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, June 28, 2016 **6:00 PM** **Council Chambers**

Voting Meeting

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

CALL TO ORDER

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 JUNE 14, 2016

1. **16-330** APPROVAL OF THE MINUTES OF THE JUNE 14, 2016 VOTING MEETING
Staff Contact: Pamela Hanna, City Clerk

Attachments: Meeting Minutes of June 14, 2016

BOARDS, COMMISSIONS AND OTHER BODIES

APPROVE RECOMMENDED APPOINTMENTS TO BOARDS, COMMISSIONS AND OTHER BODIES

PRESENTED BY: Councilmember Lauren Tolmachoff

2. 16-303 BOARDS, COMMISSIONS & OTHER BODIES
Staff Contact: Brent Stoddard, Director, Intergovernmental Programs

PROCLAMATIONS AND AWARDS

3. 16-308 PROCLAIM JULY 2016 PARKS AND RECREATION MONTH
Staff Contact: Erik Strunk, Director, Community Services
Presented By: Office of the Mayor
Accepted By: Mr. Manuel Padia, Chair, Parks and Recreation Advisory Commission
Mr. Kerry Dewberry, Vice Chair, Parks and Recreation Advisory Commission
Accepted By: Erik Strunk, Director, Community Services
Timothy Barnard, Assistant Community Services Director
Michael Gregory, Parks, Recreation & Neighborhood Services Administrator
Sean McGary, Darren Skousen, Kyle White and Bryan Wagner, Glendale Parks and Recreation Department

CONSENT AGENDA

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

4. 16-250 EXPENDITURE AUTHORIZATION FOR LEAGUE OF ARIZONA CITIES AND TOWNS 2016-17 MEMBERSHIP DUES
Staff Contact: Brent Stoddard, Director, Intergovernmental Programs
Staff Presenter: Jenna Goad, Intergovernmental Programs Administrator

Attachments: League Dues Invoice

5. 16-273 AUTHORIZATION TO ENTER INTO AN AGREEMENT WITH BERRY DUNN MCNEIL & PARKER, LLC, FOR ENTERPRISE RESOURCE PLANNING (ERP) SELECTION AND IMPLEMENTATION CONSULTING SERVICES
Staff Contact: Vicki Rios, Interim Director, Finance and Technology

Attachments: Agreement

6. 16-295 AUTHORIZATION TO ENTER INTO A SERVICE AGREEMENT WITH GRANICUS, INC., FOR AGENDA MANAGEMENT/MEDIA MANAGER

SUPPORT SERVICE FUNCTIONS AND TO APPROVE THE EXPENDITURE OF FUNDS
Staff Contact: Vicki Rios, Interim Director, Finance and Technology

Attachments: Service Agreement

7. **16-301** AUTHORIZATION TO ENTER INTO A LINKING AGREEMENT WITH COX ARIZONA TELCOM, L.L.C., FOR CARRIER AND BROADBAND SERVICES AND TO APPROVE THE EXPENDITURE OF FUNDS
Staff Contact: Vicki Rios, Interim Director, Finance and Technology

Attachments: Linking Agreement

8. **16-332** AUTHORIZATION TO ENTER INTO A CONSTRUCTION MANAGER AT RISK AGREEMENT WITH ACHEN-GARDNER CONSTRUCTION, LLC, FOR CONSTRUCTION PHASE SERVICES FOR WATER LINE REPLACEMENT AT VARIOUS LOCATIONS
Staff Contact: Craig Johnson, P.E., Director, Water Services

Attachments: Construction Manager at Risk Agreement

9. **16-304** AUTHORIZATION TO RENEW FY 2016/17 PROPERTY, LIABILITY AND WORKERS' COMPENSATION INSURANCE
Staff Contact: Jim Brown, Director, Human Resources and Risk Management

Attachments: AZ 2016-17 Renewal Projections and Actuals
AZ 2016-17 Renewal Marketing Report
FY 2016-17 Property Insurance Coverage Summary
FY 2016-17 Property Renewal Year over Year Comparison
FY 2016-17 Cyber Enhanced Insurance
FY 2016-17 Excess Liability Coverage Summary
FY 2016-17 Excess Worker's Compensation Proposal

10. **16-306** APPROVAL OF THE FISCAL YEAR 2016-17 CAMELBACK RANCH – GLENDALE CAPITAL REPAIRS/REPLACEMENT PROGRAM; AUTHORIZATION FOR THE CITY MANAGER TO EXPEND FUNDS TO REIMBURSE CAMELBACK SPRING TRAINING, LLC, FOR CAPITAL REPAIRS MADE AT CAMELBACK RANCH - GLENDALE IN FISCAL YEAR 2016-17
Staff Contact: Jack Friedline, Director, Public Works

Attachments: FY 2016-17 Capital Repairs/Replacement Program

11. **16-307** AUTHORIZATION TO ENTER INTO A CONSTRUCTION AGREEMENT WITH NESBITT CONTRACTING CO., INC., FOR THE PAVEMENT MANAGEMENT PROGRAM - MILL AND OVERLAY
Staff Contact: Jack Friedline, Director, Public Works

Attachments: Construction Agreement
Bid Tabulation

12. **16-314** AUTHORIZATION TO ENTER INTO AMENDMENT NO. 2 TO THE PROFESSIONAL SERVICES AGREEMENT FOR GENERAL LANDFILL ENGINEERING CONSULTING SERVICES WITH TETRA TECH BAS, INC.
Staff Contact: Jack Friedline, Director, Public Works

Attachments: Amendment No. 2

13. **16-315** AUTHORIZATION TO ENTER INTO AMENDMENT NO. 1 TO THE COMMUNICATIONS FACILITIES LICENSE AGREEMENT WITH COX COMMUNICATIONS ARIZONA, LLC, FOR COMMUNICATION SERVICES AT THE GLENDALE MUNICIPAL AIRPORT
Staff Contact: Jack Friedline, Director, Public Works

Attachments: Amendment No. 1
Field Notes - Map

14. **16-317** AUTHORIZATION TO ENTER INTO AN AGREEMENT WITH TRIANGLE SERVICES, INC., FOR BUS STOP TRASH SERVICE
Staff Contact: Jack Friedline, Director, Public Works

Attachments: Agreement

15. **16-318** AUTHORIZATION TO ENTER INTO A LINKING AGREEMENT WITH TITAN MACHINERY, INC., FOR COOPERATIVE PURCHASE OF ONE COMPACT WHEEL LOADER
Staff Contact: Jack Friedline, Director, Public Works

Attachments: Linking Agreement

16. **16-319** AUTHORIZATION TO ENTER INTO AMENDMENT NO. 4 TO THE AGREEMENT FOR STREETLIGHT MAINTENANCE SERVICES WITH FLUORESCO SERVICES, LLC
Staff Contact: Jack Friedline, Director, Public Works

Attachments: Amendment No. 4

17. **16-320** AUTHORIZATION TO ENTER INTO A LINKING AGREEMENT WITH FREIGHTLINER OF ARIZONA, LLC, FOR COOPERATIVE PURCHASE OF ONE REARLOAD TRUCK
Staff Contact: Jack Friedline, Director, Public Works

Attachments: Linking Agreement

18. **16-323** AUTHORIZATION TO ENTER INTO AN AGREEMENT FOR DEVELOPED AND UNDEVELOPED RIGHT-OF-WAY LANDSCAPE MAINTENANCE WITH ENVIRONMENTAL EARTHSCAPES, INC., DOING BUSINESS AS THE GROUNDSKEEPER
Staff Contact: Jack Friedline, Director, Public Works

Attachments: Agreement
Bid Tabulation

19. **16-326** AUTHORIZATION TO ENTER INTO AN AGREEMENT FOR DEVELOPED AND

UNDEVELOPED RIGHT-OF-WAY LANDSCAPE MAINTENANCE WITH BASIN TREE SERVICE & PEST CONTROL, INC., DOING BUSINESS AS UNITED RIGHT-OF-WAY (URW)
Staff Contact: Jack Friedline, Director, Public Works

Attachments: Agreement
Bid Tabulation

20. **16-335** AUTHORIZATION TO ENTER INTO A CONSTRUCTION AGREEMENT WITH UTILITY CONSTRUCTION COMPANY, INC., FOR THE STREET LIGHT INFILL PROJECT (BID ALTERNATES 1 AND 2)
Staff Contact: Jack Friedline, Director, Public Works

Attachments: Construction Agreement
Bid Tabulation

21. **16-331** POSITION RECLASSIFICATIONS
Staff Contact: Jim Brown, Director, Human Resources and Risk Management

Attachments: Classification Study Status Report

22. **16-334** AUTHORIZATION TO ENTER INTO AN ADMINISTRATIVE SERVICE AGREEMENT AMENDMENT WITH BLUE CROSS BLUE SHIELD OF ARIZONA
Staff Contact: Jim Brown, Director, Human Resources and Risk Management

Attachments: Administrative Service Agreement Amendment

23. **16-329** AUTHORIZATION TO EXECUTE AMENDMENT NO. 1 AGREEMENT FOR SERVICES FOR CITY CONTRACTS 8672 AND 8832 TO ASSIGN AND TRANSFER RIGHTS AND OBLIGATIONS TO SMG FOR THE PROVISION OF PUBLIC SAFETY SERVICES PROVIDED AT THE UNIVERSITY OF PHOENIX STADIUM AND EXTENDING THE TERM OF THE CONTRACTS TO SEPTEMBER 30, 2016
Staff Contact: Jean Moreno, Economic Development Officer

Attachments: Amendment No. 1 to 8672 SMG Assignment
Amendment No. 1 to 8832 SMG Assignment

CONSENT RESOLUTIONS

24. **16-297** RESOLUTION 5125: AUTHORIZATION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH TOLLESON UNION HIGH SCHOOL DISTRICT NO. 214 FOR THE SERVICES OF A SCHOOL RESOURCE OFFICER AT ONE SCHOOL CAMPUS DURING THE 2016-17 SCHOOL YEAR
Staff Contact: Debora Black, Police Chief

Attachments: Resolution 5125
Intergovernmental Agreement

25. **16-298** RESOLUTION 5126: AUTHORIZATION TO ENTER INTO AN

INTERGOVERNMENTAL AGREEMENT WITH GLENDALE UNION HIGH SCHOOL DISTRICT FOR THE SERVICES OF A SCHOOL RESOURCE OFFICER AT TWO SCHOOL CAMPUSES DURING THE 2016-17 SCHOOL YEAR
Staff Contact: Debora Black, Police Chief

Attachments: Resolution 5126
Intergovernmental Agreement

26. **16-309** RESOLUTION 5127: AUTHORIZATION TO ENTER INTO A NEW DEVELOPMENT AGREEMENT WITH HABITAT FOR HUMANITY CENTRAL ARIZONA FOR THE USE OF EXISTING FY 2014/15 HOME INVESTMENT PARTNERSHIP FUNDS
Staff Contact: Erik Strunk, Director, Community Services

Attachments: Resolution 5127
Development Agreement

27. **16-311** RESOLUTION 5128: AUTHORIZATION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR INSTALLATION OF EMERGENCY VEHICLE PRE-EMPTION SYSTEMS CITYWIDE
Staff Contact: Jack Friedline, Director, Public Works

Attachments: Resolution 5128
Intergovernmental Agreement

28. **16-312** RESOLUTION 5129: AUTHORIZATION TO ENTER INTO AMENDMENT NO. 2 TO TERMINATE A GRANTOR AGREEMENT WITH THE ARIZONA DEPARTMENT OF ECONOMIC SECURITY FOR VENDING MACHINE OPERATIONS
Staff Contact: Jack Friedline, Director, Public Works

Attachments: Resolution 5129
Amendment No. 2

29. **16-316** RESOLUTION 5130: AUTHORIZATION TO ENTER INTO AN AMENDMENT TO AN INTERGOVERNMENTAL AGREEMENT WITH THE REGIONAL PUBLIC TRANSPORTATION AUTHORITY FOR TRANSIT SERVICES
Staff Contact: Jack Friedline, Director, Public Works

Attachments: Resolution 5130
Transit Services Amendment

30. **16-322** RESOLUTION 5131: AUTHORIZATION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH ARIZONA DEPARTMENT OF TRANSPORTATION FOR CAMELBACK ROAD FROM 51ST AVENUE TO 91ST AVENUE INTELLIGENT TRANSPORTATION SYSTEMS ENHANCEMENTS PROJECT
Staff Contact: Jack Friedline, Director, Public Works

Attachments: Resolution 5131
Intergovernmental Agreement

31. **16-325** RESOLUTION 5132: AUTHORIZATION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR DESIGN AND CONSTRUCTION OF PEDESTRIAN IMPROVEMENTS ALONG PARADISE LANE BETWEEN 55TH AND 59TH AVENUES
Staff Contact: Jack Friedline, Director, Public Works

Attachments: Resolution 5132
Intergovernmental Agreement
Map

32. **16-327** RESOLUTION 5133: AUTHORIZATION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR DESIGN AND CONSTRUCTION OF PEDESTRIAN IMPROVEMENTS ALONG 67TH AVENUE BETWEEN GLENDALE AND ORANGEWOOD AVENUES AND ALONG ORANGEWOOD AVENUE BETWEEN 67TH AND GRAND AVENUES
Staff Contact: Jack Friedline, Director, Public Works

Attachments: Resolution 5133
Intergovernmental Agreement
Map

33. **16-328** RESOLUTION 5134: AUTHORIZATION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR DESIGN AND CONSTRUCTION OF PEDESTRIAN IMPROVEMENTS ALONG CAMELBACK ROAD BETWEEN 79TH AND 83RD AVENUES
Staff Contact: Jack Friedline, Director, Public Works

Attachments: Resolution 5134
Intergovernmental Agreement
Map

34. **16-305** RESOLUTION 5135: ADOPT A RESOLUTION AUTHORIZING THE CITY OF GLENDALE TO RECEIVE AND ACCEPT ANY PROCEEDS FROM THE SALE/RECOVERY OF BIOGAS AT THE JOINTLY OWNED 91ST AVENUE WASTEWATER TREATMENT PLANT
Staff Contact: Craig A. Johnson, P.E., Director, Water Servicesnd

Attachments: Resolution 5135

PUBLIC HEARING - ORDINANCES

35. **16-313** ORDINANCE 2994: AMENDMENTS TO CHAPTER 18 - GARBAGE AND TRASH; AND DECLARING AN EMERGENCY (ORDINANCE) (PUBLIC HEARING REQUIRED)

Staff Contact: Jack Friedline, Director, Public Works

Attachments: Ordinance 2994 with Exhibit A

ORDINANCES

36. 16-310 ORDINANCE 2995: SALT RIVER PROJECT IRRIGATION EASEMENT ALONG THUNDERBIRD ROAD BETWEEN 65TH AND 67TH AVENUES
Staff Contact: Jack Friedline, Director, Public Works

Attachments: Ordinance 2995 with Exhibit A
Salt River Project Irrigation Easement
Aerial Map

37. 16-321 ORDINANCE 2996: ADOPT FISCAL YEAR 2016-2017 PROPERTY TAX LEVY (ORDINANCE)
Staff Contact and Presenter: Vicki Rios, Interim Director, Finance and Technology

Attachments: Ordinance 2996

NEW BUSINESS

38. 16-333 APPOINTMENT OF CITY CLERK
Staff Contact: Jim Brown, Director, Human Resource and Risk Management
Staff Contact: Michael D. Bailey, City Attorney

Attachments: City Clerk Employment Agreement

39. 16-336 ORDINANCE 2997: ADOPT AN ORDINANCE UPDATING THE CITY'S SIGNATURE AUTHORITY FOR BANKING TRANSACTIONS
Staff Contact: Vicki Rios, Interim Director, Finance and Technology

Attachments: Ordinance 2997

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 #: 16-330, **Version:** 1

APPROVAL OF THE MINUTES OF THE JUNE 14, 2016 VOTING MEETING
Staff Contact: Pamela Hanna, City Clerk

City of Glendale

5850 West Glendale Avenue
Glendale, AZ 85301

Meeting Minutes - Draft

Tuesday, June 14, 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

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

PLEDGE OF ALLEGIANCE

PRAYER/INVOCATION

The invocation was offered by James Deibler of St. Helen's Catholic Church.

