct utility assistance, which will assist about 80 Glendale residents. Acceptance of this agreement will impact the FY15-16 budget and there is no impact to the General Fund, except for a DES annual grant match in the amount of \$8,559.

Councilmember Aldama wanted residents to know that these programs are available.

A motion was made by Councilmember Turner, seconded by Councilmember Aldama, that this agenda item be approved. The motion carried by the following vote:

Aye: 7 - Mayor Weiers, Vice Mayor Hugh, Councilmember Aldama, Councilmember Chavira, Councilmember Malnar, Councilmember Tolmachoff, and Councilmember Turner

ORDINANCES

13. [15-847](#) ORDINANCE 2973: ADOPT AN ORDINANCE UPDATING THE CITY'S SIGNATURE AUTHORITY FOR BANKING TRANSACTIONS
Staff Contact: Vicki Rios, Interim Director, Finance and Technology

ORDINANCE NO. 2973 NEW SERIES, WAS READ BY NUMBER AND TITLE ONLY, IT BEING AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING DESIGNATED OFFICERS TO DEPOSIT CITY FUNDS IN DESIGNATED BANK; DIRECTING SAID BANK TO RECOGNIZE THE SIGNATURES OF SAID OFFICERS ON ELECTRONIC FUND TRANSFERS, CHECKS FOR DEPOSIT AND/OR WITHDRAWAL; AND DECLARING AN EMERGENCY.

Ms. Rios said this was an Ordinance updating the city's signature authority for banking transactions. This Ordinance adds Kevin Phelps as the new City Manager and adds Vicki Rios as Interim Director of Finance and Technology. The Ordinance will take effect on February 1, 2016.

A motion was made by Councilmember Aldama, seconded by Councilmember Tolmachoff, that this agenda item be approved. The motion carried by the following vote:

Aye: 7 - Mayor Weiers, Vice Mayor Hugh, Councilmember Aldama, Councilmember Chavira, Councilmember Malnar, Councilmember Tolmachoff, and Councilmember Turner

NEW BUSINESS

14. [16-008](#) COUNCIL SELECTION OF VICE MAYOR
Staff Contact: Brent Stoddard, Director, Intergovernmental Programs

Mr. Duensing said this item is the selection of Vice Mayor and was discussed at the January 19, 2016 Workshop. He said Mr. Stoddard was available to answer any questions.

A motion was made by Councilmember Tolmachoff, seconded by Councilmember Malnar, to nominate Vice Mayor Hugh to be reappointed as Vice Mayor. The motion carried by the following vote:

Aye: 7 - Mayor Weiers, Vice Mayor Hugh, Councilmember Aldama, Councilmember Chavira, Councilmember Malnar, Councilmember Tolmachoff, and Councilmember Turner

REQUEST FOR FUTURE WORKSHOP AND EXECUTIVE SESSION

A motion was made by Vice Mayor Hugh, seconded by Councilmember Chavira, to hold the next regularly scheduled City Council Workshop on Tuesday, February 2, 2016 at 1:30 p.m. in the City Council Chambers, to be followed by an Executive Session pursuant to A.R.S. 38-431.03.. The motion carried by the following vote:

Aye: 7 - Mayor Weiers, Vice Mayor Hugh, Councilmember Aldama, Councilmember Chavira, Councilmember Malnar, Councilmember Tolmachoff, and Councilmember Turner

COUNCIL COMMENTS AND SUGGESTIONS

Councilmember Aldama reminded Ocotillo residents about his mobile office hours on Monday, February 1, 2016, from 5 p.m. to 6:30 p.m. at William C. Jack Elementary School, 6600 W. Missouri Avenue. He encouraged everyone to bring their questions and concerns.

Councilmember Chavira reminded everyone to be nice.

ADJOURNMENT

Mayor Weiers adjourned the meeting at 6:29 p.m.



Legislation Description

File #: 16-021, Version: 1

PROCLAMATION OF RECOGNITION FOR GLENDALE POLICE DEPARTMENT EXPLORER POST #2469 AS A RECIPIENT OF THE BOY SCOUTS OF AMERICA 2015 NATIONAL EXPLORING JOURNEY TO EXCELLENCE GOLD AWARD

Staff Contact: Debora Black, Police Chief

Presented By: Office of the Mayor

Accepted By: Sergeant Frank Sankhagowit

Purpose and Recommended Action

This is a request for City Council to recognize Glendale Police Department (GPD) Explorer Post #2469 as a recipient of the Boy Scouts of America (BSA) 2015 National Exploring Journey to Excellence Gold Award, and present the proclamation to Sergeant Frank Sankhagowit of the Glendale Police Department.

Background

The purpose of the GPD Explorer Program is to bring together teens and young adults (Explorers) interested in the police field and present current concepts, ideas, and techniques in effort to help the Explorers prepare for a future career in law enforcement. GPD Explorer Post #2469 strives to develop discipline, leadership, physical fitness, professional skills, and teamwork within the Explorers under the direction of GPD Officers and Post Advisors. GPD Explorer Post #2469 encompasses all aspects of police work and provides a valuable learning experience. GPD Explorer Post #2469 is the oldest law enforcement specialty post in Arizona, and many of the Explorers have gone on to become law enforcement officers, military officers, detention officers, and dispatchers. In 2015, the size of GPD Explorer Post #2469 increased to approximately 40 Explorers. Explorers participate in community service projects, assist during the city's major events, attend law enforcement conferences, and enhance intergovernmental relations through participation in various competitions and training activities with other law enforcement Explorer Posts. GPD Explorer Post #2469 was recently notified it had earned the Journey to Excellence Gold Award from the BSA.

Law Enforcement Exploring is a branch of the Learning for Life youth program that is a subsidiary of the BSA. The BSA Journey to Excellence Award is a performance recognition program designed to encourage and reward success, inspire excellence, and measure the performance of BSA units, districts, and councils. The award is granted at three levels (bronze, silver, and gold) and the program uses a balanced approach to measure performance. A post or club is scored in nine (9) objective areas grouped into the following four (4) categories: Committee and Planning, Participants and Growth, Program, and Volunteer Leadership. The objectives were developed following extensive research into proven indicators of enduring post and club programs. The award guides program planning before the year begins, monitors activities for continuous improvement during the year, and recognizes performance at the end of the year. As a recipient of the National Exploring Journey to Excellence Gold Award for 2015, it is requested that City Council authorize a proclamation of recognition for Glendale Police Department Explorer Post #2469.

Community Benefit/Public Involvement

Explorers assist police officers, specialty police units, and the entire police department during activities involving GPD. Explorers also act as civic ambassadors, assisting other city departments at various events, serving in any way needed. GPD Explorer Post #2469 donated over 6000 hours of volunteer time to the city in 2015. GPD Explorer Post #2469 will be present at the BSA Grand Canyon Council 2016 Scout-O-Rama event taking place on Saturday, February 20, 2016, from 9:00 am to 4:00 pm on lawns B and C at the University of Phoenix Stadium.

Scout-O-Rama is promoted as *Arizona's Premier Scouting Event* and an opportunity for scouting groups in the local community to showcase their scouting skills. The large event is a family-friendly experience and will consist of demonstrations, displays, and several athletic activities including a climbing wall and zip line. Community organization booths, food vendors, and live entertainment will also be featured. GPD Explorer Post #2469 will utilize the Mobile Police Command Center and other police department specialty vehicles and exhibitions to promote the Glendale Police Department and the Explorer Program. GPD Explorer Post #2469 will also post colors during the event through their newly-formed Explorer Honor Guard Team.



Legislation Description

File #: 16-022, Version: 1

DENY LIQUOR LICENSE NO. 1207A462, TASTE OF AFRICA RESTAURANT

Staff Contact: Vicki Rios, Interim Director, Finance and Technology

Purpose and Recommended Action

This is a request for City Council to recommend denial to the Arizona Department of Liquor Licenses and Control of a new, non-transferable series 12 (Restaurant) license for Taste of Africa Restaurant located at 6522 North 59th Avenue. The Arizona Department of Liquor Licenses and Control application (No. 1207A462) was submitted by James Pewee Golo, Jr.

Background Summary

The location of the establishment is in the Ocotillo District. The property is zoned C-2 (General Commercial). The population density within a one-mile radius is 18,843. This series 12 is a new license, therefore, the approval of this license will increase the number of liquor licenses in the area by one. The current number of liquor licenses within a one-mile radius is as listed below.

Series	Type	Quantity
06	Bar - All Liquor	3
07	Bar - Beer and Wine	1
09	Liquor Store - All Liquor	4
10	Liquor Store - Beer and Wine	13
11	Hotel/Motel	1
12	Restaurant	14
14	Private Club	<u>2</u>
	Total	38

Pursuant to A.R.S. § 4-203(A), when considering this new, non-transferable series 12 license, Council may take into consideration the location, as well as the applicant's capability, qualifications, and reliability.

The City of Glendale Development Services and Fire Departments have reviewed the application and determined that it meets all their technical requirements. However, The Police and Finance and Technology Departments recommend that this application be forwarded to the Arizona Department of Liquor Licenses and Control with a recommendation of denial as a result of information obtained in the course of the background investigation of this application. This recommendation is based on false and misleading information on the application, inability to meet restaurant requirements, and the finding that the applicants lack the requisite capability, qualifications, and reliability. Details supporting this recommendation are as follows:

The applicants for this license are business owners James Golo Jr. (60% ownership) and Jeraldine Greene (40% ownership). During the investigation of this application it was determined that false and misleading information was provided on each of the applicant's individual questionnaires as indicated below.

Question 13. Indicate your residence address for the last five (5) years.

Both applicants claimed ownership of their current residence. However, during the investigation it was confirmed that the property is registered as rental property with the Maricopa County Assessor's Office. The property is actually owned by John and Mary Ann Connolly. On November 23, 2015 a civil case was adjudicated in Hassayampa Justice Court with a judgment of \$4,100 against both applicants in favor of the homeowners.

Question 15. Have you been cited, arrested, indicted or summoned into court for violation of ANY law or ordinance, regardless of disposition, even if dismissed or expunged, within the past five (5) years? (For traffic violations, only include those that were alcohol and/or drug related.)

Mr. Golo Jr. answered no to this question. However, during the investigation it was discovered that Mr. Golo Jr. was cited on October 15, 2011 for obstructing a public thoroughfare and driving with a suspended driver's license (misdemeanor criminal offenses). On January 13, 2011 Mr. Golo Jr. was arrested for extreme DUI and convicted on April 28, 2011. Furthermore, Mr. Golo was arrested on July 29, 2010 (outside the five (5) year period) for assault/domestic violence which was subsequently dismissed.

Question 16. Are there ANY administrative law citations, compliance actions or consents, criminal arrest, indictments or summonses PENDING against you or ANY entity in which you are now involved? Include only criminal traffic tickets and complaints.

Mr. Golo Jr. answered no, however it was discovered during the investigation that this answer was not truthful.

Question 18. Has anyone EVER filed suit or obtained a judgement against you, the subject of which involved fraud or misrepresentation?

Mr. Golo Jr. answered no to this question. However, during this investigation it was discovered that Mr. Golo Jr. failed to disclose numerous judgments against him; a \$4,824 judgment in favor of the Arizona Department of Economic Security, a \$4,100 civil judgment in favor of the applicant's current residence's landlord, and a \$1,019.82 civil judgment in favor of Buckeye Check Cashing of Arizona, Inc.

Restaurant requirements:

In the restaurant operation plan portion of the application the applicants indicate that the premises do not have a bar area that is distinct and separate from the restaurant seating. However, there are two distinct areas of the premises; the bar area and the dining area.

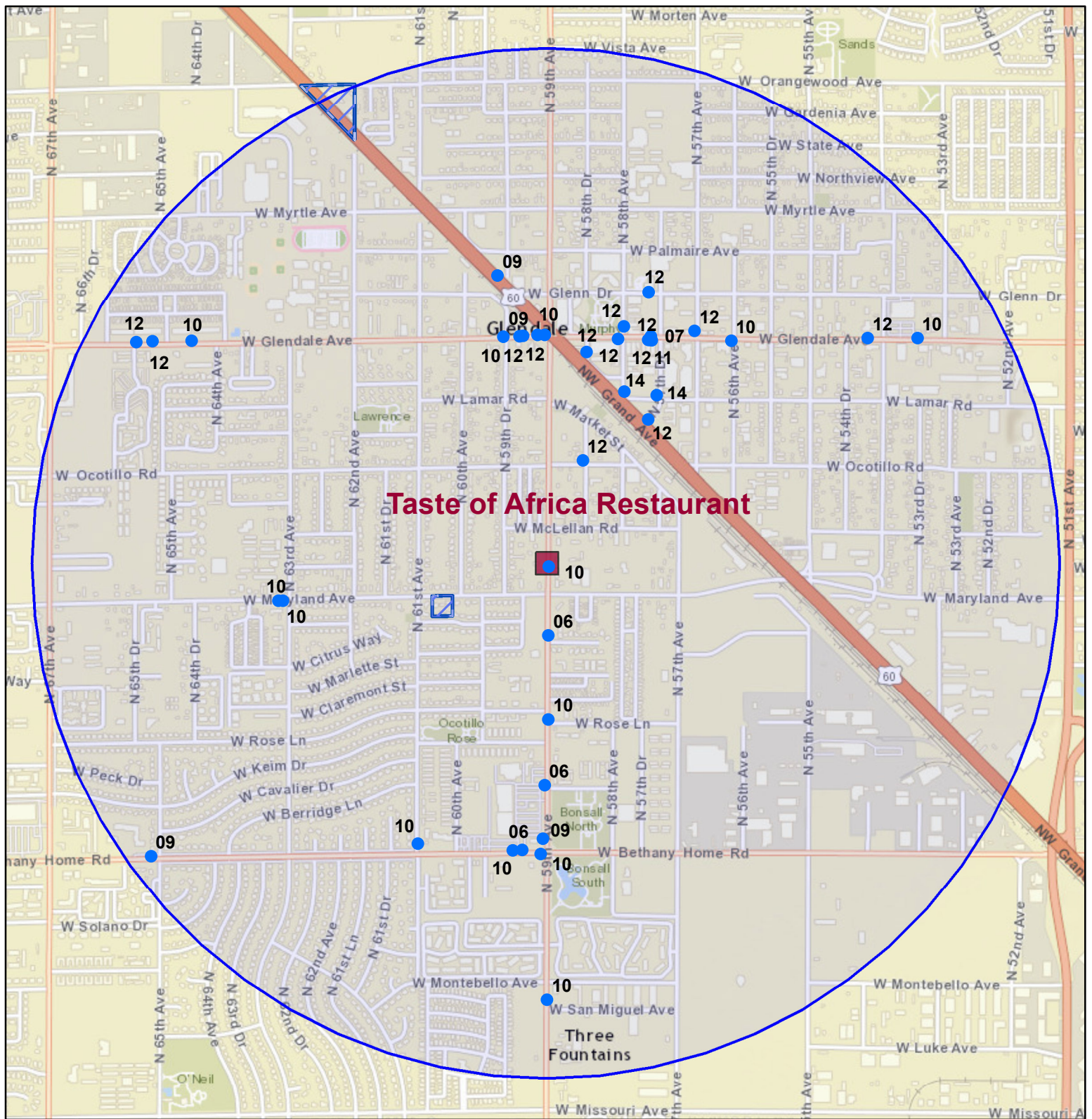
In order to meet the "Restaurant" requirement the establishment must derive at least 40 percent (40%) of its gross revenue from the sale of food and based on the proposed menu provided by the applicant this would be unlikely.

The Police Investigator contacted the applicant on January 6, 2016 and scheduled a meeting with Mr. Golo Jr. on January 12 to discuss the above findings. Mr. Golo Jr. failed to appear for this appointment. In addition, Mr. Golo Jr. was to meet with Tax & License staff on January 15th and January 26th and failed to appear on both occasions.

Based on this information, staff determined that James Golo Jr. and Jeraldine Greene are not capable, qualified, or reliable to hold an Arizona State Liquor License. Therefore, staff recommends City Council forward this application to the Arizona Department of Liquor Licenses and Control with a recommendation of denial.

Community Benefit/Public Involvement

No public protests were received during the 20-day posting period, November 20 thru December 10, 2015.



BUSINESS NAME: Taste of Africa Restaurant

LOCATION: 6522 N. 59th Avenue

APPLICANT: James Pewee Golo Jr

ZONING: C-2

APPLICATION NO: 5-18389

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



15251

GLENDAL POLICE DEPARTMENT**Liquor Application Worksheet**Date: **12-08-15**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: **Taste of Africa Restaurant**Business Address: **6522 N. 59th Ave****Applicant/s Information**Name: **Golo, James Pewee JR.**Name: **Greene, Jeraldine**

Name:

Name:

Background investigation of applicant/s completed.

Calls for Service History:	Call history for location beginning: 12/22/2010	Other Suites	New ownership call history beginning:
Liquor Related			
Vice Related			
Drug Related			
Fights / Assaults			
Robberies			
Burglary / Theft	1		
911 calls			
Trespassing			
Accidents			
Fraud / Forgery			
Threats			
Criminal damage			
Other non-criminal*	4		
Other criminal			
Total calls for service	5	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.

GLENDAL POLICE DEPARTMENT

Liquor Application Worksheet

Page 2 of 2

Applicant Background Synopsis:

Applicants do not meet the statutory requirement of satisfactory showing of capability, qualification and reliability.

Current License Holder:

Elisa Serrano (Agent)
Bukkana's LLC (Owner)

There are no known concerns with the current license holder.

Location History:

No significant Calls for Service history at this location.

Special Concerns:

None found.

Background investigation complete:

Police Department recommendation is for Denial of this liquor license application.

Investigating Officer – M. Ervin

M. ERVIN

Date

1-21-16

Chief of Police or designee

Debra Black

1-21-16



Legislation Description

File #: 16-028, Version: 1

**AUTHORIZATION TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT FOR CONSULTING SERVICES
WITH PAT WALKER CONSULTING, LLC, AND RATIFICATION OF EXPENDITURES**

Staff Contact: Vicki Rios, Interim Director, Finance and Technology

Purpose and Recommended Action

This is a request for City Council to authorize the City Manager to enter into a Professional Services Agreement for consulting services with Pat Walker Consulting, LLC in an amount of \$54,470 and to ratify previous expenditures in the amount of \$9,047.25 for services provided through December 31, 2015.

Background

In 2014, the City entered into a professional services agreement with Pat Walker Consulting, LLC to provide assistance to the City's Finance and Technology Department with financial planning and feasibility analysis. The new contract for professional services is for assistance in the development of a city-wide cost allocation and indirect cost plan in compliance with the all Federal OMB Circulars and guidelines.

Analysis

In order to properly account for the cost of certain general government support services, cities develop cost allocation plans to calculate and attribute the costs to various user departments. For example, general government services would consist of activities such as accounting, human resources functions, city attorney's oversight, and purchasing. The cost of these services is calculated and an appropriate methodology is determined to allocate the cost of these services to the user departments. The city has not undertaken a comprehensive cost allocation and indirect cost plan for a number of years. Based on government finance best practices, the consultant will assist city staff in the development of an updated comprehensive cost allocation model and indirect cost plan.

Ms. Walker, the principal owner of the firm, has over 35 years of municipal finance and budget experience including 12 years as the Chief Financial Officer for the City of Chandler, Arizona. She is considered to be an expert in developing cost allocation plans.

Pat Walker Consulting, LLC has already performed some services under this contract including holding a kick-off meeting with the departments and beginning the data collection work necessary to build the cost allocation plan. Therefore, ratification of these expenditures, which totaled \$9,047.25, is also requested. The total dollar amount of the contract will not exceed \$54,470, including the \$9,047.25.

Community Benefit/Public Involvement

Residents in the City of Glendale will benefit from a continued well-managed financial plan. A comprehensive cost allocation plan provides a tool to improve the financial planning and stability of the city.

Budget and Financial Impacts

Funding for this professional services agreement is available in the Fiscal Year 2015-2016 Non-Departmental budget.

Cost	Fund-Department-Account
\$54,470	1000-11801-518200, Professional and Contractual

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

**PROFESSIONAL SERVICES AGREEMENT
(Not Construction Related)
WITH PAT WALKER CONSULTING, LLC**

This Professional Services Agreement ("Agreement") is entered into and effective between CITY OF GLENDALE, an Arizona municipal corporation ("City") and Pat Walker Consulting, LLC, an Arizona limited liability company, authorized to do business in the State of Arizona, ("Consultant") as of the _____ day of _____, 20____ ("Effective Date").

RECITALS

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

AGREEMENT

The parties hereby agree as follows:

1. Key Personnel; Other Consultants and Subcontractors.

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

1.2 **Project Team.**

a. **Project Manager.**

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

b. **Project Team.**

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

c. **Discharge, Reassign, Replacement.**

- (1) Consultant acknowledges the Project Team is comprised of the same persons and roles for each as may have been identified in **Exhibit A**.
- (2) Consultant will not discharge, reassign, replace or diminish the responsibilities of any of the employees assigned to the Project who have been approved by City without City's prior written consent unless that person leaves the employment of Consultant, in which event the substitute must first be approved in writing by City.

- (3) Consultant will change any of the members of the Project Team at the City's request if an employee's performance does not equal or exceed the level of competence that the City may reasonably expect of a person performing those duties, or if the acts or omissions of that person are detrimental to the development of the Project.

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

2. **Schedule.** The Services will be undertaken in a manner that ensures the Project is completed timely and efficiently in accordance with the Scope of Work (Exhibit A) and schedule, as contained in Exhibit B.

3. **Consultant's Work.**

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

3.2 Licensing. Consultant warrants that:

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

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

Consultant must not discriminate against any employee or applicant for employment on the basis race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Consultant will require any Sub-contractor to be bound to the same requirements as stated within this section. Consultant, and on behalf of any subcontractors, warrants compliance with this section.

3.4 Coordination; Interaction.

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

3.5 Work Product.

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

4. **Compensation for the Project.**

- 4.1 **Compensation.** Consultant's compensation for the Project, including those furnished by its Subconsultants or Subcontractors will not exceed \$54,470 as specifically detailed in **Exhibit C** ("Compensation").
- 4.2 **Change in Scope of Project.** The Compensation may be equitably adjusted if the originally contemplated Scope as outlined in the Project is significantly modified.
 - a. Adjustments to Compensation require a written amendment to this Agreement and may require City Council approval.
 - b. Additional services which are outside the Scope of the Project contained in this Agreement may not be performed by the Consultant without prior written authorization from the City.
 - c. Notwithstanding the incorporation of the Exhibits to this Agreement by reference, should any conflict arise between the provisions of this Agreement and the provisions found in the Exhibits and accompanying attachments, the provisions of this Agreement shall take priority and govern the conduct of the parties.
- 4.3 **Expenses.** City will reimburse Consultant for certain out-of-pocket expenses necessarily incurred by Consultant in connection with this Agreement, without mark-up (the "Reimbursable Expenses"), including, but not limited to, document reproduction, materials for book preparation, postage, courier and overnight delivery costs incurred with Federal Express or similar carriers, travel and car mileage, subject to the following:
 - a. Mileage, airfare, lodging and other travel expenses will be reimbursable only to the extent these would, if incurred, be reimbursed to City of Glendale personnel under its policies and procedures for business travel expense reimbursement made available to Consultant for review prior to the Agreement's execution, and which policies and procedures will be furnished to Consultant;
 - b. The Reimbursable Expenses in this section are approved in advance by City in writing; and

- c. The total of all Reimbursable Expenses paid to Consultant in connection with this Agreement will not cause, or be in addition to, the "not to exceed" amount identified for Reimbursable Services in the Compensation section (Section 4.1) above.

5. Billings and Payment.

5.1 Applications.

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

5.2 Payment.

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

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

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

6. Termination.

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

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

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

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

7. **Conflict.** Consultant acknowledges this Agreement is subject to A.R.S. § 38-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on City's behalf is also an employee, agent, or consultant of any other party to this Agreement.
8. **Insurance.** For the duration of the term of this Agreement, Consultant shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of all tasks or work necessary to complete the Project as herein defined. Such insurance shall cover Consultant, its agent(s), representative(s), employee(s) and any subcontractors.
- 8.1 **Minimum Scope and Limit of Insurance.** Coverage must be at least as broad as:
- a. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01, including products and completed operations, with limits of no less than **\$1,000,000** per occurrence for bodily injury, personal injury, and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
 - b. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), with limits no less than **\$500,000** per accident for bodily injury and property damage.
 - c. **Professional Liability.** Consultant must maintain a Professional Liability insurance covering errors and omissions arising out of the work or services performed by Consultant, or anyone employed by Consultant, or anyone for whose acts, mistakes, errors and omissions Consultant is legally liability, with a liability insurance limit of **\$1,000,000** for each claim and a **\$1,000,000** annual aggregate limit.
 - d. **Worker's Compensation:** Insurance as required by the State of Arizona, with Statutory Limits, and Employers' Liability insurance with a limit of no less than **\$1,000,000** per accident for bodily injury or disease. Workers' Compensation insurance is not required if the Consultant has no employees.
- 8.2 **Other Insurance Provisions.** The insurance policies required by the Section above must contain, or be endorsed to contain the following insurance provisions:
- a. **The City, its officers, officials, employees and volunteers are to be covered as additional insureds** of the CGL and automobile policies for any liability arising from or in connection with the performance of all tasks or work necessary to complete the Project as herein defined. Such liability may arise, but is not limited to, liability for materials, parts or equipment furnished in connection with any tasks, or work performed by Consultant or on its behalf and for liability arising from automobiles owned, leased, hired or borrowed on behalf of the Consultant. General liability coverage can be provided in the form of an endorsement to the Consultant's existing insurance policies, provided such endorsement is at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 23 37, if later revisions are used.
 - b. **For any claims related to this Project, the Consultant's insurance coverage shall be primary insurance** with respect to the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it.
 - c. Each insurance policy required by this Section shall provide that coverage shall not be canceled, except after providing notice to the City.
- 8.3 **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII, unless the Consultant has obtained prior approval from the City stating that a non-conforming insurer is acceptable to the City.

8.4 **Waiver of Subrogation.** Consultant hereby agrees to waive its rights of subrogation which any insurer may acquire from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant, its employees, agent(s) and subcontractor(s).

8.5 **Verification of Coverage.** Within 15 days of the Effective Date of this Agreement, Consultant shall furnish the City with original certificates and amendatory endorsements, or copies of any applicable insurance language making the coverage required by this Agreement effective. All certificates and endorsements must be received and approved by the City before work commences. Failure to obtain, submit or secure the City's approval of the required insurance policies, certificates or endorsements prior to the City's agreement that work may commence shall not waive the Consultant's obligations to obtain and verify insurance coverage as otherwise provided in this Section. The City reserves the right to require complete, certified copies of all required insurance policies, including any endorsements or amendments, required by this Agreement at any time during the Term stated herein.

Consultant's failure to obtain, submit or secure the City's approval of the required insurance policies, certificates or endorsements shall not be considered a Force Majeure or defense for any failure by the Consultant to comply with the terms and conditions of the Agreement, including any schedule for performance or completion of the Project.

8.6 **Subcontractors.** Consultant shall require and shall verify that all subcontractors maintain insurance meeting all requirements of this Agreement.

8.7 **Special Risk or Circumstances.** The City reserves the right to modify these insurance requirements, including any limits of coverage, based on the nature of the risk, prior experience, insurer, coverage or other circumstances unique to the Consultant, the Project or the insurer.

9. **Immigration Law Compliance.**

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

9.2 Any breach of warranty under this section is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.

9.3 City retains the legal right to inspect the papers of any Consultant, Subconsultant, or employee who performs work under this Agreement to ensure that the Consultant, Subconsultant, or any employee, is compliant with the warranty under this section.

9.4 City may conduct random inspections, and upon request of City, Consultant will provide copies of papers and records of Consultant demonstrating continued compliance with the warranty under this section. Consultant agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this section.

9.5 Consultant agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon Consultant and expressly accrue those obligations directly to the benefit of the City. Consultant also agrees to require any Subconsultant to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.

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

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

10. Notices.

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

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

10.2 Representatives.

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

Pat Walker
Pat Walker Consulting, LLC
2404 West Harrison Street
Chandler, AZ 85224

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

City of Glendale
c/o Terri Canada
5850 West Glendale Avenue #302
Glendale, Arizona 85301

With required copy to:

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

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

- c. Concurrent Notices.

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

- (3) City may appoint one or more designees for the purpose of receiving notice by delivery of a written notice to Consultant identifying the designee(s) and their respective addresses for notices.
- d. **Changes.** Consultant or City may change its representative or information on Notice, by giving Notice of the change in accordance with this section at least ten days prior to the change.
11. **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.
12. **Entire Agreement; Survival; Counterparts; Signatures.**
- 12.1 **Integration.** This Agreement contains, except as stated below, the entire agreement between City and Consultant and supersedes all prior conversations and negotiations between the parties regarding the Project or this Agreement.
- a. Neither Party has made any representations, warranties or agreements as to any matters concerning the Agreement's subject matter.
- b. Representations, statements, conditions, or warranties not contained in this Agreement will not be binding on the parties.
- c. Inconsistencies between the solicitation, any addenda attached to the solicitation, the response or any excerpts attached as **Exhibit A**, and this Agreement, will be resolved by the terms and conditions stated in this Agreement.
- 12.2 **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.
- 12.3 **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.
- 12.4 **Amendment.** No amendment to this Agreement will be binding unless in writing and executed by the parties. Electronic signature blocks do not constitute execution for purposes of this Agreement. Any amendment may be subject to City Council approval.
- 12.5 **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.
- 12.6 **Severability.** If any provision of this Agreement is voided or found unenforceable, that determination will not affect the validity of the other provisions, and the voided or unenforceable provision will be reformed to conform with applicable law.
- 12.7 **Counterparts.** This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.
13. **Term.** The term of this Agreement commences upon the effective date and continues for a one (1) year initial period. There is no automatic renewal option for this Agreement.
14. **Dispute Resolution.** Each claim, controversy and dispute (each a "Dispute") between Consultant and City will be resolved in accordance with **Exhibit D**. 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	Scope of Work
Exhibit B	Schedule
Exhibit C	Compensation
Exhibit D	Dispute Resolution

(Signatures appear on the following page.)

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

City of Glendale,
an Arizona municipal corporation

By: Kevin R. Phelps
Its: City Manager

ATTEST:

Pamela Hanna (SEAL)
City Clerk

APPROVED AS TO FORM:

Michael D. Bailey
City Attorney

Pat Walker Consulting, LLC,,
an Arizona limited liability company



By: Pat Walker
Its: Principal

EXHIBIT A
Professional Services Agreement

SCOPE OF WORK

PER ATTACHED.



Over 38 years municipal experience

Exhibit A

October 16, 2015

Terri Canada, Budget Manager
City of Glendale
5850 W. Glendale Ave. Ste.302
Glendale, AZ 85301

Dear Terri,

Thank you for the opportunity to provide a scope of work for a cost allocation and indirect cost allocation plan in compliance with the OMB Omni Circular for City of Glendale.

With more than 38 years of experience in local government, municipal finance and operations, Pat Walker has provided a broad array of management and financial planning services to cities, towns and special districts. Ms. Walker was with the City of Chandler, Arizona, for 23 years and served as the City's Management Services Director and Chief Financial Officer. In 2007, she became a municipal management and financial consultant to cities, towns and utilities across the Country, working with municipalities and utilities performing cost allocation studies, fee studies, budgets, financial analysis and planning. In 2012, she formed Pat Walker Consulting LLC (PWC) to continue her consulting in municipal management and finance services to public sector organizations throughout Arizona.

PWC will be the prime consultant, but will be sub-contracting with Willdan Financial Services. Willdan Financial Services was established in 1988 and is one of the largest public sector financial consulting firms in the United States. They have helped over 800 public agencies successfully address a broad range of financial challenges, such as financing the costs of growth and generating revenues to fund desired services. Kevin Burnett with 14 years of experience and Tony Thrasher with 9 years of experience in preparing cost allocation or indirect cost allocation studies. Their resumes are attached.

We appreciate the opportunity to present our proposal to City of Glendale. Should you have any questions concerning the information presented or should you require additional information, please contact Pat Walker, Principal Owner, at (480) 694-7179 or pwalkerconsulting@aol.com.

Sincerely,

A handwritten signature in cursive script, appearing to read "Patricia Walker".

Pat Walker, Principal Owner
Pat Walker Consulting LLC

Introduction

In the early 1970s, the cost allocation plan concept was introduced to many government agencies. The purpose of a typical cost allocation plan is to identify costs related to rendering internal central support services and allocate those costs to operating departments or programs that utilize and benefit from them, in a fair and equitable manner.

Before indirect costs and central support service charges may be claimed for reimbursement by an operating department, there must be some formal means of identifying, accumulating and distributing these types of costs to all benefiting departments. Regardless of whether or not an agency has a formal comprehensive cost accounting system, the best method of accumulating and identifying indirect costs and accomplishing any distribution of costs is a cost allocation plan.

Project Team

The Team of Pat Walker Consulting LLC (PWC), prime consultant, in conjunction with Willdan Financial Services (WFS) as a sub-consultant, is proposing to assist the City of Glendale (City) to prepare a cost allocation plan and an OMB Omni Circular (formerly OMB A-87) indirect cost allocation plan. Pat Walker, the principal of PWC, will be lead in the project by facilitating the meetings, participating in the compilation and analysis of the data, and making presentations in conjunction with WFS. WFS will also have critical and significant roles in meetings, analysis and presentation for the successful completion of this project.