CITIZEN COMMENTS

Bill Demski, a Sahuaro resident, spoke about some construction work on nearby roads. He also spoke about the poor condition of the roads in Glendale. He said it is the same as it was 26 years ago. He also spoke about the brown grass in the median around 75th and Greenway. He spoke about all the money that is being spent on watering to ruin the streets.

Joy, a Glendale resident, spoke about gaming money and incineration program. She spoke about the smoke shops and the dangers of tobacco. She spoke about an e-vape room at Ironwood High School. She said she did not understand what the Council is doing by allowing the smoke shops in Glendale. She spoke about the killings and homeless on the streets, as well as drugs.

Leonard Rico Escudero, an Ocotillo resident, thanked the Councilmembers for quickly filling the vacancies in the Aviation Advisory Commission. He spoke about the formation of the diversity commission. He said he has been a lifelong resident of Glendale. He said Glendale is a great community and an ideal place to live and work. Glendale has always been a diverse society. He asked the Council to continue the sense of inclusiveness that already exists. He said Glendale has a cultural wealth and the Council should help keep it so.

James Deibler, a Phoenix resident, spoke about a television station that could assist low income residents view basic cable. He said Glendale should make an effort to purchase radio channel 25 to provide better services to Glendale residents.

Mayor Weiers recognized Boy Scouts Michael Fischer, Dominic Jerome and Matthew Sandoval from Troop 127, who were attending the meeting.

APPROVAL OF THE MINUTES OF MAY 24, 2016

1. 16-293 APPROVAL OF THE MINUTES OF THE MAY 24, 2016 VOTING

MEETING
Staff Contact: Pamela Hanna, City Clerk

A motion was made by Councilmember Chavira, 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

CONSENT AGENDA

Ms. Pamela Hanna, City Clerk, introduced Consent Agenda item numbers 2 through 21 and Consent Resolution item numbers 22 through 32 by number and title.

2. 16-253 RECOMMEND APPROVAL OF LIQUOR LICENSE NO. 5-20494, MOD PIZZA
Staff Contact: Vicki Rios, Interim Director, Finance and Technology

This agenda item was approved.

3. 16-258 AUTHORIZATION TO ENTER INTO A MULTI-YEAR LINKING AGREEMENT WITH FASTENAL COMPANY FOR MAINTENANCE, REPAIR, AND OPERATING (MRO) SUPPLIES AND RELATED SERVICES
Staff Contact: Vicki Rios, Interim Director, Finance and Technology

This agenda item was approved.

4. 16-255 AUTHORIZATION TO ENTER INTO AMENDMENT NO. 1 TO THE LINKING AGREEMENT WITH J.R. FILANC CONSTRUCTION COMPANY, AND APPROVE THE EXPENDITURE OF FUNDS FOR THE REPLACEMENT OF PIPE CONNECTIONS AND MAKE ADDITIONAL PUMP REPAIRS AT THE HILLCREST RANCH BOOSTER STATION
Staff Contact: Craig Johnson, P.E, Director, Water Services

This agenda item was approved.

5. 16-267 AUTHORIZATION TO ENTER INTO A LINKING AGREEMENT WITH SUMMIT ELECTRIC SUPPLY CO., INC., AND APPROVE THE EXPENDITURE OF FUNDS FOR THE PURCHASE OF ELECTRICAL PARTS FOR VARIOUS WATER AND WASTEWATER TREATMENT FACILITIES
Staff Contact: Craig Johnson, P.E., Director, Water Services

This agenda item was approved.

6. 16-268 AUTHORIZATION TO ENTER INTO A LINKING AGREEMENT WITH PHOENIX PUMPS, INC., AND APPROVE THE EXPENDITURE OF FUNDS FOR EQUIPMENT REPAIR AND MAINTENANCE FOR VARIOUS WATER AND WASTEWATER TREATMENT FACILITIES

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

This agenda item was approved.

7. 16-269 AUTHORIZATION TO PURCHASE ENTERPRISE SERVER/CLIENT SOFTWARE FROM TECHNICAL MARKETING MFG., INC., FOR THE SUPERVISORY CONTROL AND DATA ACQUISITION SYSTEM
Staff Contact: Craig Johnson, P.E., Director, Water Services

This agenda item was approved.

8. 16-270 AUTHORIZATION TO INCREASE EXPENDITURE AUTHORITY WITH W.W. GRAINGER, INC. FOR ADDITIONAL EQUIPMENT NEEDS OF THE GLENDALE POLICE DEPARTMENT
Staff Contact: Debora Black, Police Chief

This agenda item was approved.

9. 16-272 AUTHORIZATION TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH GREATER PHOENIX ECONOMIC COUNCIL
Staff Contact: Brian Friedman, Director, Economic Development

This agenda item was approved.

10. 16-222 AUTHORIZATION TO ENTER INTO A LINKING AGREEMENT WITH FREIGHTLINER OF ARIZONA, LLC, FOR THE COOPERATIVE PURCHASE OF A CERTIFIED STREET SWEEPER
Staff Contact: Jack Friedline, Director, Public Works

This agenda item was approved.

11. 16-275 AUTHORIZATION TO ENTER INTO A LINKING AGREEMENT WITH MIDWAY CHEVROLET COMPANY I, LLC, FOR THE COOPERATIVE PURCHASE OF AUTOMOTIVE MAINTENANCE FOR ORIGINAL EQUIPMENT MANUFACTURER FACILITIES
Staff Contact: Jack Friedline, Director, Public Works

This agenda item was approved.

12. 16-276 AUTHORIZATION TO ENTER INTO A LINKING AGREEMENT WITH AN CHEVROLET-ARROWHEAD, INC., FOR THE COOPERATIVE PURCHASE OF AUTOMOTIVE MAINTENANCE FOR ORIGINAL EQUIPMENT MANUFACTURER FACILITIES
Staff Contact: Jack Friedline, Director, Public Works

This agenda item was approved.

13. 16-277 AUTHORIZATION TO ENTER INTO A LINKING AGREEMENT WITH PFVT MOTORS, LLC, DOING BUSINESS AS PEORIA FORD, FOR THE COOPERATIVE PURCHASE OF AUTOMOTIVE MAINTENANCE FOR ORIGINAL EQUIPMENT MANUFACTURER FACILITIES

Staff Contact: Jack Friedline, Director, Public Works

This agenda item was approved.

14. 16-278 AUTHORIZATION TO ENTER INTO A LINKING AGREEMENT WITH DON SANDERSON FORD, INC., FOR THE COOPERATIVE PURCHASE OF AUTOMOTIVE MAINTENANCE FOR ORIGINAL EQUIPMENT MANUFACTURER FACILITIES
Staff Contact: Jack Friedline, Director, Public Works

This agenda item was approved.

15. 16-279 AUTHORIZATION TO ENTER INTO AMENDMENT NO. 1 TO A PROFESSIONAL SERVICES AGREEMENT WITH OLSSON ASSOCIATES, INC., FOR CONSTRUCTION QUALITY ASSURANCE, AS-BUILT AND RECORD DRAWING, AND PROJECT ENGINEERING REVIEW
Staff Contact: Jack Friedline, Director, Public Works

This agenda item was approved.

16. 16-280 AUTHORIZATION TO ENTER INTO A CONSTRUCTION AGREEMENT WITH VIASUN CORPORATION FOR THE CAMELBACK ROAD SLURRY SEAL PROJECT BETWEEN 43RD AVENUE AND 58TH DRIVE
Staff Contact: Jack Friedline, Director, Public Works

This agenda item was approved.

17. 16-282 AUTHORIZATION TO ENTER INTO A SYSTEM SUPPLY AND SUPPORT AGREEMENT WITH TRAPEZE SOFTWARE GROUP, INC., DOING BUSINESS AS TRIPSPARK TECHNOLOGIES, FOR THE PURCHASE OF MOBILE-DATA-TERMINALS FOR THE TRANSIT DIAL-A-RIDE FLEET
Staff Contact: Jack Friedline, Director, Public Works

This agenda item was approved.

18. 16-286 AUTHORIZATION TO ENTER INTO A LINKING AGREEMENT WITH H&E EQUIPMENT SERVICES, INC., FOR THE COOPERATIVE PURCHASE OF UP TO SIX FIRE PUMPER TRUCKS
Staff Contact: Jack Friedline, Director, Public Works

This agenda item was approved.

19. 16-287 FISCAL YEAR 2016-17 PERFORMING ARTS PARTNERSHIP PROGRAM
Staff Contact: Erik Strunk, Director, Community Services

This agenda item was approved.

20. 16-288 AUTHORIZATION TO ENTER INTO AMENDMENT NO. 1 TO C-10073

FOR ELECTRONIC SERVICES WITH OVERDRIVE, INC., TO PICK UP A ONE YEAR OPTIONAL EXTENSION AND RAISE THE EXPENDITURE LIMIT
Staff Contact: Erik Strunk, Director, Community Services

This agenda item was approved.

21. 16-274 AUTHORIZATION TO ENTER INTO AN AGREEMENT WITH OCLC ONLINE COMPUTER LIBRARY CENTER, INC., FOR LIBRARY TECHNOLOGY SERVICES
Staff Contact: Erik Strunk, Director, Community Services

This agenda item was approved.

CONSENT RESOLUTIONS

22. 16-254 RESOLUTION 5112: ADOPT A RESOLUTION APPROVING THE ISSUANCE OF REVENUE AND REFUNDING BONDS NOT TO EXCEED $22,000,000 BY THE GLENDALE INDUSTRIAL DEVELOPMENT AUTHORITY FOR THE GLENCROFT RETIREMENT COMMUNITY PROJECT
Staff Contact: Brian Friedman, Director, Economic Development

RESOLUTION NO. 5112 NEW SERIES WAS READ BY NUMBER AND TITLE ONLY, IT BEING A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, APPROVING THE ISSUANCE BY THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF GLENDALE, ARIZONA OF ITS REVENUE AND REFUNDING BONDS (GLENCROFT RETIREMENT COMMUNITY PROJECT), TAX-EXEMPT SERIES 2016, IN ONE OR MORE SERIES AND IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $22,000,000.

This agenda item was approved.

23. 16-256 RESOLUTION 5113: AUTHORIZATION TO ENTER INTO GRANT AGREEMENT HT-16-2630 WITH THE CITY OF TUCSON FOR THE HIGH INTENSITY DRUG TRAFFICKING AREA AND ACCEPT FUNDS FOR USE WITH THE WEST VALLEY DRUG ENFORCEMENT TASK FORCE
Staff Contact: Debora Black, Police Chief

RESOLUTION NO. 5113 NEW SERIES WAS READ BY NUMBER AND TITLE ONLY, IT BEING A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE ENTERING INTO OF A GRANT AGREEMENT (GRANT NO. HT-16-2630) FOR THE CITY OF TUCSON FOR THE HIGH INTENSITY DRUG TRAFFICKING AREA (HIDTA) GRANT, AND ACCEPTANCE OF GRANT FUNDS IN THE AMOUNT OF $112,000 TO PROVIDE OVERTIME AND SERVICES FUNDING FOR THE WEST VALLEY DRUG ENFORCEMENT TASK FORCE (WVDETF) BY THE GLENDALE POLICE DEPARTMENT.

This agenda item was approved.

24. 16-257 RESOLUTION 5114: AUTHORIZATION TO ENTER INTO GRANT AGREEMENT HT-16-2632 WITH THE CITY OF TUCSON FOR THE HIGH INTENSITY DRUG TRAFFICKING AREA AND ACCEPT FUNDS FOR USE WITH THE ARIZONA WARRANT APPREHENSION NETWORK AND TACTICAL ENFORCEMENT DETAIL

Staff Contact: Debora Black, Police Chief

RESOLUTION NO. 5114 NEW SERIES WAS READ BY NUMBER AND TITLE ONLY, IT BEING A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE ENTERING INTO OF A GRANT AGREEMENT (GRANT NO. HT-16-2632) WITH THE CITY OF TUCSON FOR THE HIGH INTENSITY DRUG TRAFFICKING AREA (HIDTA) GRANT, AND ACCEPTANCE OF GRANT FUNDS IN THE AMOUNT OF $40,000, TO PROVIDE OVERTIME FUNDING FOR THE ARIZONA WARRANT APPREHENSION NETWORK AND TACTICAL ENFORCEMENT DETAIL (AZWANTED) BY THE GLENDALE POLICE DEPARTMENT.

This agenda item was approved.

25. 16-262 RESOLUTION 5115: AUTHORIZATION TO ENTER INTO AMENDMENT NO. 1 TO THE INTERGOVERNMENTAL AGREEMENT WITH TOLLESON UNION HIGH SCHOOL DISTRICT NO. 214 FOR THE SERVICES OF A SCHOOL RESOURCE OFFICER AT ONE SCHOOL CAMPUS DURING THE 2015-16 SCHOOL YEAR

Staff Contact: Debora Black, Police Chief

RESOLUTION NO. 5115 NEW SERIES WAS READ BY NUMBER AND TITLE ONLY, IT BEING A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF AMENDMENT NO. 1 TO THE INTERGOVERNMENTAL AGREEMENT WITH TOLLESON UNION HIGH SCHOOL DISTRICT NO. 214 AMENDING THE SCOPE OF THE AGREEMENT.

This agenda item was approved.

26. 16-263 RESOLUTION 5116: AUTHORIZATION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH PEORIA UNIFIED SCHOOL DISTRICT FOR THE SERVICES OF A SCHOOL RESOURCE OFFICER AT TWO SCHOOL CAMPUSES DURING THE 2016-17 SCHOOL YEAR

Staff Contact: Debora Black, Police Chief

RESOLUTION NO. 5116 NEW SERIES WAS READ BY NUMBER AND TITLE ONLY, IT BEING A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF AN INTERGOVERNMENTAL AGREEMENT WITH PEORIA UNIFIED SCHOOL DISTRICT FOR SCHOOL RESOURCE OFFICERS DURING THE 2016-17 SCHOOL YEAR AT THE FOLLOWING SCHOOLS: ONE POLICE OFFICER AT CACTUS HIGH SCHOOL AND ONE POLICE OFFICER AT IRONWOOD HIGH SCHOOL.

This agenda item was approved.

27. 16-264 RESOLUTION 5117: AUTHORIZATION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH GLENDALE ELEMENTARY SCHOOL DISTRICT NO. 40 FOR THE SERVICES OF A SCHOOL RESOURCE OFFICER AT TWO SCHOOL CAMPUSES DURING THE 2016-17 SCHOOL YEAR

Staff Contact: Debora Black, Police Chief

RESOLUTION NO. 5117 NEW SERIES WAS READ BY NUMBER AND TITLE ONLY, IT BEING A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF AN INTERGOVERNMENTAL AGREEMENT WITH GLENDALE ELEMENTARY SCHOOL DISTRICT NO. 40 FOR SCHOOL RESOURCES OFFICERS DURING THE 2016-17 SCHOOL YEAR AT THE FOLLOWING SCHOOLS: ONE POLICE OFFICER AT CHALLENGER MIDDLE SCHOOL AND ONE POLICE OFFICER AT HAROLD W. SMITH ELEMENTARY SCHOOL.

This agenda item was approved.

28. 16-271 RESOLUTION 5118: AUTHORIZATION TO ACCEPT A LIBRARY SERVICES TECHNOLOGY ACT GRANT: "GLENDALE LIBRARIES TRANSFORM: EXPRESS YOURSELF" FOR THE GLENDALE PUBLIC LIBRARY SYSTEM

Staff Contact: Erik Strunk, Director, Community Services

RESOLUTION NO. 5118 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 STATE OF ARIZONA DEPARTMENT OF LIBRARY, ARCHIVES AND PUBLIC RECORDS IN THE AMOUNT OF $23,950 FOR THE GLENDALE LIBRARY TRANSFORM: EXPRESS YOURSELF PROJECT.

This agenda item was approved.

29. 16-227 RESOLUTION 5119: AUTHORIZATION TO ACCEPT A GRANT FROM THE MARICOPA ASSOCIATION OF GOVERNMENTS FOR A CERTIFIED STREET SWEEPER

Staff Contact: Jack Friedline, Director, Public Works

RESOLUTION NO. 5119 NEW SERIES WAS READ BY NUMBER AND TITLE ONLY, IT BEING A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE APPLICATION AND ACCEPTANCE OF THE FY2016 CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT GRANT AWARD FROM THE MARICOPA ASSOCIATION OF GOVERNMENTS IN THE APPROXIMATE AMOUNT OF $241,043 FOR THE PURCHASE OF A PM-10 CERTIFIED

STREET SWEEPER.

This agenda item was approved.

30. 16-281 RESOLUTION 5120: AUTHORIZATION TO ENTER INTO CHANGE ORDER NO. 2 TO AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PHOENIX FOR FIXED-ROUTE LOCAL BUS SERVICE
Staff Contact: Jack Friedline, Director, Public Works

RESOLUTION NO. 5120 NEW SERIES WAS READ BY NUMBER AND TITLE ONLY, IT BEING A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO CHANGE ORDER NO. 2 OF AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PHOENIX FOR THE OPERATION OF FIXED ROUTE BUS SERVICES IN THE CITY OF GLENDALE.

This agenda item was approved.

31. 16-284 RESOLUTION 5121: AUTHORIZATION TO ENTER INTO AMENDMENT NO. 1 TO AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR THE WIDENING OF 55TH AVENUE SOUTH OF CACTUS ROAD
Staff Contact: Jack Friedline, Director, Public Works

RESOLUTION NO. 5121 NEW SERIES WAS READ BY NUMBER AND TITLE ONLY, IT BEING A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF AMENDMENT NO. 1 TO AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR THE WIDENING OF EXISTING ROADWAY FOR BIKE LANES AND SIDEWALK AT APPROXIMATELY 55TH AVENUE, SOUTH OF CACTUS ROAD.

This agenda item was approved.

32. 16-285 RESOLUTION 5122: AUTHORIZATION TO ENTER INTO AN AMENDMENT NO. 1 TO AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR THE NEW RIVER NORTH SHARED USE PATHWAY
Staff Contact: Jack Friedline, Director, Public Works

RESOLUTION NO. 5122 NEW SERIES WAS READ BY NUMBER AND TITLE ONLY, IT BEING A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF AMENDMENT NO. 1 TO AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION (IGA/JPA 13-0003922-I) FOR THE NEW RIVER NORTH SHARED USE PATHWAY PROJECT IN THE CITY OF GLENDALE.

This agenda item was approved.

Approval of the Consent Agenda

A motion was made by Turner, seconded by Chavira, to approve the recommended actions on Consent Agenda Item Numbers 2 through 21 and Consent Resolution Item Numbers 22 through 32. 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

PUBLIC HEARING

33. 16-289 FY16-17 PUBLIC HEARING AND APPROVAL OF FISCAL YEAR 2016-17 PROPERTY TAX LEVY

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

Ms. Rios said this is a request to conduct a public hearing in the proposed FY 2016-2017 property tax levy. She said the property tax levy does not have a rate increase on either the primary or secondary tax rate. The tax on existing properties within the city remains the same. She said there will be a slight increase in revenue to the city, but that is only due to the value of new property added to the tax levy over and above the prior year.

Mayor Weiers asked if she could say there is no increase once again.

Ms. Rios said there is actually a tax rate decrease.

Mayor Weiers said even better.

Mayor Weiers opened the public hearing on FY2016-2017 property tax levy.

There were no speakers on this item.

Mayor Weiers closed the public hearing.

It was moved by Councilmember Malnar, seconded by Councilmember Aldama, to approve this item. 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

34. 16-241 ORDINANCE 2993: ADOPT AN ORDINANCE AMENDING GLENDALE CITY CODE, ARTICLE 1 (IN GENERAL), CHAPTER 3 (ALARM SYSTEMS)

Staff Contact: Debora Black, Police Chief

Assistant Chief St. John said this was a request to adopt an Ordinance amending

Glendale City Code, Article 1, and Chapter 3. In 2010, Council adopted Article 1, Chapter 3, to institute the required permitting registration of alarms and assessment of fees for two or more false alarms in a 365 day period. A fee was also assessed for non-registration of the alarm systems. This Ordinance was aimed at obtaining updated contact information for responsible parties and producing a reduction in false alarms. Following the enactment, false alarms decreased somewhat, but false alarms began to increase again. In 2014, an annual $20 fee was instituted for the alarm permits, effective with the 2015 calendar year. Glendale was one of the last cities to institute this permit fee; however, staff received many calls and complaints from citizens about the permit fee. Police staff identified other changes that were needed to bring the Code into compliance with state laws. This item is a request to remove the requirement for alarm owners to register their systems with the Police Department, remove the $20 permit fee and to remove any regulations in the Ordinance right now, so the City is in compliance with state law. Assistant Chief St. John said the issue of false alarms is still a problem that needs to be dealt with.

Assistant Chief St. John said the Police Department conducted an online survey and received 877 responses. Responses to the survey indicated residents did not want to see any penalties for false alarms. The respondents to the survey were not the ones in violation of the Ordinance. He explained about half of the respondents provided some narrative on what they wanted the Police Department to do to enhance the alarm program. Staff recommends identifying the addresses that have a high amount of false alarms per calendar year and then work with those residents or businesses to fix the alarms and educate the user to reduce the number of calls received. The second component of the program will include giving the alarm owner the opportunity to have the false alarm fee waived. When a second false alarm call comes in, the Police Department will provide that citizen with another online survey. Once the survey is completed, the false alarm fee will be waived. Police Department staff will then work with the citizen to ensure there won't be any additional false alarms. He said with the citizen input, the Police Department can provide better information about what is causing false alarms and keep them from occurring. He explained staff reviewed the surveys, met with alarm companies, alarm owners and all stakeholders involved. With their input, staff has drafted this new alarm Ordinance.

Mayor Weiers asked if this has anything to do with false alarm the Fire Department has to respond to.

Assistant Chief St. John said the information he presented does not include false fire alarms. He said this Ordinance is regarding burglar alarms.

Mayor Weiers said it is too bad they couldn't do something with the false fire alarms, as that is a recurring problem. He said he didn't like what the Police Department did a year ago about the alarms, and believed this was a good fix.

ORDINANCE NO. 2993 NEW SERIES, WAS READ BY NUMBER AND TITLE ONLY, IT BEING AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AMENDING GLENDALE CITY CODE, CHAPTER 3 CONCERNING ALARM SYSTEMS.

A motion was made by Councilmember Chavira, 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

PUBLIC HEARING – RESOLUTIONS

35. 16-134 RESOLUTION 5123: ADOPT A RESOLUTION SUPPORTING URBAN IRRIGATION AND ESTABLISH IRRIGATION SERVICE RATES PURSUANT TO GLENDALE CITY CODE (PUBLIC HEARING REQUIRED)

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

Mr. Johnson said this is a request to adopt a Resolution supporting urban irrigation and implementing an irrigation rate increase following adoption of the Resolution. Mr. Johnson recognized two commissioners on the Water Services Advisory Commission that is in the audience, Ron Short and Robin Berryhill. He spoke about urban irrigation and said it is in several places in the Salt River Valley. He said most customers receive only potable water, but the city has managed an urban irrigation program since 1912. In 1960, a Resolution clarified that the property owner is responsible for the cost associated with the extension of the urban irrigation system to their lot. In 2010, the city made a decision to increase irrigation rates at a rate that matched increases for water rates. There has not been an increase in urban irrigation rates since 2010. The Water Services Advisory Commission was created in 2013, and members of the public have been very involved in discussions regarding urban irrigation.

He continued the Commission made a number of recommendations at a May 6, 2015 meeting, nearly all of which have been incorporated into the Resolution. Several City Council Workshops were held on this issue in 2015. Residents have consistently expressed a desire to receive recognition for the value of urban irrigation and how it plays in the community. The Resolution makes a strong statement for preserving the amenity. The city has a responsibility to the taxpayers that the cost of providing this service is recovered. The system has operated at a deficit for many years. The Resolution demonstrates the city's support of the urban irrigation program, encourages new customers in the service area to join the system, confirms that new customers are responsible for costs associated with extending the service to their lots and establishes that urban irrigation is a cost of service activity. Establishing a 50% cost recovery goal, provides balance by preserving the traditional practice that adds to the ambiance of the community and recovering a higher portion of the cost from customers directly benefitting from the system. Staff recommends adopting a Resolution supporting urban irrigation and implementing a rate increase upon adoption of the Resolution.

Councilmember Aldama made a motion, seconded by Councilmember Chavira, to amend Resolution 5123, Section 1. He read, "Section 1 reads, that it is in the best interest of the citizens of the City of Glendale to continue to have the City distribute irrigation water and to maintain, inspect, monitor, repair, replace, and operate the urban irrigation distribution. He read his proposed amendment as follows: "Section 1, that it is in the best interest of the citizens of Glendale to continue to have the City distribute, preserve, protect, maintain, inspect, monitor, repair, replace and operate the urban irrigation distribution currently and in the future." He explained the amendment is to reflect the recommendations of the Water Services Advisory Commission.

Councilmember Tolmachoff asked if this amendment was at the request of the Water Services Advisory Commission.

Councilmember Aldama said he was asking that the words preserve, protect and maintain be extracted and placed into the Resolution.

Councilmember Malnar said he was trying to get a clarification and that answered his question.

Councilmember Aldama said irrigation is important to residents and he wanted to ensure irrigation is provided to those who want it. He wanted to make sure flood irrigation is available now and in the future.

Councilmember Malnar asked if this Resolution will have any fiscal impacts and are there any other requirements that have not previously been discussed by Council.

Mr. Johnson said no, this will impact a rate increase which will help offset expenses.

Mayor Weiers said the motion is not doing that.

Mr. Johnson said the motion is not doing that, but once the Resolution is passed, that is what it will do.

Councilmember Malnar said he was just addressing the proposed amendment.

Mr. Johnson said all it is doing is strengthening the wording in Section 1 of the Resolution to match more closely what was recommended by the Water Services Advisory Commission.

Councilmember Tolmachoff asked if the wording preserve and protect clear enough as to what the intent is.

Mr. Bailey said he believed it was.

Mayor Weiers said that is this Council's intent, but future Councils can always change this.

Mr. Bailey said that is correct, they cannot legislatively bind future Councils.

Mayor Weiers said other than contracts.

Mr. Bailey said yes.

Councilmember Aldama wanted the public to know that after the start of the meeting, he provided written copies of the amendment to the other Councilmembers so they had it in front of them.

Councilmember Turner asked if a future Council would have to pass a new Resolution to change the Resolution being discussion today.

Mr. Bailey said that is correct.

Councilmember Turner said he supports the amendment since it supports urban irrigation now and protects it into the future.

Mayor Weiers opened the public hearing on Resolution 5123.

Mr. Bailey said there was a pending motion and second to amend the Resolution.

Mayor Weiers asked for the vote of all those in favor of the motion. The motion passed

unanimously.

Mayor Weiers said the public hearing was open.

Ms. Berryhill, an Ocotillo resident, said she is an urban irrigation customer and a member of the Water Services Advisory Commission. She spoke about the history of urban irrigation. She spoke about whole neighborhoods that were put in without irrigation. She said there are property rights and federal mandates that need to be addressed legally. She spoke about the cost recovery rate. She was concerned about the cost of a major repair that might price out urban irrigation from its customers. She said all city water systems should be audited.

Mayor Weiers closed the public hearing.

RESOLUTION NO. 5123 NEW SERIES WAS READ BY NUMBER AND TITLE ONLY, IT BEING A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, SUPPORTING URBAN IRRIGATION AND SETTING NEW IRRIGATION SERVICE RATES PURSUANT TO GLENDALE CITY CODE; AND SETTING FORTH THE EFFECTIVE DATE.

A motion was made by Councilmember Aldama, seconded by Councilmember Chavira, that this agenda item be amended. 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

A motion was made by Councilmember Aldama, seconded by Vice Mayor Hugh, that this agenda item be approved as amended. 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

36. 16-292 RESOLUTION 5124: PUBLIC HEARING AND ADOPTION OF FISCAL YEAR 2016-2017 FINAL BUDGET (RESOLUTION) (PUBLIC HEARING REQUIRED)

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

Ms. Rios said this is a request to conduct a public hearing on the FY 2016-17 final budget and approve Resolution 5124, approving the budget. She said there have been a couple of minor changes in the budget due to debt service. The first was a change in the City's general obligation bond debt service. The second was debt that was classified in the tentative budget as MPC debt and that should have been under excise debt. With these changes, the total appropriation remains the same at $693 million. She explained this budget does not include a primary or secondary property tax increase. The budget also addresses Council priorities such as adding personnel to Public Safety to address response times, addressing high employee turnover, improving the speed-to-market of projects in the Planning Department, increasing productivity of the City through additions to innovation and technology and investing in some capital improvements and infrastructure around the city. Ms. Rios thanked the Council for their leadership, direction and feedback. She also thanked all the department heads and chiefs who contributed throughout the process. She thanked Terri Canada and her staff for their hard work behind the scenes, as well as the two Assistant City Managers for their assistance.

Mayor Weiers opened the public hearing.

There were no speakers on this item.

Mayor Weiers closed the public hearing.

RESOLUTION NO. 5124 NEW SERIES WAS READ BY NUMBER AND TITLE ONLY, IT BEING A RESOLUTION OF THE COUNCIL OF THE CITY OFGLENDALE, MARICOPA COUNTY, ARIZONA, ADOPTING THE FINAL BUDGET OF THE AMOUNTS REQUIRED FOR THE PUBLIC EXPENSE FOR THE CITY OF GLENDALE FOR THE FISCAL YEAR 2016-2017, SETTING FORTH THE REVENUE AND THE AMOUNT TO BE RAISED BY DIRECT PROPERTY TAXATION FOR THE VARIOUS PURPOSES, AND ADOPTING THE CITY COUNCIL'S FINANCIAL POLICIES.

SPECIAL BUDGET MEETING (TO ADOPT FISCAL YEAR 2016-17 FINAL BUDGET)

Special budget meeting was opened at 7:08 p.m.

Mayor Weiers said he could not be more proud of the staff and said they did an outstanding job.

A motion was made by Councilmember Tolmachoff, seconded by Councilmember Chavira, 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

ADJOURN SPECIAL BUDGET MEETING AND RECONVENE REGULAR COUNCIL MEETING

The Special Budget Meeting was adjourned and the regular meeting reconvened at 7:09 p.m.

REQUEST FOR FUTURE WORKSHOP AND EXECUTIVE SESSION

A motion was made by Vice Mayor Hugh, seconded by Councilmember Tolmachoff, to hold the next regularly scheduled City Council Workshop on Tuesday, June 21, 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 thanked the City Manager and staff for their hard work on the budget. He said this continues to achieve the $50 million unrestricted fund balance by FY20. There is no property tax increase, adds two low acuity units to the Fire Department, enhances the pavement management program, adds community services officers to the Police Department, and improving diversity and employee recognition

programs in the organization.

Councilmember Chavira echoed the sentiments of Councilmember Aldama. He said staff and the City needs to be proud. He said the ship has been righted. He said be nice.

Councilmember Malnar echoed what has been said regarding the budget and staff's work on it.

Councilmember Tolmachoff thanked staff and said it is an exciting time in Glendale. She is excited about the future. She reminded everyone of Coffee With A Cop at Dillons BBQ at 20585 N. 59th Avenue.

Councilmember Turner echoed the sentiments of the other Councilmembers and the great work by staff. He mentioned on the consent agenda, money was appropriated for the performing arts program and electronic library resources.

Vice Mayor Hugh reminded everyone the Community Band will be playing next Thursday and will be celebrating its 50th year in existence.

Mayor Weiers said he loved there is no property tax increase.

ADJOURNMENT

Mayor Weiers adjourned the meeting at 7:14 p.m.

Legislation Description

File #: 16-303, **Version:** 1

BOARDS, COMMISSIONS & OTHER BODIES
Staff Contact: Brent Stoddard, Director, Intergovernmental Programs

Purpose and Recommended Action

This is a request for City Council to approve the recommended appointments to the following boards, commissions and other bodies that have a vacancy or expired term and for the Mayor to administer the Oath of Office to those appointees in attendance.