Scope of Work

A City is made up of many departments, each with their own specific purposes or functions. Departments whose primary function is to provide support internally to other City departments are called central services. Examples of central services are City Council, City Clerk, City Attorney, Finance and Information Technology. Within these groups there are numerous functions that they perform to provide support to the direct cost centers. The direct cost centers, or departments, that require support from Central Services, and provide services directly to the community through their day-to-day operations, are called operating departments. Examples of operating departments are Police, Fire, Building, Planning, Public Works, and includes other funds. The Cost Allocation Plan allocates the costs of the central services to the operating departments based on the functions that are provided by the central services organizations, upon which the operating departments depend. This is done in order to determine the total cost associated with providing direct services. This total cost is made up of the direct costs associated with each direct cost organization (salaries and benefits of operating department personnel, materials, facilities, equipment, etc.) as well as each organizations' share of the indirect costs that are required to support the organizations' operations (central support services such as finance, workers compensation, liability insurance, payroll, etc.). Through the cost allocation plan process, a City may allocate a portion of the costs of central service departments to the operating departments to 1) account for "all" costs, direct and indirect, for each operating department, and 2) accurately calculate the fully burdened cost of providing services to the public. The objectives of the study are as follows:

- Identify the central support and operating departments in the City;
- Identify the functions and services provided by the central departments;
- Identify allocable and non-allocable costs associated with the City's central service departments;

- Determine indirect allocation rate under OMB Omni Circular and;
- Distribute those costs to operating departments in a fair and equitable manner.

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when governmental units or components are predominately federally funded. In addition, any revenue that a central service receives is used to offset the same amount of cost of that central service so that there is no duplication. These cost reductions are done before the allocation methodologies are used and are detailed within the model itself.

We will actually prepare two separate cost allocation plans. The primary is the full cost allocation (CAP), which the City should use for standard City operations and budgeting. The second is a plan that complies with the Office of Management and Budget Omni Circular (Formerly OMB A-87), that should be used for determining costs for Federal awards carried out through grants, cost reimbursement contracts and other agreements.

The methodology used for both CAP's is the double-step-down method, which is considered one of the most accurate and equitable methods for allocating costs from central services to operating departments, and is generally the most recommended. The double-step-down method utilizes two steps to allocate indirect costs. In the first step, the allocable costs of central service departments are identified and distributed to *all* departments including the central service departments themselves, based on the appropriate allocation bases that were selected to represent the manner in which central services are utilized. Then, the second and final steps allocate indirect costs that were distributed to the central service departments in the first step to *only* the operating departments. This is done in a sequential manner where costs are closed out from each central department one-by-one, until all costs have been distributed to the operating departments, and none remain with the central service departments.

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Under the OMB Omni Circular new rules, federal agencies and pass-through entities must accept a negotiated indirect cost rate if one exists, or negotiate a rate in accordance with federal guidelines. There are exceptions when a statute or regulation requires it, or if the head of the agency approves it based on publicly documented justification. For example, non-federal entities that have never had a negotiated indirect cost rate may use a rate of 10 percent of modified total direct costs. However, entities with an approved federally negotiated indirect cost rate can now apply for a one-time exemption of up to four years. There are other changes such as to administrative salary costs where in certain circumstances can be charged directly, and computer costs can be charged directly if they are essential and allocable even if they are not fully used for the performance of the federal award.

Proposed Work Plan

The following outlines the summary work plan for the cost allocation and indirect cost allocation plan.

Project Kickoff and Planning

1. Prepare and send out data request form to complete study.
2. Kickoff conference call to review scope/data request.
3. Meet with appropriate Accounting Services staff and department heads to discuss the objectives and needs related to the preparation of the cost allocation plan.
4. Meet with appropriate administrative and support personnel to gain an understanding of the City's organizational structure, operations, and available financial reports.
5. Through these discussions with City personnel and as additional information is obtained throughout the project, identify:
 - a. indirect cost pools (departments, divisions, and other cost centers providing support services);
 - b. the grants to which the indirect costs will be allocated; and
 - c. Changes in organizational structure and/or operations, new or proposed programs, and other changes that potentially may be incorporated into the current cost allocation plan.

Information Requests and Data review

1. Interview City staff in departments providing support services to gain an understanding of the practices and operations specific to the City and relevant information for the preparation of the cost allocation plans.
2. During the course of the interviews, analyze the availability and readiness of information to utilize the most advantageous and appropriate allocation methodologies.
3. Based on the determination of information available, obtain necessary budgetary and historical financial data, as well as other relevant statistical data such as authorized full-time equivalent positions, square footage by department/use, assigned vehicles, and quantities of various transactions such as purchase orders issued and accounts payable checks issued. If time studies have been performed that provide appropriate information regarding support operations activities, that information may also be used for the allocation of indirect costs. If no appropriate statistical data exists, we will recommend alternative methods for approximating the time or effort of the support function.
4. Obtain information for any in-kind services that may impact on the calculation of the indirect cost allocation plan.
5. Obtain information for any support costs that may be directly billed to grants, and identify the impact on the calculation of the indirect cost allocation plan.
6. Review and analyze detailed budgetary and historical financial data to determine appropriateness of costs to be allocated, as applicable. Evaluate the eligibility of costs in accordance with OMB Omni Circular.
7. Review detailed expenditures for indirect cost pools to allocate to the various functions of each department, division, or cost center, as appropriate.
8. Evaluate whether there are additional grants that could fairly and equitably be charged indirect costs, and discuss with appropriate City personnel to determine if these should be included in the cost allocation plan.

Preparation of Cost Allocation Plan

1. Input the expenditure data based on the various functions for each indirect cost pool and the statistical data identified as the most advantageous and appropriate allocation bases for each function.

2. Develop and calculate a cost allocation plan that complies with OMB Omni Circular and any specific restrictions identified in applicable will be included.
3. Review the methodologies and data inclusion with the City's Accounting Services team, and make any requested adjustments if appropriate.

Presentation of Cost Allocation Plan

1. Present the draft cost allocation plan to the City's key stakeholders for final acceptance and to facilitate their understanding of the plans and their implications. The presentation of the information will be tailored to the audience based on "layman" terms for maximum participation and benefit to the City.
2. Provide final cost allocation plan and indirect cost rate to the City.

Implementation

Provide assistance with integrating the results of the cost allocation plan into the City's operations, as needed.

Advise and assist with negotiations with the City's Federal cognizant agency, if requested. Ongoing negotiations extend beyond the time required to prepare the cost allocation plan; therefore, we will provide these services when requested and approved by the City at our hourly rates. All decisions in connection with the implementation of such advice are the responsibility of the City.

Train and instruct designated City staff in the specifics of indirect costing, including cost analysis and cost flow structuring, statistical collection and development techniques, plan summarization and organization, theory of computation, and plan implementation as well as use of the model.

Deliverables

FWC will provide the following deliverables.

1. Final cost allocation plan and OMB Circular allocation rate.
2. Copies of all supporting documentation.

Timeline

We expect the timeline for this engagement to be approximately four months from date of notice to proceed, depending upon the availability of City staff and timely access to City records.

Frequent regular communication with management is a vital part of all our work. Throughout the project, we will regularly report our progress, on both a formal and informal basis, and involve City personnel in as many aspects of the engagement as desired to ensure the project is adequately understood by all appropriate personnel.

Cost Proposal

The cost to conduct the studies and prepare the rates and plans will be a not to exceed number of \$54,470.

EXHIBIT B
Professional Services Agreement

SCHEDULE

Timeline to be approximately four months from date of notice to proceed, dependent upon availability of City staff and timely access to City records.

EXHIBIT C
Professional Services Agreement

COMPENSATION

METHOD AND AMOUNT OF COMPENSATION

Compensation for all work performed and expenses earned by Consultant shall not exceed a total cost of \$54,470. Billings and Payment shall be made in accordance with the provisions of Section 5 of the Agreement.

NOT-TO-EXCEED AMOUNT

The total amount of compensation paid to Consultant for full completion of all work required by the Project and all expenses earned by Consultant in performance of such work during the entire term of the Project must not exceed \$54,470.

DETAILED PROJECT COMPENSATION

See Exhibit A.

EXHIBIT D
Professional Services Agreement

DISPUTE RESOLUTION

1. Disputes.

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

2. Arbitration.

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

2.3 Hearing. The arbitration hearing will be held within 90 days of the appointment of the arbitrator. The arbitration hearing, all proceedings, and all discovery will be conducted in Glendale, Arizona unless otherwise agreed by the parties or required as a result of witness location. Telephonic hearings and other reasonable arrangements may be used to minimize costs.

2.4 Award. At the arbitration hearing, each Party will submit its position to the arbitrator, evidence to support that position, and the exact award sought in this matter with specificity. The arbitrator must select the award sought by one of the parties as the final judgment and may not independently alter or modify the awards sought by the parties, fashion any remedy, or make any equitable order. The arbitrator has no authority to consider or award punitive damages.

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

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

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

4. **Exceptions.**

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

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

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



Over 35 year's municipal experience

October 16, 2015

Terri Canada, Budget Manager
City of Glendale
5850 W. Glendale Ave. Ste.302
Glendale, AZ 85301

Dear Terri,

Thank you for the opportunity to provide a scope of work for a cost allocation and indirect cost allocation plan in compliance with the OMB Omni Circular for City of Glendale.

With more than 38 years of experience in local government, municipal finance and operations, Pat Walker has provided a broad array of management and financial planning services to cities, towns and special districts. Ms. Walker was with the City of Chandler, Arizona, for 23 years and served as the City's Management Services Director and Chief Financial Officer. In 2007, she became a municipal management and financial consultant to cities, towns and utilities across the Country, working with municipalities and utilities performing cost allocation studies, fee studies, budgets, financial analysis and planning. In 2012, she formed Pat Walker Consulting LLC (PWC) to continue her consulting in municipal management and finance services to public sector organizations throughout Arizona.

PWC will be the prime consultant, but will be sub-contracting with Willdan Financial Services. Willdan Financial Services was established in 1988 and is one of the largest public sector financial consulting firms in the United States. They have helped over 800 public agencies successfully address a broad range of financial challenges, such as financing the costs of growth and generating revenues to fund desired services. Kevin Burnett with 14 years of experience and Tony Thrasher with 9 years of experience in preparing cost allocation or indirect cost allocation studies. Their resumes are attached.

We appreciate the opportunity to present our proposal to City of Glendale. Should you have any questions concerning the information presented or should you require additional information, please contact Pat Walker, Principal Owner, at (480) 694-7179 or pwalkerconsulting@aol.com.

Sincerely,

A handwritten signature in cursive script that reads "Pat Walker".

Pat Walker, Principal Owner
Pat Walker Consulting LLC

Introduction

In the early 1970s, the cost allocation plan concept was introduced to many government agencies. The purpose of a typical cost allocation plan is to identify costs related to rendering internal central support services and allocate those costs to operating departments or programs that utilize and benefit from them, in a fair and equitable manner.

Before indirect costs and central support service charges may be claimed for reimbursement by an operating department, there must be some formal means of identifying, accumulating and distributing these types of costs to all benefiting departments. Regardless of whether or not an agency has a formal comprehensive cost accounting system, the best method of accumulating and identifying indirect costs and accomplishing any distribution of costs is a cost allocation plan.

Project Team

The Team of Pat Walker Consulting LLC (PWC), prime consultant, in conjunction with Willdan Financial Services (WFS) as a sub-consultant, is proposing to assist the City of Glendale (City) to prepare a cost allocation plan and an OMB Omni Circular (formerly OMB A-87) indirect cost allocation plan. Pat Walker, the principal of PWC, will be lead in the project by facilitating the meetings, participating in the compilation and analysis of the data, and making presentations in conjunction with WFS. WFS will also have critical and significant roles in meetings, analysis and presentation for the successful completion of this project.

Scope of Work

A City is made up of many departments, each with their own specific purposes or functions. Departments whose primary function is to provide support internally to other City departments are called central services. Examples of central services are City Council, City Clerk, City Attorney, Finance and Information Technology. Within these groups there are numerous functions that they perform to provide support to the direct cost centers. The direct cost centers, or departments, that require support from Central Services, and provide services directly to the community through their day-to-day operations, are called operating departments. Examples of operating departments are Police, Fire, Building, Planning, Public Works, and includes other funds. The Cost Allocation Plan allocates the costs of the central services to the operating departments based on the functions that are provided by the central services organizations, upon which the operating departments depend. This is done in order to determine the total cost associated with providing direct services. This total cost is made up of the direct costs associated with each direct cost organization (salaries and benefits of operating department personnel, materials, facilities, equipment, etc.) as well as each organizations' share of the indirect costs that are required to support the organizations' operations (central support services such as finance, workers compensation, liability insurance, payroll, etc.). Through the cost allocation plan process, a City may allocate a portion of the costs of central service departments to the operating departments to 1) account for "all" costs, direct and indirect, for each operating department, and 2) accurately calculate the fully burdened cost of providing services to the public. The objectives of the study are as follows:

- Identify the central support and operating departments in the City;
- Identify the functions and services provided by the central departments;
- Identify allocable and non-allocable costs associated with the City's central service departments;

- Determine indirect allocation rate under OMB Omni Circular and;
- Distribute those costs to operating departments in a fair and equitable manner.

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when governmental units or components are predominately federally funded. In addition, any revenue that a central service receives is used to offset the same amount of cost of that central service so that there is no duplication. These cost reductions are done before the allocation methodologies are used and are detailed within the model itself.

We will actually prepare two separate cost allocation plans. The primary is the full cost allocation (CAP), which the City should use for standard City operations and budgeting. The second is a plan that complies with the Office of Management and Budget Omni Circular (Formerly OMB A-87), that should be used for determining costs for Federal awards carried out through grants, cost reimbursement contracts and other agreements.

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2. Provide final cost allocation plan and indirect cost rate to the City.

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Train and instruct designated City staff in the specifics of indirect costing, including cost analysis and cost flow structuring, statistical collection and development techniques, plan summarization and organization, theory of computation, and plan implementation as well as use of the model.

Deliverables

PWC will provide the following deliverables.

1. Final cost allocation plan and OMB Circular allocation rate.
2. Copies of all supporting documentation.

Timeline

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Frequent regular communication with management is a vital part of all our work. Throughout the project, we will regularly report our progress, on both a formal and informal basis, and involve City personnel in as many aspects of the engagement as desired to ensure the project is adequately understood by all appropriate personnel.

Cost Proposal

The cost to conduct the studies and prepare the rates and plans will be a not to exceed number of \$54,470.



Legislation Description

File #: 16-025, Version: 1

AUTHORIZATION TO ENTER INTO A USE AGREEMENT WITH TACTICAL SERVICE, INC., DOING BUSINESS AS DESERT SNOW, FOR CONCESSION SERVICES AT FOOTHILLS SPORTS COMPLEX

Staff Contact: Erik Strunk, Director, Community Services

Purpose and Recommended Action

This is a request for the City Council to authorize the City Manager to enter into a five-year use agreement with Tactical Service, Inc. (dba Desert Snow) to provide concession services at Foothills Sports Complex. The City may, at its option and with approval of the Contractor, extend the term of this agreement for an additional two (2), one-year terms.

Background

The Foothills Sports Complex (FSC) is one of four, “premier” sports complexes maintained by the Community Services Department. As designed, it is a lighted, multi-use sports facility located at 19021 N. 57th Avenue, and has been serving the community since opening in 1992. The 10-acre site encompasses three regulation softball fields, one, of which, is a multi-purpose field and a 350 square foot concession building that contains room for a concession sales, maintenance, restroom facilities, a small office and storage space. Adjacent to the FSC is a 2.75 acre dog park, the Foothills Branch Library, the Foothills Recreation and Aquatics Center, the Skate Court and a connection to the Skunk Creek Trail system. The FSC is also the “home field” of the Arrowhead Little League and is used by approximately 14,000 other baseball and softball players throughout the year.

Although the FSC is heavily used, it does not currently have a licensed vendor for concession sales, which is a key element for customer satisfaction for the many scheduled sports events and activities at the site. As a result, last year, the Community Services Department identified an opportunity to provide such a service and at the same time, generate revenue for the City.

Analysis

Materials Management issued a competitive Request for Proposals (RFP16-10) in fall, 2015 for concession sales at the FSC and a total of two prospective vendors responded. After review, Tactical Service, Inc. (dba Desert Snow), was selected as the most qualified and is being recommended for approval. The vendor provided the best understanding of the City’s concession needs at FSC, had the most experience in providing healthy concession stand food alternatives, and the best overall plan to operate the concession stand.

If approved, over the course of the initial five-year agreement, it is estimated the City General Fund will receive approximately \$54,000 in new revenue.

Community Benefit/Public Involvement

Those who use the FSC will have concession services before, during, and after games and practices. Tactical Service, Inc., (dba Desert Snow) will provide a healthy menu for customer that will include items such as fresh popcorn fruits, trail mix, granola bars, and other healthy snacks and beverages. This item was reviewed by the Parks and Recreation Advisory Commission on January 25, 2016 and is being recommended for approval by Council.

Budget and Financial Impacts

This is a revenue opportunity and there will be no financial impact to the budget. Tactical Service, Inc., (dba Desert Snow) will provide the City with a monthly percentage of gross sales receipt for each contract year. The first year is 18%, year two is 23%, year three is 28%, year four and five is 33%. Tactical Service, Inc., (dba Desert Snow) expects to generate approximately \$40,000 each year in gross sales.

USE AGREEMENT FOR
Foothills Sports Complex - Concession Operations & Management
City of Glendale Solicitation No. RFP 16-10

This Agreement for Foothills Sports Complex - Concession Operations & Management ("Agreement") is effective and entered into between CITY OF GLENDALE, an Arizona municipal corporation ("City"), and Tactical Service Inc., an Arizona corporation dba Desert Snow, authorized to do business in Arizona (the "Contractor"), as of the _____ day of _____, 2016.

RECITALS

- A. City intends to undertake a project for the benefit of the public and with public funds that is more fully set forth in **Exhibit A**, pursuant to Solicitation No. RFP 16-10 (the "Project");
- B. City desires to retain the services of Contractor to perform those specific duties and produce the specific work as set forth in the Project attached hereto;
- C. The standard term and conditions applicable to all City Requests for Proposal (and located on the City's website), are incorporated by this reference;
- D. City and Contractor desire to memorialize their agreement with this document.

AGREEMENT

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

1. Key Personnel; Sub-contractors.

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

c. **Discharge, Reassign, Replacement.**

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

d. **Sub-contractors.** No subcontractors are allowed under this Use Agreement.

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

3. **Contractor's Work.**

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

3.2 **Licensing.** Contractor warrants that:

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

3.3 **Compliance.** Services will be furnished in compliance with applicable federal, state, county and local statutes, rules, regulations, ordinances, building codes, life safety codes, and other standards and criteria designated by City, including these standards conveyed under RFP 16-10.

Contractor must not discriminate against any employee or applicant for employment on the basis race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Contractor will require any Sub-contractor to be bound to the same requirements as stated within this section. Contractor, and on behalf of any subcontractors, warrants compliance with this section.

3.4 **Coordination; Interaction.**

- a. For projects that the City believes requires the coordination of various professional services, Contractor will work in close consultation with City to proactively interact with any other professionals retained by City on the Project ("Coordinating Project Professionals").

- b. Subject to any limitations expressly stated in the Project Budget, Contractor will meet to review the Project, Schedule, Project Budget, and in-progress work with Coordinating Project Professionals and City as often and for durations as City reasonably considers necessary in order to ensure the timely work delivery and Project completion.
- c. For projects not involving Coordinating Project Professionals, Contractor will proactively interact with any other contractors when directed by City to obtain or disseminate timely information for the proper execution of the Project.

4. **Compensation for the Project.**

- 4.1 Compensation. City's compensation for the Project, including those furnished by its Sub-contractors will, at a minimum, be: 18% of gross monthly sales for Year One; 23% of gross monthly sales for Year Two; 28% of gross monthly sales for Year Three; and 33% of gross monthly sales for Years Four and Five , as specifically detailed in **Exhibit B** (the "Compensation").
- 4.2 Change in Scope of Project. The Compensation may be equitably adjusted if the originally contemplated scope of services as outlined in the Project is significantly modified.
 - a. Adjustments to the Compensation require a written amendment to this Agreement and may require City Council approval.
 - b. Additional services which are outside the scope of the Project contained in this Agreement may not be performed by the Contractor without prior written authorization from the City.
 - c. Notwithstanding the incorporation of the Exhibits to this Agreement by reference, should any conflict arise between the provisions of this Agreement and the provisions found in the Exhibits and accompanying attachments, the provisions of this Agreement shall take priority and govern the conduct of the parties.

5. **Payment/Audit/Site Conditions and Maintenance.**

- a. Contractor will submit monthly payments to City's authorized representative.
- b. The period covered by each Payment will be one calendar month ending on the last day of the month or as specified in the solicitation.
- c. The City shall have the right to occasioned ledges, books, or records pertaining to the business at respectable times and places during regular business hours.
- d. All electricity, gas, or water utility service will be delivered via the delivery system in place at the City's facility. The City is not liable or responsible to Contractor for any failure to furnish the utility services set forth above occasions by any reason beyond the City's control, including but not limited to, strikes or other work stoppage, the act of any other government agency or public utility, acts of nature, force majeure, or the breakdown or failure of apparatus, equipment or machinery employed in supplying the services.

City is not responsible or liable to Contractor for any direct or consequential damages incurred by Contractor, including damage to any goods, merchandise, or equipment stored at City's facility as a result of power failure, flood, fire, explosions, or other causes beyond City's control.
- e. Contractor shall provide its own janitorial services, pick-up, clean up, and disposal of all litter for all space assigned or used in its operation. Contractor shall clean and keep concession areas free of debris during events. All food preparation and service areas must be sanitized and kept clean at all times.
- f. The Contractor must, at its sole cost and expense, provide pest control service in all food preparation and service areas. The Contractor must not perform this service on its own or with its own personnel, but must hire or contract this service to be performed by a professional exterminator licensed under the laws, ordinances and regulation of the City and State of Arizona. The Facility shall receive treatment at least once a month or more as

determined by the Facility Manager. The City agrees to provide pest control services for the balance of the facility. Pest control services will be coordinated between the Facility Manager and the Contractor's on-site manager.

- g. Contractor must not allow or commit any waste, injury or damage upon, or to, the Facility or its equipment. At the expiration of the Contractor's agreement, the Contractor must leave the Facility and its equipment in at least the same clean, safe, and like-new condition as they were at the commencement of the agreement, expecting only normal wear and tear.

6. Termination.

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

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

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

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

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

8. Insurance.

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

- a. Contractor and Sub-contractors. Contractor, and each Sub-contractor performing work or providing materials related to this Agreement must procure and maintain the insurance coverages described below (collectively referred to herein as the "Contractor's Policies"), until each Party's obligations under this Agreement are completed.
- b. General Liability.
 - (1) Contractor must at all times relevant hereto carry a commercial general liability policy with a combined single limit of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate for each property damage and contractual property damage.
 - (2) Sub-contractors must at all times relevant hereto carry a general commercial liability policy with a combined single limit of at least \$1,000,000 per occurrence.

- (3) This commercial general liability insurance must include independent contractors' liability, contractual liability, broad form property coverage, XCU hazards if requested by the City, and a separation of insurance provision.
 - (4) These limits may be met through a combination of primary and excess liability coverage.
- c. Auto. A business auto policy providing a liability limit of at least \$1,000,000 per accident for Contractor and \$1,000,000 per accident for Sub-contractors and covering owned, non-owned and hired automobiles.
- d. Workers' Compensation and Employer's Liability. A workers' compensation and employer's liability policy providing at least the minimum benefits required by Arizona law.
- e. Notice of Changes. Contractor's Policies must provide for not less than 30 days' advance written notice to City Representative of:
 - (1) Cancellation or termination of Contractor or Sub-contractor's Policies;
 - (2) Reduction of the coverage limits of any of Contractor or and Sub-contractor's Policies; and
 - (3) Any other material modification of Contractor or Sub-contractor's Policies related to this Agreement.
- f. Certificates of Insurance.
 - (1) Within 10 business days after the execution of the Agreement, Contractor must deliver to City Representative certificates of insurance for each of Contractor and Sub-contractor's Policies, which will confirm the existence or issuance of Contractor and Sub-contractor's Policies in accordance with the provisions of this section, and copies of the endorsements of Contractor and Sub-contractor's Policies in accordance with the provisions of this section.
 - (2) City is and will be under no obligation either to ascertain or confirm the existence or issuance of Contractor and Sub-contractor's Policies, or to examine Contractor and Sub-contractor's Policies, or to inform Contractor or Sub-contractor in the event that any coverage does not comply with the requirements of this section.
 - (3) Contractor's failure to secure and maintain Contractor Policies and to assure Sub-contractor policies as required will constitute a material default under the Agreement.
- g. Other Contractors or Vendors.
 - (1) Other contractors or vendors that may be contracted with in connection with the Project must procure and maintain insurance coverage as is appropriate to their particular contract.
 - (2) This insurance coverage must comply with the requirements set forth above for Contractor's Policies (e.g., the requirements pertaining to endorsements to name the parties as additional insured parties and certificates of insurance).
- h. Policies. Except with respect to workers' compensation and employer's liability coverages, City must be named and properly endorsed as additional insureds on all liability policies required by this section.
 - (1) The coverage extended to additional insureds must be primary and must not contribute with any insurance or self insurance policies or programs maintained by the additional insureds.

- (2) All insurance policies obtained pursuant to this section must be with companies legally authorized to do business in the State of Arizona and reasonably acceptable to all parties.

8.2 Sub-contractors. Not applicable.

8.3 Indemnification.

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

9. **Immigration Law Compliance.**

- 9.1 Contractor, and on behalf of any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.
- 9.2 Any breach of warranty under subsection 9.1 above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
- 9.3 City retains the legal right to inspect the papers of any Contractor or subcontractor employee who performs work under this Agreement to ensure that the Contractor or any subcontractor is compliant with the warranty under subsection 9.1 above.
- 9.4 City may conduct random inspections, and upon request of City, Contractor shall provide copies of papers and records of Contractor demonstrating continued compliance with the warranty under subsection 9.1 above. Contractor agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this section.
- 9.5 Contractor agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon Contractor and expressly accrue those obligations directly to the benefit of the City. Contractor also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.

- 9.6 Contractor's warranty and obligations under this section to the City is continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.
- 9.7 The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

10. Notices.

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

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

10.2 Representatives.

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

Tactical Service Inc., dba Desert Snow
c/o John and Lauren Kautman
2202 West Lone Cactus Drive, Suite 1
Phoenix, Arizona 85027

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

City of Glendale
c/o Mike Davis
6210 West Myrtle Avenue
Glendale, Arizona 85301
623-930-2841

With required copy to:

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

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

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

11. **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.

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

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

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

12.2 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.

12.3 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.

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

12.5 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.

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

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

13. **Term.** The term of this Agreement commences upon the effective date and continues for a five (5)-year initial period. The City may, at its option and with the approval of the Contractor, extend the term of this Agreement for an additional two (2) one year terms. Contractor will be notified in writing by the City of its intent to extend the Agreement period at least thirty (30) calendar days prior to the expiration of the original or any renewal Agreement period. Price adjustments will only be reviewed during the Agreement renewal period and will be a determining factor for any renewal. There are no automatic renewals of this Agreement.

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

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

(Signatures appear on the following page.)

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

City of Glendale,
an Arizona municipal corporation

By: Kevin R. Phelps
Its: City Manager

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

Tactical Service Inc., dba Desert Snow,
an Arizona Corporation

By: John Kautman, Jr.
Its: President

EXHIBIT A

Foothills Sports Complex- Concession Operations & Management

City of Glendale Solicitation No. RFP 16-10

PROJECT

PROJECT

Contractor, Tactical Service Inc., dba Desert Snow, will provide food and drink concession services at the Foothills Sports Complex as set forth in Request for Proposal 16-10.

EXHIBIT B

Foothills Sports Complex - Concession Operations & Management

City of Glendale Solicitation No. RFP 16-10

COMPENSATION

METHOD AND AMOUNT OF COMPENSATION

City's compensation for the Project, including those furnished by its Sub-contractors will, at a minimum, be: 18% of gross monthly sales for Year One; 23% of gross monthly sales for Year Two; 28% of gross monthly sales for Year Three; and 33% of gross monthly sales for Years Four and Five

DETAILED PROJECT COMPENSATION

The authorized representative for the Contractor, Tactical Service Inc., dba Desert Snow, shall submit monthly gross sales receipts to the City's representative reflecting the calculation of the percentage to be paid to the City as set forth in RFP 16-10.

EXHIBIT C

Foothills Sports Complex - Concession Operations & Management

City of Glendale Solicitation No. RFP 16-10

DISPUTE RESOLUTION

1. Disputes.

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

2. Arbitration.

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

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

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

4. **Exceptions.**

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



Legislation Description

File #: 16-023, **Version:** 1

AUTHORIZATION TO ENTER INTO A CONSTRUCTION AGREEMENT WITH ACHEN-GARDNER CONSTRUCTION, LLC AND APPROVE THE EXPENDITURE OF FUNDS FOR THE EMERGENCY REPAIR OF THE WATER LINE LOCATED AT THE INTERSECTION OF 43RD AVENUE AND MISSOURI AVENUE

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

Purpose and Recommended Action

This is a request for City Council to authorize the City Manager to enter into a construction agreement with Achen-Gardner Construction, LLC for the emergency repair of the water line located at the intersection of 43rd Avenue and Missouri Avenue and approve the ratification of expenditure of funds for an amount not to exceed \$177,984.96.

Background

On the morning of September 21, 2015, an eight-inch water main ruptured at the intersection of 43rd Avenue and Missouri Avenue. In addition to the water main damage, there was extensive damage to the surrounding street infrastructure, sidewalk, and curb.

The repair project included replacement of the water main and associated appurtenances, and water service line connections impacted by the rupture. Additionally, the project included concrete and asphalt repairs and replacement.

Analysis

Due to the loss of service in the immediate area and restrictions to the traffic in the surrounding area, it was determined that an outside contractor would be best able to make the repairs quickly and efficiently.

At the time of incident, Achen-Gardner Construction, LLC had been under contract with the city to do related work and was able to respond to the emergency. In order to address repairs immediately, the City Manager's Office authorized Achen-Gardner to proceed with the emergency repairs to the water and street infrastructure.

This action will authorize the City Manager to enter into a construction agreement with Achen-Gardner, LLC and ratify the expenditure of funds.

Community Benefit/Public Involvement

Maintaining reliable water services ensures quality of life and safety of all City of Glendale residents. This project allowed the rapid re-establishment of water delivery to customers in the impacted areas and

improved the integrity of the water system within the area.

Budget and Financial Impacts

While the expenditure was unplanned and not budgeted, funding is available in the Water Services FY2015-16 capital budget.

Cost	Fund-Department-Account
\$177,984.96	2400-61013-550800, Water Line Replacement

Capital Expense? Yes

Budgeted? No

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 Achen-Gardner Engineering, LLC, an Arizona limited liability company ("Contractor") as of the _____ day of _____, 20__.

RECITALS

- A. The City undertook a project, on an emergency basis, 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 1** ("Project Description");
- B. City retained the services of Contractor to perform those specific duties and produce the specific work as set forth in the Project, the plans and specifications, the **Information for Bidders**, and the **Maricopa Association of Governments ("MAG") General and Supplemental Conditions and Provisions**;
- C. City and Contractor desire to memorialize their agreement with this document.

AGREEMENT

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

1. Project.

- 1.1 **Scope.** Contractor will provide all services and material necessary to assure the Project is completed timely and efficiently consistent with Project requirements, including, but not limited to, working in close interaction and interfacing with City and its designated employees, and working closely with others, including other contractors, providers or consultants retained by City.
- 1.2 **Documents.** The following documents are, by this reference, entirely incorporated into this Agreement and attached Exhibits as though fully set forth herein:

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

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

1.3 Project Team.

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

(B) Project Team.

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

(C) Sub-contractors.

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

2. **Schedule.** The Project was undertaken in a manner that ensured its completion in a timely and efficient manner. If not otherwise stated in the **Exhibits attached hereto**, the contractor substantially completed all work required by the Project by or before November 24, 2015. Any remaining Work shall be completed on or before the Effective Date of this Agreement.

3. **Contractor's Work.**

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

3.2 **Licensing.** Contractor warrants that:

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

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

3.4 Coordination; Interaction.

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

3.5 Hazardous Substances. Contractor is responsible for the appropriate handling, disposal of, and if necessary, any remediation and all losses and damages to the City, associated with the use or release of hazardous substances by Contractor in connection with completion of the Project.

3.6 Warranties. At any time within two years after completion of the Project, Contractor must, at Contractor's sole expense and within 20 days of written notice from the City, uncover, correct and remedy all defects in Contractor's work. City will accept a manufacturer's warranty on approved equipment as satisfaction of the Contractor's warranty under this subsection.

3.7. Bonds. Upon execution of this Agreement, and if applicable, Contractor must furnish Payment and Performance bonds as required under A.R.S. § 34-608.

4. Compensation for the Project.

4.1 Compensation. Contractor's compensation for the Project, including those furnished by its Sub-contractors will not exceed **\$177,984.96**, as specifically detailed in the Contractor's bid and set forth in **Exhibit 2 ("Proposal")**.

5. Billings and Payment.

5.1 Payment.

- (A) The 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.
- (C) City may withhold an amount sufficient to pay expenses that City reasonably expects to incur in correcting the deficiency or deficiencies in the Work performed
- (D) 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.
- (E) City will temporarily withhold Compensation amounts as required by A.R.S. 34-221(C).

6. Termination.

- 6.1 For Convenience.** City may terminate this Agreement for convenience, without cause, by delivering a written termination notice stating the effective termination date, which may not be less than 15 days following the date of delivery.
- (A) Contractor will be equitably compensated any services and materials furnished prior to receipt of the termination notice and for reasonable costs incurred.
 - (B) Contractor will also be similarly compensated for any approved effort expended and approved costs incurred that are directly associated with Project closeout and delivery of the required items to the City.
- 6.2 For Cause.** City may terminate this Agreement for cause if Contractor fails to cure any breach of this Agreement within seven days after receipt of written notice specifying the breach.
- (A) Contractor will not be entitled to further payment until after City has determined its damages. If City's damages resulting from the breach, as determined by City, are less than the equitable amount due but not paid Contractor for Service and Repair furnished, City will pay the amount due to Contractor, less City's damages.
 - (B) If City's direct damages exceed amounts otherwise due to Contractor, Contractor must pay the difference to City immediately upon demand; however, Contractor will not be subject to consequential damages more than \$1,000,000 or the amount of this Agreement, whichever is greater.