Arts Commission

Helen Fokszanskyj-Conti	Yucca	Appointment	08/23/2016	08/23/2018
Eva Ndavu - Vice Chair	Cactus	Appointment	08/23/2016	08/23/2017

Citizens Bicycle Advisory Committee

Larry Flatau - Chair	Barrel	Reappointment	07/17/2016	07/17/2017
Anthony Pratcher - Vice Chair	Cholla	Reappointment	07/17/2016	07/17/2017

Commission on Persons with Disabilities

Syeda Madani	Cholla	Appointment	06/28/2016	07/26/2018

Community Development Advisory Committee

Emmanuel Allen	Cactus	Appointment	07/01/2016	07/01/2018
Matthew Versluis	Barrel	Reappointment	07/23/2016	07/23/2018

Library Advisory Board

Gary Johnson	Barrel	Appointment	06/28/2016	04/13/2018

Parks & Recreation Advisory Commission

Ethan McAffee - Teen	Mayoral	Appointment	06/28/2016	05/27/2017

Public Safety Personnel Retirement System/Police Board

Justin Harris - Police Rep.	N/A	Appointment	07/01/2016	07/01/2020

Water Services Advisory Commission

Ruth Faulls	Barrel	Reappointment	09/10/2016	09/10/2018
Jonathan Liebman	Cholla	Reappointment	09/10/2016	09/10/2018
Ron Short	Cactus	Reappointment	09/10/2016	09/10/2018
Jonathan Liebman - Chair	Cholla	Reappointment	09/10/2016	09/10/2017

File #: 16-308, **Version:** 1

PROCLAIM JULY 2016 PARKS AND RECREATION MONTH

Staff Contact: Erik Strunk, Director, Community Services
Presented By: Office of the Mayor
Accepted By: Mr. Manuel Padia, Chair, Parks and Recreation Advisory Commission
Mr. Kerry Dewberry, Vice Chair, Parks and Recreation Advisory Commission
Accepted By: Erik Strunk, Director, Community Services
Timothy Barnard, Assistant Community Services Director
Michael Gregory, Parks, Recreation & Neighborhood Services Administrator
Sean McGary, Darren Skousen, Kyle White and Bryan Wagner, Glendale Parks and Recreation Department

Purpose and Policy Guidance

This is a request for City Council to proclaim the month of July 2016 as Parks and Recreation Month in Glendale and present the proclamation to the Parks and Recreation Advisory Commission Chairperson and Commissioners.

Background

National Recreation and Parks Association (NRPA) has celebrated July as the official Parks and Recreation Month since 1985 in appreciation of professional and volunteer men and women who have worked to advance opportunities for all to recreate and enjoy active and passive parks and facilities that enrich the quality of life.

The Glendale Parks and Recreation Division consists of 43 employees who are responsible for programming and maintaining 119 different parks and related facilities including 55 neighborhood parks; nine community parks; six regional parks; Thunderbird Conversation Park; four sports complexes; 23 retention basins; 22 special-use facilities; and shade structures, parks restrooms, sports courts and playground equipment. The division is also responsible for programming and activities through after school programs; the Foothills Recreation and Aquatics Center; the Adult Center and our four community recreation centers. Programs and activities also include aquatics; adaptive needs serving the disabled population; services for our senior community and other recreational activities for all ages and walks of life through special interest classes. In October 2014, it received national accreditation status by the Commission for Accreditation of Parks and Recreation.

This has been accomplished through the generosity of over 8,000 volunteer hours, the efforts of the Parks and Recreation Advisory Commission and the staff of the Parks, Recreation and Neighborhood Services Division.

Analysis

Parks and open spaces improve our health, strengthen our communities, and make our cities and neighborhoods more attractive places to live and work. Research shows that when people have access to parks, they exercise more. Physical activity has been shown to increase health and reduce the risk of a wide range of diseases and also relieves symptoms of depression and anxiety, improves mood, and enhances psychological well-being.

Community Benefit/Public Involvement

Service to the community and providing quality parks and recreational programs has always been the focus of the Glendale Parks, Recreation and Neighborhood Services Division.

File #: 16-250, **Version:** 1

EXPENDITURE AUTHORIZATION FOR LEAGUE OF ARIZONA CITIES AND TOWNS 2016-17 MEMBERSHIP DUES
Staff Contact: Brent Stoddard, Director, Intergovernmental Programs
Staff Presenter: Jenna Goad, Intergovernmental Programs Administrator

Purpose and Recommended Action

This is a request for City Council to approve expenditure authorization by the City Manager to the Arizona League of Cities and Towns (LACT) for the Fiscal Year (FY) 2016-17 membership dues and assessments for the City of Glendale in an amount not to exceed $93,295.

Background

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

At the LACT Executive Committee meeting on February 12, 2016, a budget was approved that called for a modest increase in dues assessments for FY 2016-17. The new dues formula calls for a $3,910 base fee plus a varying per capita rate ranging from $.46 to $.49 depending on population. Cities over a 200,000 population (Chandler, Gilbert, Glendale, Mesa, Phoenix, Scottsdale and Tucson) pay on a capped-dues formula. The capped-dues formula was increased by 1.65% above the FY 2015-16 levels. Due to the economic downturn in FY 2010-11, the LACT approved a 5% reduction to membership rates. Since then, dues have gradually increased as shown in the tables below:

Fiscal Year	Amount
2016-2017	$93,295
2015-2016	$91,780
2014-2015	$88,250
2013-2014	$88,250
2012-2013	$88,250
2011-2012	$88,000
2010-2011	$80,750
2009-2010	$85,000
2008-2009	$85,000

Analysis

The LACT provides its members services in the following areas:

Legislative Issues - During the legislative session and throughout the year, in coordination with the Intergovernmental Programs staff of each city, the LACT meets with legislators and other special interest groups to represent the interests of cities and towns. The LACT carefully monitors and tracks each bill of municipal concern that is introduced during the session. The LACT attend and testify at committee hearings on bills of municipal interest.

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

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

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

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

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

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

- Arizona City/County Management Association (ACMA)

- Government Finance Officers' Association of Arizona (GFOAZ)
- Arizona Municipal Clerks' Association

Previous Related Council Action

On June 23, 2015, City Council approved the LACT membership dues for FY 2015-16.

On May 13, 2014, City Council approved the LACT membership dues for FY 2014-15.

On September 24, 2013, City Council approved the LACT membership dues for FY 2013-14.

Community Benefit/Public Involvement

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

Budget and Financial Impacts

The LACT dues are paid out of the Non-Departmental Fund of the City and this amount is included in the Fiscal Year 2016-17 budget request.

Cost	Fund-Department-Account
$93,295	**1000-11801-529000, Non-Departmental**

Capital Expense? No

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from?

League of Arizona Cities and Towns

1820 W. Washington • Phoenix, AZ 85007 • Phone (602) 258-5786 • Fax (602) 253- 3874
Email: league@mg.state.az.us • Web site: www.azleague.org

February 16, 2016

TO: Kevin Phelps, City Manager, Glendale

FROM: Ken Strobeck, Executive Director

SUBJECT: **2016-2017 LEAGUE DUES**

Enclosed is the annual statement for the League dues for 2016-2017. As you know, because of its large population, the City of Glendale pays under a "cap" arrangement rather than on a per capita basis.

At the recommendation of the League Budget Subcommittee, the Executive Committee voted last Friday to adopt a slight increase to the League membership dues for the upcoming year. The increase was necessary in order to decrease the amount of deficit projected for the FY 16-17 League budget.

The League provides valuable services that benefit cities and towns in the state, focusing primarily on representation and advocacy at the state legislature, and also providing educational classes, publications, legal work, research, inquiry services, pooled programs and meetings and conferences. Your dues provide the major source of funding for the organization.

Thank you for the work you do for the people of Arizona and for your continuing support of the League. If you have any questions regarding dues or any League program, please contact me.

cc: Brent Stoddard, Director of Intergovernmental Programs

League of Arizona Cities and Towns

1820 W. Washington • Phoenix, AZ 85007 • Phone (602) 258-5786 • Fax (602) 253- 3874
Email: league@mg.state.az.us • Web site: www.azleague.org

ANNUAL DUES STATEMENT

THE LEAGUE OF ARIZONA CITIES AND TOWNS

1820 West Washington Street
Phoenix, Arizona 85007
Phone: (602) 258-5786

City of Glendale

Membership dues for the League of Arizona Cities and Towns for the fiscal year, July 1, 2016 to June 30, 2017.

Dues for cities with a population between 200,000 - 399,999	$93,295
TOTAL AMOUNT DUE	**$93,295**

Please make checks payable to the League of Arizona Cities & Towns.

PLEASE NOTE:

We are sending out dues statements early for your city/town budgeting purposes. The actual due date for payment of 2016-2017 membership dues is July 31, 2016.

Thank you!

Please use the information below if you wish to make an ACH payment:

FINANCIAL INSTITUATION: JPMorgan Chase
NAME ON ACCOUNT: League of Arizona Cities & Towns
ROUTING NUMBER: 122100024
ACCOUNT NUMBER: 68101
REMITTANCE EMAIL: ACHpayments@azleague.org

File #: 16-273, **Version:** 1

AUTHORIZATION TO ENTER INTO AN AGREEMENT WITH BERRY DUNN MCNEIL & PARKER, LLC, FOR ENTERPRISE RESOURCE PLANNING (ERP) SELECTION AND IMPLEMENTATION CONSULTING SERVICES
Staff Contact: Vicki Rios, Interim Director, Finance and Technology

Purpose and Recommended Action

This is a request for the City Council to authorize the City Manager to enter into an agreement with Berry Dunn McNeil & Parker, LLC (Berry Dunn), for ERP selection and implementation consulting services for an initial term of one (1) year, with the option to extend annually at the City Manager's discretion for an additional four (4) years in an amount not to exceed $150,000 over the life of the agreement.

Background

On January 2016, the city issued a request for proposals (RFP) for a consultant to provide services related to the procurement of a new ERP system and, optionally, to manage the implementation of the resulting ERP application. Eleven proposals were received and an evaluation committee consisting of staff from the Finance & Technology and Human Resources Departments reviewed the offers received. Specific evaluation criteria included: experience of the firm in developing written requirements for an ERP system, writing RFP documents, coordinating and conducting formal business process review for future ERP systems, leadership capabilities in evaluating RFP responses, contract negotiations, and selecting and implementing an ERP system. The proposal submitted by Berry Dunn was recommended by the committee for approval by the Council.

Analysis

Since 1995, the city has been using PeopleSoft's Human Capital Management (HCM) and Supply Chain Management (SCM) Financials ERP solutions. In the HCM system, the city has implemented the Core Human Resources, Payroll for North America and Time and Labor. In the PeopleSoft SCM/Financials, the city has implemented Purchasing, Accounts Payable and General Ledger. The city is considering replacing PeopleSoft with a software solution that is mid-range in terms of complexity (Tier 2), less demanding to implement and maintain, and smaller in size but robust and agile enough to fit the city's needs. The city is also open to the implementation of multiple software solutions that integrate to achieve optimum results. Berry Dunn is expected to provide expert guidance and assist the city with identifying and documenting the city's system requirements, preparing an RFP for a fully integrated, proven, state-of-the art ERP solution, assisting in the evaluation of the responses to the RFP, performing project management functions and optionally, managing the implementation of the selected ERP application.

Berry Dunn is a consulting and certified public accounting firm with extensive experience in assisting municipal clients throughout the project lifecycle of ERP system selection and implementation. The firm's

government consulting group has been providing management and information technology consulting services to clients in local government since 1986 and has worked with more than 250 local and state agencies throughout the country including the cities of Surprise, Goodyear and Tucson. Berry Dunn's team has knowledge and experience with all of the common ERP systems on the market. The proposed team members have implemented public sector ERP systems and are certified Project Management Professionals (PMP), Certified Fraud Examiners (CFE) and Certified Lean Six Sigma Green Belts.

The recommended agreement with Berry Dunn is for one (1) year, with an option, at the discretion of the City Manager, to extend the agreement for four (4) additional years in one-year increments. Budget for the PeopleSoft replacement project is available in the technology projects fund.

Budget and Financial Impacts

The estimated cost of $150,000 includes the following consulting services: identifying and documenting the city's system requirements; preparing an RFP for a fully integrated, proven, state-of-the art ERP solution; assisting in the evaluation of the responses to the RFP; contract negotiations; selecting the ERP solution and performing project management functions. The implementation project management is an optional service at an additional cost of $185 per hour. If the city chooses Berry Dunn to provide additional consulting services to assist with implementing the ERP solution, staff will seek Council approval for the additional cost.

Cost	Fund-Department-Account
$150,000	2592-18500-518200, Professional & Contractual

Capital Expense? No

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from?

AGREEMENT FOR
PEOPLESOFT REPLACEMENT CONSULTANT
City of Glendale Solicitation No. RFP 16-19

This Agreement for PeopleSoft Replacement Consultant ("Agreement") is effective and entered into between CITY OF GLENDALE, an Arizona municipal corporation ("City"), and Berry Dunn McNeil & Parker, LLC, a Maine limited liability company, 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 16-19, PeopleSoft Replacement Consultant (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. 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.

(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 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.

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.

3.4 Coordination; Interaction.

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

b. Subject to any limitations expressly stated in the Project Budget, Contractor will meet to review the Project, Schedule, Project Budget, and in-progress work with Coordinating Project Professionals and City as often and for durations as City reasonably considers necessary in order to ensure the timely work delivery and Project completion.

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

3.5 Work Product.

a. Ownership. Upon receipt of payment for services furnished, Contractor grants to City, and will cause its Sub-contractors to grant to the City, the exclusive ownership of and all copyrights, if any, to evaluations, reports, drawings, specifications, project manuals, surveys, estimates, reviews, minutes, all "architectural work" as defined in the United States Copyright Act, 17 U.S.C § 101, *et seq.*, and other intellectual work product as may be applicable ("Work Product").

(1) This grant is effective whether the Work Product is on paper (e.g., a "hard copy"), in electronic format, or in some other form.

(2) Contractor warrants, and agrees to indemnify, hold harmless and defend City for, from and against any claim that any Work Product infringes on third-party proprietary interests.

b. Delivery. Contractor will deliver to City copies of the preliminary and completed Work Product promptly as they are prepared.

c. City Use.

(1) City may reuse the Work Product at its sole discretion.

(2) In the event the Work Product is used for another project without further consultations with Contractor, the City agrees to indemnify and hold Contractor harmless from any claim arising out of the Work Product.

(3) In such case, City shall also remove any seal and title block from the Work Product.

4. Compensation for the Project.

4.1 Compensation. Contractor's compensation for the Project, including those furnished by its Sub-contractors will not exceed $150,000 for the entire term of this Agreement (initial term and any and all renewal terms, 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. Billings and Payment.

5.1 Applications.

a. Contractor will submit monthly invoices (each, a "Payment Application") to City's Project Manager and City will remit payments based upon the Payment Application as stated below.

b. The period covered by each Payment Application will be one calendar month ending on the last day of the month or as specified in the solicitation.

5.2 Payment.

a. After a full and complete Payment Application is received, City will process and remit payment within 30 days.

b. Payment may be subject to or conditioned upon City's receipt of:

(1) Completed work generated by Contractor and its Sub-contractors; and

(2) Unconditional waivers and releases on final payment from Sub-contractors as City may reasonably request to assure the Project will be free of claims arising from required performances under this Agreement.

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

a. If the Payment Application is rejected, the Project Manager will issue a written listing of the items not approved for payment.

b. City may withhold an amount sufficient to pay expenses that City reasonably expects to incur in correcting the deficiency or deficiencies rejected for payment.

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-contactors 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.

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 the Required Insurance whenever requested.