7. Insurance.

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

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

7.2 Sub-contractors.

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

7.3 Indemnification.

- (A) To the fullest extent permitted by law, Contractor must defend, indemnify, and hold harmless City and its elected officials, officers, employees and agents (each, an "Indemnified Party," collectively, the

"Indemnified Parties"), for, from, and against any and all claims, demands, actions, damages, judgments, settlements, personal injury (including sickness, disease, death, and bodily harm), property damage (including loss of use), infringement, governmental action and all other losses and expenses, including attorneys' fees and litigation expenses (each, a "Demand or Expense"; collectively, "Demands or Expenses") asserted by a third-party (i.e. a person or entity other than City or Contractor) and that arises out of or results from the breach of this Agreement by the Contractor or the Contractor's negligent actions, errors or omissions (including any Sub-contractor or other person or firm employed by Contractor), whether sustained before or after completion of the Project.

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

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

8. Immigration Law Compliance.

- 8.1 Contractor, and on behalf any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.
- 8.2 Any breach of warranty under subsection 8.1 above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
- 8.3 City retains the legal right to inspect the papers of any Contractor or subcontractor employee who performs work under this Agreement to ensure that the Contractor or any subcontractor is compliant with the warranty under subsection 8.1 above.

- 8.4 City may conduct random inspections, and upon request of City, Contractor shall provide copies of papers and records of Contractor demonstrating continued compliance with the warranty under subsection 8.1 above. Contractor agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this section 8.
- 8.5 Contractor agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon Contractor and expressly accrue those obligations directly to the benefit of the City. Contractor also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.
- 8.6 Contractor's warranty and obligations under this section to the City is continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.
- 8.7 The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

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

10. **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:

Achen-Gardner Engineering, LLC
Attn: Dan Broderick
550 South 79th Street
Chandler, Arizona 85226

- (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 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 Exhibits. Any inconsistency between Exhibits 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.

14.7 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 3**. 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.

- (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.

Exhibit 1 – Project Description.

Exhibit 2 – Compensation.

Exhibit 3 – Dispute Resolution Procedures.

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

City of Glendale,
an Arizona municipal corporation

By: Kevin R. Phelps
Its: City Manager

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

Achen-Gardner Engineering, LLC
an Arizona limited liability company

By: Daniel J. Spitz
Its: Vice President

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

EXHIBIT 1
CONSTRUCTION AGREEMENT

PROJECT

Emergency waterline repairs and other work related to damaged city streets caused by the rupture of an existing waterline at the intersection of 43rd Avenue and Missouri Avenue. Work included replacement of mainline water pipe and fittings, fire hydrants, and water service line connections affected by the rupture. Scope of work also included concrete and asphalt repairs to damaged city streets.

**EXHIBIT 2
CONSTRUCTION AGREEMENT**

COMPENSATION

METHOD AND AMOUNT OF COMPENSATION

Time and Materials not to exceed **\$177,984.96**.

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 **\$177,984.96**.

DETAILED PROJECT COMPENSATION

Materials:	\$28,345.00
Equipment:	\$22,434.86
Labor:	\$50,945.90
Subcontractors	\$62,345.92
Sales Tax, Insurance	\$13,913.28

EXHIBIT 3
CONSTRUCTION AGREEMENT

DISPUTE RESOLUTION

1. Disputes.

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

2. Arbitration.

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

- 2.4 Award. At the arbitration hearing, each Party will submit its position to the arbitrator, evidence to support that position, and the exact award sought in this matter with specificity. The arbitrator must select the award sought

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

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

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

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

4. **Exceptions.**

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

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

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



Legislation Description

File #: 15-833, Version: 1

EXPENDITURE AUTHORIZATION FOR ADDITIONAL EXPENSES FOR MYRTLE AVENUE IMPROVEMENTS FROM 62ND AVENUE TO 66TH DRIVE

Staff Contact: Jack Friedline, Director, Public Works

Purpose and Recommended Action

Staff is requesting City Council authorization for the expenditure of an additional \$65,590 for construction of sidewalk and street infrastructure improvements along Myrtle Avenue, between 62nd Avenue and 66th Drive, where gaps currently exist.

Background

Council previously approved an intergovernmental agreement (IGA) with the Arizona Department of Transportation (ADOT) to provide funding for construction of improvements along Myrtle Avenue, from 62nd Avenue to 66th Drive, where gaps in the route currently exist. Improvements include realignment and widening of Myrtle Avenue to accommodate a five-foot-wide attached sidewalk on both the north and south sides of the road. New sidewalks will provide connectivity for elementary and high school students to existing school bus pick-up and drop-off locations, and pedestrian access to the adjacent Glendale High School.

Additional improvements include curbs and gutters, storm water drainage piping and associated retention basins, concrete driveway approaches, ADA-accessible ramps and replacement of affected asphalt pavement and bases. Overhead APS power lines and power poles have been relocated to newly acquired right-of-way dedicated to the city at the Spring City parcel, which is located just west of 63rd Avenue.

The sidewalk route along Myrtle Avenue provides an important connection within the publicly accessible pedestrian system and will complete the connection of existing sidewalks in the immediate area from 62nd Avenue to 66th Drive. Staff anticipates construction to begin in spring 2016.

Analysis

Since Council approval in October 2013, the design of this project has been completed. The design and project management costs totaled \$206,013, which included \$68,995 in Glendale funds, and \$137,018 in federal funds. In addition, Arizona Public Service (APS) relocated overhead electrical utilities at their expense (approximately \$200,000).

ADOT has recently completed the solicitation process for the construction of the project. The bids received came in significantly higher than the engineer's estimate of \$506,410 for total construction costs. In fact, the contractor ADOT selected bid \$582,000 for the construction of the improvements. Based upon the cost of recent construction projects, it is unlikely that reopening the project for bids will result in lower pricing.

Furthermore, repackaging the project to readvertise would also be an added cost to the city.

If construction does not move forward, the City of Glendale will be required to reimburse both APS and the Federal Highway Administration (FHWA) for costs incurred at their expense toward this project at a cost of approximately \$137,000.

Previous Related Council Action

At the October 22, 2013 meeting, Council approved an IGA with ADOT for the design and construction of improvements along Myrtle Avenue, from 62nd Avenue to 66th Drive, where gaps in the route currently exist.

Community Benefit/Public Involvement

No sidewalk currently exists along either side of Myrtle Avenue, from 62nd Avenue to 66th Drive, on which students can walk or wait for the bus. A narrow dirt path exists along the south side of the roadway, which leaves students vulnerable to traffic because there is no grade separation between the path and the road. When it rains, the path is muddy or fully submerged under water.

The proposed five-foot-wide sidewalk will provide students and their parents a separate place to walk and enable students to travel the entirety of Myrtle Avenue on a sidewalk. This sidewalk will enhance safety and encourage students to walk rather than drive to school. Also, there are two public transit routes with bus stops on Myrtle Avenue. This project will also complete the street by including curbs and gutters.

The Myrtle Avenue Infrastructure Improvements Project has received positive public input over the past two years from citizens attending the Glendale Onboard (GO) Program open houses and from presentations to the Citizens Transportation Oversight Commission. On April 25, 2013, preliminary design plans were presented at the GO Transportation Program Open House held at the Glendale Civic Center. The application for Safe Routes to School Program funding in the amount of \$400,000 for this project also received letters of support from Glendale High School, Desert Spirit Elementary School, Harold W. Smith School and Landmark School.

Budget and Financial Impacts

At the time of Council approval of the IGA for this project which was October 22, 2013, the estimated cost of construction was \$506,410. However, these projects take time to design and construct, and construction costs adjust to economic factors. The current total anticipated cost for the construction portion of this project, based on the low bid received, is \$582,000. The difference is \$75,590. There is a savings of \$10,000 in design funds that can be allocated to the project construction. This would reduce Glendale's additional share to \$65,590, which is available in the FY 2015-16 capital improvement plan.

While staff does not anticipate any additional project costs, should this project further exceed the estimate outlined in the IGA, the city will be responsible for the additional costs. Any additional costs exceeding \$50,000 will be brought to Council for approval.

Cost	Fund-Department-Account
\$65,590	2210-65094-551200, Myrtle Avenue Improvements

Capital Expense? Yes

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

AGREEMENT ESTIMATE RECAPITULATION

0000 MA GLN SF01501C
 SRS-TA-GLN-0(239)T
 MYRTLE AVENUE, 62ND AVENUE TO 66TH DRIVE

CREATED: 07/29/15
 REVISED: 11/06/15
 ENGINEER: Ghalib Mahdi

DESCRIPTION	FHWA CODE	ESTIMATED COST	FEDERAL PARTICIPATION	FEDERAL FUNDS	CITY OF GLENDALE FUNDS		LENGTH IN MILES
				100.00%	100.00%		
ROADWAY	4	333,333 151,667	333,333	333,333	151,667		0.480
SUBTOTAL		485,000	333,333	333,333	151,667		0.480
CONSTRUCTION ENGINEERING 14%	17	67,900	46,667	46,667	21,233		
CONSULTANT SERVICES 1%	17	4,850	3,333	3,333	1,517		
CONSTRUCTION CONTINGENCY 5%	4	24,250	16,667	16,667	7,583		
PROJECT TOTAL:		582,000	400,000	400,000	182,000		0.480

NOTE:

CITY CLERK ORIGINAL

ADOT CAR No IGA/JPA 13-0002426I
AG Contract No P001 2013003061
Project: Sidewalk Improvements
Section: Myrtle Avenue
Federal-aid No.: GLN-0(239)T
ADOT Project No.: SF0150
01C/01D02D
TIP/STIP No.: GLN12-102D;
GLN12-102C
Budget Source Item No.: N/A

INTERGOVERNMENTAL AGREEMENT

C-8675
10/22/2013

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF GLENDALE

THIS AGREEMENT is entered into this date November 5, 2013, pursuant to the Arizona Revised Statutes §§ 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State" or "ADOT") and the CITY OF GLENDALE, acting by and through its MAYOR and CITY COUNCIL (the "City") The State and the City are collectively referred to as "Parties "

I. RECITALS

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

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

3 The work proposed under this Agreement consists of design and construction of Myrtle Avenue realignment, new concrete curb gutter, sidewalks, and driveway approaches ADA accessible ramps, drainage appurtenances, and additional ancillary improvements along Myrtle Avenue from 62nd Avenue to 66th Drive, hereinafter referred to as the "Project" The improvements will connect existing sidewalk/curb and gutter currently installed near the two ends for the Project along with realignment of Myrtle Avenue and necessary drainage, facilities and basins, The Parties will jointly monitor the process of design and the State will advertise, bid and award, and administer the construction of the Project. The plans, estimates and specifications for the Project will be prepared and, as required, submitted to the State and Federal Highway Administration (FHWA) for its approval

4 The City in order to obtain federal funds for the design and/or construction of the Project, is willing to provide City funds to match federal funds in the ratio required or as finally fixed and determined by the City and FHWA, including actual construction engineering and administration costs (CE)

5. The interest of the State in this Project is the acquisition of federal funds for the use and benefit of the City and to authorize such federal funds for the Project pursuant to federal law and regulations. The State shall be the designated agent for the City

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

7. The federal funds will be used for the scoping/design and construction of the Project, including the construction engineering and administration cost (CE). The estimated Project costs are as follows:

SF015 02D (scoping/design):

Federal-aid funds @ 94.3% (capped)	\$137,018.00
City's match @ 5.7%	\$8,282.00
Design review fee (SF015 01D)*	\$ <u>60,713.00</u>
Subtotal – Scoping/Design	\$ 206,013.00

SF015 01C (construction):

Federal-aid funds @ 100% (capped)	\$ 400,000.00
City's additional funds @ 100%	\$ <u>106,410.00</u>
Subtotal – Construction** (State administered)	\$ 506,410.00

Summary:

Total Estimated City Funds	\$ 175,405.00
Total Federal Funds	\$ <u>537,018.00</u>

TOTAL Project Cost	\$ 712,423.00
---------------------------	----------------------

* (Included in the City Estimated Funds)

** (Includes 15% CE and 5% Project contingencies)

The Parties acknowledge that the final bid amount may exceed the initial estimate(s) shown above, and in such case, the City is responsible for, and agrees to pay, any and all eventual, actual costs exceeding the initial estimate. If the final bid amount is less than the initial estimate, the difference between the final bid amount and the initial estimate will be de-obligated or otherwise released from the Project. The City acknowledges it remains responsible for, and agrees to pay according to the terms of this Agreement, any and all eventual, actual costs exceeding the final bid amount.

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

II. SCOPE OF WORK

1. The State will:

a. Upon execution of this Agreement, be the designated agent for the City if the Project is approved by FHWA and funds for the Project are available

b. Upon execution of this Agreement, and prior to performing or authorizing any work, invoice the City for the State's design review fee, currently estimated at **\$60,713.00** and the City's estimated share of the Project design costs, currently estimated at **\$8,282.00**. Once the Project design costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs

c. Upon receipt of the design review fee and the City's estimated share of the Project design costs, currently estimated at **\$68,995.00** on behalf and with consent of the City, contract with one of the State's on-call consultants ("Consultant") to prepare all pertaining documents for the design and post-

design of the project; review and approve documents required by FHWA to qualify the Project for and to receive federal funds, and incorporate the City's comments as applicable. Such documents may consist of, but are not specifically limited to, environmental documents, including the preparation of the analysis requirements for documentation of environmental categorical exclusion determinations; review of reports, design plans, maps, and specifications; geologic materials testing and analysis; right-of-way requirements and activities and such other related tasks essential to the achievement of the objectives of this Agreement. Issue the rights-of-way clearance after review of the Consultant's right of way submittal.

d. Submit all documentation required to FHWA containing the above-mentioned Project with the recommendation that funding be approved for scoping/design. Request the maximum programmed federal funds for the scoping/design of this Project. The Project will be performed, completed, accepted and paid for in accordance with the requirements of Project plans and specifications.

e. Upon notification by the City and the Consultant of the completion of design and prior to bid advertisement, invoice the City for the City's share of the Project construction costs currently estimated at **\$106,410.00**. Once the Project costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs. Deobligate or otherwise release any remaining federal funds from the scoping/design phase of the Project.

f. Upon receipt of the local match and any contribution toward construction, submit all documentation required to FHWA with the recommendation that funding be approved for construction. Request the maximum programmed federal funds for the construction of this Project.

g. Upon authorization by FHWA and with the aid and consent of the City and the FHWA, administer the Project and proceed to advertise for, receive and open bids subject to the concurrence of the FHWA and the City, to whom the award is made for and enter into a contract(s) with a firm(s) for the construction of the Project.

h. Notify the City that the Project has been completed and is considered acceptable, coordinating with the City as appropriate and to turn over full responsibility of the Project improvements to the City. De-obligate or otherwise release any remaining federal funds from the construction phase of the Project within 90 days of final acceptance.

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

2. The City will:

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

b. Upon execution of this Agreement, prior to performing or authorizing any work, and within thirty (30) days of receipt of an invoice from the State, remit to the State the State's design review fee, currently estimated at **\$60,713.00** and the City's estimated share of the Project design costs, currently estimated at **\$8,282.00**. Be responsible for any difference between the estimated and actual design review costs.

c. Allow the State to enter into an agreement with the selected Consultant to provide services as required and requested throughout the design and post-design of the project. Review the design plans, specifications and other such documents and services required for the construction bidding and construction of the Project, including scoping/design plans and documents required by FHWA to qualify projects for and to receive federal funds. Provide design review comments to the State as appropriate.

d. Monitor, and as required, be involved with all rights-of-way activities and functions performed by the Consultant, including, but not specifically limited to, rights-of-way survey, delineation, appraisal, review appraisal, acquisition, relocation and property management as applicable.

e. Be responsible for all costs incurred in performing and accomplishing the work as set forth under this Agreement, not covered by federal funding. Should costs be deemed ineligible or exceed the maximum federal funds available, it is understood and agreed that the City is responsible for these costs, payment for these costs shall be made within thirty (30) days of receipt of an invoice from the State.

f. Upon completion of design and within thirty (30) days of receipt of an invoice from the State and prior to bid advertisement, remit to the State, the City's share of funds for the construction costs of the Project currently estimated at **\$106,410.00**. Once the Project costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs.

g. Certify that all necessary rights-of-way have been or will be acquired prior to advertisement for bid and also certify that all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the Project area, shall be removed from the proposed right-of-way, or will be removed prior to the start of construction, in accordance with The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended; 49 CFR 24.102 Basic Acquisition Policies, 49 CFR 24.4 Assurances, Monitoring and Corrective Action, parts (a) & (b) and ADOT ROW Manual. 8.02 Responsibilities, 8.03 Prime Functions, 9.07 Monitoring Process and 9.08 Certification of Compliance. Coordinate with the appropriate State's Right-of-Way personnel during any right-of-way process performed by the City, if applicable

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

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

j. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent of scope of the work requested by the City. Such changes require the prior approval of the State and FHWA. Be responsible for any contractor claims for additional compensation caused by Project delays attributable to the City. Payment for these costs shall be made within thirty (30) days of receipt of an invoice from the State.

k. Upon completion of the Project, assume responsibility for maintenance of the Project, at its own expense and as an annual item in its budget. Provide perpetual and proper maintenance of the Project. Upon completion of construction, be responsible for the electrical power and water necessary to maintain the Project.

l. Pursuant to 23 USC 102(b), repay all federal funds reimbursements for preliminary engineering costs on the Project if it does not advance to right-of-way acquisition or construction within ten (10) years after federal funds were first made available.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of said Project and related deposits or reimbursement, except any provisions for maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be cancelled at any time prior to the award of the Project construction contract, upon thirty (30) days written notice to the other party. It is understood and agreed that, in the event the City terminates this Agreement, the State shall in no way be obligated to maintain said Project. If the federal funding related to this Project is terminated or reduced by the federal government, or if Congress rescinds, fails to renew, or otherwise reduces apportionments or obligation authority, the State shall in no way be obligated for funding or liable for any past, current or future expenses under this agreement.

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

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

4. The cost of the project under this Agreement includes applicable indirect costs approved by the Federal Highway Administration (FHWA).

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

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

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

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

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

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

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

12. The Parties shall comply with the applicable requirements of Arizona Revised Statutes § 41-4401.

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

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

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

City of Glendale
Attn: Tom Kaczmarowski, P.E.
5850 W. Glendale Avenue
Glendale, Arizona 85301
(623) 930-3640
(623) 930-2861 Fax

With copies to:

City of Glendale
Attn: City Manager's Office
5850 W Glendale
Glendale, Arizona 85301

City of Glendale
Attn: Finance Department
5850 W Glendale Ave
Glendale, Arizona 85301

City of Glendale
Attn: Glendale Transportation
Services
5800 W Glenn Drive
Suite 315
Glendale, Arizona 85301

City of Glendale
Attn: Engineering Department
5850 W Glendale Ave.
Glendale, Arizona 85301

City of Glendale
Attn: City Attorney's Office
5850 W. Glendale Ave.
Suite 450
Glendale, Arizona 85301

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

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

CITY OF GLENDALE

STATE OF ARIZONA

Department of Transportation

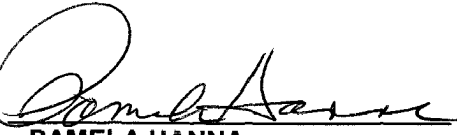
By 

BRENDA S. FISCHER
City Manager

By 

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

ATTEST:

By 

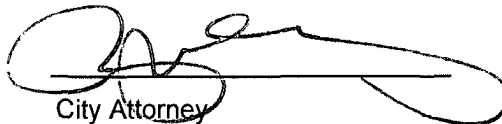
PAMELA HANNA
City Clerk

ATTORNEY APPROVAL FORM FOR THE CITY OF GLENDALE

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

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

DATED this 23rd day of October, 2013


City Attorney



THOMAS C. HORNE
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
TRANSPORTATION SECTION

SUSAN E. DAVIS
ASSISTANT ATTORNEY GENERAL
DIRECT LINE: 602-542-8855
E-MAIL: SUSAN.DAVIS@AZAG.GOV

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. P0012013003061 (ADOT IGA/JPA 13-0002426-I), an Agreement between public agencies, the State of Arizona and City of Glendale, has been reviewed pursuant to A.R.S. §§ 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: November 5, 2013

THOMAS C. HORNE
Attorney General

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:rl:#3599126
Attachment



Legislation Description

File #: 16-014, Version: 1

AUTHORIZATION TO ENTER INTO AMENDMENT NO. 1 TO THE LINKING AGREEMENT WITH DIVERSIFIED FLOORING SERVICES-PHOENIX, LLC FOR CARPET REPLACEMENT AT CITY FACILITIES

Staff Contact: Jack Friedline, Director, Public Works

Purpose and Recommended Action

This is a request for City Council to authorize the City Manager to enter into Amendment No. 1 to the Linking Agreement with Diversified Flooring Services-Phoenix, LLC to extend the agreement for a one-year period from January 31, 2016 through January 31, 2017, in an amount not to exceed \$340,000 for the term of the contract.

Background

The Public Works Department's Facilities Management Division is responsible for completing preventative maintenance, emergency repairs, and capital improvements to over 150 city buildings and over 71 park facilities. This request is to replace the carpeting at city buildings. The carpeting at these facilities is worn, frayed and torn and needs to be replaced in order to ensure the safety of all individuals who work at or visit these facilities.

Analysis

Diversified Flooring Services-Phoenix LLC was awarded their contract by the State of Arizona through a competitive bid process. Materials Management has reviewed and approved the utilization of the cooperative purchasing agreement through the State of Arizona for products and services. Materials Management concurs the cooperative purchase is in the City's best interest.

On January 27, 2015, Council approved Linking Agreement C-9666 with Diversified Flooring Services-Phoenix LLC for carpet replacement at city facilities in amount not to exceed \$200,000 for the term of the agreement. This original agreement ended on January 31, 2016 and the amount was not adequate to fund unanticipated carpet replacement and repairs throughout the year. In order to meet the demand, staff is requesting to extend the agreement for a one-year period from January 31, 2016 through January 31, 2017, in an amount not to exceed \$340,000 for the term of the contract.

Previous Related Council Action

On January 12, 2016, Council approved a budget appropriation contingency transfer to the capital projects building maintenance reserve fund for various critical and safety-related repair and replacement projects at city facilities.

On January 27, 2015, Council authorized entering into Linking Agreement with Diversified Flooring Services-Phoenix LLC for carpet replacement at city facilities.

Community Benefit/Public Involvement

The carpet projects at city facilities need to be completed as soon as possible for the safety and comfort of employees who work at and the citizens who visit these public facilities.

Cooperative purchasing typically produces the lowest possible volume prices and allows for the most effective use of available funding. The bids are publicly advertised and all Arizona firms have an opportunity to participate.

Budget and Financial Impacts

Funding is available in the fiscal year 2015-16 Building Maintenance Reserve fund budget. Expenditures with Diversified Flooring Services-Phoenix, LLC are not to exceed \$340,000 for the term of the contract; contingent upon Council Budget approval.

Cost	Fund-Department-Account
\$340,000	1000-81013-551000, Building Maintenance Reserve

Capital Expense? Yes

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from?

AMENDMENT NO. 1
TO
THE LINKING AGREEMENT
WITH
DIVERSIFIED FLOORING SERVICES-PHOENIX, LLC
(State of Arizona Contract No. ADSP013-04053, Contract No. C-9666)

This Amendment No. 1 ("Amendment") to the Linking Agreement ("Agreement") is made this _____ day of _____, 2016, ("Effective Date"), by and between the City of Glendale, an Arizona municipal corporation ("City") and Diversified Flooring Services-Phoenix, LLC, an Arizona limited liability company authorized to do business in Arizona ("Contractor").

RECITALS

- A. City and Diversified Flooring Services-Phoenix, LLC ("Contractor") previously entered into a Linking Agreement, Contract No. C-9666, dated January 27, 2015 ("Agreement") pursuant to the State of Arizona Contract No. ADSP013-04053; and
- B. The original State of Arizona Contract, Contract No. ADSP013-04053 had an initial one-year term beginning January 31, 2013 through January 30, 2014 with the option to extend an additional four (4) years in one-year increments; and
- C. The State of Arizona Contract, Contract No. ADSP013-040453, as amended, expires on January 31, 2017; and
- D. City and Contractor wish to modify and amend the Agreement subject to and strictly in accordance with the terms of this Amendment.

AGREEMENT

In consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Contractor hereby agree as follows:

- 1. **Recitals.** The recitals set forth above are not merely recitals, but form an integral part of this Amendment.
- 2. **Term.** The term of the Agreement is extended for a one-year period from January 31, 2016 through January 31, 2017, unless otherwise terminated or canceled as provided by the Agreement. All other provisions of the Agreement except as set forth in this Amendment shall remain in their entirety.
- 3. **Scope of Work.** The scope of work is unchanged.
- 4. **Compensation.** Section 3 of the Linking Agreement is hereby modified and amended as follows:

B. The total purchase price for the supplies and/or services purchased under this Agreement shall not exceed three hundred and forty thousand dollars (\$340,000) for the entire term of the Agreement.

5. **Insurance Certificate.** Current certificate will expire on November 1, 2016 and a new certificate applying to the extended term must be provided prior to this date to Materials Management and the Contract Administrator.
6. **Non-discrimination.** Contractor must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Contractor will require any Sub-contractor to be bound to the same requirements as stated within this section. Contractor, and on behalf of any subcontractors, warrants compliance with this section.
7. **Ratification of Agreement.** City and Contractor hereby agree that except as expressly provided herein, the provisions of the Agreement shall be, and remain in full force and effect and that if any provision of this Amendment conflicts with the Agreement, then the provisions of this Amendment shall prevail.

[Signatures on the following page.]

CITY OF GLENDALE, an Arizona
municipal corporation

Kevin R. Phelps, City Manager

ATTEST:

Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:


Michael D. Bailey, City Attorney

Diversified Flooring Services-Phoenix, LLC,
an Arizona limited liability company



By: David J. Stanton

Its: Partner

	Contract Change Order Summary		State of Arizona State Procurement Office 100 N. 15 TH Avenue, Suite 201 Phoenix, AZ 85007
	Contract No.: ADSP013-040453		
	Change Order No.: 08	Date: November 6, 2015	

The above-mentioned contract is hereby amended as follows:

- A. In accordance with Special Terms and Conditions Section 6, Contract Renewal, the contract is hereby extended through January 31, 2017.

ALL OTHER REQUIREMENTS, SPECIFICATIONS, TERMS AND CONDITIONS REMAIN UNCHANGED

ACKNOWLEDGEMENT AND AUTHORIZATION

This change order shall be fully executed upon the approval electronically in ProcureAZ by an authorized representative of the Contractor and applied to the contract by the Procurement Officer or delegate.



Diversified Flooring Services – Phoenix LLC
7898 E. Acoma Suite 107
Scottsdale, AZ 85260
Office: 480-967-7600
Fax: 480-967-4700
Floor Covering License: K-08 ROC 206271
Ceramic Tile License: K-48 ROC 206270
SBE

December 23, 2015

Mr. Ross Coffey
City of Glendale
6210 W. Myrtle Ave. Suite 111
Glendale, AZ 85301

sent via fax or email:
rcoffey@glendaleaz.com

Re: Request for renewal of Linking Agreement

Dear Mr. Coffey:

Pursuant to your request, Diversified Flooring Services – Phoenix LLC, would like to renew the Linking Agreement with the City of Glendale dated January 27, 2015.

The Linking Agreement was based on our State of Arizona Contract No. ADSP013-04053 which has been extended through January 31, 2017 and will most likely be extended through 2018.

Thank you very much for allowing us to be of service to you this past year and in previous years. We look forward to the opportunity of working with the City of Glendale for many years to come.

Sincerely,

Diversified Flooring Services – Phoenix LLC

David J. Stanton
Partner



Legislation Description

File #: 16-015, Version: 1

AUTHORIZATION TO ENTER INTO CONTRACT CHANGE ORDER NO. 1 TO A CONSTRUCTION AGREEMENT WITH TSG CONSTRUCTORS, LLC FOR CONSTRUCTION OF THE TRANSIT CENTER AT ARROWHEAD TOWNE CENTER

Staff Contact: Jack Friedline, Director, Public Works

Purpose and Recommended Action

This is a request for City Council to authorize the City Manager to enter into Contract Change Order No. 1 to a construction agreement with TSG Constructors, LLC for the construction of the transit center located at Arrowhead Towne Center in an amount not to exceed \$68,398, and to extend the contract an additional 120 days.

Background

On June 23, 2015, Council approved the construction agreement with TSG Constructors to build the transit center at Arrowhead Towne Center in an amount not to exceed \$617,000. The facility is now open and operational for our transit patrons. However, there are a couple of items that still need to be installed to complete the project. This change order is necessary to ensure the project is completed and the contractor is paid for these additional items, including some unforeseen expenditures.

Analysis

This project was constructed in partnership with Arrowhead Towne Center (Macerich) and concurrently with the mall's renovation project. One of the unforeseen expenses was for the rental of a crane needed to support a palm tree that was planted adjacent to the transit center while the contractor was digging out the area in preparation for the pouring of concrete. The palm trees were a late change to Macerich's project.

Another unforeseen expense was for the relocation of a water line and valve from under the concrete lanes that were poured in front of the transit center. Additional seats were also added to increase the capacity available for patrons waiting for buses.

It was necessary to add the additional 120 days to the contract in order for the contractor to complete the installation of the sign, soffit and additional seats. The original estimated completion date was November 1, 2015. The city granted the contractor an additional 20 days due to various delays such as weather, slope and electrical issues. With the additional 120 days requested with this change order, the new contract completion date will be March 19, 2016.

The contractor completed the majority of the project within the original allotted contract period. However, as this was a joint project with Macerich, there were some delays in the approval process for a couple of items.

Also, under the terms of the agreement with Macerich, there was a moratorium placed on any construction activity beginning in early November until after the holidays.

Previous Related Council Action

On June 23, 2015, Council approved a construction agreement with TSG Constructors, LLC for the purpose of constructing a transit center at Arrowhead Towne Center.

Community Benefit/Public Involvement

Comments from customers and mall management have been very positive regarding the new transit center. The transit center has provided transit users a shaded place to sit while waiting for the bus, and fits in with the renovation project in the mall's amphitheater area. The new design also provides buses a pullout area to load and unload passengers, which is a much safer environment for riders, pedestrians and mall customers. Staff continues to work with Valley Metro to get a Ticket Vending Machine (TVM) installed at the transit center, which will provide transit users another option for obtaining tickets.

Budget and Financial Impacts

Funding in the amount of \$68,398 for this Change Order is available in the GO Transportation Fund in the Fiscal Year 2015-2016 Capital Improvement Plan.

Cost	Fund-Department-Account
\$68,398	2210-65080-550800, Bell/101 Park&Ride/Transit Ctr

Capital Expense? Yes

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No



CITY OF GLENDALE, ARIZONA

CONTRACT CHANGE ORDER

Project Number: 141511

Change Order No: 1

Project: North Glendale Transit Center

Description of Change:

- 1. Crane for Palm Tree Support:** As part of collaboration efforts with the construction work being done by the mall, it was necessary to temporarily support a large palm tree during excavation for and placement of one of the transit center canopy foundations. This item is to cover the costs of supporting that tree with a crane during that process.
- 2. Additional Sign Cost:** At the time that the construction budget was established, the exact detailing of the project signs had yet to be determined. During construction, the design and construction teams collaborated with the mall in an effort to provide a uniform sign package throughout the property. The additional cost allows the signs to be completed within the design framework established by all parties.
- 3. Exposed Aggregate Sidewalk Finish:** During construction, the mall determined to utilize exposed aggregate concrete in lieu of colored concrete with a broom finish. This change reflects the cost difference between the originally planned colored concrete and the exposed aggregate finish needed to match the adjacent mall surfaces.
- 4. Water Line Modifications:** At the time bids were due, the design team and the City of Glendale Engineering Department were still negotiating the placement of concrete above existing +/- 30 year old water lines and valves. The engineering department determined that the water lines could remain, but the valves needed to be relocated to an area that would remain asphalt. This change order reflects the necessary adjustments to those valve locations as requested by the engineering department.
- 5. Pull and Conduit for TVM:** This change order is to cover the cost of conduit and an at-grade junction box for the future ticket vending machine.
- 6. Five Additional New Seats:** During construction, a portion of concrete wall was added to mitigate unforeseen existing site conditions. This change order is to provide additional seating to be placed along that new wall and increase seating capacity at the transit center.
- 7. Modify Five Seats:** This change order is to cover the cost to modify 5 seats such that they may be installed in a concrete wall.
- 8. Construction Contingency:** this allowance is at all times the property of the City and is for the sole purpose of reimbursing Contractor for any unforeseen or additional work requested by the City.

Change order includes labor, equipment, materials, and all services required to make additions, deletions, and changes, including changes to quantities and/or prices.

Total amount of change order #1: **\$68,398.00**

COMPLETION DATE:

Contract completion date prior to change order:	11/20/15
Change in contract time due to this change order:	120
New contract completion date:	03/19/16

COST:

Contract amount prior to this change order:	\$617,000.00
New increase (decrease), due to this change order:	\$68,398.00
New contract amount including this change order:	\$685,398.00

For Valuable Consideration, it is mutually agreed that the matter detailed above shall be done and payment made as shown herein on a Supplemental Agreement Change Order in accordance with the terms of the contract. For work being performed as a Supplemental Agreement Force Account Request, final payment shall be made as stipulated in the Standard Specifications and its supplements upon completion of said work.