8.3 Indemnification.

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

Berry Dunn McNeil & Parker, LLC
c/o Chad Snow
100 Middle Street
Portland, Maine 04104
270-541-2294
csnow@berrydunn.com

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 Connie Schneider, C.P.M.
5850 W Glendale Ave, Suite 317
Glendale, Arizona 85301
623-930-2868
CSchneider@Glendaleaz.com

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 one (1)-year initial period. The City may, at its option and with the approval of the Contractor, extend the term of this Agreement an additional four (4) years, renewable on an annual basis. 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 any such price adjustment 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

Berry Dunn, McNeil & Parker, LLC,
a Maine limited liability company

By: Charles Snow
Its: Principal

EXHIBIT A

PeopleSoft Replacement Consultant

PROJECT

[See attached]

EXHIBIT A

CITY OF GLENDALE
MATERIALS MANAGEMENT
REQUEST FOR PROPOSAL

SOLICITATION NUMBER: **RFP 16-19**

DESCRIPTION: **PEOPLESOFT REPLACEMENT CONSULTANT**

PUBLISHED DATE: **JANUARY 21, 2016**

OFFER DUE DATE AND TIME: MARCH 3, 2016, 2:00pm local time

PRE-OFFER CONFERENCE: **FEBRUARY 18, 2016 AT 2:00 PM**
The pre-offer conference will be held at City of Glendale, 5850 W. Glendale Avenue– Municipal Building, Third Floor, Conference Room 3A, Glendale, AZ 85301
Attendance is not required.

SUBMITTAL LOCATION:
City of Glendale
Materials Management
5850 West Glendale Avenue, Suite 317
Glendale, Arizona 85301

Proposals must be in the actual possession of Materials Management on or prior to the time and date, and at the location indicated. Materials Management is located on the third (3rd) floor of the Glendale Municipal Office Complex (City Hall) in the Engineering Department. Proposals are accepted from the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, unless otherwise indicated for a holiday. All proposals will be received and time/date stamped at the Engineering Department's window. Late proposals will not be considered.

The City of Glendale is closed in honor of Presidents' Day February 15, 2016

Proposals must be submitted in a sealed envelope with the Solicitation Number and the Offeror's name and address clearly indicated on the envelope. **See Paragraph 2.3 for additional instructions for preparing an offer.**

Proposals shall be opened publicly at the time, place and location designated on this page. Only the name of each Offeror shall be publicly read and recorded. All other information contained in the proposals shall be confidential so as to avoid disclosure of contents prejudicial to competing Offerors.

OFFERORS ARE STRONGLY ENCOURAGED TO CAREFULLY READ THE ENTIRE SOLICITATION.

For questions regarding this solicitation contact:
Connie Schneider, C.P.M.
623-930-2868
Materials Management Division
CSchneider@glendaleaz.com

GLENDALE	**City of Glendale** **Materials Management** **Solicitation Number: RFP 16-19** **PEOPLESOFT REPLACEMENT CONSULTANT**	CITY OF GLENDALE Materials Management 5850 West Glendale Avenue, Suite 317 Glendale, Arizona 85301

1.0 SPECIFICATIONS

1.1 INTRODUCTION

The City of Glendale, Arizona (City) has a current population of approximately 232,000 residents and with a total appropriation budget for fiscal year 2016 of $632,000,000.

Since 1995, the City has been utilizing PeopleSoft for HCM and Financials and is looking to replace the system with a more agile and easier to manage system that better meets the needs of the organization.

The City is soliciting proposals from qualified and experienced Contractor's to provide consulting services related to the procurement and optionally, manage the implementation of an Enterprise Resource Planning (ERP) application.

The City is open to the implementation of multiple ERP solutions to achieve optimum results. The consultant is expected to provide expert guidance and assist the City with:

- Identifying and documenting the City's system requirements;
- Preparing a Request for Proposals (RFP) for a fully integrated, proven, state-of-the-art solution (future ERP solution);
- Assisting in the evaluation of responses to the RFP; and
- Performing project management functions (optional)

1.1.1 Current Environment

The City's is currently using PeopleSoft's Human Capital Management (HCM) and Supply Chain Management (SCM) Financials ERP solutions.

In the Human Capital Management/Payroll area, the City has implemented the following PeopleSoft modules:

- **Core Human Resources**
  The City employee base consists of nonexempt, exempt, part time, temporary employees as well as Public Safety employees represented by Fire and Police unions. The City has approximately 90,000 job records and tracks 600 retirees. The City uses full position management (each employee has a unique position number).

- **Payroll for North America**
  The City processes payroll in-house on a biweekly basis for approximately 2000 employees;

- **Time and Labor**
  The City uses the PeopleSoft Time and Labor module to track and approve employee time. All City staff has access to PeopleSoft HCM, Time and Labor, and Pay check information through a secure portal 24/7.

From the City's HCM and Payroll systems, interface files are transmitted from/to various external agencies including Health Insurance vendors, financial institutions, as well as federal and state agencies. In addition, various internal systems validate information against the HCM system. Furthermore, Payroll check data is summarized and sent to the City's PeopleSoft Financials system

In the SCM/Financials area, the City has implemented the following PeopleSoft modules:

- **Purchasing**
  Purchase Orders 3,995 (2010 through 2015)
- **Accounts Payable**
  - AP vouchers 123,324 (2010 through 2015)
  - AP checks 79,220 (2010 through 2015)
- **General Ledger**
  - Journal Entries 37,094 (2010 through 2015)

The City has 252 active PeopleSoft users that can access the City's SCM/Financial system. The City has implemented a decentralized Accounts Payable model whereby departmental staff can enter vendor invoices for payment. Finally, full budgetary control is enforced for revenues and expenditure transactions.

1.1.2 **New Environment**

The City of Glendale is currently using PeopleSoft, a Tier 1 ERP solution. The City is interested in evaluating Tier 2 software solutions that are: mid-range in terms of complexity, less demanding to implement and maintain, smaller in size but yet, are robust and agile enough to fit the City's needs.

The City is also open to the implementation of multiple software solutions that integrate to achieve optimum results.

The core functions of future ERP system(s) must include but are not limited to:

SCM/Financials	Human Resources
Fixed Asset Management	Human Resources Core
General Ledger	Hiring
Accounts Payable	Employee Self Service
Accounts Receivable	Management Self Service
Budget	Time Reporting (w/ supervisor approval)
Purchasing	Leave Request and Approval
User Account Management	Position Budget Control
Workflow and Transactions Processing	Employee Benefits
Reporting	Payroll
	Reporting

1.2 SCOPE OF SERVICES

The City is seeking the professional consultant services from firms experienced in ERP solution selection and consulting to:

1.2.1 Have a minimum of three (3) years' knowledge and experience in a variety of ERP solutions;
1.2.2 Develop written requirements for future ERP system(s);
1.2.3 Have a minimum of three (3) years' of experience writing RFP documents;
1.2.4 Coordinate and conduct a formal business process review for future ERP system(s);
1.2.5 Lead the process for evaluating RFP responses;
1.2.6 Assist the City in selecting ERP system(s);

1.3 DELIVERABLES - Contractor shall:

1.3.1 Perform Project Management using the City's existing templates for the following documents;

1.3.1.1 Project Risk Analysis of potential ERP solutions;
1.3.1.2 Project Status Report;
1.3.1.3 Project Schedule;

1.3.2 Benchmark current system(s) using LEAN processes (preferred), that shall include but are not limited to;

- 1.3.2.1 Identify and document current processes:
  - 1.3.2.1.1 Manual processes;
  - 1.3.2.1.2 Processes kept outside the current systems (i.e. Access, Excel, NEOGOV)
  - 1.3.2.1.3 Assess challenges;
  - 1.3.2.1.4 Current system restrictions
- 1.3.2.2 Interview key City personnel in various departments and business functions regarding the use of current systems and manual business processes as they relate to ERP functionality;
- 1.3.2.3 Assess Organizational Readiness (for example: determine if the City will accept using a cloud based software solution that has the ability to provide a distributed enterprise-wide system and supports future growth);
- 1.3.2.4 Identify Material 'RICE' Objects (reports, interfaces, conversions, extensions/customizations);

1.3.3 Prepare an ERP Solution(s) RFP based on the information gathered 1.3.2 above that includes;

- 1.3.3.1 Functional requirements;
- 1.3.3.2 General system and technical requirements;
- 1.3.3.3 System Interfaces;
- 1.3.3.4 Identify potential commercial off the shelf ERP solution candidates;

1.3.4 Lead the City Project Team and Steering Committee to evaluate and select Offeror and Solution;

- 1.3.4.1 Perform Due Diligence on Offeror's Solutions
  - 1.3.4.1.1 Conduct Interviews of RFP Responses;
  - 1.3.4.1.2 Assist with negotiation and acquisition of ERP Solution;
  - 1.3.4.1.3 Assist with the review and/or development of the contract including the statement of work.
- 1.3.4.2 Prepare ERP System Deployment Plan;
  - 1.3.4.2.1 Processes, resources, responsibilities, implementation tasks, and costs;
- 1.3.4.3 Develop project planning documents to include but are not limited to:
  - 1.3.4.3.1 Project Management Plan;
  - 1.3.4.3.2 Project Charter and Communications Plan;

1.3.4.3.3 Project Organization Change Management Plan;
1.3.4.3.4 Develop a formal training plan,
1.3.4.3.5 Develop a formal knowledge transfer plan(s);

1.4 OPTIONAL SERVICES

1.4.1 Project Management;

1.4.1.1 Contractor will assume the role of the sole project manager during the implementation of the ERP system(s) acting on behalf of the City;

1.5 PAYMENT The Contractor shall provide monthly statements of itemized services. Payment will be reviewed and approved by the Contract Administrator or designee. The itemized statement shall not exceed the proposal fee in Section 5.

1.6 OUT OF SCOPE

The awarded Contractor or any affiliates of the awarded Contractor shall not be allowed to bid on the resulting RFP to procure and implement future ERP solution(s).

2.0 SPECIAL INSTRUCTIONS

2.1 PRE-OFFER CONFERENCE

2.1.1 A Pre-Offer Conference will be held on **FEBRUARY 18, 2016, 2:00 P.M, Arizona Time, located at 5850 W. Glendale Avenue, Room 3A**. Attendance is recommended but is not required. Copies of the Request for Proposal (RFP) will NOT be available.

2.1.2 The purpose of the conference will be to clarify the contents of the solicitation in order to prevent any misunderstanding of the City of Glendale's position. Any doubt as to the requirements of the solicitation or any apparent omission or discrepancy should be presented to the City at the conference. The City will determine the appropriate action necessary, if any, and issue a written amendment to the solicitation if required. Oral statements or instructions will not constitute an amendment to the solicitation.

2.2 RETURN OF OFFER

The Offeror shall submit three (3) hardcopies marked as "Copies". The offeror shall also submit one complete proposal on a CD or flash drive as one file folder. The folder shall be identified as "RFP 16-xx – 'Original - Name of Offeror.'" (For example: RFP 16-xx – Original - ABC Company.)

The proposal responses shall be submitted in a bound format (i.e. three (3) ring loose-leaf binders, spiral and/or report covers). Proposals should be divided by tab sections according to items listed in the **Preparation of Proposal Package Instructions section 2.3**. This will assist the evaluation panel in identifying items and information submitted within the proposal. Offerors may reproduce the forms and recreate information, but all of the required information must be presented in the order requested.

The Offeror shall complete all sections of the solicitation in the format given in the space provided. If additional space is needed, enter "See attachment for detail." Proposals that do not conform to the above format may be rejected.

The Offeror shall bear all costs associated with submitting the proposal, including proposal preparation, site visitation or any travel connected with submission of the proposal. The City shall have no liability whatsoever for such costs.

2.3 PREPARATION OF OFFER PACKAGE

The following items shall be completed and returned including the written, narrative responses required in Section 2.4 Submission Requirements. Failure to include all the items may result in an offer being rejected. Offer packages shall be submitted in the order presented below.

2.3.1 COVER SHEET
2.3.2 OFFER SHEET, Section 4.0
2.3.3 PRICE SHEET, Section 5.0
2.3.4 ADDENDUM, Return all addenda (if applicable).
2.3.5 SUBMISSION REQUIREMENTS, Section 2.4 (written narrative)

2.4 SUBMISSION REQUIREMENTS

Offeror's should provide written, narrative responses for each item requested within the criteria below. *Unnecessarily elaborate responses beyond that sufficient to present a complete and effective response to this solicitation are not desired. Do not provide general answers or reference to sales literature.* When applicable, supporting documents should be attached and reference the appropriate criterion.

Offeror's response shall submit the following information in the order it appears and reference the item number as listed below:

2.4.1 COMPANY EXPERIENCE AND QUALIFICATIONS

2.4.1.1 Provide an overview of company, business locations, number of years in business, lines of business and size;

2.4.1.2 Describe business results (key performance indicators),

2.4.1.3 List professional qualifications and certifications;

2.4.1.4 List organizational strengths;

2.4.1.5 Provide an organization chart with number of employees specified for each area;

2.4.1.6 Provide profiles of the owners and executives of the business, and provide resumes of Key Personnel who will perform work on the project. If Key Personnel are to be drawn from a pool of individuals, provide resumes for all individuals in the pool. See Section 3.12 for information on Key Personnel.

2.4.1.7 Provide length of time in operation business under the current structure;

2.4.1.8 Offeror shall provide a back-up staffing plan in the event of turnover during the project, to ensure that there will be no absence of required expertise and experience throughout the project.

2.4.1.9 Offeror shall describe their experience and role(s) serving as an ERP solution selection and acquisition expert;

2.4.1.10 Offeror shall describe their experience and role(s) serving as a leader and consultant for writing ERP solution specifications, performing evaluations, selections and the implementation of the solution;

2.4.1.11 Offeror shall provide detailed information on at least three (3) recent, (within the past three (3) years), customer engagements that reflect experience with projects of a similar type and scope.

2.4.1.12 Offeror shall provide customer references for the three (3) engagements stated directly above to include:

- Name of the organization;
- Size of the organization including number of employees, annual budget, and population, if applicable.
- Contact information: name, title and project role, phone number and email address. Ensure that engagements provided are for work performed by members of the project team being proposed.

2.4.2 METHOD OF APPROACH:

2.4.2.1 Offeror shall describe their understanding of the project scope;

2.4.2.2 Offeror shall describe the proposed approach to performing the services stated in the Scope of Work (refer to Summary section - professional services and deliverables for the list of services);

2.4.2.3 Offeror shall describe their approach to evaluating proposals against the evaluation criteria;

2.4.2.4 Offeror shall submit a proposed schedule, including project milestones and deliverables that cover the scope of work requested;

2.4.2.5 Offeror shall provide two (2) separate sample project plans of projects completed in the past that include major deliverables, including but not limited to the following subject matter: (provide 3 pages for each only):

2.4.3.6.1 Statement of Work;

2.4.3.6.2 Project Plan

2.4.3.6.3 Project Communications Plan

2.4.3.6.4 Project Organization Change Management Plan

2.4.3.6.5 ERP Business Requirements Statement (for RFP)

2.4.3.6.6 ERP Solution Requirements Evaluation Matrix (for RFP)

2.4.3.6.7 ERP System Deployment Plan (high level)

2.4.3.6.8 ERP Solution Training plan,

2.4.3.6.9 ERP Solution Knowledge Transfer Plan

2.5 EVALUATION CRITERIA

The evaluation criterion is weighted in accordance with the Submission Requirements, section 2.4.

2.5.1	Experience and Qualifications	35%
2.5.2	Method of Approach	40%
2.5.3	Cost	25%

2.6 ALTERNATE OFFERS/EXCEPTIONS

Offers submitted as alternates, or on the basis of exceptions to specific conditions of purchase and/or required specifications, must be submitted as an attachment referencing the specific paragraph number(s) and adequately defining the alternate or exception submitted. Offeror shall clearly and specifically detail all exceptions to the exact requirements imposed by this solicitation. Detailed product brochures and/or technical literature, suitable for evaluation, must be submitted with the Offer. If no exceptions are taken, City will expect and require complete compliance with the specifications and all conditions of purchase.

2.7 SITE INSPECTION

Offeror shall visit the site(s) to become familiar with any conditions which may affect the performance and pricing. Submission of an Offer will be prima facie evidence that the Offeror did, in fact, make a site inspection and is aware of all conditions.

2.8 INQUIRIES

Any question related to the Request for Proposal shall be directed to the Contract Officer whose name appears above. An Offeror shall not contact or ask questions of the department for whom the requirement is being procured. The Contract Officer may require any and all questions be submitted in writing. Offerors are encouraged to submit written questions via electronic mail or facsimile, no later than **five (5) days** prior to the proposal due date. Any correspondence related to a solicitation should refer to the appropriate Request for Proposal number, page and paragraph number. An envelope containing questions should be identified as such; otherwise it may not be opened until after the official proposal due date and time. Oral interpretations or clarifications will be without legal effect. Only questions answered by a formal written amendment to the Request for Proposal will be binding.

2.9 EVALUATION PANEL

Offeror submittals will be evaluated by an evaluation panel. Award shall be made to the responsive, responsible Offeror whose proposal is determined to be the most advantageous to the City.

2.10 PANEL CONTACT

Offerors shall have no exclusive meetings, conversations or communications with an individual evaluation panel member on any aspect of the RFP, after submittal.

2.11 INTERVIEWS

The City reserves the right to conduct interviews with some or all of the Offerors at any point during the evaluation process. However, the City may determine that interviews are not necessary. In the event interviews are conducted, information provided during the interview process shall be taken into consideration when evaluating the stated criteria. The City shall not reimburse the Offeror for the costs associated with the interview process.

2.12 ADDITIONAL INVESTIGATIONS

The City reserves the right to make such additional investigations as it deems necessary to establish the competence and financial stability of any Offeror submitting a proposal.

2.13 DISCUSSIONS AND REVISIONS TO PROPOSAL

Discussions may be conducted with responsible Offerors who submit proposals determined to be reasonably susceptible of being selected for award; and may obtain pertinent information for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Should the City elect to call for 'best and final' offers, Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information

derived from proposals submitted by competing Offerors. The purposes of such discussions shall be to:

2.13.1 Determine in greater detail such Offeror's qualifications, and

2.13.2 Explore with the scope and nature of the project, the Offeror's proposed method of performance, and the relative utility of alternate methods of approach;

2.13.3 Determining that the Offeror will make available the necessary personnel and facilities to perform within the required time;

2.13.4 Agreeing upon compensation which is fair and reasonable, taking into account the estimated value of the required services, and the scope, complexity and nature of such services.

2.14 BEST AND FINAL OFFERS

The City may request best and final offers if deemed necessary, and will determine the scope and subject of any best and final request.

2.15 PROPOSAL EVALUATION

The City reserves the right to secure additional information from the Offeror in various forms and or to award based on submitted information.

2.16 NOTICE OF INTENT TO AWARD AND PROTEST PERIOD

Information about the recommended award for this solicitation will be posted on the Internet. The information will be available for review on the City's Materials Management Internet home page www.glendaleaz.com/purchasing immediately after the City has completed its evaluation process of the offers received. If you have any questions, or would like further information about an intended award, contact the contract analyst immediately. Any protest must be submitted to the Materials Manager no later than seven (7) calendar days from the date of posting on the Internet. Please go to: http://www.glendaleaz.com/Purchasing/doingbusinesswithglendale.cfm for information and instructions on how to file a protest with the City of Glendale.

2.17 WITHDRAWAL OF PROPOSAL

At any time prior to the specified solicitation due date and time, an Offeror may formally withdraw the proposal by a written letter, facsimile or electronic mail from the Offeror or a designated representative. Telephonic or oral withdrawals shall not be considered.

2.18 OFFER ERRORS OMISSIONS AND CORRECTIONS

The City will not be responsible for any offeror errors or omissions. All prices and notations shall be written in ink or typed. Changes or corrections made on the offer

form must be initialed in ink by the individual signing the offer. No corrections will be permitted after the offers have been opened.

2.19 COMPETITIVE NEGOTIATIONS

Exclusive or concurrent negotiations may be conducted with responsible Offeror(s) for the purpose of altering or otherwise changing the conditions, terms and price of the proposed contract unless prohibited. Offerors shall be accorded fair and equal treatment in conducting negotiations and there shall be no disclosure of any information derived from proposals submitted by competing offerors. Exclusive or concurrent negotiations shall not constitute a contract award nor shall it confer any property rights to the successful Offeror. In the event the City deems that negotiations are not progressing, the City may formally terminate these negotiations and may enter into subsequent concurrent or exclusive negotiations with the next most qualified offeror(s).

2.20 NO CONTACT, NO INFLUENCE DURING THE RFP PROCESS

The City is conducting a competitive RFP process for the contract, free from improper influence or lobbying. There shall be no contact concerning this RFP from Offerors submitting a Proposal with any member of the City Council, RFP Evaluation Committee Members, or anyone connected with the process for or on behalf of the City. Contact includes direct or indirect contact by the Offeror, its employees, attorneys, lobbyists, surrogates, etc. in an attempt to influence the RFP process.

From the time the RFP is issued until the expiration of the protest period or the resolution of any protest, whichever is later (the "Black-Out Period"), Offerors, directly or indirectly through others, are restricted from attempting to influence in any manner the decision making process through, including but not limited to, the use of paid media; contacting or lobbying the City Council or City Manager or any other City employee (other than Material Management employees); the use of any media for the purpose of influencing the outcome; or in any other way that could be construed to influence any part of the decision-making process about this RFP. This provision shall not prohibit an Offeror from petitioning an elected official or engaging in any other protected first amendment activity after the protest period has run or any protest has been resolved, whichever is later.

Violation of this provision will cause the proposal or offer of the Offeror to be found in violation and to be rejected.

2.21 PROPRIETARY INFORMATION

An Offeror shall clearly mark any proprietary information contained in its bid with the words "Proprietary Information." Offeror shall not mark any Solicitation Form as proprietary. Pricing data shall not be considered proprietary. Marking all, or nearly all, of a bid as proprietary may result in rejection of the bid.

Offeror's acknowledge that the City is required by law to make certain records available for public inspection. In the event that the City receives a request for disclosure of Proprietary Information by any person, court, agency or administrative body, or otherwise has a reasonable belief that it is obligated to disclose the Proprietary Information to any such person or authority, the City will provide Offeror with prompt written notice so that Offeror may seek a protective order or other appropriate remedy. The Offeror, by submission of materials marked Proprietary Information, acknowledges and agrees that the City will have no obligation to advocate for non-disclosure in any forum or any liability to the Offeror in the event that the City must legally disclose the Proprietary Information.

3.0 SPECIAL TERMS AND CONDITIONS

3.1 **TERM OF AGREEMENT** The initial term of the contract shall be one (1) year upon approval by the City Council.

3.2 **OPTION TO EXTEND** The City may, at its option and with the approval of the Contractor, extend the term of this agreement four (4) additional years in one (1) year increments based on satisfactory Contractor performance. Contractor shall be notified in writing by the City Materials Manager of the City's intention to extend the contract period at least sixty (60) calendar days prior to the expiration of the original contract period. Price adjustments will only be reviewed during contract renewal.

3.3 **INCORPORATION BY REFERENCE** All responses shall incorporate by reference the Scope/Specifications, terms and conditions, general instructions and conditions and any attachments or exhibits. The Standard Terms and Conditions applicable to this solicitation are posted on the Internet. They are available for review and download at the City's Materials Management Internet home page, www.glendaleaz.com/purchasing. Offerors are advised to review all provisions of the General Instructions and Conditions for this solicitation.

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

3.4.1 MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

Commercial General Liability (CGL): Insurance covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than **$1,000,000** per occurrence, **$2,000,000** aggregate. 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.

Automobile Liability: Insurance covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **$1,000,000** per accident for bodily injury and property damage.

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

If the contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the contractor.

Other Insurance Provisions The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status The City, its officers, officials, employees, and volunteers are to be covered as additional insured's on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations.

Primary Coverage For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects 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 excess of the Contractor's insurance and shall not contribute with it.

Notice of Cancellation Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.

Waiver of Subrogation Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Acceptability of Insurers Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

Verification of Coverage Contractor shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received by the Contract Administrator and approved by the City before work commences. DO NOT SEND CERTIFICATES TO RISK MANAGEMENT. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

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

Professional Liability (Errors and Omissions) Insurance appropriate to the Consultant's profession, with limit no less than **$1,000,000** per occurrence or claim, **$2,000,000** aggregate. If the policy provided is on a claims-made basis, the **Retroactive Date** must be shown and must be before the date of the contract or the beginning of contract work. Insurance must be maintained and evidence of insurance must be provided **for at least two (2) years after completion of the contract work.**

If coverage is canceled or non-renewed, and not **replaced with another claims-made policy form with a Retroactive Date** prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of **two (2) years** after the completion of contract work.

3.5 INDEMNIFICATION CLAUSE:

To the extent allowed by law, Contractor shall defend, indemnify, and hold harmless the City of Glendale, and its departments, boards, commissions, officers, officials, agents, employees and volunteers (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the City of Glendale, its officers, officials, agents, employees and volunteers for losses arising from the work performed by the Contractor for the City of Glendale.

3.6 CONFLICT OF INTEREST Contractor shall disclose the following: 1) the name(s) and position(s) of each Contractor's employee or subcontractor that participated in the preparation of the submittal or who will be involved, directly or indirectly, with performing the contract, if awarded; 2) the name(s) of any City of Glendale employee who is a relative of persons identified pursuant to No. 1; 3) the name(s) and position(s) of Contractor's personnel that have a financial or proprietary interest in the contract; 4) the name(s) of any City of Glendale employee who is a relative of persons identified pursuant to No. 3.

Providing such disclosure will not necessarily disqualify a Contractor. Failure to disclose the requested information or any potential conflict of interest pursuant to A.R.S. § 38-501 et seq. may result in rejection of the proposal or bid or any contract being void or terminated.

For purposes of this provision, the following definitions apply:

"Employee" means all persons who are employed on a full-time, part-time or contract basis by the City of Glendale.
"Relative" means the spouse, child, child's child, parent, grandparent, brother or sister of the whole or half blood and their spouses and the parent, brother, sister or child of a spouse.

3.7 **ESTIMATED QUANTITIES** The Quantities listed are the City's best estimate and do not obligate the City to order or accept more than City's actual requirements during the period of this agreement as determined by actual needs and availability of appropriated funds. It is expressly understood and agreed that the resulting contract is to supply the City with its complete actual requirements for the contract period, except that the estimated quantity shown for each proposal item shall not be exceeded by 100% without the express written approval of the Materials Manager. Any demand or order made by any employee or officer of the City, other than the Materials Manager, for quantities in the excess of the estimated quantities shall be void if the written approval of the Materials Manager was not received prior to the Contractor's performance.

3.8 **COOPERATIVE USE OF CONTRACT** This agreement may be extended for use by other governmental agencies and political subdivisions of the State, including all members of SAVE (Strategic Alliance for Volume Expenditures). Any such usage by other entities must be in accord with the ordinances, charter, rules and regulations of the respective entity and the approval of the Contractor and City. For a list of SAVE members, click on the following link: http://www.maricopa.gov/Materials/save.aspx.

3.9 **PUBLIC RECORD** Contractor acknowledges that the City is a public agency and must comply with all Public Records laws. All proposals submitted in response to the Solicitation shall become the property of the City and, subsequent to award recommendation, become a matter of public record available for review pursuant to Arizona Public Records Law.
If a Contractor believes that a specific section of its Proposal response is confidential, that should be withheld from the public record, Contractor shall isolate the pages and mark each page confidential in a specific and clearly labeled section of its Proposal response. The Contractor shall include a written statement as to the basis for considering the marked pages confidential including the specific harm or prejudice if disclosed. The City Materials Management Division will review the material and make a determination as to the confidentiality of any of the information and/or material contained within the Submittal. In the event of a public records request for documents Contractor deems confidential, the City will notify Contractor of the request and if Contractor claims such documents are confidential, it shall be the Contractor's sole responsibility, including sole cost, to take appropriate action, including legal action, to protect such documents. Price is not confidential and will not be withheld.

3.10 PERMITS AND LICENSES The Contractor and Subcontractors shall be responsible for determining and securing, at his/her expense, any and all licenses and permits that are required by any statute, ordinance, rule or regulation of any regulatory body having jurisdiction in any manner connected with providing operations and maintenance of the facility. Such fees shall be included in and are part of the total proposal cost. During the term of the contract, the Contractor shall notify the City in writing, within two (2) working days, of any suspension, revocation or renewal.

3.11 CERTIFICATION By signature on the Offer/Bid page, solicitation Amendment(s), or cover letter accompanying the submittal documents, Contractor certifies:

The submission of the offer did not involve collusion, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the invitation to bid, designed to limit independent bidding or competition or other anti-competitive practices. The Contractor shall not discriminate against any employee or applicant for employment in violation of Federal or State law. The Contractor has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, meal or service to a public servant in connection with the submitted offer. The Contractor hereby certifies that the individual signing the submittal is an authorized agent for the Contractor and has the authority to bind the Contractor to the Contract.

3.12 KEY PERSONNEL Contractor shall assign specific individuals to the key positions in support of the Contract. Once assigned to work under the Contract, key personnel shall not be removed or replaced without the prior written approval of the City. Upon the replacement of any key personnel, Contractor shall submit the name(s) and qualifications of any new key personnel to the City Contract Administrator or Designee. With the concurrence of the Contract Administrator or Designee, the City shall amend the Contract to reflect the name(s) of any replacement key personnel. Upon any unplanned departure of key personnel, Contractor shall immediately notify the Contract Administrator or Designee.

For this purpose, a primary and secondary emergency contact name and phone number are required from the Contractor. It is critical to the City that the contactor's emergency contact information remains current. The Materials Management staff member, identified on page 1, is to be contacted by E-mail with any change to a contact name or phone number.

All products or services provided to meet an emergency phone request are to be supplied as per the contract prices, terms and conditions. The Contractor may

provide the fee (pricing) for an after-hours emergency opening of the business separate from the Price Sheet. In general, the order will be placed using a City Procurement Card. The billing is to include the emergency opening fee, if applicable.

3.13 **PRICE & PRICE ADJUSTMENTS** All prices quoted shall be firm and fixed for the contract period. Any price adjustments shall be addressed a minimum of sixty (60) days prior to the contract renewal date, shall be in writing and include supportive justification for the proposed increase. The rate increase shall only be considered at time of contract extension. The City will review the request and shall determine if the increase shall be granted or if an alternate option is in the best interest of the City. The price increase adjustment, if approved, will be effective and executed via a contract amendment.

3.14 **ADDITIONS OF PRODUCTS OR SERVICES** The City reserves the right to add additional products or services to this contract when deemed necessary by the City. If this occurs, the Contractor will be requested to submit a negotiable quotation for the additions. Upon approval and authorization by the Materials Manager such additions will be added to and become a part of the contract through properly executed forms.

3.15 **NON-DISCRIMINATION** By submitting this Offer, Contractor agrees not to 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 by bound to the same requirements as stated within this section. Contractor, and on behalf of any subcontractors, warrants compliance with this section.

3.16 **EMPLOYEE NON-SOLICITATION**. Neither City nor Contractor shall, except with the prior written consent of the other, solicit or hire any employee of the other Party during the time such employee is associated with any Services under this Agreement and for a period of one year after such person ceases to be so engaged. The foregoing restriction shall not apply to the employment of any person who responds to a general recruitment advertisement issued to the public.

GLENDALE	**City of Glendale** **Materials Management** **Solicitation Number: RFP 16-19** **PEOPLESOFT REPLACEMENT CONSULTANT**	CITY OF GLENDALE Materials Management 5850 West Glendale Avenue, Suite 317 Glendale, Arizona 85301

4.0 OFFER SHEET

4.1 **OFFER** Offeror certifies that they have read, understand, and will fully and faithfully comply with this solicitation, its attachments and any referenced documents. Offeror also certifies that the prices offered were independently developed without consultation with any of the other Offeror or potential Offeror.

Authorized Signature	Company's Legal Name
Printed Name Address	
Title	City, State & Zip Code
Telephone Number	FAX Number
Authorized Signature Email Address	Date

For questions regarding this offer: (If different from above)

Contact Name	**Phone Number**	**Fax Number**

Email Address

FEDERAL TAXPAYER ID NUMBER: _____

Arizona Sales Tax No. _____ Tax Rate _____

Offeror certifies it is a: Proprietorship ____ Partnership ____ Corporation ____

Minority or woman owned business: Yes _____ No _____

5.0 PRICING

OFFEROR NAME: _____

Offeror's shall bid in accordance with the pricing structure as outlined in Section 5.