APPROVALS:

Project Eng/Manager

City of Glendale
5850 W. Glendale Ave.
Glendale, AZ 85301

By: William L. Pacore

Date: 1/12/16

City of Glendale:

By: _____

Date: _____

Contractor:

TSG Constructors LLC
PO Box 71640
Phoenix AZ 85060

By: [Signature]

Date: 1/12/2016

City of Glendale:

By: _____

Kevin R. Phelps, City Manager

Date: _____



CITY OF GLENDALE, ARIZONA

CONTRACT CHANGE ORDER

Project Number: PROJECT NUMBER 141511

Change Order No: 01

Project: NORTH GLENDALE TRANSIT CENTER

1 Crane for Palm Tree Support	\$ 4,377.00
2 Additional Sign Cost	\$ 7,986.00
3 Exposed Aggregate Sidewalk Finish	\$ 2,581.00
4 Water Line Modifications	\$ 40,212.00
5 Pull and Conduit for TVM	\$ 680.00
6 Five Additional New Seats	\$ 6,738.00
7 Modify Five Seats	\$ 824.00
8 Construction Contingency	\$ 5,000.00

Total Amount of Change Order #01:	\$ 68,398.00
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Legislation Description

File #: 16-016, Version: 1

AUTHORIZATION TO ENTER INTO A LINKING AGREEMENT WITH PROGRESSIVE SERVICES INC., DOING BUSINESS AS PROGRESSIVE ROOFING, FOR ROOFING REPAIRS AT CITY FACILITIES

Staff Contact: Jack Friedline, Director, Public Works

Purpose and Recommended Action

This is a request for City Council to authorize the City Manager to enter into a linking agreement with Progressive Services Inc., doing business as Progressive Roofing, for roof repairs at city facilities in an amount not to exceed \$420,000 annually, and to authorize the City Manager to renew the agreement, at the City Manager's discretion, for an additional three, one-year renewals, not to exceed \$1,680,000 for the full term of the agreement.

Background

The Public Works Department's Facilities Management Division is responsible for completing preventative maintenance, emergency repairs, and capital improvements to over 150 city buildings and over 71 park facilities. The agreement with Progressive Roofing will be utilized for roof repair or replacement to city facilities on an as needed basis.

Progressive Roofing was awarded a bid by Mohave Arizona Cooperative Purchasing and staff is requesting to utilize the cooperative purchase with Strategic Alliance for Volume Expenditures (SAVE). SAVE is a consortium of local municipalities, in which Glendale is a member. Contract No. 13X-PRO-0417 was awarded on April 17, 2014 and ends on April 17, 2016, and includes an option to renew the term of the agreement for an additional three years, in one-year periods, allowing the agreement to be extended through April 17, 2019.

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

Progressive Roofing was awarded their contract by Mohave Arizona Cooperative Purchasing through a competitive bid process. Materials Management has reviewed and approved the utilization of the cooperative purchasing agreement through the State of Arizona for products and services. Materials Management concurs the cooperative purchase is in the City's best interest.

Previous Related Council Action

On January 12, 2016, Council approved a budget appropriation contingency transfer to the capital projects building maintenance reserve fund for various critical and safety-related repair and replacement projects at city facilities.

On January 27, 2015, Council approved Linking Agreement, C-9667, with Progressive Roofing for roofing repairs at city facilities.

On November 24, 2014, Council approved budget appropriation contingency transfer to capital projects building maintenance reserve fund for various critical and safety-related repair and replacement projects at city facilities.

On November 27, 2007, Council adopted resolution No. 4113 New Series authorizing and directing the entering into of an Intergovernmental Agreement with Mohave Educational Services Cooperative, Inc., for a cooperative purchasing agreement.

Community Benefit/Public Involvement

The roofs that need repair have exceeded their useful life, and the roof repairs need to be completed as soon as possible to preserve the integrity of the entire building and to prevent further or future damage to the building interior.

Cooperative purchasing typically produces the lowest possible volume prices and allows for the most effective use of available funding. The bids are publicly advertised and all Arizona firms have an opportunity to participate.

Budget and Financial Impacts

Funding is available in the Fiscal Year 2015-16 Public Works Operating and Maintenance budget. Expenditures with Progressive Roofing are not to exceed \$1,680,000 for the entire term of the agreement; contingent upon Council Budget approval.

Cost	Fund-Department-Account
\$1,680,000	1000-81013-551000, Building Maintenance Reserve

Capital Expense? Yes

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from?

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
PROGRESSIVE SERVICES INC., DBA PROGRESSIVE ROOFING**

THIS LINKING AGREEMENT (this "Agreement") is entered into as of this _____ day of _____, 20____, between the City of Glendale, an Arizona municipal corporation (the "City"), and Progressive Services Inc., dba Progressive Roofing, an Arizona corporation authorized to do business in Arizona ("Contractor"), collectively, the "Parties."

RECITALS

- A. On April 17, 2014, under the S.A.V.E Cooperative Purchasing Agreement, the Mohave Arizona Cooperative Purchasing entered into a contract with Contractor to purchase the goods and services described in the Roof and Roofing Systems – Installation, Products, and Services Contract No. 13X-PRO-0417 ("Cooperative Purchasing Agreement"), which is attached hereto as Exhibit A. The Cooperative Purchasing Agreement permits its cooperative use by other governmental agencies including the City.
- B. Section 2-149 of the City's Procurement Code permits the Materials Manager to procure goods and services by participating with other governmental units in cooperative purchasing agreements when the best interests of the City would be served.
- C. Section 2-149 also provides that the Materials Manager may enter into such cooperative agreements without meeting the formal or informal solicitation and bid requirements of Glendale City Code Sections 2-145 and 2-146.
- D. The City desires to contract with Contractor for supplies or services identical, or nearly identical, to the supplies or services Contractor is providing other units of government under the Cooperative Purchasing Agreement. Contractor consents to the City's utilization of the Cooperative Purchasing Agreement as the basis of this Agreement, and Contractor desires to enter into this Agreement to provide the supplies and services set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated by reference, and the covenants and promises contained in this Linking Agreement, the parties agree as follows:

1. Term of Agreement. The City is purchasing the supplies and/or services from Contractor pursuant to the Cooperative Purchasing Agreement. According to the Cooperative Purchasing Agreement award and rate sheet, which are attached hereto as part of Exhibit B, purchases can be made by governmental entities from the date of award, which was April 17, 2014, until the date the contract expires on April 17, 2016, unless the term of the Cooperative Purchasing Agreement is extended by the mutual agreement of the original contracting parties. The Cooperative Purchasing Agreement, however, may not be extended

beyond April 17, 2019. The initial period of this Agreement, therefore, is the period from the Effective Date of this Agreement until April 17, 2016. The City Manager or designee, however, may renew the term of this Agreement for 3 one-year periods until the Cooperative Purchasing Agreement expires on April 17, 2019. Renewals are not automatic and shall only occur if the City gives the Contractor notice of its intent to renew. The City may give the Contractor notice of its intent to renew this Agreement 30 days prior to the anniversary of the Effective Date to effectuate such renewal.

2. Scope of Work; Terms, Conditions, and Specifications.

- A. Contractor shall provide City the supplies and/or services identified in the Scope of Work attached as Exhibit C.
- B. Contractor agrees to comply with all the terms, conditions and specifications of the Cooperative Purchasing Agreement. Such terms, conditions and specifications are specifically incorporated into and are an enforceable part of this Agreement.

3. Compensation.

- A. City shall pay Contractor compensation at the same rate and on the same schedule as the Cooperative Purchasing Agreement, unless the City and Contractor agree to a different schedule, as provided in Exhibit D.
- B. The total purchase price for the supplies and/or services purchased under this Agreement shall not exceed four hundred twenty thousand dollars (\$420,000) annually or one million six hundred eighty thousand dollars (\$1,680,000) for the entire term of the Agreement.

4. Cancellation. This Agreement may be cancelled pursuant to A.R.S. § 38-511.

5. Non-discrimination. Contractor must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Contractor will require any Sub-contractor to be bound to the same requirements as stated within this section. Contractor, and on behalf of any subcontractors, warrants compliance with this section.

6. Insurance Certificate. A certificate of insurance applying to this Agreement must be provided to the City prior to the Effective Date.

7. E-verify. Contractor complies with A.R.S. § 23-214 and agrees to comply with the requirements of A.R.S. § 41-4401.

8. Notices. Any notices that must be provided under this Agreement shall be sent to the Parties' respective authorized representatives at the address listed below:

City of Glendale
Ron Gouger
6210 W. Myrtle Avenue, Suite #111
Glendale, Arizona 85301
623-930-2647

and

Progressive Services, Inc., dba Progressive Roofing
c/o Mark Farrell
23 N. 35th Avenue
Phoenix, AZ 85009
602-278-4900

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

"City"

"Contractor"

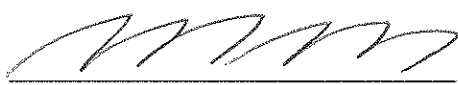
City of Glendale, an Arizona
municipal corporation

Progressive Services Inc. dba Progressive,
Roofing, an Arizona corporation

By:

Kevin R. Phelps
City Manager

By:



Name: Mark Farrell
Title: President

ATTEST:

Pamela Hanna (SEAL)
City Clerk

APPROVED AS TO FORM:

Michael D. Bailey
City Attorney

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
PROGRESSIVE SERVICES INC., DBA PROGRESSIVE ROOFING**

EXHIBIT A

Mohave Educational Services Cooperative Contract No. 13X-PRO-0417 – Roof and Roofing
Systems – Installation, Products, and Services



Browse by contract category

-or-

Search by keyword



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Mohave (928) 753-6945 ASPIN (520) 888-9664

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Overview

Pricing & Docs

More Info



PROGRESSIVE ROOFING

Visit Website

23 N. 35th Avenue
Phoenix AZ 85009**Main Contact:**Alice Hunt
Phone: 602-278-4900**Contract:**

13X-PRO-0417

Final Expiration:

04/17/2019

Next Renewal:

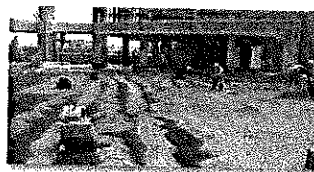
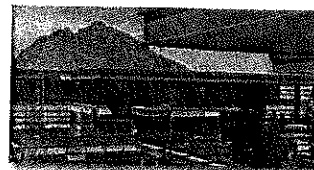
04/17/2016

Mohave Contacts:Procurement Specialist:
Griselda CruzContract Specialist
Mike Nentwig**Products/Services:****Progressive Roofing provides:**

- Installation of roofing systems
- Repair of roofing systems
- Restoration of roofing systems

Manufacturers include:

- Atlas Roofing - (shingles)
- Bayer - (insulation)
- Burke industries - (asbestos removal)
- Carlisle - (TPO, EPDM systems)
- Cetco - (clay roofing products)
- Fibertite - (roofing membrane)
- GAF - (shingles & roofing materials)
- Johns Manville - (SBS, PVC roofing/shingles and insulation)
- Jones-Blair - (coatings)
- Metal Sales - (metal roofing)
- Polyglass - (membranes, coatings)
- Quest - (coatings)
- RMP Rollfab - (metal roofing)
- Sika - (membranes, coatings)
- Siplast - (SBS roofing systems)
- The Garland Company - (commercial roofing systems)

**About Vendor:**

MOHAVE

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Due Diligence

News & Events

Contact Us

Current Mohave Members

Current ASPIN Members

Resources/Brochures

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3/10/2015

Extension of Contract

(Page 1 of 3)

Alice Hunt
Progressive Roofing
23 N. 35th Avenue
Phoenix, AZ 85009

RE: Contract # 13X-PRO-0417 Extension Agreement made by and between Progressive Roofing and Mohave Educational Services Cooperative (Mohave).

* In accordance with its terms, Mohave desires to extend contract 13X-PRO-0417 for a period of one (1) year, beginning 4/17/2015. The extension shall be under the same terms and conditions contained therein.

Please indicate your desire to extend by completing the appropriate information below and on the following pages. If the contract is extended, Progressive Roofing agrees to provide products or prices as per 13X-0131.

We desire to **extend** the contract as specified above, and agree to abide by the original terms & conditions, and any attached clarifications.

Signature  Title PRESIDENT

Typed/Printed Name MARK FARRELL Date 3/11/15

Please check the information below.

POs Att: Order Desk
Progressive Roofing
23 N. 35th Avenue
Phoenix, AZ 85009

Remit to: Progressive Roofing
Accounts Receivable
23 N. 35th Avenue
Phoenix, AZ 85009

Member Contact: Alice Hunt
Contract Administrator: Alice Hunt
Phone Number: 602-278-4900
Fax Number: 602-278-3199

If both pages of this notice are not received at Mohave's Kingman office on or before 4/17/2015, orders may be held without processing. Email or Fax completed extension to contracts@mesc.org or (928) 718-3238

To terminate contract 13X-PRO-0417 effective 4/17/2015, send a notice of such to (928) 718-3238 or email contracts@mesc.org. You agree to complete any authorized work or orders received prior to that date.

Extension of Contract

(Page 2 of 3)

Pricing Update

We list your contract as utilizing Fixed. Please confirm the following regarding pricing under your contract:

____ Our contract utilized firm-fixed pricing. We agree to hold the current prices until the next contract renewal date of 4/17/2016.

____ Our contract utilized percentage off MSRP/Retail pricing. The current price lists/catalogs are still applicable.

☒ We will provide new price lists/catalog by 4/10/15. (Insert Date)

Remember that your firm cannot quote any new products contained in pricing submitted with your contract renewal until it has been reviewed and approved by your Contract Specialist. Current contract pricing will remain in effect until new pricing has been reviewed and approved.

Vendor Logo

Currently, we have the following logo on our website for our members to view:



If you wish to revise or update the information, keep the following key points in mind:

• *What file types are acceptable?* Vector point files are highly recommended (such as .ai or .eps files). If you don't have access to a vector file, a large hi-resolution (approx. 150-300 dpi) JPEG, TIFF, BITMAP, GIF or PNG file will work. Having a high dpi will help keep images looking sharp if we need to resize the logo.

• *What file size is recommended?* There is no limitation to the logo file size.

Vendor Benefits Description

Currently, we have the following information on our website detailing the benefits of your contract for our members to view:

Extension of Contract

(Page 3 of 3)

Vendor Benefits Description (continued)

If you wish to revise or update the information, keep the following key points in mind:

- The description should be 150-200 words that explain the benefits that your company can provide to our members through your Mohave contract.
- This description should give a brief overview for members who may be accessing information about your contract via our Product Vendor Finder.
- Please note that Mohave reserves the right to revise or modify the information provided either for content or length.

Email any information corrections, or additional information to contracts@mesc.org. If you have any questions, contact your Contract Specialist either via email mike@mesc.org or phone 928-718-3203.



ARIZONA COOPERATIVE PURCHASING

The delivery address for
solicitations is now:
625 East Beale Street
Kingman, AZ 86401

INVITATION FOR BID 13X-0131

Roof and Roofing Systems - Installation, Products, and Services

Pursuant to the provisions in the Arizona procurement rules and code, Mohave Educational Services Cooperative, Inc. seeks bids to establish contracts for roof and roofing systems – installation, products, and services.

Due Date & Time: January 31, 2014 @ 3:00 p.m. (local Arizona time)

Pre-Bid Conference: FRIDAY, JANUARY 3, 2014 AT 10:00 A.M. (LOCAL ARIZONA TIME)
WEBEX MEETING – AUDIO ONLY
FOR LOG-IN INFORMATION CONTACT MICHAEL CARTER, CPPB, NO
LATER THAN THURSDAY, JANUARY 2, 2014.

LAST DAY FOR QUESTIONS: JANUARY 24, 2014

IFB QUESTIONS MUST BE DIRECTED TO:

Michael S. Carter, CPPB, Contract Specialist I
Email: contracts@mesc.org
Telephone: (928) 718-3222

This solicitation consists of instructions to bidders, scope of work/services, specifications, evaluation requirements, special terms and conditions, general terms and conditions, pricing workbook, award criteria, offer & acceptance, and form of contract. Bidders are strongly encouraged to carefully read the entire contents of this solicitation prior to submitting a bid. Failure to examine any of the requirements will be at the bidder's sole risk.

To be considered, bids shall be delivered to Mohave Educational Services Cooperative, Inc. (Attn: Contracts Dept.), 625 East Beale Street, Kingman, AZ 86401 in a sealed envelope or box with IFB 13X-0131, bidder's name, mailing address, and bid due date and time clearly indicated on the envelope or box. Bids must be in the actual possession of Mohave on, or prior to the exact time and date indicated above. Bids shall be opened immediately following the bid due date and time, with the name of each bidder and a sample of prices publicly read and recorded. Late bids shall not be considered. Kingman is considered a "rural" area by many express delivery carriers and thus, they do not guarantee priority (next day) delivery by a specific time. Potential bidders are encouraged to keep this in mind when arranging delivery of their bids and are advised herein that late bids shall be rejected.

Mohave reserves the right to cancel this solicitation and/or reject all bids in whole or in part if Mohave determines that cancellation and/or rejection is advantageous to Mohave and/or its members.

Julia E. Tribbett
Executive Director
Mohave Educational Services Cooperative, Inc.

Publish Date: December 20, 2013

Template Rev. 10-12

Special Terms and Conditions

Place after Tab 1d

The following Special Terms and Conditions are in addition to the applicable General Terms and Conditions and Standard Terms and Conditions for Construction that appear on pages 75 - 93. Please review them and complete the *Special Terms and Conditions Specifications Acceptance Form* (page 95).

1. DELIVERY

- 1.1. **Default in one installment to constitute total breach:** Contract vendor shall deliver conforming materials in each installment or lot under this contract and may not substitute nonconforming materials. Mohave reserves the right to declare a breach of contract if contract vendor delivers nonconforming materials to any member under this contract.
- 1.2. **Defective goods:** Contract vendor agrees to pay for return shipment of goods that arrive in a defective or non-operable condition. Contract vendor shall arrange for return shipment of damaged or defective goods.
- 1.3. **Delivery time:** Failure to deliver any order within the time frame specified on the purchase order may result in cancellation of that purchase order.
- 1.4. **Improper delivery:** If the goods or tender of delivery fail in any respect to conform to this contract, member may reject the whole, accept the whole, or accept any commercial unit or units and reject the rest.
- 1.5. **Restocking fees:** A restocking fee may only be charged on products ordered and delivered to member's site. Restocking fees in excess of fifteen percent (15%) shall not be allowed. Contract vendor may waive restocking fees. Shipping charges on returns must be identified. Restocking and return shipping charges shall be identified on the price workbook.

2. EVALUATION & AWARD

- 2.1. **Total costs:** Total member costs include energy, facilities, repair costs, present values of money, contract vendor charges, personnel costs and all other identifiable member costs. Contract vendor charges include all the costs of contract vendor support, materials, transportation and all other identifiable costs associated with the bid. Contract vendor costs means the costs of all hardware, materials, software, transportation, contract vendor support and all other identifiable costs associated with the bid. Contract vendor support means services provided by the contract vendor, such as consulting, education, training, management of the system purchased and other integration and maintenance support.

3. FORM OF CONTRACT

- 3.1. **Contract vendor contract documents:** Mohave will review proposed contract vendor contract documents. Contract vendor's contract documents shall not become part of Mohave's contract with contract vendor unless, and until, an authorized representative of Mohave reviews and approves them. If a firm submitting a bid requires member to sign an additional agreement, a copy of the proposed agreement shall be included with the bid.
- 3.2. **Form of contract:** The form of contract for this solicitation shall be the Invitation For Bid, the awarded bid(s), and properly issued member purchase orders referencing the requirements of the Invitation For Bid.
- 3.3. **Parol evidence:** The contract represents the final written expression of agreement. All agreements are contained herein and no other agreements or representations that materially alter it are acceptable.

4. INSTALLATION

4.1. HVAC and other equipment removal, reinstall and/or relocate: Air conditioning units and other roof equipment shall be moved as required for roof installation and in accordance with plans and specifications. When roof units are moved, they shall be placed into a protected area so as not to damage any part or component.

An HVAC mechanical, electrical and plumbing contractor properly licensed to perform such work shall perform all disconnections, reconnections and minor work. Any damage caused by the disconnection, storage, or reconnection of roof equipment shall be repaired at no additional cost to the member.

4.2. Roofing products and systems: Roofing product and system installations shall be done in a reasonable amount of time and be scheduled directly with the member. Installation shall be in accordance with the manufacturer's instructions and shall be accomplished by skilled and properly licensed individuals. All roof systems offered and installed shall meet all applicable federal and state building codes. Contract vendor shall agree that all systems installed shall be 100% asbestos free, have UL labels and be warranted by the contract vendor for, at minimum, a ten-year period (excluding 5-year roofing systems).

Contract vendor shall not permit any building to be occupied while being re-roofed with a liquid roofing system (spray polyurethane).

Workmanship shall be superior and comply with National Roofing Contractors Association (NRCA), Underwriters Laboratory (UL) and roofing material manufacturer's guidelines and specifications.

Upon completion of a roof replacement and member acceptance, contract vendor shall deliver to the member, at minimum, a ten (10) year roofing system warranty (excluding 5-year roofing systems) and owner's manual. Contract vendor shall, at predetermined points during the term of this warranty, inspect and provide a written executive summary for the member.

5. INSURANCE

5.1. Liability insurance: Prior to commencing services under this contract, contract vendor shall procure and maintain during the life of this agreement, comprehensive public liability insurance, to include automobile liability, providing limits of not less than \$5,000,000 per occurrence. Evidence of the required insurance shall be provided by means of a certificate of insurance with your bid. In addition, contract vendor must be willing to provide, upon request, identical certification of insurance to any member using this contract. A certificate naming Mohave as the certificate holder, or a sample certificate may be provided. However, before any orders are processed, contract vendor must provide a certificate that names Mohave as the certificate holder. **Place after Tab 2b.**

5.2. Subcontractor insurance: Prior to commencing any work, any subcontractor shall procure and maintain at its own expense until final acceptance of the work, insurance coverage in a form and from insurers acceptable to the prime contractor. All subcontractors will provide workers' compensation insurance, which waives all subrogation rights against the prime contractor and member.

5.3. Workers' compensation insurance: Contract vendor shall also procure and maintain during the life of this agreement, workers' compensation insurance for all of contract vendor's employees engaged in work under the contract. All workers' compensation insurance will be in compliance with state statute and evidenced by a certificate of insurance.

6. MAINTENANCE FACILITIES AND SUPPORT

It is preferred that each contract vendor should have maintenance facilities and a maintenance support available for servicing products throughout Arizona, or the regions specified in their offer. If a third party is used to provide maintenance or warranty work, bidder must include details of any such arrangement in the bid. Trained and qualified technicians shall be available to cover all parts of the state, or specific regions within the state for regional offers. It is preferred that maintenance services are available within 24 hours. Maintenance facilities must have sufficient parts inventory to provide quality service on products sold to members.

7. MANUFACTURER SUPPORT

Bidders submitting bids as a manufacturer's representative must be able, if requested by Mohave, to supplement the bid with a letter from the manufacturer certifying that bidder is a bona fide dealer for the equipment offered, that bidder is authorized to submit a bid on such equipment, and which guarantees that should bidder fail to satisfactorily fulfill any obligations established as a result of the award of contract, the manufacturer will either assume and discharge such obligations or provide for their competent assumption by one or more bona fide dealers for the balance of the contract period.

8. OFFER ACCEPTANCE PERIOD/WITHDRAWAL

Bid acceptance period: A bid submitted in response to this solicitation shall be valid and irrevocable for one hundred twenty (120) days after opening time and date.

9. OVERVIEW

9.1. Bidder qualifications: It is preferred that the bidder have extensive knowledge and at least three (3) years experience with the installation, maintenance and provision of the services offered. Mohave reserves the right to accept or reject newly-formed companies solely based on information provided in the bid and/or its own investigation of the company.

9.2. Bid Bond - Bidder shall provide an original bid bond or alternate bid security in the amount of **\$100,000**. *Place after Tab 1f.* Note: Bid security as a percentage of the bid value (i.e. - 10 % of contract award) is not acceptable.

9.3. Bonding Capacity - The required minimum single job bonding capacity for this contract shall be \$1,750,000. Provide a letter from your bonding agency describing your current bonding capacity (single and aggregate levels) and how much bonding capacity will be available for this contract. An agent of your licensed bonding agency shall sign the letter. If the original letter is not signed and/or has conflicting information, it may render your bid nonresponsive. *Place letter from bonding agency after Tab 1f.*

9.4. Order cycle overview:

1. Member forwards purchase orders to Mohave that lists the contract number. Vendor listed on the purchase order is contract vendor.
2. Mohave reviews and emails member order with "MESC Reviewed" stamp, to contract vendor and member.
3. Contract vendor provides product/services.
4. Contract vendor invoices member.
5. Member pays contract vendor.
6. Contract vendor sends monthly Reconciliation Report to Mohave.
7. Contract vendor remits administration fee monthly, based on invoices paid.
8. Mohave audits selected purchases.

10. PRICING

10.1. Administration fee: Mohave's 1% administration fee shall be included in bidder's net price. Contract vendor shall not add the administration fee to approved contract prices. The value of trade-ins or rebates shall not affect the amount of administration fee paid to Mohave.

10.2. Application of pricing: The date a member's purchase order is received by Mohave and/or a contract vendor's quote will generally be used to determine the contract pricing that is in effect for that order. However, other factors may apply.

10.3. Basis for pricing: Contract pricing under this IFB must be based upon:

1. Percent of discount(s) off manufacturer's price list(s) or list price with economic adjustment (contingencies for economic price adjustments must be identified in the bid);
2. Firm fixed price with economic adjustment (contingencies for economic price adjustments must be identified in the bid); or
3. A combination of the above.

10.4. Combination pricing: Bids for combination contracts shall clearly identify items covered by discount(s) and those with fixed prices. Prices for such contracts shall be adjusted as identified for the appropriate contract type above.

- 10.5. Decimal places:** Pricing shall use a maximum of three (3) decimal places, unless specified otherwise.
- 10.6. Discounts:** Discounts must clearly identify the percent of discount to apply to the price list. If multiple discounts apply, bidder shall clearly indicate the discounts and applicable materials or services. Bidder shall agree that there will be no reduction in discount(s) during the term of contract.
- 10.7. Effect of price:** No contract shall be awarded solely on the basis of price.
- 10.8. New price lists:** New price lists, and/or workbooks may be submitted for review throughout the term of the contract. Mohave will review new price lists, and/or workbooks to determine if the new prices or an alternative option is in the members' best interests. New price lists, and/or workbooks shall apply to the contract only upon approval from Mohave. New price lists, and/or workbooks found to be non-competitive at any time during the contract will be grounds for terminating the contract.
- 10.9. Overcharges by antitrust violations:** Mohave maintains that overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, contract vendor assigns to member any and all claims for such overcharges as to the goods or services used to fulfill the contract.
- 10.10. Percent of discount as fixed price:** Percent of discount bids that are not based upon published price lists will be administered as fixed price contracts.
- 10.11. Price lists:** A copy of the latest edition of the price list to which discount shall be applied shall be included with bid. Bidder shall attach all applicable price lists. Submission of outdated price lists may result in rejection of bid.
- 10.12. Pricing increases and adjustment:** Bids shall include prices for any and all items. Prices shall be firm until each anniversary date of contract, unless there is an occurrence of one or more allowable economic price adjustment contingencies outlined in bid. If allowable price adjustment contingencies occur, contract vendor may submit a fully documented request for price adjustment to Mohave. The documentation must substantiate that any requested price increase was clearly unpredictable at the time of bid submittal and results from an increased cost to contract vendor that was out of contract vendor's control.
- 10.13. Price reduction and adjustment:** Price reduction may be offered at any time during a contract and shall become effective upon notice of acceptance from Mohave. Special time-limited reductions are permissible under the following conditions: 1) reduction is available to all members equally; 2) reduction is for a specific time period, normally not less than 30 days; 3) original price is not exceeded after the time-limit; and 4) Mohave has approved the new prices prior to any offer of the prices to a member.
- Contract pricing based upon regions (as specified elsewhere in this solicitation or in approved contract pricing) may base price reductions upon those contract-approved regions. Mohave shall be the sole judge on the acceptance of price reductions under an awarded contract. Contract vendor shall offer Mohave any published price reduction during the contract period. Mohave shall be the sole judge on the acceptance of price reductions under an awarded contract. Contract vendor shall offer Mohave any published price reduction during the contract period.
- Contractor with pricing based upon regions (as specified elsewhere in this solicitation or in approved contract pricing) may base price reductions upon any or all contract-approved regions.
- 10.14. Price review:** Mohave will review requests for price adjustments to determine if the new prices or another option is in the members' best interests. New prices shall apply to the contract upon approval from Mohave. Price changes shall be a factor in contract renewal.
- 10.15. Price workbook:** All bidders must complete the 13X roofing workbook titled "13X roofing workbook.xlsx". Provide a CD or similar electronic media device (DVD, USB thumb drive, etc.) with the completed workbook in your response. Paper copies of the workbook are required. Failure to provide and complete the 13X roofing workbook shall render your bid nonresponsive. *Place after Tab 3a.*
- If awarded a contract, all future pricing updates shall be based on the electronic workbook, or similar approved format.

10.16. Reimbursement for transportation, mileage, lodging, meals and incidental expenses (M&IE): Contract vendor may charge for transportation, mileage, lodging, M&IE, costs for out of area employees working in Arizona under this contract. Out of area is defined as 50 miles from the point of origin. An overnight stay is required for lodging reimbursement. Mileage reimbursement shall be at a specified rate. Transportation charges are separate from mileage, and may include airfare, car rental, etc.

Reimbursements under this section shall not exceed the rates listed in approved pricing, and may not exceed the actual charge. To be eligible for reimbursement, estimated charges must be on the quote and approved by the member. Receipts for such reimbursements must be provided upon request from the member.

10.17. Special pricing offers: Special pricing offers (i.e., volume discounts) must apply to all Mohave orders of similar size and scope. Special pricing limited to a single member is not acceptable. Mohave must approve special pricing before it is offered to any member.

10.18. Travel time, mobilization, and trip charges: Contract vendor may charge for travel time, mobilization, or trip charges under this contract. Travel time is a labor rate charged for time in transit to and from a job site, per person. Travel time may be used with mileage reimbursement, but shall be listed separately. Travel time charges are only applicable for out of area employees working in Arizona under this contract. Out of area is defined as 50 miles from the point of origin.

Mobilization or trip charges are charges for the movement of equipment to the jobsite necessary to complete a job. Mobilization or trip charges may be based on mileage from the point of origin. Charges under this section shall not exceed the rates listed in approved pricing. Such charges must be on the quote and approved by the member.

11. SAMPLES, SAMPLE TESTING

11.1. Sample evaluation: Samples may be requested by member for compliance with manufacturer specifications and evaluated as to materials used in construction, quality and workmanship, durability, adaptability to the use for which the items were intended, and overall appearance. Member may request samples for testing by an independent firm or laboratory at any time prior to, during, or after completion of project. Should test results prove that a material is not functionally equal to specified material, the contract vendor shall pay for all testing, and installed roofing found not to comply with the specifications shall be removed and replaced with conforming materials at no charge, or change in the contract price

11.2. Sample requirements: Bidder shall provide adequate samples and detailed specifications for any item offered upon member request. Samples must be submitted within ten (10) days of request from member.

11.3. Sample submittals: Samples shall be free of charge and submitted and removed by bidder at bidder's expense. Samples may be held for comparison with deliveries. Member shall not be held responsible for samples damaged or destroyed in examination or testing. Samples not removed within thirty (30) days after notice to bidder will be considered abandoned, and member shall have the right to dispose of them.

12. SITE REQUIREMENTS

12.1. Accessibility: For roof work areas that are not accessible through regular means and methods, surcharges will be allowed. These surcharges shall only apply when workers and equipment shall be transported over one or more additional roof areas not being worked on, or where fall protection is required in excess of warning lines. These surcharges shall be clearly identified in your pricing workbook.

12.2. Cleanup: Contract vendor shall clean up and remove all debris and rubbish resulting from their work as required or directed by member. Upon completion of the work, the premises shall be left in good repair and unobstructed condition.

12.3. Contract vendor employee fingerprinting: contract vendor and its employees or subcontractors working under an awarded contract who are required to provide services on a regular basis at an individual school, shall obtain and present a valid Department of Public Safety fingerprint clearance card in accordance with A.R.S. § 15-512 (H). The fingerprint card shall be issued pursuant to Title 41, Chapter 12, Article 3.1. Charges for such fingerprint checks will be the responsibility of the contract vendor, subcontractor or individual employee as determined by the member.

An exception to this requirement may be authorized in member's Governing Board policy, for persons who, *"as part of the normal job duties of the persons, are not likely to have independent access to or unsupervised contact with pupils."*

Contract vendor and its employees or subcontractors shall not provide services on school district property until so authorized by the school district. Additionally, contract vendor shall comply with applicable governing board fingerprinting policy(ies) at the school district where services are provided.

12.4. Onsite contract vendor responsibilities: The contract vendor is responsible for ensuring that all onsite work performed under contract meets or exceeds the OSHA standards, and is responsible for ensuring safe work performance of employees and subcontract vendors. These standards apply to onsite activities and equipment operation that support the contract work.

Contract vendor and its employees or subcontractors shall report accidents and incidents immediately to the member's responsible staff or its administration. The contract vendor is responsible for providing and obtaining appropriate medical and emergency assistance and notifying fire and law enforcement agencies, when necessary. Except for rescue and emergency measures, the scene of the accident or incident shall not be disturbed, and the operation shall not resume until authorized by the member's responsible staff or administration. The contract vendor must assist and cooperate fully with the investigation of the accident/incident and ensure availability of all information, personnel and data pertinent to the investigation.

For preemptive purposes, contract vendor and its employees or subcontractors shall immediately report to the member's responsible staff or administration all areas of concern that could potentially lead to accident or injury.

When roof decking is being repaired or replaced, the contract vendor shall maintain a crewman as a floor area guard.

The contract vendor shall assure that all tools used at the worksite shall be operated, serviced, maintained, refueled and stored in compliance with current OSHA standards. Powder-actuated tools used by employees shall meet all applicable OSHA and ANSI related requirements. Only employees who have been specifically trained shall be allowed to operate a powder-actuated tool.

The contract vendor shall advise member representative when volatile materials are to be used near air ventilation intakes so that they can be shut down or blocked, as directed. Appropriate measures shall be taken to prevent rust, vapors, gases or odors from entering the building during roof removal, replacement, or repair.

Toilets shall be provided for contract vendor and subcontractor employees, as per OSHA standards and local building codes.

12.5. Preparation: Contract vendor shall clearly identify in writing any member responsibilities or similar pre-installation requirements prior to beginning projects. The condition of the prepared site prior to start up shall be agreed upon between the member and the contract vendor and shall be written into a construction contract.

If the building space directly under the roof area is to be used, the contract vendor shall agree to receive written approval from the member's representative prior to interrupting any classroom or program. Contract vendor shall advise the member's representative whenever work is expected to be hazardous.

Temporary electrical service and the cost for power, the costs for water, and other owner costs shall be identified.

12.6. Registered sex offender restrictions: For work to be performed at an Arizona school, contract vendor agrees that no employee or employee of a subcontractor who has been adjudicated to be a registered sex offender will perform work at any time when students are or are reasonably expected to be present. Contract vendor agrees that a violation of this condition shall be considered a material breach and may result in the cancellation of the purchase order at the member's discretion.

12.7. Safety measures: Contract vendor shall take all reasonable precautions for the safety of employees on the worksite, and shall erect and properly maintain all necessary safeguards for protection of workers and the public. Contract vendor shall post warning signs against all hazards created by its operation and work in progress. Proper precautions shall be taken pursuant to state law and standard practices to protect workers, general public, and existing structures from injury or damage.

12.8. Smoking: Persons working under the contract shall adhere to local smoking policies. Smoking will only be permitted in posted areas or off premises.

12.9. Stored materials: Upon prior written agreement between the contract vendor and member, payment may be made for materials not incorporated in the work but delivered and suitably stored at the site or some other location, for installation at a later date. An inventory of the stored materials must be provided to member prior to payment. Such materials must be stored and protected in a secure location, and be insured for their full value by the contract vendor against loss and damage. For materials stored offsite that have been paid by member, contract vendor agrees to provide proof of insurance coverage and/or addition of member as an additional insured upon member's request. Additionally, if stored offsite, the materials must also be clearly identified as property of member and be separated from other materials. Member must be allowed reasonable opportunity to inspect and take inventory of stored materials, on or offsite, as necessary.

Until final acceptance by the member, it shall be the contract vendor's responsibility to protect all materials and equipment. The contract vendor warrants and guarantees that title for all work, materials and equipment shall pass to the member upon final acceptance. Payment for stored materials shall not constitute final acceptance of such materials.

13. SUBCONTRACTORS

13.1. Awarding subcontracts: Bidder agrees that any subcontract competitively solicited by contract vendor will not be awarded solely upon membership or non-membership in a union or professional association.

13.2. Entering subcontracts: Subcontracts shall incorporate by reference the terms and conditions of the Mohave contract.

13.3. Prime contractor: Contract vendor will be considered a prime contractor and not a subcontractor. Neither Mohave nor the member will establish a contractual relationship with subcontractors.

13.4. Subcontracts: No subcontracts shall be entered into with any unlicensed party. Contract vendor must use subcontractors openly, include such arrangements in the bid, and certify upon request that such use complies with the rules of the Arizona Registrar of Contractors and the Procurement Code. No subcontracting costs may be hidden in a cost bid to member.

13.5. Subcontractor payment: Contract vendor agrees to pay subcontractors within seven days after receipt of payment from member, as required in Arizona procurement rules and code. If contract vendor receives any interest monies for delay of payment from member, contract vendor will pay subcontractor the correct proportion of interest paid. Complaints by subcontractor may be resolved as described in Arizona procurement rules and code. Failure to pay subcontractor for work faithfully performed and properly invoiced may result in the suspension or cancellation of this contract.

13.6. Use of subcontractors: Labor used to perform work under the contract shall permit the work to be carried on harmoniously and without delay, and that will not cause any disturbance, interference or delay to the progress of the project (e.g. engaging in strike, work stoppage, picketing, ceasing work due to a labor dispute). Subcontractor shall not employ anyone whose employment may be objected to by prime contractor, member or Mohave.

14. TERM OF CONTRACT AND EXTENSION

14.1. Contract period: It is Mohave's intent to award a multi-term contract for the specified materials, equipment and services. The initial contract term shall be for one (1) calendar year from the effective date of contract award. By mutual written agreement between Mohave and contract vendor, the contract may be extended for up to four (4) consecutive additional 12-month periods, beginning immediately after expiration of the prior term. However, no contract extension exists unless and until contract vendor is so notified by Mohave.

14.2. Contract extension: Conditions for contract extension may include, but are not limited to: contract usage, satisfactory performance of services during the preceding contract term, ability to continue to provide satisfactory services, continued adherence to the contract requirements, and continued competitive prices for the materials and services provided under the contract.

14.3. Month-to-month extensions: Mohave reserves the right to offer month-to-month extensions if that is determined to be in the best interests of members.

15. TRADE-IN EQUIPMENT OR RECYCLED MATERIALS CREDITS

Member and contract vendor shall determine values placed on trade-in products, or any credits for materials to be sent to a recycling center. The value of trade-in or credit for recycled materials shall not affect the amount of administration fee paid to Mohave. Trade-in equipment and materials to be recycled shall be dismantled by contract vendor and removed at contract vendor's expense. The condition of trade-in equipment at the time it is turned over to contract vendor shall be the same as when the original agreement was made, except for normal wear and tear from use between the time of the offer and trade-in.

16. WARRANTY/QUALITY GUARANTEE

16.1. Fitness: Contract vendor warrants that any equipment or material supplied to Mohave or its members shall fully conform to all requirements of the contract and all representations of contract vendor, and shall be fit for all purposes and uses required by the contract.

16.2. Inspection: The warranties set forth in this section shall not be affected by inspection or testing of, or payment for the equipment or materials to contract vendor by member.

16.3. Quality: Contract vendor warrants that for a minimum of 5 years for workmanship, and the minimum stated manufacturer's roofing system warranty, after acceptance of the materials by member, they shall be:

- Of a quality to pass without objection in the industry or trade normally associated with them;
- Fit for the intended purpose(s) for which they are used;
- Of even kind, quantity and quality within each unit and among all units, within the variations permitted by the contract;
- Adequately contained, packaged and marked as the contract may require; and
- Conform to the written promises or affirmations of fact made by contract vendor.

16.4. Warranty requirements: Contract vendor warrants that all equipment, materials, and service delivered under this contract shall conform to the specifications. Contract vendor agrees to help member reach resolution in a dispute with the manufacturer over warranty terms. Any extended manufacturer's warranty will be passed on to member without exception. Mohave reserves the right to cancel the contract if contract vendor charges member for a replacement part contract vendor received at no cost under a warranty.

Special Terms and Conditions Acceptance Form

Place after Tab 1d

Signature on Page 95 certifies complete acceptance of the Special Terms and Conditions in this solicitation, except as noted below (additional pages may be attached, if necessary).

Check one of the following responses to the Special Terms and Conditions:

- ☐ **We take no exceptions/deviations to the Special Terms and Conditions.**

(Note: If none are listed below, it is understood that no exceptions/deviations are taken.)

- ☐ **We take the following exceptions/deviations to the Special Terms and Conditions. All exceptions/deviations shall be clearly explained. Reference the corresponding Special Terms and Conditions that you are taking exceptions/deviations to. Clearly state if you are adding additional terms and conditions to the Special Terms and Conditions. Provide details on your exceptions/deviations below:**

(Note: All requested exceptions/deviations must be clearly explained. Reference the specific special terms and conditions that you are taking exceptions/deviations to, detail any proposed substitute special terms and conditions, and clearly demonstrate how Mohave and its membership will be better served by the substituted special terms and conditions. Unacceptable exceptions/deviations shall remove your bid from consideration for award. Mohave shall be the sole judge on the acceptance of exceptions and Mohave's decision shall be final.)

General Terms and Conditions

Place after Tab 1c

1. CANCELLATION

1.1. Cancellation for bankruptcy or acquisition: Mohave reserves the right to cancel, or suspend the use of, any contract if contract vendor files for bankruptcy protection, or is acquired by an independent third party.

1.2. Cancellation for conflict of interest: Mohave may cancel this contract or any purchase order issued under this contract pursuant to ARS §38-511 for conflict of interest. Conflict of interest occurs if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of Mohave, is or becomes at any time while the contract or an extension of the contract is in effect, an employee of, or a consultant to, any other party to the contract, with respect to the subject matter of the contract. Members shall incur no penalty or further obligation if the contract is cancelled for conflict of interest. A written notice of cancellation shall be sent to the contract vendor and the effective date of cancellation shall be the date specified within the written notice of cancellation.

1.3. Cancellation for convenience: Mohave reserves the right to immediately cancel the contract without penalty or recourse, in whole or in part, when Mohave determines that action to be in the best interests of its members. Contract vendor shall be entitled to receive just and equitable compensation in accordance with applicable contract pricing for authorized work in progress, authorized work completed and materials accepted before the effective date of the cancellation.

1.4. Cancellation for non-performance or contract vendor deficiency: Mohave may terminate any contract if members have not used the contract, or if purchase volume is determined to be "low volume" in any 12-month period. Mohave reserves the right to cancel the whole or any part of this contract due to failure by contract vendor to carry out any obligation, term or condition of the contract. Mohave may issue a written deficiency notice to contract vendor for acting or failing to act in any of the following:

- Failing to comply with the accepted terms and conditions of the contract;
- Providing material that does not meet the specifications of the contract;
- Providing work and/or material that was not awarded under the contract;
- Failing to adequately perform the services set forth in the scope of work/services and specifications;
- Failing to complete required work or furnish required materials within a reasonable amount of time;
- Failing to make progress in performance of the contract and/or giving Mohave reason to believe that contract vendor will not or cannot perform the requirements of the contract
- Failing to provide required performance bonds;
- Performing work or providing services under the contract prior to receiving a Mohave reviewed purchase order for such work.

Upon receipt of a written deficiency notice, contract vendor shall have ten (10) days to provide a satisfactory response to Mohave to adequately address all issues of concern. Failure to adequately address all issues of concern may result in contract cancellation. Upon cancellation under this clause, all goods, materials and work paid for by the member, along with documents, data and reports prepared by contract vendor under the contract shall become the property of the member.

1.5. Cancellation for replacement: Mohave reserves the right to cancel a contract awarded under this solicitation and replace it with a newer contract awarded to the same contract vendor for similar goods and services. Mohave may, at its option, either replace a contract resulting from this solicitation or delay a new award until the existing contract expires. The decision to replace the contract rests solely with Mohave.

1.6. Contract vendor cancellation: Contract vendor may cancel this contract at any time upon thirty (30) days prior written notice to Mohave or at time of annual contract renewal. Termination shall have no effect on projects in progress at the time the notice of cancellation is received by Mohave.

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
PROGRESSIVE SERVICES INC., DBA PROGRESSIVE ROOFING**

EXHIBIT B
Award and Rate Sheet

Offer and Acceptance Form

Place after Tab 1a

IFB 13X-0131

Roof and Roofing Systems - Installation, Products, and Services

To Mohave Educational Services Cooperative, Inc.:

The undersigned hereby certifies understanding and compliance with the requirements in all terms, conditions, specifications and addenda. Bidder further agrees to furnish materials and/or services in compliance with all terms, conditions, specifications and addenda in the solicitation and any written exceptions in the offer.

Federal Employer Identification Number: 86-0345657

Company Name: Progressive Services, Inc. dba Progressive Roofing

Address: 23 N. 35th Avenue City: Phoenix State: AZ Zip: 85009

Telephone Number: 602-278-4900 Fax: 602- 278-3199

Printed Name : Mark Farrell

Title: President

Primary Email : mark.farrell@progressiveus.com Alternate email : alice.hunt@progressiveus.com

Note: The primary email address will be used for all communication from Mohave regarding your response to this solicitation. Provide an alternate email address that will be used only if the primary email address is not valid.

Authorized Signature

The offer and acceptance form should be submitted with a signature by the person authorized to sign the bid. The person signing the bid shall initial erasures, interlineations, or other modifications in bid. Failure to sign the bid and contract award document, or to make other notations as indicated, may result in rejection of bid.

The contract vendor shall not commence any billable work or provide any material or service under this contract unless and until contract vendor receives a purchase order with Mohave's review noted.

Acceptance of Offer and Contract Award (Mohave Only)

Your Bid is Hereby Accepted:

As contract vendor, you are now bound to sell the materials and/or services offered to and accepted by Mohave in accordance with the solicitation, including all terms, conditions, specifications, addenda, etc.

This Contract shall be referred to as Contract Number 13X-PRO-0417

Awarded this 28th day of March 2014.

This contract shall be effective this 17th day of April 2014.

Julia E. Tribbett, Executive Director
Mohave Educational Services Cooperative, Inc.

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
PROGRESSIVE SERVICES INC., DBA PROGRESSIVE ROOFING**

EXHIBIT C
Scope of Work

PROJECT

Provide roof repair or replacement to City of Glendale facilities on an as-needed basis.

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
PROGRESSIVE SERVICES INC., DBA PROGRESSIVE ROOFING**

EXHIBIT D

METHOD AND AMOUNT OF COMPENSATION

Method of payment is provided in Section 3 of the agreement.

NOT TO EXCEED AMOUNT

The total amount of compensation paid to Contractor for full completion of all work required by the Project must not exceed \$420,000 annually or \$1,680,000 for the entire term of the Agreement.

DETAILED PROJECT COMPENSATION

The vendor will provide roof repair or replacement to City of Glendale facilities on an as-needed basis.



Legislation Description

File #: 15-785, Version: 1

RESOLUTION 5067: AUTHORIZATION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT (IGA) WITH SURPRISE FIRE-MEDICAL DEPARTMENT FOR STAFFING ON HELICOPTER AIR-MEDICAL AND LOGISTIC OPERATIONS (HALO), AND TO REQUEST RATIFICATION OF THE PAYMENTS MADE SINCE JUNE 26, 2015

Staff Contact: Terry Garrison, Fire Chief

Purpose and Recommended Action

This is a request for City Council to authorize the City Manager to enter into a contract with Surprise Fire-Medical Department to assist with the staffing on HALO, to request ratification of the payments made from June 26, 2015, through February 2016, in the amount of \$63,968.63. The full approximate amount for this IGA is \$125,000 for FY 2015-2016, with a not to exceed amount of \$145,000.

Background

The mission of the HALO team is to be the air medical provider utilized for pre-hospital patient transport requirements. The medical team will be comprised of personnel from the cities of Glendale, Surprise, and North County Fire & Medical District, formerly (Sun City West Fire District) and the aviation team will be comprised of personnel from Petroleum Helicopters Incorporated (PHI) Air Medical, LLC.

The secondary mission of the team is to provide aerial reconnaissance and assistance for specific duties as determined by the participating fire departments, such as incident command support. The team is an additional asset or resource to be dispatched like any other apparatus or personnel requirement.

To keep the citizens safer and have continual service, the City has continued to pay for this service since June 26, 2015. We have paid invoices from May 2015 through October 2015 in the amount of \$63,968.63. We have not received the invoices for November-December 2015 and January - February 2016. Surprise Fire-Medical Department invoices 2-3 months in the rear.

Previous Related Council Action

On June 12, 2012, Council approved Contract C-8084.

On June 26, 2007, Council approved the original Contract C-6067.

Community Benefit/Public Involvement

The HALO Program has been successful since its conception in 2007. The most important benefit of air medical transport is the rapid transport of patients to the appropriate hospital facility and level of care. The primary responsibility of the HALO team is to build on the immediate care provided by fire department

personnel on scene of an emergency and then movement of the patient promptly to a hospital facility. An additional benefit to the City of Glendale includes the ability to obtain an aerial view of large emergencies in our community.

Budget and Financial Impacts

The contract with PHI Air Medical will cover all costs of the program through reimbursement to the City of Glendale for medical personnel costs and PHI provides all required equipment and aviation personnel.

Cost	Fund-Department-Account
\$145,000	1000-12492-518200, Air-Medical & Logistics Ops (HALO)

Capital Expense? No

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from?

RESOLUTION NO. 5067 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 SURPRISE TO SUPPORT THE HELICOPTER AIR-
MEDICAL LOGISTICS OPERATIONS (H.A.L.O.) PROGRAM.

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 Surprise to support the Helicopter Air-Medical Logistics Operations (H.A.L.O.) program, 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 Manager or designee 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 _____, 2016.

M A Y O R

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

REVIEWED BY:

City Manager

**Intergovernmental Agreement
Between the City of Glendale and the City of Surprise
for
Helicopter Air-Medical Logistics Operations
(H.A.L.O.)**

THIS INTERGOVERNMENTAL AGREEMENT ("IGA") is entered into to be effective beginning June 26, 2015 pursuant to Arizona Revised Statutes § 11-952 between the City of Glendale, an Arizona municipal corporation ("Glendale") and the City of Surprise ("Surprise"), a political subdivision of the State of Arizona, for their respective fire departments (hereinafter collectively referred to as the "Departments" and individually as a "Department").

WHEREAS, Glendale has an existing contract with PHI AIR MEDICAL, L.L.C., a Louisiana limited liability company ("PHI"), Contract No. C-10076, and its first amendment No. C-10076-1 which are attached hereto as Exhibit A ("PHI Agreement"); and

WHEREAS, Glendale and PHI have established a public-private air medical program to provide air medical transportation services to the residents of the City of Glendale and its automatic aid and mutual aid partners; and

WHEREAS, the Departments are parties to the automatic aid agreement for Maricopa County; and

WHEREAS, the Departments desire to provide firefighter paramedic services to support the staffing of one or more medical helicopters in conjunction with the PHI contract; and

WHEREAS, the Departments desire to provide emergency medical, special operations, aerial reconnaissance, command and control and other services to automatic aid and mutual aid jurisdictions and communities within the prescribed response areas of Helicopter Air-Medical Logistics Operations ("H.A.L.O.") medical transport aircraft.

NOW, THEREFORE, the Departments hereby agree to enter into this IGA to cooperatively provide the necessary firefighter paramedics, emergency medical services and special operations personnel services to support the H.A.L.O. program, as needed, according to the terms and conditions set forth below.

I. Purpose.

The purpose of this IGA is to provide fire services personnel to co-staff the H.A.L.O. program within the jurisdictional boundaries of the automatic aid consortium. H.A.L.O. will provide pre-hospital emergency medical and other fire service support in the Departments' jurisdictions and in other automatic aid jurisdictions within the state of Arizona (hereinafter referred to as "Fire Department Consortium"). Through this IGA, the Departments intend to provide air medical transport personnel, emergency on scene command and control, EMS and special operations services by maximizing cooperation and integrating the Departments' personnel assets.

II. Organizational Structure.

The Departments shall each provide qualified personnel to staff the H.A.L.O. program pursuant to the PHI Agreement. Personnel provided by a Department are hereinafter referred to as "Participating Personnel." Glendale will provide three (3) Participating Personnel and Surprise shall provide one (1) Participating Personnel. Each Department shall also have the mutually agreed upon number of qualified back-up personnel, depending on the department work schedule, for each Participating Personnel position. The Departments acknowledge and agree that this IGA may be amended to access additional personnel for the program, if required. H.A.L.O. program participation will be limited to automatic aid jurisdictions in Maricopa County. It is agreed that no new IGA will be entered into with any additional department related to the subject of this Agreement, nor will any amendment to this IGA be made regarding an additional department, except upon the consensus of the Departments. Notwithstanding the foregoing, the Departments acknowledge that Glendale and the North County Fire and Medical District have or will have an IGA to supply Participating Personnel.

III. H.A.L.O. Personnel.

A. The personnel qualifications and requirements for H.A.L.O. personnel are set forth in the H.A.L.O. Operations Manual, and the Departments agree that all Participating Personnel will comply with such qualifications and requirements.

B. General Orders: Participating Personnel shall be subject to both their "home" department's General Orders and the H.A.L.O. Operations Manual. If a conflict arises between one's "home" department General Orders and the H.A.L.O. Operations Manual, the H.A.L.O. Operations Manual will apply.

C. Discipline/Personnel Review: If, in the reasonable opinion of PHI or any Department, any Participating Personnel do not demonstrate a high degree of aptitude for the type of operations or customer service required for the H.A.L.O. program, including good interpersonal relations, PHI or any Department may make a written request to the Glendale Fire Chief to conduct a prompt review of the performance of the individual and to take appropriate action. Glendale reserves the right to "ground" personnel pending decision of a review board. All such employment actions will be handled by Glendale on a case-by-case basis. If, at any time, the conduct or performance of Participating Personnel comes into question, Glendale will convene a review board comprised of one representative from each Department, PHI, and the Medical Directors. The review board shall have the authority to disqualify any individual from further participation in the program. The decision of the review board may be appealed, upon written request of the individual, to an appeal board comprised of the Fire Chief, or designee, of each Department and a PHI designee. The action of the board shall not prevent additional disciplinary action by the Departments for violations of General Orders, policies or procedures.

D. Command and Control:

1. All Departments acknowledge that command and control of daily (non-incident) operational issues shall be Glendale's duty and responsibility.

Command and control of H.A.L.O. Participating Personnel during incidents will remain the responsibility of the assigned Incident Commander.

2. A H.A.L.O. Operations Manual will be promulgated and maintained by Glendale. This manual will address operational issues including, but not limited to, command, control, training, administration and marketing. Glendale will promptly notify the Departments of any changes in the H.A.L.O. Operations Manual.
3. In the event a Department fails to provide Participating Personnel for a shift, Glendale shall assign qualified personnel from the Glendale Fire Department or from another participating Department.

E. Compensation:

1. Surprise will provide personnel and be reimbursed at the initial rate of \$45.41 per hour for each hour a H.A.L.O position is occupied by Participating Personnel provided by Surprise. Payments will be made each month by Glendale based upon invoices submitted to Glendale by Surprise monthly, no later than the 10th of each month. Surprise will receive payment for time worked in a H.A.L.O. position. Adjustments in the future reimbursement rate will be governed by the contract between PHJ and Glendale and will be the same for all Departments.
2. All costs associated with the initial training and continued education of the flight paramedics will be the responsibility of the city of Glendale. The city of Glendale will reimburse the city of Surprise the contractual rate for all mandated flight paramedic training.
3. Each Department shall be individually responsible for the payment of wages, including overtime, and benefits for its Participating Personnel.
- 4.. Payment by Glendale to a Department is to be made within 30 days of receipt of an invoice.

F. Uniform:

H.A.L.O personnel will wear such uniforms as prescribed in the H.A.L.O. Operations Manual.

IV. Insurance/Indemnification.

A. Each Department assumes responsibility for all liabilities relating to its Participating Personnel and will save harmless, defend and indemnify all other Departments in any actions related to such employment.

B. Each Department will maintain responsibility for all of their employees' benefits, including but not limited to sick leave, vacation, alternative duty assignments, worker's compensation and other associated life insurance requirements. Glendale will only

insure Glendale personnel related to the H.A.L.O. project and Surprise will only insure Surprise personnel related to the H.A.L.O. project. The Departments further agree that they are not joint employers for the purpose of workers compensation coverage and that any Department's employee assigned to work as Participating Personnel shall remain an employee of such Department. To the extent that employees of one Department perform duties on behalf of another Department, such employee shall be deemed to be an "employee" of both public agencies while performing pursuant to this Agreement solely for purposes of ARIZ. REV. STAT. § 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 ARIZ. REV. STAT. § 23-1022 in substantially the following form:

"All employees are hereby further notified that they may be required to work under the jurisdiction or control or within the jurisdictional boundaries of another public agency pursuant to an intergovernmental agreement or contract, and under such circumstances they are deemed by the laws of Arizona to be employees of both public agencies for the purposes of worker's compensation."

C. Each Department (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

V. Media Releases and Relations.

Any release of information to the media pertaining to H.A.L.O., other than a public records release, will be coordinated by the Glendale Fire Department Public Information Officer ("Glendale PIO") in cooperation with and with input from the Departments. No Department will distribute any unilateral media releases without prior coordination with the Glendale PIO. A copy of all public record and media releases regarding H.A.L.O. shall be provided to the Glendale PIO. Departments will not reveal any investigative information or operational procedures of the H.A.L.O. project outside the Departments except as required by law or competent authority. If an incident is primarily focused upon or concerned with the actions of a Department's Participating Personnel, that Department will be responsible for the release of information to the media relative to the incident.

VI. Arizona Department of Health Services Certification.

A. Relative to its Participating Personnel, each Department agrees that it will be responsible to the Arizona Department of Health Services ("ADHS") for complying with all requirements mandated by ADHS for Emergency Medical Care Technicians (EMCTs). By way of example only, and not by way of limitation, this means each Department, relative to its Participating Personnel, agrees to be responsible to ADHS for the record-keeping, training and testing requirements imposed upon fire departments employing personnel in Arizona.

B. Departments agree to cooperate to assure any issues that arise relative to EMCT certification are resolved in a reasonable and efficient manner.

VII. Execution, Duration and Renewal.

A. This IGA will be effective upon the approval and execution by both Glendale and Surprise.

B. This IGA may be executed in counterparts.

C. This IGA will remain in effect for three (3) years ending June 25, 2018, subject to the renewal and termination provisions set forth below.

D. This IGA may be renewed for successive additional three (3) year periods upon mutual written agreement of the parties.

VIII. HIPAA.

To the extent Surprise shall be deemed a "Business Associate" (as such term is defined in the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as may be amended, and regulations promulgated thereunder by the U.S. Department of Health and Human Services and other federal agencies ("HIPAA") in connection with PHI's provision of services under the PHI Agreement) of PHI or Glendale, Surprise shall comply with the terms and conditions of the business Associate Agreement attached as Schedule A to the PHI Agreement.

IX. General Provisions.

A. Entire Agreement. This IGA embodies the entire understanding of the Departments and supersedes any other agreement or understanding between the parties relating to the subject matter. The Departments agree that should any part of this IGA be held to be invalid or void, the remainder of the IGA shall remain in full force and effect and shall be binding upon the parties.

B. Governing Law. This IGA shall be governed by and construed in accordance with the laws of the State of Arizona.

C. Conflict of Interest. This IGA is subject to termination pursuant to the provisions of A.R.S. § 38-511.

D. Termination. Either party may terminate this IGA by giving the other party not less than thirty (30) days prior written notice.

E. Non-Discrimination. Surprise must not discriminate against any employee or applicant for employment on the basis race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Surprise will require any Sub-contractor to be bound to the same requirements as stated within this section. Surprise, and on behalf of any subcontractors, warrants compliance with this section.

F. Dispute Resolution. In the event of any dispute, claim, question, or disagreement arising from or relating to this IGA or the breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If that fails, the matter shall be submitted to a body consisting of one voting representative from each Department plus a third member mutually agreed upon by the Departments for a majority vote recommendation. The Fire Chief of Glendale has the final authority to decide and resolve the dispute, claim, question or disagreement.

G. The provisions of this Agreement for payment of funds by the Parties shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. The Parties shall be the sole judge and authority in determining the availability of funds under this Agreement and each Party shall keep the other Parties fully informed as to the availability of funds for its program. The obligation of the Parties to make any payment pursuant to this Agreement is a current expense of the Parties, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of the Parties. If the City Councils of the Parties fail 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 Parties shall be relieved of any subsequent obligation under this Agreement.

H. Notice: All notices relating to this IGA shall be deemed given when mailed, by certified or registered mail, or overnight courier, to the other Department at the address set forth below or such other address as may be given in writing from time to time:

If to Glendale: Glendale Fire Department
 Attn: Fire Chief
 5800 West Glenn Drive, Suite 350
 Glendale, Arizona 85301

with a copy to: Glendale City Attorney
 5850 West Glendale Avenue, Suite 450
 Glendale, Arizona 85301


If to Surprise: City of Surprise
 Attn: Fire Chief
 14250 W. Statler Plaza. Ste. 101
 Surprise, Arizona 85374-9002

I. Immigration Compliance: The Departments warrant they will abide by those federal and state immigration laws and regulations applicable to its employees. The Departments retain the legal right to inspect the papers of the Departments to ensure that the Departments are compliant with the warranty under this Section. The Departments may conduct random inspections, and upon request of a Department, the other Department shall provide copies of papers and records demonstrating continued compliance with the warranty under this Section. The Departments agree to keep papers and records available for inspection during normal business hours and will cooperate with the other Department 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. The Departments' warranty and obligations under this Section are continuing throughout the term of this IGA or until such time as the Departments determine that Arizona law has been modified in that compliance with this Section is no longer a requirement. The "E-Verify Program" means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

DATED: December 2nd, 2015

CITY OF SURPRISE



City Manager

ATTEST:

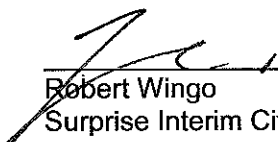


City Clerk

CERTIFICATION BY LEGAL COUNSEL

The foregoing Intergovernmental Agreement is in proper form and is within the powers and authority of the City of Surprise granted under the laws of the State of Arizona.

APPROVED AS TO FORM AND AUTHORITY:



Robert Wingo
Surprise Interim City Attorney

DATED: _____, 2015

CITY OF GLENDALE

Richard A. Bowers
Acting City Manager

ATTEST:

Pam Hanna, City Clerk

CERTIFICATION BY LEGAL COUNSEL

The foregoing Intergovernmental Agreement is in proper form and is within the powers and authority of the City of Glendale granted under the laws of the State of Arizona.

APPROVED AS TO FORM AND AUTHORITY:

Michael D. Bailey
Glendale City Attorney

EXHIBIT A

Air Ambulance Service Agreement (Contract. No. C-10076)

Between City of Glendale and PHI Air Medical, L.L.C.

and

Amendment No. 1 to Air Ambulance Service Agreement (Contract No. C-10076)

AIR AMBULANCE SERVICES AGREEMENT

This Air Ambulance Services Agreement (this "Agreement") is made effective as of June 23 2015 (the "Effective Date"), by and between PHI Air Medical, L.L.C., a Louisiana limited liability company ("PHI"), and City of Glendale ("Glendale") (PHI and Glendale, collectively, the "Parties," individually, a "Party").

RECITALS

WHEREAS, PHI provides air medical transportation services; and

WHEREAS, Glendale has identified the opportunity to improve customer service to its constituents and more effectively deliver emergency services, which are core to its public safety mission; and

WHEREAS, Glendale and PHI have agreed to work cooperatively to establish a public-private air medical program to provide air medical transportation and other emergency services to the residents of the City of Glendale and its automatic aid and mutual aid partners (the "Program").

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the Parties agree as follows:

AGREEMENT

1. Services Provided by PHI.

- 1.1 Air Medical Transport Services. As authorized in accordance with this Agreement, PHI shall provide air ambulance flight services to patients (the "Flight Services") in accordance with (i) local, State and Federal protocols, (ii) Glendale protocols in existence on the Effective Date which have been furnished to PHI on or before the Effective Date and (iii) Glendale protocols as they may be amended after the Effective Date which have been furnished to PHI and approved by PHI (which approval will not be unreasonably withheld).
- 1.2 Flight Service Guidelines. PHI shall provide the Flight Services in accordance with the standards set forth by the Commission on Accreditation of Medical Transport Services ("CAMTS"). The PHI Medical Director for the Program, working with the PHI Manager of Clinical Standards, shall establish standards for appropriate patient care during air transport.

- 1.3 PHI Flight Operations. PHI shall provide one (1) turbine engine helicopter (the "Aircraft") with service available for the Program twenty-four (24) hours a day, three hundred sixty-five (365) days per year, except for maintenance and repair activities. The Aircraft shall be based in a mutually agreed upon West Valley location. PHI shall use its commercially reasonable efforts to promptly respond to transportation requests from Glendale to the extent the Aircraft is available and not then in use or subject to maintenance or repair activities. PHI shall provide not less than four (4) pilots and one (1) mechanic (collectively, the "Flight Team") for the Program. At least one (1) pilot shall be on-duty at all times. Each Flight Team member shall be trained to PHI standards. Each Flight Team member shall meet all educational and experience standards recommended by CAMTS. All personnel of PHI providing services pursuant to this Agreement are subject to the general approval of Glendale. The pilot in command of the aircraft shall have complete power and authority to make and shall make all decisions concerning the suitability of weather and landing areas, condition of the aircraft for flight, and all other factors affecting flight safety. In accordance with Federal Aviation Regulations and PHI General Operations Manual, the pilot in command of the aircraft will at all times maintain "Operational Control" of the Aircraft.
- 1.4 Medical Director and Medical Direction. PHI will provide physician medical director services for the Program (the "Medical Director") through Banner University Medical Center subject to the approval of Glendale, which approval shall not unreasonably be withheld. The Medical Director shall be an employee or a contractor of PHI and shall not be deemed an employee, contractor or agent of Glendale. The Medical Director must meet all licensure, education, and certification requirements as set forth by any state or federal oversight body, and CAMTS.
- 1.5 General Financial Responsibility. Each Party shall assume full responsibility and oversight for its independently incurred costs and fees associated with the Program. Costs and fees incurred for the Program that are not clearly within the responsibility of either Party will be negotiated on a case by case basis, excluding any costs or fees incurred as a result of a claim by a third-party. For purposes of this section, "third-party" means a person other than the Parties.
- 1.6 Billing and Collection Obligations. PHI shall seek payment for all Flight Services by directly billing and collecting from the patients and other persons for whose benefit such Flight Services are provided under this Agreement, including, without limitation, the transported persons, their insurance carriers, or county, state or federal agencies. Compensation received by PHI for Flight Services shall remain the property of PHI. All patient charges by PHI shall be in accordance with applicable governmental regulations. Glendale is not responsible for non-payment of bills by individuals or other responsible parties to whom patient care and transportation services, including Flight Services, have been rendered by PHI. PHI represents that its charges to patients and other persons served for services rendered under this Agreement shall be fair and competitive.