5.1 Offeror must submit a Firm Fixed Cost for each line item based on project deliverables in **Tables 5.3 through Tables 5.5**. The cost must be broken down by consulting hours for each deliverable. In addition, detailed estimate of types of reimbursable expenses and cost shall be defined in **Table 5.6.** Insert additional line items as needed.

5.2 **Offeror may submit an alternate pricing structure using your own format. If submitting an alternate pricing structure,** Offeror shall provide a complete firm fixed price breakdown for all services included in the proposal and scope of work in a format that is clear, concise and easily cross-referenced with task items in the scope of work.

TABLE 5.3: DEVELOPMENT OF ERP RFP TASKS

Item No. (1)	Deliverables) (as defined in Section 1.3) (2)	Contractor Resource Roles/Positions (3)	Estimated Combined Hours for all Contractor Resources (4)	Firm Fixed Cost ($) (5)
5.3.1	Project Management			
5.3.2	Benchmark current environment			
5.3.3	Prepare Preliminary ERP system Requirements for RFP			
5.3.4	Evaluate and select Offeror and Solution			
	TOTAL COSTS	-	-	

Notes:

1. Column 3: Enter each role/position (as defined in Table 5.5) for resource required.
2. Column 4: Enter the combined total number of hours required to complete each deliverable.

TABLE 5.4: OFFEROR RESOURCE ROLES

Role/Position Type *(1)*	Proposed Number of Hours	Firm Fixed Hourly Rate ($) *(2)*
5.4.1 Business Analyst		
5.4.2 ERP Subject Matter Expert		
5.4.3 Project Manager		
Add additional roles as needed…		

Notes:
1. Column 1: Offeror shall list all positions that are expected to be used for the duration of the contract.
2. Column 2: Offeror shall provide a Firm Fixed Hourly Rate for each Position Type specified in the table.

TABLE 5.5: OPTIONAL TASKS

Item No. (1)	Deliverables (as defined in Section 1.4) (2)	Contractor Resource Roles/Positions (3)	Estimated Combined Hours for all Contractor Resources (4)	Firm Fixed Cost ($) (5)
5.5.1	Implementation Services: Assume the role of the sole project manager during the implementation of the ERP system(s) acting on behalf of the City;			
	Add additional tasks as needed below this line.			
	TOTAL COSTS	-	-	

Note: If additional tasks are listed, the City reserves the right to accept or reject.

TABLE 5.6: OTHER EXPENSES (DETAIL)

Item No.	Description of "Other Expenses"	Estimated Cost
5.6.1		
5.6.2		
5.6.3		
	Add more lines an needed below this line	
	TOTAL COSTS	

TABLE 5.7: COST SUMMARY

Item No.	TABLE	TOTAL HOURS	TOTAL COST
5.7.1	TABLE 5.3: Development of ERP RFP Tasks		
5.7.2	TABLE 5.5: Optional Tasks		
5.7.3	TABLE 5.6: Other Expenses (Detail)		
	GRAND TOTAL COST		

EXHIBIT B

PeopleSoft Replacement Consultant

COMPENSATION

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 $150,000 (initial term and any and all renewal terms).

DETAILED PROJECT COMPENSATION

Please see attached Exhibit B.

PeopleSoft Replacement Consultant

EXHIBIT B

Proposed Project Phase	Deliverable (RFP Section 1.3)	Staff Resources	Estimated Staff Hours	Cost
Project Management	Project Management	8	65	$10,855
Phase 1: Current Environment Fact-Finding and Analysis	Benchmark Current Environment	8	215	$35,905
Phase 2: Request for Proposal Development	Prepare preliminary ERP System Requirements for RFP	8	150	$25,050
Phase 3: System Seclection	Evaluate and select Offeror and solution	8	245	$40,915
Phase 4: Contract Negotiation	Perform Contract Negotiations	3	85	$0
Phase 5: Implementation Planning	Prepare ERP System Deployment Plan	7	40	$6,680
Total Phase 1 through 5				**$119,405**
Phase 6: (OPTIONAL) Implementation Project Management	Perform Implementation Project Management	Hourly rate of $185		
Total Phase 6		Statement of work to be defined.		*** $30,595**

***This is an estimated cost to be based on a defined Statement of Work if the City chooses to move forward with Phase 6**

EXHIBIT C

PeopleSoft Replacement Consultant

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.

File #: 16-295, **Version:** 1

AUTHORIZATION TO ENTER INTO A SERVICE AGREEMENT WITH GRANICUS, INC., FOR AGENDA MANAGEMENT/MEDIA MANAGER SUPPORT SERVICE FUNCTIONS AND TO APPROVE THE EXPENDITURE OF FUNDS

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 Service Agreement with Granicus, Inc. for a term commencing June 28, 2016 and ending on June 28, 2017, and to authorize four additional one-year automatic renewals until June 30, 2021; unless either party notifies the other of cancellation in writing at least thirty (30) days prior to the renewal date. Under the terms of the agreement, Granicus will provide support and services to the City for the Legistar (agenda management) and Media Manager (Glendale 11) systems. This request also includes approval of expenditure authority in an amount not to exceed $191,000 over the life of the agreement.

Background

Legistar was chosen as the City's agenda management software due to its features such as electronic document routing and approvals, automated agenda creation, and the publishing of printed and searchable electronic agenda versions. It was also chosen due to its integration capabilities with Media Manager, the existing Granicus video platform used by Glendale 11 for a number of years.

Analysis

Media Manager is used for web streaming and online video archives. Residents and visitors can now watch Glendale 11 live as well as access archived videos of City Council meetings, Council Workshops, Planning Commission meetings and Glendale 11 programming via www.glendaleaz.com/video/ <http://www.glendaleaz.com/video/>. Visits to city web sites exceeded 6 million for 2015, indicating a high-demand for online access to government. This online video tool empowers citizens and staff with a convenient way to research and stay engaged in policy, deliberations, and decision-making 24/7 anytime, anywhere. It also allows for endless video content to be presented to the public without additional ongoing hardware costs and allows an unlimited number of citizens to log on to view both live and archived high-quality videos at the same time without interruptions.

Both Granicus applications are hosted solutions. This new service agreement combines both applications into one agreement, defining support expectations and monthly managed service fees.

Previous Related Council Action

On April 8, 2014, Council approved the purchase of Legistar for agenda management.

Community Benefit/Public Involvement

Granicus provides a web portal that provides live meeting video and allows the community to easily search legislative text, attachments, agendas, minutes, votes, etc.

Budget and Financial Impacts

Funding is available in the FY16-17 Information Technology budget. The amount budgeted per year for future years will fluctuate based on the allowed increase to the monthly managed services of up to 3% per year.

Cost	Fund-Department-Account
$16,068	2591-18402-522700, Information Technology Fund
$15,861	1000-10890-518200, Media Center

Capital Expense? No

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from?

GRANICUS, INC. SERVICE AGREEMENT

THIS SERVICE AGREEMENT (the "Agreement"), dated _____ day of _____, 2016 (the "Effective Date"), is entered into between Granicus, Inc. ("Granicus"), a California Corporation, and City of Glendale an Arizona municipal corporation (the "Client"). Additional definitions of capitalized terms used in this Agreement are set forth in Section 12 of this Agreement.

A. WHEREAS, Granicus is in the business of developing, licensing, and offering for sale various streaming media solutions specializing in Internet broadcasting, and related support services; and

B. WHEREAS, Client desires to (i) continue with Client's existing solution as described in the Current Solution document, which is attached as Exhibit A and incorporated by reference, (ii) engage Granicus to integrate its Granicus Software onto the Client Website, (iii) use the Granicus Software subject to the terms and conditions set forth in this Agreement, and (iv) contract with Granicus to administer the Granicus Solution through the Managed Services set forth in Exhibit A.

NOW, THEREFORE, in consideration of the recitals above and the mutual agreements, covenants, representations, and warranties contained in this Agreement, the parties agree as follows:

1. GRANICUS SOFTWARE AND MANAGED SERVICES.

1.1 Software and Services. Subject to the terms and conditions of this Agreement, Granicus will provide Client with the Granicus Software and Managed Services that comprise the Granicus Solution as outlined in Exhibit A. Managed Services means the services provided by Granicus to Client as detailed in Exhibit A. Managed Services Fee means the monthly cost of the Managed Services, as detailed in Exhibit A.

2. GRANT OF LICENSE.

2.1 Ownership. Granicus, and/or its third party supplier, owns the copyright and/or certain proprietary information protectable by law in the Granicus Software.

2.2 Use. Granicus will provide Client with a revocable, non-transferable and non-exclusive license to access the Granicus Software listed in the Proposal and a revocable, non-sublicensable, non-transferable and non-exclusive right to use the Granicus Software. All Granicus Software is proprietary to Granicus and protected by intellectual property laws and international intellectual property treaties. Pursuant to this Agreement, Client may use the Granicus Software to perform its own work, including Client's work with its customers/constituents. Cancellation of the Client's Managed Services will also result in the immediate termination of the Client's Software license as described in Section 2.2 hereof.

2.3 Limited Warranty; Exclusive Remedies. Subject to Sections 6.1 and 6.2 of this Agreement, Granicus warrants that the Granicus Software, as provided by Granicus, will substantially perform in accordance with the functionality and features as described in the Proposal for as long as the Client pays for and receives Managed Services. Client's sole and exclusive remedy

for any breach by Granicus of this warranty is to notify Granicus, with sufficient detail of the nonconformance, and provide Granicus with a reasonable opportunity to promptly correct or replace the defective Granicus Software. Client agrees to comply with Granicus' reasonable instructions with respect to the alleged defective Granicus Software.

2.4 Limitations. Except for the license in Section 2.2, Granicus retains all ownership and proprietary rights in and to the Granicus Software, and Client is not permitted, and will not assist or permit a third party, to: (a) utilize the Granicus Software in the capacity of a service bureau or on a time share basis; (b) reverse engineer, decompile or otherwise attempt to derive source code from the Granicus Software; (c) provide, disclose, or otherwise make available the Granicus Software, or copies thereof, to any third party; or (d) share, loan, or otherwise allow another Meeting Body, in or outside its jurisdiction, to use the Granicus Software, or copies thereof, except as expressly outlined in the Proposal.

3. PAYMENT OF FEES

3.1 Client agrees to pay all fees, costs and other amounts as outlined in the Proposal in Exhibit A.

3.2 The total purchase price for the supplies and/or services purchased under this Agreement will not exceed One Hundred and Ninety One Thousand Dollars ($191,000) for the entire term of the Agreement.

3.3 Granicus, Inc. will send invoices:

For Legistar:
Name: Claire Smith
Title: Management Aide
Address: 6835 N. 57th Dr., Suite 100, Glendale, AZ 85301
Email: crsmith@glendaleaz.com

For Media Manager:
Name: Debbie Denuit
Title: Management Assistant
Address: 5850 W. Glendale Ave, Glendale, AZ 85301
Email: ddenuit@glendaleaz.com

3.4 Upon any renewal of this Agreement, Granicus may increase the Granicus Managed Service Fees by the larger of either (a) the current annualized CPI percentage rate (as found at the United States Bureau of Labor Statistics website (http://www.bls.gov/CPI) or (b) three (3) percent per year.

3.5 Training Usage Policies. Granicus has established best practice training plans around success with Granicus services, and Clients are encouraged to take advantage of all purchased training up-front in order to achieve the maximum amount of success with their services. All purchased training must be completed within ninety (90) days of the date of the project kickoff call. Any purchased training not used during this ninety (90) day period will expire. If Client feels that it is necessary to obtain more training after the initial ninety (90) day period, Client may purchase additional training at that time.

3.6 Training Cancellation Policies. Granicus' policies on Client cancellation of scheduled trainings are as follows:

(a) Onsite Training. For any cancellations within forty-eight (48) hours of the scheduled onsite training, Granicus, at its sole discretion, may invoice the Client for one hundred (100) percent of the purchased training costs and all travel expenses, including any incurred third party cancellation fees. Subsequent training will need to be purchased and scheduled at the previously quoted pricing.

(b) Online Training. For any cancellations within twenty-four (24) hours of the scheduled online training, Granicus, at its sole discretion, may invoice the Client for fifty (50) percent of the purchased training costs, including any incurred third party cancellation fees. Subsequent training will need to be purchased and scheduled at the previously quoted pricing.

4. CONTENT PROVIDED TO GRANICUS

4.1 Responsibility for Content. The Client shall have sole control and responsibility over the determination of which data and information shall be included in the Content that is to be transmitted, including, if applicable, the determination of which cameras and microphones shall be operational at any particular time and at any particular location. However, Granicus has the right (but not the obligation) to remove any Content that Granicus believes violates any applicable law or this Agreement.

4.2 Restrictions. Client shall not provide Granicus with any Content that: (i) infringes any third party's copyright, patent, trademark, trade secret or other proprietary rights; (ii) violates any law, statute, ordinance or regulation, including without limitation the laws and regulations governing export control and e-mail/spam; (iii) is defamatory or trade libelous; (iv) is pornographic or obscene, or promotes, solicits or comprises inappropriate, harassing, abusive, profane, defamatory, libelous, threatening, indecent, vulgar, or otherwise objectionable or constitutes unlawful content or activity; (v) contains any viruses, or any other similar software, data, or programs that may damage, detrimentally interfere with, intercept, or expropriate any system, data, information, or property of another.

5. TRADEMARK OWNERSHIP. Granicus and Client's Trademarks are listed in the Trademark Information exhibit attached as Exhibit D.

5.1 Each Party will retain all right, title and interest in and to their own Trademarks, including any goodwill, subject to the limited license granted pursuant to Section 5.2 of this Agreement. Upon any termination of this Agreement, each Party's right to use the other Party's Trademarks pursuant to this Section 5 terminates.

5.2 Each Party grants to the other a non-exclusive, non-transferable (other than as provided in Section 5 hereof), limited license to use the other Party's Trademarks as is reasonably necessary to perform its obligations under this Agreement, provided that any promotional materials containing the other Party's Trademarks shall be subject to the prior written approval of such other Party, approval of which shall not be unreasonably withheld.

6. LIMITATION OF LIABILITY

6.1 Warranty Disclaimer. Except as expressly provided in this Agreement, Granicus' services, software and deliverables are provided "as is" and Granicus expressly disclaims any and all express or implied warranties, including but not limited to implied warranties of merchantability, and fitness for a particular purpose. Granicus does not warrant that access to or use of its software or services will be uninterrupted or error free. In the event of any interruption or error, Granicus' sole obligation shall be to use commercially reasonable efforts to restore access.

6.2 Limitation of Liabilities. To the maximum extent permitted by applicable law, Granicus and its suppliers and licensors shall not be liable for any indirect, special, incidental, consequential, or punitive damages, whether foreseeable or not, including but not limited to: those arising out of access to or inability to access the services, software, content, or related technical support; damages or costs relating to the loss of profits or revenues, goodwill, data (including loss of use or of data, loss or inaccuracy or corruption of data), or cost of procurement of substitute goods, services or technology.

7. CONFIDENTIAL INFORMATION & OWNERSHIP.

7.1 Confidentiality Obligations. Each party agrees to keep confidential and not disclose to any third party, and to use only for purposes of performing or as otherwise permitted under this Agreement, any Confidential Information of the other Party. The receiving party shall protect the Confidential Information using measures similar to those it takes to protect its own confidential and proprietary information of a similar nature but not less than reasonable measures. Each party agrees not to disclose the Confidential Information to any of its Representatives except those who are required to have the Confidential Information in connection with this Agreement and then only if such Representative is either subject to a written confidentiality agreement or otherwise subject to fiduciary obligations of confidentiality that cover the confidential treatment of the Confidential Information.