- 1.7 HIPAA. To the extent either Party shall be deemed a "Business Associate" (as such term is defined in the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as may be amended, and regulations promulgated thereunder by the U.S. Department of Health and Human Services and other federal agencies ("HIPAA") in connection with PHI's provision of services under this Agreement) of the other Party, the Parties shall comply with the terms and conditions of the Business Associate Agreement attached as Schedule A.

2. Services Provided by Glendale.

- 2.1 Clinical Services on Flights. Glendale shall be responsible for providing 24-hour paramedic staffing for the Program. In accordance therewith, Glendale shall provide a total of five (5) paramedics, up to two of which may be nurse paramedics if mutually-agreed to by the Parties, trained to a standard agreed upon by the Parties for the Program (the "Glendale Medical Providers"). PHI shall pay Glendale Seventy-Four Thousand and 00/100 Dollars (\$74,000.00) per month for the Glendale Medical Providers. This rate will increase by 2.5% on each yearly anniversary of the Effective Date of this Agreement. Payments made to Glendale shall be due and payable on or before the first day of each month, to the order of the City of Glendale, 5850 W. Glendale Avenue, Glendale Arizona 85301, Attn: Finance Department, Contract No. C-_____. Payments received after the 15th day of any month shall be assessed a late charge of 15% per month. The Glendale Medical Providers shall be employees of Glendale or sub-contractors and under the control of Glendale and shall not be deemed employees or agents of PHI. Two (2) Glendale Medical Providers shall be on-duty at all times.
- 2.2 Dispatch Services. Glendale will provide all dispatch and communication services for the Program through the Phoenix Regional Dispatch and Deployment Center. These services will be conducted in accordance with the standards established by CAMTS.
- 2.3 Program Management. Glendale will designate one or more individuals to act as the supervisor over the Glendale Medical Providers from the Emergency Medical Services Division of the Glendale Fire Department ("GFD"), as provided for herein. Glendale's on duty Shift Commander will work with PHI in an advisory capacity to oversee the daily operations of the Program. All personnel provided by Glendale (including supervisors and the Glendale Medical Providers) shall be either employees or contractors of Glendale and under the control of Glendale and shall not be deemed employees or agents of PHI. Glendale shall be solely responsible for and shall pay, or cause to be paid, all salary, fringe benefits, worker's compensation benefits, professional liability insurance, all employment related taxes and any other related employment expenses associated with the personnel provided by Glendale.

- 2.4 **Medical Crew Review.** If, in the reasonable opinion of PHI, any personnel provided by Glendale pursuant to this Agreement do not demonstrate a high degree of aptitude for the type of operations or customer service required, including good interpersonal relations, PHI may make written request to Glendale to conduct a prompt review of the performance of the individual and to take appropriate prompt action. All such employment actions will be handled by Glendale on a case-by-case basis in accordance with Glendale policy and procedure. All Glendale employees shall conform to the rules and requirements jointly approved by Glendale and PHI concerning dress and conduct and other applicable PHI and Glendale policies while providing services pursuant to this Agreement, and in connection with referring/receiving agency personnel interface.
- 2.5 **Preferred Provider.** Glendale agrees that PHI shall be its "preferred provider" and shall have first right of refusal for all air medical transport requests received by, through or from GFD. If for reasons other than dangerous weather conditions, PHI is unable to timely initiate or complete any requested air medical transport, PHI will provide GFD with its best estimate of alternative aircraft response time. If GFD determines that the response time is not acceptable based on the circumstances of the transport, GFD shall be free to solicit and utilize any other appropriate resource or transport service to meet patient transfer needs without violating the preferred provider status of PHI. PHI shall have no liability to Glendale or GFD as a result of PHI's inability to fulfill a request for air medical transport unless caused by PHI's willful misconduct. GFD will encourage regional support and utilization of PHI as the regional air medical transport program. Notwithstanding PHI's preferred provider status hereunder, the party to be transported or the attending physician or health care provider shall always have the right to direct that another air medical transporter be used for the transport.
3. **Utilization of Corporate Identity or Likeness.** PHI and Glendale will use their commercially reasonable efforts to participate in mutually beneficial public relations and marketing activities. Neither PHI nor Glendale will utilize the others' markings or identities without express written permission from the other Party. PHI will allow Glendale to place Glendale's identity on aircraft dedicated to this Agreement, provided that PHI will only use Glendale's trade names, trademarks, and logos in accordance with this Agreement. All marketing materials of PHI that names or makes reference to Glendale or the Glendale trade names, trademarks and logos must be approved in writing by Glendale prior to distribution.
4. **Relationship of the Parties.** The relationship of the Parties as set forth in this Agreement is that of independent contractor to the other Party. PHI shall be an independent contractor of Glendale pertaining to the Flight Services and the Program pursuant to this Agreement. Glendale shall be an independent contractor of PHI in furnishing the Glendale Medical Providers and any and all supervisory and communications personnel for the Program. Nothing in this Agreement is intended or shall be construed as creating any kind of partnership, joint venture, or agency relationship between the Parties.

5. **Term.** Subject to Section 11.3, the term of this Agreement commences upon the Effective Date and continues for a two (2) year initial period (the "Term"). Glendale may, at its option and with the approval of PHI, extend the Term of this Agreement an additional three (3) years, renewable on an annual basis (each an "Extended Term"). PHI shall be notified in writing by Glendale of its intent to extend the Agreement at least 30 calendar days prior to the expiration of the Term or any Extended Term. There are no automatic renewals of this Agreement.
6. **Termination for Convenience.** Notwithstanding anything herein to the contrary, this Agreement may be terminated by either Party for convenience and with or without cause upon ninety (90) days written notice. The terms of this Agreement will apply until the date of termination (not the date of notice).
7. **Representations, Warranties and Covenants of PHI.** PHI hereby represents, warrants and covenants as follows:
 - 7.1 **Organization.** PHI is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Louisiana, and has the power and authority to execute, deliver and perform its obligations under this Agreement. PHI is qualified and authorized to do business in the State of Arizona.
 - 7.2 **Authorization.** The execution, delivery and performance of PHI of this Agreement have been authorized by all necessary corporate action on the part of PHI.
 - 7.3 **FAA Regulations.** PHI shall comply with all regulations of the Federal Aviation Administration ("FAA") pertaining to air medical transport services being furnished by PHI under this Agreement and, in that connection, PHI represents that the Aircraft and the members of the Flight Team are properly licensed and certified and meet the minimum requirements as set forth in the applicable FAA regulations.
 - 7.4 **Compliance.** In addition to the FAA regulations referenced in Section 7.3, PHI shall comply with all federal, state and local laws and regulations applicable to the Flight Services provided by PHI under this Agreement.
8. **Representations, Warranties and Covenants of Glendale.** Glendale hereby represents, warrants and covenants as follows:
 - 8.1 **Organization.** Glendale is a duly organized municipal fire department validly existing and in good standing under the laws of the State of Arizona, and has the power and authority to execute, deliver and perform its obligations under this Agreement.
 - 8.2 **Authorization.** The execution, delivery and performance of Glendale of this Agreement have been authorized by all necessary government action on the part of Glendale.

- 8.3 Governmental Approvals. Glendale has obtained, and shall maintain and keep in force, all consents, licenses, permits, approvals and authorization of federal, state and local governmental authorities which may be required to execute, deliver and perform its obligations under this Agreement.

9. PHI Insurance Requirements.

- 9.1 Policies and Amounts. PHI shall, during the Term or any Extended Term, maintain the following minimum insurance coverage:

- (a) **Commercial General Liability Insurance** in the minimum amounts indicated below or such additional amounts as required by the City of Glendale, including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of any agreement with the City of Glendale, 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 of Glendale. 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.
- (b) All risk ground and flight aircraft hull insurance. Aircraft liability insurance covering injuries to passengers or third parties and damage to property in an amount not less than \$50,000,000 for any one accident or series of accidents arising out of any one event. Such aircraft insurance excludes medical malpractice coverage and aggravation of injuries to passengers.
- (c) Workers' compensation insurance for its employees at Arizona statutory limits including a waiver of subrogation in favor of the City of Glendale.
- (d) With the exception of Workers' compensation insurance and the incidental medical malpractice protection afforded PHI as an extension of its aircraft liability policy, to the extent of PHI's Indemnification Obligations, Glendale shall be included as an additional insured on each and every one of PHI's policies described above, waive subrogation, be primary to any other insurance or self-insurance covering the same risks maintained by Glendale, and provide Glendale 60 days' written notice of cancellation, non-renewal or material change.
- (e) "Best's Key Rating Guide" – All insurance shall be issued by a company or companies licensed to do business in Arizona and listed in the current "Best's Key Rating Guide" publication with a minimum rating of A-;VII or its equivalent. Any exception to these requirements must be approved by the City.
- (f) 30-Day Cancellation Notice. The above stated insurance coverage's required to be maintained by PHI shall be maintained until the completion of all of PHI's obligations under any agreement, and shall not be reduced, modified, or canceled without thirty (30) days prior written notice to the Certificate Holder. PHI shall immediately obtain replacement coverage for any insurance policy

that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

- (g) **Primary and Non-Contributory.** All insurance carried by PHI shall be primary and non-contributory with any insurance carried by the City of Glendale to the extent of the risks and liabilities assumed by PHI hereunder. The policy must be endorsed to include this verbiage and evidence of coverage provided with the certificate.
- (h) **Notice of Cancellation.** Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.
- (i) **Waiver of Subrogation.** PHI hereby grants to the City of Glendale a waiver of any right to subrogation to the extent of the risks and liabilities assumed by PHI hereunder, which any insurer of said PHI may acquire against the City by virtue of the payment of any loss under such insurance. PHI agrees 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.
- (j) **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the City of Glendale. The City of Glendale may require the PHI to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. If PHI maintains higher limits than the minimums shown above, then the City requires and shall be entitled to coverage for the higher limits maintained by the PHI to the extent of the risks and liabilities assumed by PHI hereunder.
- (k) **The City of Glendale Risk Manager** may make reasonable changes to the required insurance based on the circumstances.

9.2 Glendale shall, during the Term or any Extended Term, maintain the following minimum insurance coverage and, to the extent of Glendale's Indemnification Obligations, all such policies of insurance shall name PHI as an additional insured (except with respect to workers' compensation coverage), waive subrogation (except with respect to workers' compensation coverage), be primary to any other insurance or self-insurance covering the same risks maintained by PHI, and provide PHI 30 days written notice of cancellation, non-renewal or material change, only with respect to work performed pursuant to or the operations of the City of Glendale related to this Agreement and the Program.

- (a) Professional/Paramedic errors and omissions liability insurance in amounts of not less than \$4,000,000 single and \$6,000,000 aggregate limits.
- (b) Workers' Compensation insurance for its employees at Arizona statutory limits.

10. Indemnification. The Parties agree to indemnify each other (the "Indemnification Obligations") as follows:

- 10.1 PHI's Indemnification Obligations. PHI agrees to defend, protect, indemnify and hold harmless Glendale, its mutual aid partners, subsidiaries, affiliates and subcontractors and their respective directors, officials, officers, agents, employees, representatives and agents, including, without limitation, the Glendale Medical Providers and all supervisory and communications personnel (collectively, the "Glendale Group") from every kind or character of damages, losses, liabilities, expenses, demands or claims (collectively, "Losses") arising out of, connected with, incident to, resulting from or relating to, the performance of Flight Services under this Agreement, including but not limited to the operation and maintenance of the Aircraft, after the Effective Date, to the extent and only to the extent such Losses are caused by the negligence, fault, or other legal liability of PHI, its parent, any subsidiaries, affiliates and other contractors and subcontractors (not including Glendale) and their respective directors, officers, agents, employees, and representatives, including, without limitation, the members of the Flight Team and the Medical Director (collectively, the "PHI Group"), which obligation shall not be diminished in any regard if such Losses were caused in part by the concurrent or joint negligence, either active or passive, of any member of the Glendale Group; provided, however, that, in the event of joint or concurrent negligence or fault of any member of the Glendale Group and any member of the PHI Group, PHI's indemnification obligation shall be limited to PHI's allocable share of such joint or concurrent negligence or fault.
- 10.2 Glendale's Indemnification Obligations. Glendale agrees to defend, protect, indemnify and hold harmless the PHI Group for Losses, to the extent and only to the extent such Losses are caused by the negligence, fault, or other legal liability of any member of the Glendale Group, which obligation shall not be diminished in any regard if such Losses were caused in part by the concurrent or joint negligence, either active or passive, of any member of the PHI Group; provided, however, that, in the event of joint or concurrent negligence or fault of Glendale and PHI, Glendale's indemnification obligation shall be limited to Glendale's allocable share of such joint or concurrent negligence or fault.
- 10.3 Limitations. Neither PHI nor Glendale shall indemnify the other Party for any Losses resulting from the intentional, willful or negligent acts of the other Party or members of its organization. In no event, whether as a result of contract, tort, strict liability or otherwise, shall either Party be liable to the other for any punitive, special, indirect, incidental or consequential damages, including without limitation loss of profits, loss of use or loss of contract. The Indemnification Obligations shall not be reduced nor limited by any insurance coverage or insurance proceeds an Indemnified Party may have for its own account with respect to a claim.
- 10.4 Procedures. PHI or Glendale shall promptly notify the other Party of the existence of any claim, or the threat of any claim, to which the Indemnification Obligations might apply. Upon written request by the Party entitled to indemnification (the "Indemnatee"), the other Party (or its insurer) (the "Indemnitor") shall select,

manage, and pay the claim investigation and legal defense costs as a part of the indemnity obligation including any settlement and/or judgment amounts awarded. Each Indemnitee shall have the right, at its option and sole expense, to participate in the defense or claim without relieving the Indemnitor of any obligation hereunder. The Indemnitee shall cooperate and comply with all reasonable requests that the Indemnitor may make in connection with the defense and any settlement of a claim.

- 10.5 Duration. The Indemnification Obligations shall continue after the termination of this Agreement, and all rights associated with the Indemnification Obligations shall inure to the benefit of the successors or assigns of PHI and Glendale.

11. Miscellaneous.

- 11.1 Force Majeure. Neither Party shall be liable to the other Party for failure to perform its respective obligations under this Agreement if and to the extent that such failure results from causes beyond the non-performing Party's reasonable control, including without limitation such causes as strikes, lockouts, riots, fires, floods or other weather conditions, natural disasters, acts of God, acts of public enemy, or any regulations, orders or requirements of any duly authorized governmental body or agency (collectively, "Force Majeure"). If either Party is unable to perform as a result of Force Majeure, it shall promptly notify the other Party in writing of the beginning and estimated ending of each such period. If any period of Force Majeure continues for thirty (30) days or more, the Party not so failing in performance shall have the right to terminate the Agreement upon written notice to the other Party. Notwithstanding anything contained herein to the contrary, PHI shall use its commercially reasonable efforts to provide a backup helicopter and associated flight services as required by this Agreement during the period of Force Majeure.
- 11.2 Default. A material breach by either Party of any representation, warranty or covenant contained in this Agreement or the failure of either Party to comply with any material terms or conditions set forth in this Agreement shall constitute an event of default ("Default").
- 11.3 Termination. This Agreement shall terminate and, except as otherwise set forth herein, shall be of no further force and effect sixty (60) days after the non-defaulting Party provides the defaulting Party with written notice of a Default (the "Cure Period"), unless the non-defaulting Party cures the Default prior to the expiration of the Cure Period. Further, this Agreement may be terminated for convenience, as set forth in Section 6, or by reason of Force Majeure, as set forth in Section 11.1, above.
- 11.4 Severability. In the event that any provision of this Agreement is determined to be unlawful or contrary to public policy, such provision shall be severed here from,

shall be deemed null and void, but shall in no way affect the remaining provisions outlined herein.

- 11.5 Proprietary Information. PHI shall cause its employees, agents and affiliates to hold as confidential all patient information, except as may otherwise be reasonably necessary for PHI's routine business functions to the extent it is deemed a Business Associate. Glendale shall cause its employees, agents and affiliates to hold confidential all patient information, except as may otherwise be reasonably necessary for Glendale's routine business functions to the extent it is deemed a Business Associate.
- 11.6 Assignment. Neither Party shall assign this Agreement, in whole or in part, without the prior written consent of the other.
- 11.7 Waiver. The waiver by one Party of any breach or failure of the other Party to perform any covenant or obligation contained in this Agreement shall not constitute a waiver of any subsequent breach or failure.
- 11.8 Entire Agreement. This Agreement and any exhibits or schedules attached thereto or referred to herein, represent the entire agreement between the Parties, with respect to the subject matter hereof, all other prior agreements being merged herein, and this Agreement shall not be modified except in writing signed by the Party against whom such modification is sought to be enforced.
- 11.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona, without giving regard to its conflicts of law rules or principles.
- 11.10 Non-Discrimination. Neither Party will discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Each Party will require any sub-contractor to be bound to the same requirements as stated within this section.
- 11.11 Cancellation. This Agreement is subject to cancellation for conflicts of interest under the provisions of A.R.S. § 38-511.
- 11.12 Immigration Compliance.
 - 11.12.1 PHI, 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.

- 11.12.2 Any breach of warranty under subsection 11.12.1 above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
- 11.12.3 Glendale retains the legal right to inspect the papers of PHI or subcontractor employee who performs work under this Agreement to ensure that PHI or any subcontractor is compliant with the warranty under subsection 11.12.1 above.
- 11.12.4 Glendale may conduct random inspections, and upon request of the Glendale, PHI shall provide copies of papers and records demonstrating continued compliance with subsection 11.12.1 above. PHI agrees to keep papers and records available for inspection by Glendale during normal business hours and will cooperate with Glendale in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this Section.
- 11.12.5 PHI agrees to incorporate into any subcontracts directly related to this Agreement the same obligations imposed upon it as set forth in this Section 11.12 and expressly accrue those obligations directly to the benefit of Glendale. PHI 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 Glendale.
- 11.12.6 PHI's warranty and obligations under this Section to Glendale are continuing throughout the Term of this Agreement or until such time as Glendale determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.
- 11.12.7 The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.
- 11.13 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 Glendale: Glendale City Clerk;
 5850 West Glendale Avenue.
 Glendale, Arizona 85301
 Telephone: (623) 930-2030

With a copy to: Glendale Fire Chief
 6829 N. 58th Drive
 Glendale, Arizona 85301

Telephone: (623) 930-4406
Fax: (623) 623-847-5313

Glendale City Attorney
5850 West Glendale Avenue.
Glendale, Arizona 85301
Telephone: (623) 930-2930
Fax: (623) 915 2391

If to PHI: PHI Air Medical, L.L.C.
Attn: David Motzkin, President
2800 N. 44th Street, Suite 800
Phoenix, AZ 85008

Copy to: PHI Air Medical, L.L.C.
Attn: Jeff Stanek, Director of Finance
2800 N. 44th Street, Suite 800
Phoenix, AZ 85008
Telephone: (602) 273-9349
Fax: (602) 224-1601

11.14 Recitals. The recitals contained in the first portion of this Agreement are made an integral part of this Agreement.

11.15 No Referral Relationship. The Parties acknowledge and agree that the amounts being paid or reimbursed by PHI hereunder are fair and reasonable and reflective of the actual cost of such services and that there is no expectation of any referral relationship or any other form of remuneration by Glendale as a result of the arrangements set forth in this Agreement.

[Signature Page Follows]

The Parties, through their respective undersigned authorized officers, have duly executed this Agreement as of the Effective Date.

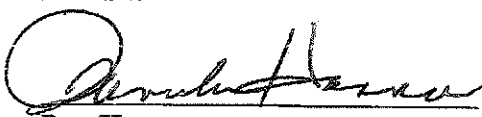
PHI:
PHI Air Medical, L.L.C.,
a Louisiana limited liability company

By: 
Title: President

GLENDALE:
City of Glendale,
an Arizona municipal corporation



Dick Bowers
Acting City Manager

ATTEST:


Pam Hanna
City Clerk

(SEAL)

APPROVED AS TO FORM:


Michael D. Bailey
City Attorney

SCHEDULE A
Business Associate Agreement

CITY CLERK ORIGINAL

C-10076-1
07/22/15

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is made effective the 22 day of July, 2015 ("Effective Date"), by and between the City of Glendale ("Glendale"), and PHI Air Medical, L.L.C. ("PHIAM"). Glendale and PHIAM may from time to time be either a Covered Entity or a Business Associate as such terms are used in this Agreement and defined under applicable law. Accordingly, the terms Covered Entity and Business Associate used herein shall apply to Glendale and/or PHIAM, as applicable, and solely to the extent such parties are deemed either a Covered Entity or a Business Associate under applicable law. (Glendale and PHIAM may sometimes be referred to individually as a "Party" and collectively as the "Parties.")

WITNESSETH

WHEREAS, Sections 261 through 264 of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, known as "the Administrative Simplification provisions," direct the Department of Health and Human Services ("HHS") to develop standards to protect the security, confidentiality and integrity of health information;

WHEREAS, pursuant to the Administrative Simplification provisions, the Secretary of Health and Human Services issued regulations modifying 45 CFR Parts 160 and 164 (the "HIPAA Privacy and Security Rule");

WHEREAS, the Health Information Technology for Economic and Clinical Health Act, and regulations thereunder (collectively, "HITECH Act"), codified at 42 U.S.C. 17921-17954, provides modifications to the HIPAA Privacy and Security Rule;

WHEREAS, pursuant to the HITECH Act, the Secretary of HHS has issued regulations at 45 C.F.R. Part 164, Subpart D (the "Data Breach Rule", together with the HIPAA Privacy and Security Rule and any and all regulations promulgated under the HITECH Act, the "HIPAA Rules") and may issue additional regulations in the future to further protect the security, confidentiality, and integrity of health information;

WHEREAS, the Parties wish to enter into or have entered into an arrangement whereby each Party will provide services to or on behalf of the other Party (the "Contract") and, pursuant to such Contract, each of the Parties may be considered a "business associate" of the other Party as defined in the HIPAA Rules;

WHEREAS, in connection with these services, each of the Parties, when acting as a Covered Entity, may disclose to the other Party, when acting as a Business Associate, certain Protected Health Information that is subject to protection under the HIPAA Rules; and

WHEREAS, both Parties agree that the HIPAA Rules require that the Covered Entity receive adequate assurances that the Business Associate will comply with certain obligations with respect to the Protected Health Information received in the course of providing services to

or on behalf of the Covered Entity, and the purpose of this Agreement is to comply with the requirements of the HIPAA Rules.

NOW THEREFORE, in consideration of the mutual promises and covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

A. Definitions. Except as otherwise defined in this Agreement, any and all capitalized terms shall have the same meaning as the definitions set forth in the HIPAA Rules, as amended from time to time. In particular, the following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Privacy Rule, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Rules, as amended, the HIPAA Rules shall control.

B. Purposes for which PHI May Be Disclosed to Business Associate. In connection with the services provided by Business Associate to or on behalf of Covered Entity described in this Agreement, Covered Entity may Disclose Protected Health Information ("PHI") to Business Associate solely for the purposes described in the Contract.

C. Obligations of Business Associate. Business Associate acknowledges that sections of the HIPAA Rules apply directly to Business Associate as they apply to Covered Entity and agrees to comply with such rules and regulations, including:

1. Use and Disclosure of PHI. Except as otherwise permitted by this Agreement or Required by Law, Business Associate shall not Use or Disclose PHI except as necessary to provide the services as described in the Contract to or on behalf of Covered Entity, and shall not Use or Disclose PHI in a manner that would violate the Privacy Rule if Used or Disclosed by Covered Entity. Notwithstanding the foregoing, Business Associate may access, create or receive PHI and Use and Disclose PHI as necessary for the proper management and administration of Business Associate, or to carry out its legal responsibilities, provided that Business Associate shall in such cases:

a) provide information to members of its workforce Using or Disclosing PHI regarding the confidentiality requirements of the HIPAA Rules and this Agreement; and

b) unless such Disclosure is Required by Law, obtain reasonable assurances from the person or entity to whom the PHI is Disclosed that: (a) the PHI will be held confidential and further Used and Disclosed only as Required by Law or for the purpose for which it was Disclosed to the person or entity; and (b) the person or entity will notify Business Associate of any instances of which it is aware in which confidentiality of the PHI has been breached.

Business Associate must also comply with the HIPAA Privacy and Security Rule (45 C.F.R. §§ 164.314(a)(2)(i)(A), 164.504(e)(2)(ii)(B)) as well as Covered Entity's minimum necessary policies.

2. Incident Reporting. Business Associate shall report, in writing, to Covered Entity any Breach, Security Incident, or Use, Disclosure or unauthorized access of PHI that is not permitted by this Agreement within two (2) calendar days after discovery (as provided in (45 C.F.R. §§ 164.314(a)(2)(i)(C), 164.504(e)(2)(ii)(C)). The report shall include, at a minimum, the identification of each affected individual. The Covered Entity retains control over breach notification procedures, including risk assessment, provision of breach notification to affected patients and communications to other entities as required, such as media outlets and the Secretary ("Breach Notification Procedure"). Business Associate shall cooperate with Covered Entity in any investigation of the incident and the Breach Notification Procedure, to include a review of breach notification and other communications as requested. In addition, Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of the requirements of this Agreement, the HIPAA Rules, or in violation of any applicable state law.

3. Data Aggregation. In the event that Business Associate works for more than one covered entity, Business Associate is permitted to Use PHI for Data Aggregation purposes only in order to analyze data for permitted Health Care Operations, to the extent that such Use is permitted under the Privacy Rule and the Contract.

4. Safeguards. Business Associate shall implement reasonable and appropriate administrative, physical and technical safeguards to ensure that PHI is not Used or Disclosed in any manner inconsistent with this Agreement and to protect the confidentiality, integrity, and availability of any electronic PHI it creates, receives, maintains, or transmits on behalf of Covered Entity as required by the Security Rule. Further, Business Associate will implement any other security requirements to the extent required by Section 17931(a) of the HITECH Act and any applicable regulations. Business Associate will ensure that any agent, including a Subcontractor, to whom it provides such electronic PHI agrees to implement reasonable and appropriate safeguards to protect it.

5. Minimum Necessary. Business Associate and its agents or Subcontractors, if any, shall request, Use and Disclose only a Limited Data Set, if practicable; if not practicable, Business Associate and its agents or Subcontractors, if any, shall request, Use and Disclose only the minimum amount of PHI necessary to accomplish the purpose of the request, Use or Disclosure, unless an exception in 45 C.F.R. § 164.502(b)(2) applies; provided that, when effective, Business Associate agrees to comply with the Secretary's guidance on what constitutes minimum necessary as required by HITECH Act Section 13405.

6. Disclosure to Agents and Subcontractors. If Business Associate Discloses PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, to agents, including a Subcontractor, Business Associate shall require the agent or Subcontractor to agree in writing to the same or substantially similar restrictions and conditions as apply to Business Associate under this Agreement (45 C.F.R. §§ 164.314(a)(2)(i)(B)). To the extent that the Business Associate is to carry out one or more of Covered Entity's obligations under the Privacy Rule, Business Associate must comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligations. Business Associate further expressly warrants that its agents or Subcontractors will be specifically advised of, and will comply in all respects with, the terms of this Agreement.

7. Individual Rights.

a) Individual Right to Copy or Inspection. Business Associate agrees that if it maintains a Designated Record Set for Covered Entity that is not maintained by Covered Entity, it will permit an Individual to inspect or copy PHI about the Individual in that set as directed by Covered Entity to meet the requirements of 45 C.F.R. § 164.524, the HITECH Act, and applicable state law. Covered Entity is required to take action on such requests as soon as possible, but not later than fifteen (15) days following receipt of the request. Business Associate agrees to make reasonable efforts to assist Covered Entity in meeting this deadline. If Business Associate maintains PHI electronically, it agrees to make such PHI electronically available to the applicable Individual. If Covered Entity maintains the requested records, Covered Entity, rather than Business Associate, shall permit access according to its policies and procedures implementing the HIPAA Rules.

b) Individual Right to Amendment. Business Associate agrees, if it maintains PHI in a Designated Record Set, to make amendments to PHI at the request and direction of Covered Entity pursuant to 45 C.F.R. § 164.526. If Business Associate maintains a record in a Designated Record Set that is not also maintained by Covered Entity, Business Associate agrees that it will accommodate an Individual's request to amend PHI only in conjunction with a determination by Covered Entity that the amendment is appropriate according to 45 C.F.R. § 164.526.

c) Accounting of Disclosures. Business Associate agrees to maintain documentation of the information required to provide an accounting of Disclosures of PHI in accordance with 45 C.F.R. § 164.528 and Section 17935(c) of the HITECH Act, and to make this information available to Covered Entity upon Covered Entity's request, in order to allow Covered Entity to respond to an Individual's request for accounting of Disclosures.

8. Internal Practices, Policies and Procedures. Except as otherwise specified herein, Business Associate shall make available its internal practices, policies and

procedures relating to the Use and Disclosure of PHI received from or on behalf of Covered Entity to the Secretary or his or her agents for the purpose of determining Covered Entity's compliance with the HIPAA Rules, or any other health oversight agency, or to Covered Entity. Records requested that are not protected by an applicable legal privilege will be made available in the time and manner specified by Covered Entity, the applicable health oversight agency, or the Secretary.

9. Notice of Privacy Practices. Business Associate shall abide by the limitations of Covered Entity's Notice of which it has knowledge. Any Use or Disclosure permitted by this Agreement may be amended by changes to Covered Entity's Notice; provided, however, that the amended Notice shall not affect permitted Uses and Disclosures on which Business Associate relied prior to receiving notice of such amended Notice.

10. Withdrawal of Authorization. If the Use or Disclosure of PHI in this Agreement is based upon an Individual's specific authorization for the Use or Disclosure of his or her PHI, and the Individual revokes such authorization, the effective date of such authorization has expired, or such authorization is found to be defective in any manner that renders it invalid, Business Associate shall, if it has notice of such revocation, expiration, or invalidity, cease the Use and Disclosure of the Individual's PHI except to the extent it has relied on such Use or Disclosure, or if an exception under the Privacy Rule expressly applies.

11. Knowledge of HIPAA. Business Associate agrees to review and understand the HIPAA Rules as they apply to Business Associate, and to comply with the applicable requirements, as well as any applicable amendments thereto.

12. Remuneration and Marketing. Business Associate will not directly or indirectly receive remuneration in exchange for any PHI, subject to the exceptions contained in the HITECH Act, without a valid authorization from the applicable Individual. Business Associate will not engage in any communication which might be deemed to be "marketing" under the HITECH Act.

D. Term and Termination.

1. Term. This Agreement shall be effective as of the Effective Date and shall run coterminous with the Contract. At the termination of this Agreement, all PHI provided to Business Associate by Covered Entity, or created or received by Business Associate on behalf of Covered Entity, shall be destroyed or returned to Covered Entity, unless Covered Entity permits Business Associate to use or disclose PHI for its own management and administration or to carry out its legal responsibilities, in which case the PHI retained shall be limited to the Minimum Necessary for such use or disclosure.

2. Termination for Breach. If Business Associate, or its agents or Subcontractors, if any, violates any material term of this Agreement, as determined by Covered Entity, Covered Entity may, in its discretion: (i) immediately terminate this

Agreement; (ii) provide an opportunity for Business Associate to cure the Breach or end the violation and terminate this Agreement if Business Associate does not promptly cure the Breach or end the violation within a period not to exceed thirty (30) days; or (iii) report the violation to the Secretary if neither termination nor cure is feasible.

Covered Entity may terminate this Agreement effective immediately, if (i) Business Associate is named as a defendant in a criminal proceeding for a violation of the HIPAA Rules or other security or privacy laws or (ii) there is a finding or stipulation that the Business Associate has violated any standard or requirement of the HIPAA Rules or other security or privacy laws in any administrative or civil proceeding in which Business Associate is involved. Business Associate agrees to report the commencement of any legal action or investigation against Business Associate arising from an alleged violation of the HIPAA Rules or any other security or privacy laws.

3. Effect of Termination. Upon termination of this Agreement for any reason, Business Associate agrees to return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, maintained by Business Associate in any form. If Business Associate determines that the return or destruction of PHI is not feasible, Business Associate shall inform Covered Entity in writing of the reason thereof, and shall agree to extend the protections of this Agreement to such PHI and limit further Uses and Disclosures of the PHI to those purposes that make the return or destruction of the PHI not feasible for so long as Business Associate retains the PHI.

E. Miscellaneous.

1. Independent Contractors. It is expressly agreed and stipulated by and between the Parties hereto that Business Associate and Covered Entity are independent contractors, and neither Party shall be deemed or construed to be an agent, servant, or employee of the other or of any affiliates within the meaning of the Workers' Compensation Act of the applicable State.

2. Insurance. Unless greater coverage is required under any other agreement between Covered Entity and Business Associate for the provision of services related to the Contract and this Agreement, Business Associate shall maintain or cause to be maintained the following insurance covering itself and each Subcontractor or agent, if any, through whom Business Associate provides services: (i) a policy of commercial general liability and property damage insurance, and electronic data processing insurance, with limits of liability not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) annual aggregate; and (ii) such other insurance or self-insurance as shall be necessary to insure it against any claim or claims for damages arising under this Agreement or from violating Business Associate's own obligations under the HIPAA Rules, including but not limited to, claims or the imposition of administrative penalties and fines on Business Associate or its Subcontractors or agents, if any, arising from the loss, theft, or unauthorized use or disclosure of PHI. Such insurance coverage shall apply to all site(s) of Business Associate and to all services

provided by Business Associate or any of its Subcontractors or agents under the Contract or this Agreement.

3. Indemnification. To the extent permitted by law, Business Associate agrees to indemnify and hold harmless Covered Entity from and against all claims, demands, liabilities, judgments or causes of action of any nature for any relief, elements of recovery or damages recognized by law (including, without limitation, reasonable attorney's fees, defense costs, and equitable relief) (collectively, "Claims"), for any damage or loss incurred by Covered Entity arising out of, resulting from, or attributable to any negligence, fault or other legal liability of Business Associate or its Subcontractors or agents in connection with the performance of Business Associate's duties under this Agreement. This indemnity shall not be construed to limit Covered Entity's rights, if any, to common law indemnity.

To the extent permitted by law, Covered Entity agrees to indemnify and hold harmless Business Associate from and against all Claims for any damage or loss incurred by Business Associate arising out of, resulting from, or attributable to any negligence, fault or other legal liability of Covered Entity or its Subcontractors or agents in connection with this Agreement. This indemnity shall not be construed to limit Business Associate's rights, if any, to common law indemnity.

The Party receiving indemnification ("Indemnified Party") shall have the option, at its discretion, to employ attorneys selected by it to defend any such action, the reasonable costs and expenses of which shall be the responsibility of the Party providing indemnification (the "Indemnifying Party"). The Indemnified Party shall provide the Indemnifying Party with timely notice of the existence of such proceedings and such information, documents and other cooperation as reasonably necessary to assist the Indemnifying Party in establishing a defense to such action.

These indemnities shall survive termination of this Agreement.

4. Rights of Proprietary Information. Covered Entity retains any and all rights to the proprietary information, confidential information, and PHI it releases to Business Associate. Business Associate agrees that it acquires no title or rights to PHI as a result of the Contract or this Agreement.

5. Survival. The respective rights and obligations of Business Associate under Sections C, D, E.2, E.3, and E.4 of this Agreement shall survive the termination of this Agreement for any reason.

6. Notices. Any notices pertaining to this Agreement shall be given in writing and shall be deemed duly given when personally delivered to a Party or a Party's authorized representative as listed below or sent by means of a reputable overnight carrier, or sent by means of certified mail, return receipt requested, postage prepaid. A notice sent by certified mail shall be deemed given on the date of receipt or refusal of receipt. All notices shall be addressed to the appropriate Party as follows:

If to Glendale: Glendale City Clerk
5850 West Glendale Avenue.
Glendale, Arizona 85301
Telephone: (623) 930-2030

With a Copy to: Glendale City Attorney
5850 West Glendale Avenue.
Glendale, Arizona 85301
Telephone: (623) 930-2930
Fax: (623) 915 2391

If to PHIAM: PHI Air Medical, L.L.C.
2800 N. 44th Street, Suite 800
Phoenix, Arizona 85008
Attn: David Motzkin, President

With a Copy to: PHI Air Medical, L.L.C.
2800 N. 44th Street, Suite 800
Phoenix, Arizona 85008
Attn: Jeff Stanek, Director of Finance

7. Amendments. If any modification to this Agreement is required by HIPAA, the HITECH Act, the HIPAA Rules, or any other federal or state law affecting this Agreement or if Covered Entity reasonably concludes that an amendment to this Agreement is needed because of a change in federal or state law or changing industry standards, Covered Entity shall notify Business Associate of such proposed modification(s) ("Legally-Required Modifications"). Such Legally Required Modifications shall be deemed accepted by Business Associate and this Agreement so amended, if Business Associate does not, within thirty (30) calendar days following the date of the notice (or within such other time period as may be mandated by applicable state or federal law), deliver to Covered Entity its written rejection of such Legally-Required Modifications. If the Parties cannot agree on the effect of any such amendment or interpretation, this Agreement may be terminated upon written notice to the other Party.

8. Choice of Law. This Agreement and the rights and the obligations of the Parties hereunder shall be governed by and construed under the laws of the State of Arizona, without regard to applicable conflict of laws principles.

9. Assignment of Rights and Delegation of Duties. This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective successors and permitted assigns. However, neither Party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.

Notwithstanding any provisions to the contrary, however, Covered Entity retains the right to assign or delegate any of its rights or obligations hereunder to any of its wholly owned subsidiaries, affiliates or successor companies. Assignments made in violation of this provision are null and void.

10. Nature of Agreement. Nothing in this Agreement shall be construed to create (i) a partnership, joint venture or other joint business relationship between the Parties or any of their affiliates, (ii) any fiduciary duty owed by one Party to another Party or any of its affiliates, or (iii) a relationship of employer and employee between the Parties.

11. No Waiver. Failure or delay on the part of either Party to exercise any right, power, privilege or remedy hereunder shall not constitute a waiver thereof. No provision of this Agreement may be waived by either Party except by a writing signed by an authorized representative of the Party making the waiver.

12. Equitable Relief. Business Associate agrees that any disclosure of misappropriation of PHI by Business Associate or its agents or Subcontractors, if any, in violation of this Agreement will cause Covered Entity irreparable harm, the amount of which may be difficult to ascertain. Business Associate therefore agrees that Covered Entity shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining Business Associate from any such further Disclosure or Breach, and for such other relief as Covered Entity shall deem appropriate. Such rights are in addition to any other remedies available to Covered Entity at law or in equity.

13. Severability. The provisions of this Agreement shall be severable, and if any provision of this Agreement shall be held or declared to be illegal, invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect as though such illegal, invalid or unenforceable provision had not been contained herein.

14. No Third Party Beneficiaries. Nothing in this Agreement shall be considered or construed as conferring any right or benefit on a person not party to this Agreement nor imposing any obligations on either Party hereto to persons not a party to this Agreement.

15. Headings. The descriptive headings of the articles, sections, subsections, exhibits and schedules of this Agreement are inserted for convenience only, do not constitute a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement.

16. Entire Agreement. This Agreement, together with the all Exhibits, Riders and amendments, if applicable, which are fully completed and signed by authorized persons on behalf of both Parties from time to time while this Agreement is in effect, constitutes the entire Agreement between the Parties hereto with respect to the subject matter hereof and supersedes all previous written or oral understandings, agreements,

negotiations, commitments, and any other writing and communication by or between the Parties with respect to the subject matter hereof. In the event of any inconsistencies between any provisions of this Agreement in any provisions of the Exhibits, Riders, or amendments, the provisions of this Agreement shall control.

17. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Rules. In the event of an inconsistency between the provisions of this Agreement and any mandatory provisions of the HIPAA Rules, as amended, the HIPAA Rules shall control. Where provisions of this Agreement are different from those in the HIPAA Rules, as amended, but are nonetheless permitted by the HIPAA Rules, the provisions of this Agreement shall control.

18. Regulatory References. A citation in this Agreement to the Code of Federal Regulations shall mean the cited section as that section may be amended from time to time.

19. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the month, date, and year indicated below, but which shall be deemed effective as of the Effective Date.

PHI AIR MEDICAL, L.L.C.:

By: 

Name: David Motzkin

Title: President

Date: 06/18/2015

CITY OF GLENDALE:

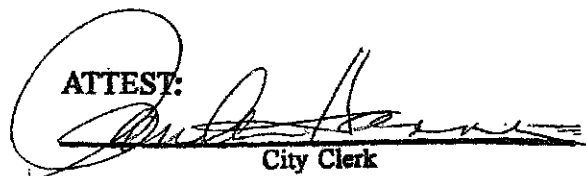
By: 

Name: Richard A. Bowers

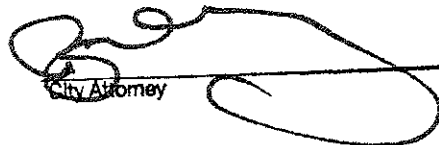
Title: Acting City Manager

Date: 7-22-15

ATTEST:


City Clerk

Approved as to form


City Attorney



Legislation Description

File #: 15-786, Version: 1

RESOLUTION 5068: AUTHORIZATION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT (IGA) WITH NORTH COUNTY FIRE & MEDICAL DISTRICT FOR STAFFING ON HELICOPTER AIR-MEDICAL AND LOGISTIC OPERATIONS (HALO), AND TO REQUEST RATIFICATION OF THE PAYMENTS MADE SINCE JUNE 26, 2015

Staff Contact: Terry Garrison, Fire Chief

Purpose and Recommended Action

This is a request for City Council to authorize the City Manager to enter into a contract with North County Fire & Medical District to assist with the staffing on HALO, and to request ratification of the payments made from June 26, 2015, through February 2016, in the amount of \$69,124.37. The full approximate amount for this IGA is \$125,000 for FY 2015-2016, with a not to exceed amount of \$145,000.

Background

The mission of the HALO team is to be the air medical provider utilized for pre-hospital patient transport requirements. The medical team will be comprised of personnel from the cities of Glendale, Surprise, and North County Fire & Medical District formerly (Sun City West Fire District) and the aviation team will be comprised of personnel from Petroleum Helicopters International (PHI) Air Medical, LLC.

The secondary mission of the team is to provide aerial reconnaissance and assistance for specific duties as determined by the participating fire departments, such as incident command support. The team is an additional asset or resource to be dispatched like any other apparatus or personnel requirement.

To keep the citizens safer and have continual service, the City has continued to pay for this service since June 26, 2015. The paid invoices are from May 2015 - December 2015 in the amount of \$69,124.37. We have not received the invoices for January 2016 - February 2016. North County Fire & Medical District invoices are 1-2 months in arrears.

Previous Related Council Action

On January 25, 2011, Council approved Contract C-7562.

On June 26, 2007, Council approved the original Contract C-6067.

Community Benefit/Public Involvement

The HALO Program has been successful since its conception in 2007. The most important benefit of air medical transport is the rapid transport of patients to the appropriate hospital facility and level of care. The

primary responsibility of the HALO team is to build on the immediate care provided by fire department personnel on scene of an emergency and then movement of the patient promptly to a hospital facility. An additional benefit to the City of Glendale includes the ability to obtain an aerial view of large emergencies in our community.

Budget and Financial Impacts

The contract with PHI Air Medical will cover all costs of the program through reimbursement to the City of Glendale for medical personnel costs and PHI provides all required equipment and aviation personnel.

Cost	Fund-Department-Account
\$145,000	1000-12492-518200, Air-Medical & Logistics Ops (HALO)

Capital Expense? No

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from?

RESOLUTION NO. 5068 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 NORTH COUNTY FIRE AND MEDICAL DISTRICT TO SUPPORT THE HELICOPTER AIR-MEDICAL LOGISTICS OPERATIONS (H.A.L.O.) PROGRAM.

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 North Country Fire and Medical District to support the Helicopter Air-Medical Logistics Operations (H.A.L.O.) program, 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 Manager or designee 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 , 2016.

M A Y O R

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

REVIEWED BY:

City Manager

**Intergovernmental Agreement
Between the City of Glendale and the North County Fire & Medical District
for
Helicopter Air-Medical Logistics Operations
(H.A.L.O.)**

THIS INTERGOVERNMENTAL AGREEMENT ("IGA") is entered into to be effective beginning June 26, 2015 under Arizona Revised Statutes ("A.R.S") § 11-952 between the City of Glendale, an Arizona municipal corporation ("Glendale") and the North County Fire & Medical District ("NCFMD"), a political subdivision of the State of Arizona, for their respective fire departments (hereinafter collectively referred to as the "Departments" and individually as a "Department").

RECITALS

A. Glendale has an existing contract with PHI AIR MEDICAL, L.L.C., a Louisiana limited liability company ("PHI"), Contract No. C-10076, and its first amendment No. C-10076-1, which are attached hereto as Exhibit A ("PHI Agreement"); and

B. Glendale and PHI have established a public-private air medical program to provide air medical transportation services to the residents of the City of Glendale and its automatic aid and mutual aid partners; and

C. The Departments are parties to the automatic aid agreement for Maricopa County; and

D. The Departments desire to provide firefighter paramedic services to support the staffing of one or more medical helicopters in conjunction with the PHI contract; and

E. The Departments desire to provide emergency medical, special operations, aerial reconnaissance, command and control and other services to automatic aid and mutual aid jurisdictions and communities within the prescribed response areas of Helicopter Air-Medical Logistics Operations ("H.A.L.O.") medical transport aircraft.

AGREEMENT

NOW, THEREFORE, the Departments hereby agree to enter into this IGA to cooperatively provide the necessary firefighter paramedics, emergency medical services and special operations personnel services to support the H.A.L.O. program, as needed, according to the terms and conditions set forth below:

I. Purpose.

The purpose of this IGA is to provide fire services personnel to co-staff H.A.L.O. program in Glendale. H.A.L.O. will provide pre-hospital emergency medical and other fire service in the Departments' jurisdictions and in other automatic aid jurisdictions within the state of Arizona (hereinafter referred to as "Fire Department Consortium"). Through this IGA, the Departments intend to provide air medical transport personnel, emergency on scene command and control, EMS and special operations services by maximizing cooperation and integrating the Departments' personnel assets.

II. Organizational Structure.

The Departments shall each provide qualified personnel to staff the H.A.L.O. program under the PHI Agreement. Personnel provided by a Department are hereinafter referred to as "Participating Personnel." Glendale will provide three (3) Participating Personnel and NCFMD shall provide one (1) Participating Personnel. Each Department shall also have at least one qualified back-up person for each Participating Personnel position. The Departments acknowledge and agree that this IGA may be amended to access additional personnel for the program, if required. H.A.L.O. program participation will be limited to automatic aid jurisdictions in Maricopa County. It is agreed that no new IGA will be entered into with any additional department related to the subject of this Agreement, nor will any amendment to this IGA be made regarding an additional department, except upon the consensus of the Departments.

III. H.A.L.O. Personnel.

A. The personnel qualifications and requirements for H.A.L.O. personnel are set forth in the H.A.L.O. Operations Manual, and the Departments agree that all Participating Personnel will comply with such qualifications and requirements.

B. General Orders: Participating Personnel shall be subject to both their "home" department's General Orders and the H.A.L.O. Operations Manual. If a conflict arises between one's "home" department General Orders and the H.A.L.O. Operations Manual, the H.A.L.O. Operations Manual will apply.

C. Discipline/Personnel Review: If, in the reasonable opinion of PHI or any Department, any Participating Personnel do not demonstrate a high degree of aptitude for the type of operations or customer service required for the H.A.L.O. program, including good interpersonal relations, PHI or any Department may make a written request to the Glendale Fire Chief to conduct a prompt review of the performance of the individual and to take appropriate action. Glendale reserves the right to "ground" personnel pending decision of a review board. All such employment actions will be handled by Glendale on a case-by-case basis. If, at any time, the conduct or performance of Participating Personnel comes into question, Glendale will convene a review board comprised of one representative from each Department, PHI, and the Medical Directors. The review board shall have the authority to disqualify any individual from further participation in the program. The decision of the review board may be appealed, upon written request of the individual, to an appeal board comprised of the Fire Chief, or designee, of each Department and a PHI designee. The action of the board shall not prevent additional disciplinary action by the Departments for violations of General Orders, policies or procedures.

D. Command and Control:

1. All Departments acknowledge that command and control of daily (non-incident) operational issues shall be Glendale's duty and responsibility. Command and control of H.A.L.O. Participating Personnel during incidents will remain the responsibility of the assigned Incident Commander.

2. A H.A.L.O. Operations Manual will be promulgated and maintained by Glendale. This manual will address operational issues including, but not limited to, command, control, training, administration and marketing. Glendale will promptly notify the Departments of any changes in the H.A.L.O. Operations Manual.
3. In the event a Department fails to provide Participating Personnel for a shift, Glendale shall assign qualified personnel from the Glendale Fire Department or from another participating Department.

E. Compensation:

1. NCFMD will provide personnel and be reimbursed at the initial rate of \$45.41 per hour for each hour a H.A.L.O position is occupied by Participating Personnel provided by NCFMD. Payments will be made each month by Glendale based upon invoices submitted to Glendale by NCFMD monthly, no later than the 10th of each month. NCFMD will only receive payment for time worked in a H.A.L.O. position. Adjustments in the future reimbursement rate will be governed by the contract between PHI and Glendale and will be the same for all Departments.
2. Each Department shall be individually responsible for the payment of wages, including overtime, and benefits for its Participating Personnel.
3. Payment by Glendale to a Department is to be made within 30 days of receipt of an invoice.

F. Uniform:

H.A.L.O personnel will wear such uniforms as prescribed in the H.A.L.O. Operations Manual.

IV. Insurance/Indemnification.

A. Each Department assumes responsibility for all liabilities relating to its Participating Personnel and will save harmless, defend and indemnify all other Departments in any actions related to such employment.

B. Each Department will maintain responsibility for all of their respective employees' benefits, including but not limited to sick leave, vacation, alternative duty assignments, worker's compensation and other associated life insurance requirements. Glendale will only insure Glendale personnel related to the H.A.L.O. project and NCFMD will only insure NCFMD personnel related to the H.A.L.O. project. The Departments further agree and declare that they are not joint employers for the purpose of workers compensation coverage and that any Department's employee assigned to work as Participating Personnel shall remain an employee of such Department. To the extent that employees of one Department perform duties on behalf of another Department, such employee 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 Department shall post a notice pursuant to the provisions of A.R.S § 23-1022 in substantially the following form:

"All employees are hereby further notified that they may be required to work under the jurisdiction or control or within the jurisdictional boundaries of another public agency pursuant to an intergovernmental agreement or contract, and under such circumstances they are deemed by the laws of Arizona to be employees of both public agencies for the purposes of worker's compensation."

C. Each Department (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

V. Media Releases and Relations.

Any release of information to the media pertaining to H.A.L.O., other than a public records release, will be coordinated by the Glendale Fire Department Public Information Officer ("Glendale PIO") in cooperation with and with input from the Departments. No Department will distribute any unilateral media releases without prior coordination with the Glendale PIO. A copy of all public record and media releases regarding H.A.L.O. shall be provided to the Glendale PIO. Departments will not reveal any investigative information or operational procedures of the H.A.L.O. project outside the Departments except as required by law or competent authority. If an incident is primarily focused upon or concerned with the actions of a Department's Participating Personnel, that Department will be responsible for the release of information to the media relative to the incident.

VI. Arizona Department of Health Services Certification.

A. Relative to its Participating Personnel, each Department agrees that it will be responsible to the Arizona Department of Health Services ("ADHS") for complying with all requirements mandated by ADHS for Emergency Medical Care Technicians (EMCTs). By way of example only, and not by way of limitation, this means each Department, relative to its Participating Personnel, agrees to be responsible to ADHS for the record-keeping, training, and testing requirements imposed upon fire departments employing personnel in Arizona.

B. Departments agree to cooperate to assure any issues that arise relative to EMCT certification are resolved in a reasonable and efficient manner.

VII. Execution, Duration and Renewal.

A. This IGA will be effective upon the approval and execution by both Glendale and NCFMD.

B. This IGA may be executed in counterparts.

C. This IGA will remain in effect for three (3) ending June 25, 2018, subject to the renewal and termination provisions set forth below.

D. This IGA may be renewed for successive additional three (3) year periods upon mutual written agreement of the parties. There are no automatic renewals.

VIII. HIPAA.

To the extent NCFMD shall be deemed a "Business Associate" (as that term is defined in the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as may be amended, and regulations promulgated thereunder by the U.S. Department of Health and Human Services and other federal agencies ("HIPAA") in connection with PHI's provision of services under the PHI Agreement) of PHI or Glendale, NCFMD shall comply with the terms and conditions of the business Associate Agreement attached as Schedule A to the PHI Agreement.

IX. General Provisions.

A. Entire Agreement. This IGA embodies the entire understanding of the Departments and supersedes any other agreement or understanding between the parties relating to the subject matter. The Departments agree that should any part of this IGA be held to be invalid or void, the remainder of the IGA shall remain in full force and effect and shall be binding upon the parties.

B. Governing Law. This IGA shall be governed by and construed in accordance with the laws of the State of Arizona.

C. Conflict of Interest. This IGA is subject to termination by either Department under to the provisions of A.R.S. § 38-511.

D. Termination. Either party may terminate this IGA by giving the other party not less than thirty (30) days prior written notice; provided, Glendale shall be obligated to pay NCFMD for services rendered through the termination date.

E. Non-Discrimination. NCFMD must not discriminate against any employee or applicant for employment on the basis race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. NCFMD will require any Sub-contractor to be bound to the same requirements as stated within this section. NCFMD, and on behalf of any subcontractors, warrants compliance with this section.

F. Dispute Resolution. In the event of any dispute, claim, question, or disagreement arising from or relating to this IGA or the breach thereof, the parties shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If

that fails, the matter shall be submitted to a body consisting of one voting representative from each Department plus a third member mutually agreed upon by the Departments for a majority vote recommendation. The Fire Chief of Glendale has the final authority to decide and resolve the dispute, claim, question, or disagreement.

G. Appropriation of Funds. The provisions of this Agreement for payment of funds by the Parties shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. The Parties shall be the sole judge and authority in determining the availability of funds under this Agreement and each Department shall keep the other Parties fully informed as to the availability of funds for its program. The obligation of the Parties to make any payment pursuant to this Agreement is a current expense of the Parties, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of the Parties. If the City Councils of the Parties fail 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 Parties shall be relieved of any subsequent obligation under this Agreement.

H. Notice: All notices relating to this IGA shall be deemed given when mailed, by certified or registered mail, or overnight courier, to the other Department at the address set forth below or such other address as may be given in writing from time to time:

If to Glendale: Glendale Fire Department
 Attn: Fire Chief
 5800 West Glenn Drive, Suite 350
 Glendale, Arizona 85301

with a copy to: Glendale City Attorney
 5850 West Glendale Avenue, Suite 450
 Glendale, Arizona 85301

If to NCFMD: North County Fire & Medical District
 Attn: Fire Chief
 18818 North Spanish Garden Drive
 Sun City West, Arizona 85375

I. Immigration Compliance: The Departments warrant they will abide by those federal and state immigration laws and regulations applicable to its employees. The Departments retain the legal right to inspect the papers of the Departments to ensure that the Departments are compliant with the warranty under this Section. The Departments may conduct random inspections, and upon request of a Department, the other Department shall provide copies of papers and records demonstrating continued compliance with the warranty under this Section. The Departments agree to keep papers and records available for inspection during normal business hours and will cooperate with the other Department 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. The Departments' warranty and obligations under this Section are continuing throughout the term of this IGA or until such time as the Departments determine that Arizona law has been modified in that compliance with this Section is no longer a requirement. The "E-Verify Program" means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

DATED: _____, 2015 **NORTH COUNTY FIRE & MEDICAL DISTRICT**

Board Chairman

ATTEST:

Board Clerk

CERTIFICATION BY LEGAL COUNSEL

The foregoing Intergovernmental Agreement is in proper form and is within the powers and authority of the Fire District of North County Fire & Medical District granted under the laws of the State of Arizona.

APPROVED AS TO FORM AND AUTHORITY:

North County Fire & Medical District Attorney

DATED: _____, 2016 **CITY OF GLENDALE**

Kevin R. Phelps
City Manager

ATTEST:

Pam Hanna, City Clerk

CERTIFICATION BY LEGAL COUNSEL

The foregoing Intergovernmental Agreement is in proper form and is within the powers and authority of the City of Glendale granted under the laws of the State of Arizona.

APPROVED AS TO FORM AND AUTHORITY:

Michael D. Bailey
Glendale City Attorney

EXHIBIT A

**Air Ambulance Service Agreement (Contract No. C-10076)
Between City of Glendale and PHI Air Medical, L.L.C.
and
Amendment No. 1 to Air Ambulance Service Agreement (Contract No. C-10076**

AIR AMBULANCE SERVICES AGREEMENT

23 This Air Ambulance Services Agreement (this "Agreement") is made effective as of June 23, 2015 (the "Effective Date"), by and between PHI Air Medical, L.L.C., a Louisiana limited liability company ("PHI"), and City of Glendale ("Glendale") (PHI and Glendale, collectively, the "Parties," individually, a "Party").

RECITALS

WHEREAS, PHI provides air medical transportation services; and

WHEREAS, Glendale has identified the opportunity to improve customer service to its constituents and more effectively deliver emergency services, which are core to its public safety mission; and

WHEREAS, Glendale and PHI have agreed to work cooperatively to establish a public-private air medical program to provide air medical transportation and other emergency services to the residents of the City of Glendale and its automatic aid and mutual aid partners (the "Program").

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the Parties agree as follows:

AGREEMENT

1. Services Provided by PHI.

- 1.1 Air Medical Transport Services. As authorized in accordance with this Agreement, PHI shall provide air ambulance flight services to patients (the "Flight Services") in accordance with (i) local, State and Federal protocols, (ii) Glendale protocols in existence on the Effective Date which have been furnished to PHI on or before the Effective Date and (iii) Glendale protocols as they may be amended after the Effective Date which have been furnished to PHI and approved by PHI (which approval will not be unreasonably withheld).
- 1.2 Flight Service Guidelines. PHI shall provide the Flight Services in accordance with the standards set forth by the Commission on Accreditation of Medical Transport Services ("CAMTS"). The PHI Medical Director for the Program, working with the PHI Manager of Clinical Standards, shall establish standards for appropriate patient care during air transport.

- 1.3 PHI Flight Operations. PHI shall provide one (1) turbine engine helicopter (the "Aircraft") with service available for the Program twenty-four (24) hours a day, three hundred sixty-five (365) days per year, except for maintenance and repair activities. The Aircraft shall be based in a mutually agreed upon West Valley location. PHI shall use its commercially reasonable efforts to promptly respond to transportation requests from Glendale to the extent the Aircraft is available and not then in use or subject to maintenance or repair activities. PHI shall provide not less than four (4) pilots and one (1) mechanic (collectively, the "Flight Team") for the Program. At least one (1) pilot shall be on-duty at all times. Each Flight Team member shall be trained to PHI standards. Each Flight Team member shall meet all educational and experience standards recommended by CAMTS. All personnel of PHI providing services pursuant to this Agreement are subject to the general approval of Glendale. The pilot in command of the aircraft shall have complete power and authority to make and shall make all decisions concerning the suitability of weather and landing areas, condition of the aircraft for flight, and all other factors affecting flight safety. In accordance with Federal Aviation Regulations and PHI General Operations Manual; the pilot in command of the aircraft will at all times maintain "Operational Control" of the Aircraft.
- 1.4 Medical Director and Medical Direction. PHI will provide physician medical director services for the Program (the "Medical Director") through Banner University Medical Center subject to the approval of Glendale, which approval shall not unreasonably be withheld. The Medical Director shall be an employee or a contractor of PHI and shall not be deemed an employee, contractor or agent of Glendale. The Medical Director must meet all licensure, education, and certification requirements as set forth by any state or federal oversight body, and CAMTS.
- 1.5 General Financial Responsibility. Each Party shall assume full responsibility and oversight for its independently incurred costs and fees associated with the Program. Costs and fees incurred for the Program that are not clearly within the responsibility of either Party will be negotiated on a case by case basis, excluding any costs or fees incurred as a result of a claim by a third-party. For purposes of this section, "third-party" means a person other than the Parties.
- 1.6 Billing and Collection Obligations. PHI shall seek payment for all Flight Services by directly billing and collecting from the patients and other persons for whose benefit such Flight Services are provided under this Agreement, including, without limitation, the transported persons, their insurance carriers, or county, state or federal agencies. Compensation received by PHI for Flight Services shall remain the property of PHI. All patient charges by PHI shall be in accordance with applicable governmental regulations. Glendale is not responsible for non-payment of bills by individuals or other responsible parties to whom patient care and transportation services, including Flight Services, have been rendered by PHI. PHI represents that its charges to patients and other persons served for services rendered under this Agreement shall be fair and competitive.

- 1.7 HIPAA. To the extent either Party shall be deemed a "Business Associate" (as such term is defined in the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as may be amended, and regulations promulgated thereunder by the U.S. Department of Health and Human Services and other federal agencies ("HIPAA") in connection with PHI's provision of services under this Agreement) of the other Party, the Parties shall comply with the terms and conditions of the Business Associate Agreement attached as Schedule A.

2. Services Provided by Glendale.

- 2.1 Clinical Services on Flights. Glendale shall be responsible for providing 24-hour paramedic staffing for the Program. In accordance therewith, Glendale shall provide a total of five (5) paramedics, up to two of which may be nurse paramedics if mutually-agreed to by the Parties, trained to a standard agreed upon by the Parties for the Program (the "Glendale Medical Providers"). PHI shall pay Glendale Seventy-Four Thousand and 00/100 Dollars (\$74,000.00) per month for the Glendale Medical Providers. This rate will increase by 2.5% on each yearly anniversary of the Effective Date of this Agreement. Payments made to Glendale shall be due and payable on or before the first day of each month, to the order of the City of Glendale, 5850 W. Glendale Avenue, Glendale Arizona 85301, Attn: Finance Department, Contract No. C-_____. Payments received after the 15th day of any month shall be assessed a late charge of 15% per month. The Glendale Medical Providers shall be employees of Glendale or sub-contractors and under the control of Glendale and shall not be deemed employees or agents of PHI. Two (2) Glendale Medical Providers shall be on-duty at all times.
- 2.2 Dispatch Services. Glendale will provide all dispatch and communication services for the Program through the Phoenix Regional Dispatch and Deployment Center. These services will be conducted in accordance with the standards established by CAMTS.
- 2.3 Program Management. Glendale will designate one or more individuals to act as the supervisor over the Glendale Medical Providers from the Emergency Medical Services Division of the Glendale Fire Department ("GFD"), as provided for herein. Glendale's on duty Shift Commander will work with PHI in an advisory capacity to oversee the daily operations of the Program. All personnel provided by Glendale (including supervisors and the Glendale Medical Providers) shall be either employees or contractors of Glendale and under the control of Glendale and shall not be deemed employees or agents of PHI. Glendale shall be solely responsible for and shall pay, or cause to be paid, all salary, fringe benefits, worker's compensation benefits, professional liability insurance, all employment related taxes and any other related employment expenses associated with the personnel provided by Glendale.

- 2.4 Medical Crew Review. If, in the reasonable opinion of PHI, any personnel provided by Glendale pursuant to this Agreement do not demonstrate a high degree of aptitude for the type of operations or customer service required, including good interpersonal relations, PHI may make written request to Glendale to conduct a prompt review of the performance of the individual and to take appropriate prompt action. All such employment actions will be handled by Glendale on a case-by-case basis in accordance with Glendale policy and procedure. All Glendale employees shall conform to the rules and requirements jointly approved by Glendale and PHI concerning dress and conduct and other applicable PHI and Glendale policies while providing services pursuant to this Agreement, and in connection with referring/receiving agency personnel interface.
- 2.5 Preferred Provider. Glendale agrees that PHI shall be its "preferred provider" and shall have first right of refusal for all air medical transport requests received by, through or from GFD. If for reasons other than dangerous weather conditions, PHI is unable to timely initiate or complete any requested air medical transport, PHI will provide GFD with its best estimate of alternative aircraft response time. If GFD determines that the response time is not acceptable based on the circumstances of the transport, GFD shall be free to solicit and utilize any other appropriate resource or transport service to meet patient transfer needs without violating the preferred provider status of PHI. PHI shall have no liability to Glendale or GFD as a result of PHI's inability to fulfill a request for air medical transport unless caused by PHI's willful misconduct. GFD will encourage regional support and utilization of PHI as the regional air medical transport program. Notwithstanding PHI's preferred provider status hereunder, the party to be transported or the attending physician or health care provider shall always have the right to direct that another air medical transporter be used for the transport.
3. Utilization of Corporate Identity or Likeness. PHI and Glendale will use their commercially reasonable efforts to participate in mutually beneficial public relations and marketing activities. Neither PHI nor Glendale will utilize the others' markings or identities without express written permission from the other Party. PHI will allow Glendale to place Glendale's identity on aircraft dedicated to this Agreement, provided that PHI will only use Glendale's trade names, trademarks, and logos in accordance with this Agreement. All marketing materials of PHI that names or makes reference to Glendale or the Glendale trade names, trademarks and logos must be approved in writing by Glendale prior to distribution.
4. Relationship of the Parties. The relationship of the Parties as set forth in this Agreement is that of independent contractor to the other Party. PHI shall be an independent contractor of Glendale pertaining to the Flight Services and the Program pursuant to this Agreement. Glendale shall be an independent contractor of PHI in furnishing the Glendale Medical Providers and any and all supervisory and communications personnel for the Program. Nothing in this Agreement is intended or shall be construed as creating any kind of partnership, joint venture, or agency relationship between the Parties.

5. **Term.** Subject to Section 11.3, the term of this Agreement commences upon the Effective Date and continues for a two (2) year initial period (the "Term"). Glendale may, at its option and with the approval of PHI, extend the Term of this Agreement an additional three (3) years, renewable on an annual basis (each an "Extended Term"). PHI shall be notified in writing by Glendale of its intent to extend the Agreement at least 30 calendar days prior to the expiration of the Term or any Extended Term. There are no automatic renewals of this Agreement.
6. **Termination for Convenience.** Notwithstanding anything herein to the contrary, this Agreement may be terminated by either Party for convenience and with or without cause upon ninety (90) days written notice. The terms of this Agreement will apply until the date of termination (not the date of notice).
7. **Representations, Warranties and Covenants of PHI.** PHI hereby represents, warrants and covenants as follows:
 - 7.1 **Organization.** PHI is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Louisiana, and has the power and authority to execute, deliver and perform its obligations under this Agreement. PHI is qualified and authorized to do business in the State of Arizona.
 - 7.2 **Authorization.** The execution, delivery and performance of PHI of this Agreement have been authorized by all necessary corporate action on the part of PHI.
 - 7.3 **FAA Regulations.** PHI shall comply with all regulations of the Federal Aviation Administration ("FAA") pertaining to air medical transport services being furnished by PHI under this Agreement and, in that connection, PHI represents that the Aircraft and the members of the Flight Team are properly licensed and certified and meet the minimum requirements as set forth in the applicable FAA regulations.
 - 7.4 **Compliance.** In addition to the FAA regulations referenced in Section 7.3, PHI shall comply with all federal, state and local laws and regulations applicable to the Flight Services provided by PHI under this Agreement.
8. **Representations, Warranties and Covenants of Glendale.** Glendale hereby represents, warrants and covenants as follows:
 - 8.1 **Organization.** Glendale is a duly organized municipal fire department validly existing and in good standing under the laws of the State of Arizona, and has the power and authority to execute, deliver and perform its obligations under this Agreement.
 - 8.2 **Authorization.** The execution, delivery and performance of Glendale of this Agreement have been authorized by all necessary government action on the part of Glendale.

- 8.3 Governmental Approvals. Glendale has obtained, and shall maintain and keep in force, all consents, licenses, permits, approvals and authorization of federal, state and local governmental authorities which may be required to execute, deliver and perform its obligations under this Agreement.

9. PHI Insurance Requirements.

- 9.1 Policies and Amounts. PHI shall, during the Term or any Extended Term, maintain the following minimum insurance coverage:
- (a) **Commercial General Liability Insurance** in the minimum amounts indicated below or such additional amounts as required by the City of Glendale, including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of any agreement with the City of Glendale, 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 of Glendale. 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.
 - (b) All risk ground and flight aircraft hull insurance. Aircraft liability insurance covering injuries to passengers or third parties and damage to property in an amount not less than \$50,000,000 for any one accident or series of accidents arising out of any one event. Such aircraft insurance excludes medical malpractice coverage and aggravation of injuries to passengers.
 - (c) Workers' compensation insurance for its employees at Arizona statutory limits including a waiver of subrogation in favor of the City of Glendale.
 - (d) With the exception of Workers' compensation insurance and the incidental medical malpractice protection afforded PHI as an extension of its aircraft liability policy, to the extent of PHI's Indemnification Obligations, Glendale shall be included as an additional insured on each and every one of PHI's policies described above, waive subrogation, be primary to any other insurance or self-insurance covering the same risks maintained by Glendale, and provide Glendale 60 days' written notice of cancellation, non-renewal or material change.
 - (e) "Best's Key Rating Guide" – All insurance shall be issued by a company or companies licensed to do business in Arizona and listed in the current "Best's Key Rating Guide" publication with a minimum rating of A-;VII or its equivalent. Any exception to these requirements must be approved by the City.
 - (f) 30-Day Cancellation Notice. The above stated insurance coverage's required to be maintained by PHI shall be maintained until the completion of all of PHI's obligations under any agreement, and shall not be reduced, modified, or canceled without thirty (30) days prior written notice to the Certificate Holder. PHI shall immediately obtain replacement coverage for any insurance policy

that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

- (g) **Primary and Non-Contributory.** All insurance carried by PHI shall be primary and non-contributory with any insurance carried by the City of Glendale to the extent of the risks and liabilities assumed by PHI hereunder. The policy must be endorsed to include this verbiage and evidence of coverage provided with the certificate.
- (h) **Notice of Cancellation.** Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.
- (i) **Waiver of Subrogation.** PHI hereby grants to the City of Glendale a waiver of any right to subrogation to the extent of the risks and liabilities assumed by PHI hereunder, which any insurer of said PHI may acquire against the City by virtue of the payment of any loss under such insurance. PHI agrees 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.
- (j) **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the City of Glendale. The City of Glendale may require the PHI to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. If PHI maintains higher limits than the minimums shown above, then the City requires and shall be entitled to coverage for the higher limits maintained by the PHI to the extent of the risks and liabilities assumed by PHI hereunder.
- (k) **The City of Glendale Risk Manager may make reasonable changes to the required insurance based on the circumstances.**

9.2 Glendale shall, during the Term or any Extended Term, maintain the following minimum insurance coverage and, to the extent of Glendale's Indemnification Obligations, all such policies of insurance shall name PHI as an additional insured (except with respect to workers' compensation coverage), waive subrogation (except with respect to workers' compensation coverage), be primary to any other insurance or self-insurance covering the same risks maintained by PHI, and provide PHI 30 days written notice of cancellation, non-renewal or material change, only with respect to work performed pursuant to or the operations of the City of Glendale related to this Agreement and the Program.

- (a) **Professional/Paramedic errors and omissions liability insurance in amounts of not less than \$4,000,000 single and \$6,000,000 aggregate limits.**
- (b) **Workers' Compensation insurance for its employees at Arizona statutory limits.**

10. Indemnification. The Parties agree to indemnify each other (the "Indemnification Obligations") as follows:

- 10.1 PHI's Indemnification Obligations. PHI agrees to defend, protect, indemnify and hold harmless Glendale, its mutual aid partners, subsidiaries, affiliates and subcontractors and their respective directors, officials, officers, agents, employees, representatives and agents, including, without limitation, the Glendale Medical Providers and all supervisory and communications personnel (collectively, the "Glendale Group") from every kind or character of damages, losses, liabilities, expenses, demands or claims (collectively, "Losses") arising out of, connected with, incident to, resulting from or relating to, the performance of Flight Services under this Agreement, including but not limited to the operation and maintenance of the Aircraft, after the Effective Date, to the extent and only to the extent such Losses are caused by the negligence, fault, or other legal liability of PHI, its parent, any subsidiaries, affiliates and other contractors and subcontractors (not including Glendale) and their respective directors, officers, agents, employees, and representatives, including, without limitation, the members of the Flight Team and the Medical Director (collectively, the "PHI Group"), which obligation shall not be diminished in any regard if such Losses were caused in part by the concurrent or joint negligence, either active or passive, of any member of the Glendale Group; provided, however, that, in the event of joint or concurrent negligence or fault of any member of the Glendale Group and any member of the PHI Group, PHI's indemnification obligation shall be limited to PHI's allocable share of such joint or concurrent negligence or fault.
- 10.2 Glendale's Indemnification Obligations. Glendale agrees to defend, protect, indemnify and hold harmless the PHI Group for Losses, to the extent and only to the extent such Losses are caused by the negligence, fault, or other legal liability of any member of the Glendale Group, which obligation shall not be diminished in any regard if such Losses were caused in part by the concurrent or joint negligence, either active or passive, of any member of the PHI Group; provided, however, that, in the event of joint or concurrent negligence or fault of Glendale and PHI, Glendale's indemnification obligation shall be limited to Glendale's allocable share of such joint or concurrent negligence or fault.
- 10.3 Limitations. Neither PHI nor Glendale shall indemnify the other Party for any Losses resulting from the intentional, willful or negligent acts of the other Party or members of its organization. In no event, whether as a result of contract, tort, strict liability or otherwise, shall either Party be liable to the other for any punitive, special, indirect, incidental or consequential damages, including without limitation loss of profits, loss of use or loss of contract. The Indemnification Obligations shall not be reduced nor limited by any insurance coverage or insurance proceeds an Indemnified Party may have for its own account with respect to a claim.
- 10.4 Procedures. PHI or Glendale shall promptly notify the other Party of the existence of any claim, or the threat of any claim, to which the Indemnification Obligations might apply. Upon written request by the Party entitled to indemnification (the "Indemnitee"), the other Party (or its insurer) (the "Indemnitor") shall select,

manage, and pay the claim investigation and legal defense costs as a part of the indemnity obligation including any settlement and/or judgment amounts awarded. Each Indemnitee shall have the right, at its option and sole expense, to participate in the defense or claim without relieving the Indemnitor of any obligation hereunder. The Indemnitee shall cooperate and comply with all reasonable requests that the Indemnitor may make in connection with the defense and any settlement of a claim.

- 10.5 Duration. The Indemnification Obligations shall continue after the termination of this Agreement, and all rights associated with the Indemnification Obligations shall inure to the benefit of the successors or assigns of PHI and Glendale.

11. Miscellaneous.

- 11.1 Force Majeure. Neither Party shall be liable to the other Party for failure to perform its respective obligations under this Agreement if and to the extent that such failure results from causes beyond the non-performing Party's reasonable control, including without limitation such causes as strikes, lockouts, riots, fires, floods or other weather conditions, natural disasters, acts of God, acts of public enemy, or any regulations, orders or requirements of any duly authorized governmental body or agency (collectively, "Force Majeure"). If either Party is unable to perform as a result of Force Majeure, it shall promptly notify the other Party in writing of the beginning and estimated ending of each such period. If any period of Force Majeure continues for thirty (30) days or more, the Party not so failing in performance shall have the right to terminate the Agreement upon written notice to the other Party. Notwithstanding anything contained herein to the contrary, PHI shall use its commercially reasonable efforts to provide a backup helicopter and associated flight services as required by this Agreement during the period of Force Majeure.
- 11.2 Default. A material breach by either Party of any representation, warranty or covenant contained in this Agreement or the failure of either Party to comply with any material terms or conditions set forth in this Agreement shall constitute an event of default ("Default").
- 11.3 Termination. This Agreement shall terminate and, except as otherwise set forth herein, shall be of no further force and effect sixty (60) days after the non-defaulting Party provides the defaulting Party with written notice of a Default (the "Cure Period"), unless the non-defaulting Party cures the Default prior to the expiration of the Cure Period. Further, this Agreement may be terminated for convenience, as set forth in Section 6, or by reason of Force Majeure, as set forth in Section 11.1, above.
- 11.4 Severability. In the event that any provision of this Agreement is determined to be unlawful or contrary to public policy, such provision shall be severed here from,

shall be deemed null and void, but shall in no way affect the remaining provisions outlined herein.

- 11.5 Proprietary Information. PHI shall cause its employees, agents and affiliates to hold as confidential all patient information, except as may otherwise be reasonably necessary for PHI's routine business functions to the extent it is deemed a Business Associate. Glendale shall cause its employees, agents and affiliates to hold confidential all patient information, except as may otherwise be reasonably necessary for Glendale's routine business functions to the extent it is deemed a Business Associate.
- 11.6 Assignment. Neither Party shall assign this Agreement, in whole or in part, without the prior written consent of the other.
- 11.7 Waiver. The waiver by one Party of any breach or failure of the other Party to perform any covenant or obligation contained in this Agreement shall not constitute a waiver of any subsequent breach or failure.
- 11.8 Entire Agreement. This Agreement and any exhibits or schedules attached thereto or referred to herein, represent the entire agreement between the Parties, with respect to the subject matter hereof, all other prior agreements being merged herein, and this Agreement shall not be modified except in writing signed by the Party against whom such modification is sought to be enforced.
- 11.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona, without giving regard to its conflicts of law rules or principles.
- 11.10 Non-Discrimination. Neither Party will discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Each Party will require any sub-contractor to be bound to the same requirements as stated within this section.
- 11.11 Cancellation. This Agreement is subject to cancellation for conflicts of interest under the provisions of A.R.S. § 38-511.
- 11.12 Immigration Compliance.
 - 11.12.1 PHI, 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.

- 11.12.2 Any breach of warranty under subsection 11.12.1 above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
- 11.12.3 Glendale retains the legal right to inspect the papers of PHI or subcontractor employee who performs work under this Agreement to ensure that PHI or any subcontractor is compliant with the warranty under subsection 11.12.1 above.
- 11.12.4 Glendale may conduct random inspections, and upon request of the Glendale, PHI shall provide copies of papers and records demonstrating continued compliance with subsection 11.12.1 above. PHI agrees to keep papers and records available for inspection by Glendale during normal business hours and will cooperate with Glendale in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this Section.
- 11.12.5 PHI agrees to incorporate into any subcontracts directly related to this Agreement the same obligations imposed upon it as set forth in this Section 11.12 and expressly accrue those obligations directly to the benefit of Glendale. PHI 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 Glendale.
- 11.12.6 PHI's warranty and obligations under this Section to Glendale are continuing throughout the Term of this Agreement or until such time as Glendale determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.
- 11.12.7 The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.
- 11.13 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 Glendale: Glendale City Clerk;
5850 West Glendale Avenue.
Glendale, Arizona 85301
Telephone: (623) 930-2030

With a copy to: Glendale Fire Chief
6829 N. 58th Drive
Glendale, Arizona 85301

Telephone: (623) 930-4406
Fax: (623) 623-847-5313

Glendale City Attorney
5850 West Glendale Avenue.
Glendale, Arizona 85301
Telephone: (623) 930-2930
Fax: (623) 915 2391

If to PHI: PHI Air Medical, L.L.C.
Attn: David Motzkin, President
2800 N. 44th Street, Suite 800
Phoenix, AZ 85008

Copy to: PHI Air Medical, L.L.C.
Attn: Jeff Stanek, Director of Finance
2800 N. 44th Street, Suite 800
Phoenix, AZ 85008
Telephone: (602) 273-9349
Fax: (602) 224-1601

11.14 Recitals. The recitals contained in the first portion of this Agreement are made an integral part of this Agreement.

11.15 No Referral Relationship. The Parties acknowledge and agree that the amounts being paid or reimbursed by PHI hereunder are fair and reasonable and reflective of the actual cost of such services and that there is no expectation of any referral relationship or any other form of remuneration by Glendale as a result of the arrangements set forth in this Agreement.

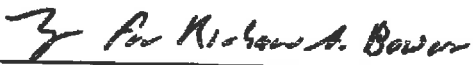
[Signature Page Follows]

The Parties, through their respective undersigned authorized officers, have duly executed this Agreement as of the Effective Date.


PHI:
PHI Air Medical, L.L.C.,
a Louisiana limited liability company

By: 
Title: President

GLENDALÉ:
City of Glendale,
an Arizona municipal corporation



Dick Bowers
Acting City Manager

ATTEST:


Pam Hanna
City Clerk

(SEAL)

APPROVED AS TO FORM:


Michael D. Bailey
City Attorney

SCHEDULE A
Business Associate Agreement

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is made effective the ____ day of _____, 2015 ("Effective Date"), by and between the City of Glendale ("Glendale"), and PHI Air Medical, L.L.C. ("PHIAM"). Glendale and PHIAM may from time to time be either a Covered Entity or a Business Associate as such terms are used in this Agreement and defined under applicable law. Accordingly, the terms Covered Entity and Business Associate used herein shall apply to Glendale and/or PHIAM, as applicable, and solely to the extent such parties are deemed either a Covered Entity or a Business Associate under applicable law. (Glendale and PHIAM may sometimes be referred to individually as a "Party" and collectively as the "Parties.")

WITNESSETH

WHEREAS, Sections 261 through 264 of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, known as "the Administrative Simplification provisions," direct the Department of Health and Human Services ("HHS") to develop standards to protect the security, confidentiality and integrity of health information;

WHEREAS, pursuant to the Administrative Simplification provisions, the Secretary of Health and Human Services issued regulations modifying 45 CFR Parts 160 and 164 (the "HIPAA Privacy and Security Rule");

WHEREAS, the Health Information Technology for Economic and Clinical Health Act, and regulations thereunder (collectively, "HITECH Act"), codified at 42 U.S.C. 17921-17954, provides modifications to the HIPAA Privacy and Security Rule;

WHEREAS, pursuant to the HITECH Act, the Secretary of HHS has issued regulations at 45 C.F.R. Part 164, Subpart D (the "Data Breach Rule", together with the HIPAA Privacy and Security Rule and any and all regulations promulgated under the HITECH Act, the "HIPAA Rules") and may issue additional regulations in the future to further protect the security, confidentiality, and integrity of health information;

WHEREAS, the Parties wish to enter into or have entered into an arrangement whereby each Party will provide services to or on behalf of the other Party (the "Contract") and, pursuant to such Contract, each of the Parties may be considered a "business associate" of the other Party as defined in the HIPAA Rules;

WHEREAS, in connection with these services, each of the Parties, when acting as a Covered Entity, may disclose to the other Party, when acting as a Business Associate, certain Protected Health Information that is subject to protection under the HIPAA Rules; and

WHEREAS, both Parties agree that the HIPAA Rules require that the Covered Entity receive adequate assurances that the Business Associate will comply with certain obligations with respect to the Protected Health Information received in the course of providing services to

or on behalf of the Covered Entity, and the purpose of this Agreement is to comply with the requirements of the HIPAA Rules.

NOW THEREFORE, in consideration of the mutual promises and covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

A. Definitions. Except as otherwise defined in this Agreement, any and all capitalized terms shall have the same meaning as the definitions set forth in the HIPAA Rules, as amended from time to time. In particular, the following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Privacy Rule, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Rules, as amended, the HIPAA Rules shall control.

B. Purposes for which PHI May Be Disclosed to Business Associate. In connection with the services provided by Business Associate to or on behalf of Covered Entity described in this Agreement, Covered Entity may Disclose Protected Health Information ("PHI") to Business Associate solely for the purposes described in the Contract.

C. Obligations of Business Associate. Business Associate acknowledges that sections of the HIPAA Rules apply directly to Business Associate as they apply to Covered Entity and agrees to comply with such rules and regulations, including:

1. Use and Disclosure of PHI. Except as otherwise permitted by this Agreement or Required by Law, Business Associate shall not Use or Disclose PHI except as necessary to provide the services as described in the Contract to or on behalf of Covered Entity, and shall not Use or Disclose PHI in a manner that would violate the Privacy Rule if Used or Disclosed by Covered Entity. Notwithstanding the foregoing, Business Associate may access, create or receive PHI and Use and Disclose PHI as necessary for the proper management and administration of Business Associate, or to carry out its legal responsibilities, provided that Business Associate shall in such cases:

a) provide information to members of its workforce Using or Disclosing PHI regarding the confidentiality requirements of the HIPAA Rules and this Agreement; and

b) unless such Disclosure is Required by Law, obtain reasonable assurances from the person or entity to whom the PHI is Disclosed that: (a) the PHI will be held confidential and further Used and Disclosed only as Required by Law or for the purpose for which it was Disclosed to the person or entity; and (b) the person or entity will notify Business Associate of any instances of which it is aware in which confidentiality of the PHI has been breached.

Business Associate must also comply with the HIPAA Privacy and Security Rule (45 C.F.R. §§ 164.314(a)(2)(i)(A), 164.504(e)(2)(ii)(B)) as well as Covered Entity's minimum necessary policies.

2. Incident Reporting. Business Associate shall report, in writing, to Covered Entity any Breach, Security Incident, or Use, Disclosure or unauthorized access of PHI that is not permitted by this Agreement within two (2) calendar days after discovery (as provided in (45 C.F.R. §§ 164.314(a)(2)(i)(C), 164.504(e)(2)(ii)(C)). The report shall include, at a minimum, the identification of each affected individual. The Covered Entity retains control over breach notification procedures, including risk assessment, provision of breach notification to affected patients and communications to other entities as required, such as media outlets and the Secretary ("Breach Notification Procedure"). Business Associate shall cooperate with Covered Entity in any investigation of the incident and the Breach Notification Procedure, to include a review of breach notification and other communications as requested. In addition, Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of the requirements of this Agreement, the HIPAA Rules, or in violation of any applicable state law.

3. Data Aggregation. In the event that Business Associate works for more than one covered entity, Business Associate is permitted to Use PHI for Data Aggregation purposes only in order to analyze data for permitted Health Care Operations, to the extent that such Use is permitted under the Privacy Rule and the Contract.

4. Safeguards. Business Associate shall implement reasonable and appropriate administrative, physical and technical safeguards to ensure that PHI is not Used or Disclosed in any manner inconsistent with this Agreement and to protect the confidentiality, integrity, and availability of any electronic PHI it creates, receives, maintains, or transmits on behalf of Covered Entity as required by the Security Rule. Further, Business Associate will implement any other security requirements to the extent required by Section 17931(a) of the HITECH Act and any applicable regulations. Business Associate will ensure that any agent, including a Subcontractor, to whom it provides such electronic PHI agrees to implement reasonable and appropriate safeguards to protect it.

5. Minimum Necessary. Business Associate and its agents or Subcontractors, if any, shall request, Use and Disclose only a Limited Data Set, if practicable; if not practicable, Business Associate and its agents or Subcontractors, if any, shall request, Use and Disclose only the minimum amount of PHI necessary to accomplish the purpose of the request, Use or Disclosure, unless an exception in 45 C.F.R. § 164.502(b)(2) applies; provided that, when effective, Business Associate agrees to comply with the Secretary's guidance on what constitutes minimum necessary as required by HITECH Act Section 13405.

6. Disclosure to Agents and Subcontractors. If Business Associate Discloses PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, to agents, including a Subcontractor, Business Associate shall require the agent or Subcontractor to agree in writing to the same or substantially similar restrictions and conditions as apply to Business Associate under this Agreement (45 C.F.R. §§ 164.314(a)(2)(i)(B)). To the extent that the Business Associate is to carry out one or more of Covered Entity's obligations under the Privacy Rule, Business Associate must comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligations. Business Associate further expressly warrants that its agents or Subcontractors will be specifically advised of, and will comply in all respects with, the terms of this Agreement.

7. Individual Rights.

a) Individual Right to Copy or Inspection. Business Associate agrees that if it maintains a Designated Record Set for Covered Entity that is not maintained by Covered Entity, it will permit an Individual to inspect or copy PHI about the Individual in that set as directed by Covered Entity to meet the requirements of 45 C.F.R. § 164.524, the HITECH Act, and applicable state law. Covered Entity is required to take action on such requests as soon as possible, but not later than fifteen (15) days following receipt of the request. Business Associate agrees to make reasonable efforts to assist Covered Entity in meeting this deadline. If Business Associate maintains PHI electronically, it agrees to make such PHI electronically available to the applicable Individual. If Covered Entity maintains the requested records, Covered Entity, rather than Business Associate, shall permit access according to its policies and procedures implementing the HIPAA Rules.

b) Individual Right to Amendment. Business Associate agrees, if it maintains PHI in a Designated Record Set, to make amendments to PHI at the request and direction of Covered Entity pursuant to 45 C.F.R. § 164.526. If Business Associate maintains a record in a Designated Record Set that is not also maintained by Covered Entity, Business Associate agrees that it will accommodate an Individual's request to amend PHI only in conjunction with a determination by Covered Entity that the amendment is appropriate according to 45 C.F.R. § 164.526.

c) Accounting of Disclosures. Business Associate agrees to maintain documentation of the information required to provide an accounting of Disclosures of PHI in accordance with 45 C.F.R. § 164.528 and Section 17935(c) of the HITECH Act, and to make this information available to Covered Entity upon Covered Entity's request, in order to allow Covered Entity to respond to an Individual's request for accounting of Disclosures.

8. Internal Practices, Policies and Procedures. Except as otherwise specified herein, Business Associate shall make available its internal practices, policies and

procedures relating to the Use and Disclosure of PHI received from or on behalf of Covered Entity to the Secretary or his or her agents for the purpose of determining Covered Entity's compliance with the HIPAA Rules, or any other health oversight agency, or to Covered Entity. Records requested that are not protected by an applicable legal privilege will be made available in the time and manner specified by Covered Entity, the applicable health oversight agency, or the Secretary.

9. Notice of Privacy Practices. Business Associate shall abide by the limitations of Covered Entity's Notice of which it has knowledge. Any Use or Disclosure permitted by this Agreement may be amended by changes to Covered Entity's Notice; provided, however, that the amended Notice shall not affect permitted Uses and Disclosures on which Business Associate relied prior to receiving notice of such amended Notice.

10. Withdrawal of Authorization. If the Use or Disclosure of PHI in this Agreement is based upon an Individual's specific authorization for the Use or Disclosure of his or her PHI, and the Individual revokes such authorization, the effective date of such authorization has expired, or such authorization is found to be defective in any manner that renders it invalid, Business Associate shall, if it has notice of such revocation, expiration, or invalidity, cease the Use and Disclosure of the Individual's PHI except to the extent it has relied on such Use or Disclosure, or if an exception under the Privacy Rule expressly applies.

11. Knowledge of HIPAA. Business Associate agrees to review and understand the HIPAA Rules as they apply to Business Associate, and to comply with the applicable requirements, as well as any applicable amendments thereto.

12. Remuneration and Marketing. Business Associate will not directly or indirectly receive remuneration in exchange for any PHI, subject to the exceptions contained in the HITECH Act, without a valid authorization from the applicable Individual. Business Associate will not engage in any communication which might be deemed to be "marketing" under the HITECH Act.

D. Term and Termination.

1. Term. This Agreement shall be effective as of the Effective Date and shall run coterminous with the Contract. At the termination of this Agreement, all PHI provided to Business Associate by Covered Entity, or created or received by Business Associate on behalf of Covered Entity, shall be destroyed or returned to Covered Entity, unless Covered Entity permits Business Associate to use or disclose PHI for its own management and administration or to carry out its legal responsibilities, in which case the PHI retained shall be limited to the Minimum Necessary for such use or disclosure.

2. Termination for Breach. If Business Associate, or its agents or Subcontractors, if any, violates any material term of this Agreement, as determined by Covered Entity, Covered Entity may, in its discretion: (i) immediately terminate this

Agreement; (ii) provide an opportunity for Business Associate to cure the Breach or end the violation and terminate this Agreement if Business Associate does not promptly cure the Breach or end the violation within a period not to exceed thirty (30) days; or (iii) report the violation to the Secretary if neither termination nor cure is feasible.

Covered Entity may terminate this Agreement effective immediately, if (i) Business Associate is named as a defendant in a criminal proceeding for a violation of the HIPAA Rules or other security or privacy laws or (ii) there is a finding or stipulation that the Business Associate has violated any standard or requirement of the HIPAA Rules or other security or privacy laws in any administrative or civil proceeding in which Business Associate is involved. Business Associate agrees to report the commencement of any legal action or investigation against Business Associate arising from an alleged violation of the HIPAA Rules or any other security or privacy laws.

3. Effect of Termination. Upon termination of this Agreement for any reason, Business Associate agrees to return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, maintained by Business Associate in any form. If Business Associate determines that the return or destruction of PHI is not feasible, Business Associate shall inform Covered Entity in writing of the reason thereof, and shall agree to extend the protections of this Agreement to such PHI and limit further Uses and Disclosures of the PHI to those purposes that make the return or destruction of the PHI not feasible for so long as Business Associate retains the PHI.

E. Miscellaneous.

1. Independent Contractors. It is expressly agreed and stipulated by and between the Parties hereto that Business Associate and Covered Entity are independent contractors, and neither Party shall be deemed or construed to be an agent, servant, or employee of the other or of any affiliates within the meaning of the Workers' Compensation Act of the applicable State.

2. Insurance. Unless greater coverage is required under any other agreement between Covered Entity and Business Associate for the provision of services related to the Contract and this Agreement, Business Associate shall maintain or cause to be maintained the following insurance covering itself and each Subcontractor or agent, if any, through whom Business Associate provides services: (i) a policy of commercial general liability and property damage insurance, and electronic data processing insurance, with limits of liability not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) annual aggregate; and (ii) such other insurance or self-insurance as shall be necessary to insure it against any claim or claims for damages arising under this Agreement or from violating Business Associate's own obligations under the HIPAA Rules, including but not limited to, claims or the imposition of administrative penalties and fines on Business Associate or its Subcontractors or agents, if any, arising from the loss, theft, or unauthorized use or disclosure of PHI. Such insurance coverage shall apply to all site(s) of Business Associate and to all services

provided by Business Associate or any of its Subcontractors or agents under the Contract or this Agreement.

3. Indemnification. To the extent permitted by law, Business Associate agrees to indemnify and hold harmless Covered Entity from and against all claims, demands, liabilities, judgments or causes of action of any nature for any relief, elements of recovery or damages recognized by law (including, without limitation, reasonable attorney's fees, defense costs, and equitable relief) (collectively, "Claims"), for any damage or loss incurred by Covered Entity arising out of, resulting from, or attributable to any negligence, fault or other legal liability of Business Associate or its Subcontractors or agents in connection with the performance of Business Associate's duties under this Agreement. This indemnity shall not be construed to limit Covered Entity's rights, if any, to common law indemnity.

To the extent permitted by law, Covered Entity agrees to indemnify and hold harmless Business Associate from and against all Claims for any damage or loss incurred by Business Associate arising out of, resulting from, or attributable to any negligence, fault or other legal liability of Covered Entity or its Subcontractors or agents in connection with this Agreement. This indemnity shall not be construed to limit Business Associate's rights, if any, to common law indemnity.

The Party receiving indemnification ("Indemnified Party") shall have the option, at its discretion, to employ attorneys selected by it to defend any such action, the reasonable costs and expenses of which shall be the responsibility of the Party providing indemnification (the "Indemnifying Party"). The Indemnified Party shall provide the Indemnifying Party with timely notice of the existence of such proceedings and such information, documents and other cooperation as reasonably necessary to assist the Indemnifying Party in establishing a defense to such action.

These indemnities shall survive termination of this Agreement.

4. Rights of Proprietary Information. Covered Entity retains any and all rights to the proprietary information, confidential information, and PHI it releases to Business Associate. Business Associate agrees that it acquires no title or rights to PHI as a result of the Contract or this Agreement.

5. Survival. The respective rights and obligations of Business Associate under Sections C, D, E.2, E.3, and E.4 of this Agreement shall survive the termination of this Agreement for any reason.

6. Notices. Any notices pertaining to this Agreement shall be given in writing and shall be deemed duly given when personally delivered to a Party or a Party's authorized representative as listed below or sent by means of a reputable overnight carrier, or sent by means of certified mail, return receipt requested, postage prepaid. A notice sent by certified mail shall be deemed given on the date of receipt or refusal of receipt. All notices shall be addressed to the appropriate Party as follows:

If to Glendale: Glendale City Clerk
5850 West Glendale Avenue.
Glendale, Arizona 85301
Telephone: (623) 930-2030

With a Copy to: Glendale City Attorney
5850 West Glendale Avenue.
Glendale, Arizona 85301
Telephone: (623) 930-2930
Fax: (623) 915 2391

If to PHIAM: PHI Air Medical, L.L.C.
2800 N. 44th Street, Suite 800
Phoenix, Arizona 85008
Attn: David Motzkin, President

With a Copy to: PHI Air Medical, L.L.C.
2800 N. 44th Street, Suite 800
Phoenix, Arizona 85008
Attn: Jeff Stanek, Director of Finance

7. Amendments. If any modification to this Agreement is required by HIPAA, the HITECH Act, the HIPAA Rules, or any other federal or state law affecting this Agreement or if Covered Entity reasonably concludes that an amendment to this Agreement is needed because of a change in federal or state law or changing industry standards, Covered Entity shall notify Business Associate of such proposed modification(s) ("Legally-Required Modifications"). Such Legally Required Modifications shall be deemed accepted by Business Associate and this Agreement so amended, if Business Associate does not, within thirty (30) calendar days following the date of the notice (or within such other time period as may be mandated by applicable state or federal law), deliver to Covered Entity its written rejection of such Legally-Required Modifications. If the Parties cannot agree on the effect of any such amendment or interpretation, this Agreement may be terminated upon written notice to the other Party.

8. Choice of Law. This Agreement and the rights and the obligations of the Parties hereunder shall be governed by and construed under the laws of the State of Arizona, without regard to applicable conflict of laws principles.

9. Assignment of Rights and Delegation of Duties. This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective successors and permitted assigns. However, neither Party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.

Notwithstanding any provisions to the contrary, however, Covered Entity retains the right to assign or delegate any of its rights or obligations hereunder to any of its wholly owned subsidiaries, affiliates or successor companies. Assignments made in violation of this provision are null and void.

10. Nature of Agreement. Nothing in this Agreement shall be construed to create (i) a partnership, joint venture or other joint business relationship between the Parties or any of their affiliates, (ii) any fiduciary duty owed by one Party to another Party or any of its affiliates, or (iii) a relationship of employer and employee between the Parties.

11. No Waiver. Failure or delay on the part of either Party to exercise any right, power, privilege or remedy hereunder shall not constitute a waiver thereof. No provision of this Agreement may be waived by either Party except by a writing signed by an authorized representative of the Party making the waiver.

12. Equitable Relief. Business Associate agrees that any disclosure of misappropriation of PHI by Business Associate or its agents or Subcontractors, if any, in violation of this Agreement will cause Covered Entity irreparable harm, the amount of which may be difficult to ascertain. Business Associate therefore agrees that Covered Entity shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining Business Associate from any such further Disclosure or Breach, and for such other relief as Covered Entity shall deem appropriate. Such rights are in addition to any other remedies available to Covered Entity at law or in equity.

13. Severability. The provisions of this Agreement shall be severable, and if any provision of this Agreement shall be held or declared to be illegal, invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect as though such illegal, invalid or unenforceable provision had not been contained herein.

14. No Third Party Beneficiaries. Nothing in this Agreement shall be considered or construed as conferring any right or benefit on a person not party to this Agreement nor imposing any obligations on either Party hereto to persons not a party to this Agreement.

15. Headings. The descriptive headings of the articles, sections, subsections, exhibits and schedules of this Agreement are inserted for convenience only, do not constitute a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement.

16. Entire Agreement. This Agreement, together with the all Exhibits, Riders and amendments, if applicable, which are fully completed and signed by authorized persons on behalf of both Parties from time to time while this Agreement is in effect, constitutes the entire Agreement between the Parties hereto with respect to the subject matter hereof and supersedes all previous written or oral understandings, agreements,

negotiations, commitments, and any other writing and communication by or between the Parties with respect to the subject matter hereof. In the event of any inconsistencies between any provisions of this Agreement in any provisions of the Exhibits, Riders, or amendments, the provisions of this Agreement shall control.

17. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Rules. In the event of an inconsistency between the provisions of this Agreement and any mandatory provisions of the HIPAA Rules, as amended, the HIPAA Rules shall control. Where provisions of this Agreement are different from those in the HIPAA Rules, as amended, but are nonetheless permitted by the HIPAA Rules, the provisions of this Agreement shall control.

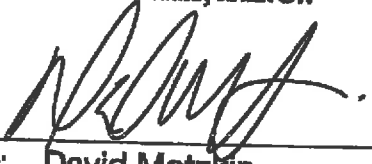
18. Regulatory References. A citation in this Agreement to the Code of Federal Regulations shall mean the cited section as that section may be amended from time to time.

19. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the month, date, and year indicated below, but which shall be deemed effective as of the Effective Date.

PHI AIR MEDICAL, L.L.C.:

By: 
Name: David Motzkin
Title: President
Date: 06/18/2015

CITY OF GLENDALE:

By: _____
Name: _____
Title: _____
Date: _____