7.2 Exceptions. The obligations of this Section 7 shall not apply if receiving party can prove by appropriate documentation that such Confidential Information (i) was known to the receiving party as shown by the receiving party's files at the time of disclosure thereof, (ii) was already in the public domain at the time of the disclosure thereof, (iii) entered the public domain through no action of the receiving party subsequent to the time of the disclosure thereof, or (iv) is required by law (including but not limited to the records laws that pertain to government entities in Arizona) or government order to be disclosed by the receiving party, provided that the receiving party shall (i) if permitted by applicable law, notify the disclosing party in writing of such required disclosure as soon as reasonably possible prior to such disclosure, (ii) use its commercially reasonable efforts at its expense to cause such disclosed Confidential Information to be treated by such governmental authority as trade secrets and as confidential.

8. TERM

8.1 The term of this Agreement will commence on the date of this Agreement and will continue in full force and effect for twelve (12). This Agreement shall automatically renew in for no more than four terms of one (1) year each, unless either party notifies the other in writing at least thirty (30) days prior to such automatic renewal that the party does not wish to renew this Agreement.

8.2 Rights Upon Termination. Upon any expiration or termination of this Agreement, and unless otherwise expressly provided in an exhibit to this Agreement:

(a) Client's right to access or use the Granicus Solution, including Granicus Software, terminates and Granicus has no further obligation to provide any services;

(b) Client shall immediately return the Granicus Software and all copies thereof to Granicus, and within thirty (30) days of termination, Client shall deliver a written certification to Granicus certifying that it no longer has custody of any copies of the Granicus Software.

(c) Client shall refer to Exhibit E for the four (4) termination/expiration options available regarding Content.

8.3 Obligations Upon Termination. Upon any termination of this Agreement,

(a) the parties shall remain responsible for any payments that have become due and owing up to the effective date of termination;

(b) the provisions of 2.1, 2.4, 3, 4, 5, 6., 7, 8.2, 11, and 12 of the Agreement, and applicable provisions of the exhibits intended to survive, shall survive termination of this Agreement and continue in full force and effect;

(c) pursuant to the termination or expiration options regarding Content as set forth on Exhibit E, Granicus shall allow the Client limited access to the Client's Content, including, but not limited to, all video recordings, timestamps, indices, and cross-referenced documentation. The Client shall also have the option to order hard copies of the Content in the form of compact discs or other equivalent format; and

(d) Granicus has the right to delete Content within sixty (60) days of the expiration or termination of this Agreement.

9. PATENT, COPYRIGHT AND TRADE SECRET INFRINGEMENT.

9.1 Granicus' Options. If the Granicus Software becomes, or in Granicus' opinion is likely to become, the subject of a trade secret infringement claim, Granicus may, at its option and sole discretion, (i) obtain for Client the right to continue to use the Granicus Software as provided in this Agreement; (ii) replace the Granicus Software with another software product that provides similar functionality; or (iii) if Granicus determines that neither of the foregoing options are reasonably available, Granicus may terminate this Agreement and refund any prepaid fees to Client for which it has not received the corresponding services.

10. INTERLOCAL AGREEMENT.

10.1 This Agreement may be extended for use by other municipalities, school districts and governmental agencies upon execution of an addendum or other signed writing setting forth all of the terms and conditions for such use, including the products and services and fees applicable thereto. Any such usage by other entities must be in accordance with the City Code, Charter and procurement rules and regulations of the respective governmental entity.

11. MISCELLANEOUS.

11.1 Amendment and Waiver. This Agreement may be amended, modified, waived or canceled only in writing signed by each of the parties or, in the case of a waiver, by the party waiving

compliance. Any failure by either party to strictly enforce any provision of this Agreement will not be a waiver of that provision or any further default.

11.2 Governing Law. The laws of the State of Arizona will govern the validity, construction, and performance of this Agreement, without regard to its conflict of law principles.

11.3 Construction and Severability. Wherever possible, each provision of this Agreement shall be interpreted so that it is valid under applicable law. If any provision of this Agreement is held illegal or unenforceable, that provision will be reformed only to the extent necessary to make the provision legal and enforceable; all remaining provisions continue in full force and effect.

11.4 Independent Contractors. The parties are independent contractors, and no other relationship is intended by this Agreement.

11.5 Force Majeure. Other than payment obligations, neither party is responsible for any delay or failure in performance if caused by any event outside the reasonable control of the party, including without limitation acts of God, government regulations, shortage of supplies, act of war, act of terrorism, earthquake, or electrical, internet or telecommunications outage.

11.6 Closed Captioning Services. Client and Granicus may agree that a third party will provide closed captioning or transcription services under this Agreement. In such case, Client expressly understands that the third party is an independent contractor and not an agent or employee of Granicus. Granicus is not liable for acts performed by such independent third party.

12. DEFINITIONS. In addition to terms defined elsewhere in this Agreement, the following terms shall have the meaning specified:

12.1 "Confidential Information" shall mean all proprietary or confidential information disclosed or made available by either party pursuant to this Agreement, directly or indirectly, in any manner whatsoever (including without limitation, in writing, orally, electronically, or by inspection), that is identified as confidential or proprietary at the time of disclosure or is of a nature that should reasonably be considered to be confidential, and includes but is not limited to the terms and conditions of this Agreement, and all business, technical and other information (including without limitation, all product, services, financial, marketing, engineering, research and development information, product specifications, technical data, data sheets, software, inventions, processes, training manuals, know-how and any other information or material); provided, however, that Confidential Information shall not include the Content that is to be published on the Client Website.

12.2 "Content" shall mean any and all, documents, graphics, video, audio, images, sounds and other content that is streamed or otherwise transmitted or provided by, or on behalf of, the Client to Granicus.

12.3 "Client Website" shall mean the Client's existing websites.

12.4 "Granicus Application Programmatic Interface" shall mean the Granicus interface which is used to add, update, extract, or delete information in MediaManager.

12.5 "Granicus Solution" shall mean the Solution detailed in the Proposal, which may include Granicus Software, Installation and Training, Managed Services, and Hardware, as specified in Exhibit A.

12.6 "Granicus Software" shall mean all software included with the Granicus Solution as specified in the attached Proposal that may include but is not limited to: MediaManager™ (includes Uploader, Software Development Kit, and Podcasting Services), MinutesMaker™ (includes LiveManager), MobileEncoder™, VotingSystem™ (includes Public Vote Display).

12.7 "Hardware" shall mean the equipment components of the Granicus Solution, as listed in Exhibit A.

12.8 "Managed Services" shall mean the services provided by Granicus to Client for bandwidth usage associated with live and archived Internet streaming, data storage, and Granicus Solution maintenance, upgrades, parts, customer support services, and system monitoring, as detailed in the Proposal attached as Exhibit A.

12.9 "Managed Services Fee" shall mean the monthly cost of the Managed Services, as specified in Exhibit A.

12.10 "Meeting Body" shall mean a unique board, commission, agency, or council body comprised of appointed or elected officials that meet in a public capacity with the objective of performing decisions through a democratic voting process (typically following Robert's Rules of Order). Two or more Meeting Bodies may be comprised of some or all of the same members or officials but may still be considered separate and unique Meeting Bodies at Granicus' sole discretion. For example, committees, subcommittees, city councils, planning commissions, parks and recreation departments, boards of supervisors, school boards/districts, and redevelopment agencies may be considered separate and unique individual Meeting Bodies at Granicus' sole discretion.

12.11 "Proposal" shall mean the document where the Granicus Solution that is the object of this Agreement is described along with pricing and training information.

12.12 "Representatives" shall mean the officers, directors, employees, agents, attorneys, accountants, financial advisors and other representatives of a party.

12.13 "Trademarks" shall mean all trademarks, trade names and logos of Granicus and Client that are listed on Exhibit D attached hereto, and any other trademarks, trade names and logos that Granicus or Client may specify in writing to the other party from time to time.

This Agreement consists of this Agreement as well as the following exhibits, which are incorporated herein by reference as indicated:

Exhibit A:	Current Solution
Exhibit B:	Support Information
Exhibit C:	Hardware Exhibit
Exhibit D:	Trademark Information
Exhibit E:	Termination or Expiration Options Regarding Content

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives,

GRANICUS, INC.

By: _____

Jason Fletcher

Its: Chief Executive Officer

Address:

707 17th Street, Suite 4000

Denver, CO 80202

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

EXHIBIT A

CURRENT SOLUTION

The current Granicus solutions used by the City of Glendale include:

- Basic - $1,321.69/month
- Legislative Management Suite - $1,339.00/month

The City's monthly managed service fee: **$2,660.69/month**

[The remainder of this page is left blank intentionally.]

EXHIBIT B

SUPPORT INFORMATION

1. Contact Information. The support staff at Granicus may be contacted by the Client at its mailing address, general and support-only telephone numbers, and via e-mail or the Internet.

(a) Mailing Address. Mail may be sent to the support staff at Granicus headquarters, located at 707 17th Street, Suite 4000, Denver, CO 80202.

(b) Telephone Numbers. Office staff may be reached from 5:00 AM to 5:00 PM Pacific time at (415) 357-3618 or toll-free at (877) 889-5495. The technical support staff may be reached at (415) 357-3618 opt 1.

(c) Internet and E-mail Contact Information. The website for Granicus is http://www.granicus.com. E-mail may be sent to the support staff at customercare@granicus.com.

2. Support Policy. When Granicus receives notification of an issue from Client, Granicus, Inc. customer advocate or technical support engineer will respond with notice that they will be actively working to resolve the issue. Granicus, Inc. will make a good faith effort to give an assessment of the issue and an estimated time for resolution. Notification shall be the documented time that the Client either calls or e-mails Granicus, Inc. to notify them of an issue or the documented time that Granicus, Inc. notifies Client there is an issue. Granicus reserves the right to modify its support and maintenance policies, as applicable to its customers and licensees generally, from time to time, upon reasonable notice.

3. Scheduled Maintenance. Scheduled maintenance of the Granicus Solution will not be counted as downtime. Granicus will clearly post that the site is down for maintenance and the expected duration of the maintenance. Granicus will provide the Client with at least three (3) days prior notice for any scheduled maintenance. All system maintenance will only be performed during these times, except in the case of an emergency. In the case that emergency maintenance is required, the Client will be provided as much advance notice, if any, as possible under the circumstances.

4. Software Enhancements or Modifications. The Client may, from time to time, request that Granicus incorporate certain features, enhancements or modifications ("Modifications") into the licensed Granicus Software. Subject to the terms and conditions to this exhibit and the Agreement, Granicus and Client will use commercially reasonable efforts to enter into a written scope of work ("SOW") setting forth the Modifications to be done, the timeline to perform the work and the fees and costs to be paid by Client for the work.

4.1 Documentation. The SOW will include a detailed requirements and detailed design document illustrating the complete financial terms that govern the SOW, proposed project staffing, anticipated project schedule, and other information relevant to the project. Such Modifications shall become part of the licensed Granicus Software.

4.2 Acceptance. Client understands that all work contemplated by this exhibit is on a "time-and-materials" basis unless otherwise stated in the SOW. Delivery of the software containing the Modifications shall be complete once such software is delivered and deemed by Granicus to be ready for Client's use. Client will have fifteen (15) days after delivery of the Modifications to notify Granicus

of any issues or problems. If Client notifies Granicus within such fifteen (15) day period of issues or problems, Granicus will promptly work to fix those issues or problems.

4.3 Title to Modifications. All such Modifications shall be the sole property of the Granicus.

5. Limitation of Liability; Exclusive Remedy. IN THE EVENT OF ANY INTERRUPTION, GRANICUS' SOLE OBLIGATION, AND CLIENT'S EXCLUSIVE REMEDY, SHALL BE FOR GRANICUS TO USE COMMERCIALLY REASONABLE EFFORTS TO RESTORE ACCESS AS SOON AS REASONABLY POSSIBLE.

EXHIBIT C

HARDWARE EXHIBIT

THIS HARDWARE EXHIBIT is entered into by Granicus and Client, as an attachment to the Agreement between Granicus and Client, for the Hardware components of the Granicus Solution (the "Hardware") provided by Granicus to Client. This exhibit is an additional part of the Agreement and is incorporated therein by reference. Capitalized terms used but not defined in this exhibit have the meanings given in the Agreement.

1. Price. The price for the Hardware shall be the price specified in the Proposal.

2. Delivery. Any scheduled ship date quoted is approximate and not the essence of this exhibit. Granicus will select the shipment method unless otherwise mutually agreed in writing. Granicus retains title to and ownership of all Granicus Software installed by Granicus on the Hardware, notwithstanding the use of the term "sale" or "purchase."

3. Acceptance. Use of the Hardware by Client, its agents, employees or licensees, or the failure by Client to reject the Hardware within fifteen (15) days following delivery of the Hardware, constitutes Client's acceptance. Client may only reject the Hardware if the Hardware does not conform to the applicable written specifications.

4. Service Response Time. For hardware issues requiring replacement, Granicus shall respond to the request made by the Client within twenty-four (24) hours. Hardware service repair or replacement will occur within seventy-two (72) hours of determination of a hardware issue, not including the time it takes for the part to ship and travel to the Client. The Client shall grant Granicus, or its representatives access to the equipment for the purpose of repair or replacement at reasonable times. Granicus will keep the Client informed regarding the timeframe and progress of the repairs or replacement. Once the Hardware is received Client's responsibilities will include:

a. Mount server on client rack (if applicable)

b. Connecting original network cables.

c. Connecting original audio and video cables (if applicable).

5. LIMITATION OF LIABILITY. GRANICUS SHALL NOT BE LIABLE FOR CONSEQUENTIAL, EXEMPLARY, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES ARISING OUT OF OR RELATING TO THIS EXHIBIT INCLUDING WITHOUT LIMITATION LOSS OF PROFIT, WHETHER SUCH LIABILITY ARISES UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR OTHERWISE, EVEN IF GRANICUS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGE COULD HAVE BEEN REASONABLY FORESEEN. IN NO EVENT WILL GRANICUS' LIABILITY TO CLIENT ARISING OUT OF OR RELATING TO THIS EXHIBIT EXCEED THE AMOUNT OF THE PRICE PAID TO GRANICUS BY CLIENT FOR THE HARDWARE.

6. Hardware. In the event of malfunction for Hardware provided by Granicus, Hardware will be repaired or replaced as per the warranty, and as detailed in this Exhibit. Granicus provides the above-mentioned services under Client's acknowledgment that all Granicus tools, and systems will be installed by the manufacturer chosen by Granicus within the Hardware, provided to the client. These software tools have been qualified by Granicus to allow the highest level of service for the client. While it is Granicus' intention to provide all Clients with the same level of customer care and warranty, should the Client decline these recommended tools, certain levels of service and warranty may not guaranteed.

7. Remote Accessibility. Granicus leverages remote access tools such as Logmein for installation and ongoing maintenance of Granicus software. These tools are designed to provide Granicus technicians with necessary information to diagnose and resolve software problems. Should the Client decide to decline these remote tools, Granicus cannot guarantee optimal level of service due to limited access to Granicus Hardware. Client understand that should they decide to use internal methods of access, such as VPN, Client may need to assist Granicus technicians for remote accessibility during business hours as well as after hours in the event Granicus technicians are unable to access remote Granicus systems.

8. Purchased Hardware Warranty. For Hardware purchased from Granicus by Client, Granicus will provide to Client a three (3) year warranty with respect to the Hardware. Within the three (3) year warranty period, Granicus shall repair or replace any Hardware provided directly from Granicus that fails to function properly due to normal wear and tear, defective workmanship, or defective materials. Hardware warranty shall commence on the Effective Date of the Agreement.

9. Use of Non-Approved Hardware. The Granicus platform is designed and rigorously tested based on Granicus-approved Hardware. In order to provide the highest level of support, Granicus requires the use of Granicus-approved Hardware in your solution. While it is Granicus' intention to provide all clients with the same level of customer care and continuous software upgrades, Granicus does not make any guarantees or warranties whatsoever in the event Client uses non-approved hardware.

10. Client Changes to Hardware Prohibited. Client shall not install any software or software components that have not been agreed upon in advance between Client and Granicus technical staff. While it is Granicus' intention to provide all clients with the same level of customer care, Granicus does not make any guarantees or warranties whatsoever regarding the Hardware in the event Client violates this provision.

EXHIBIT D

TRADEMARK INFORMATION

Granicus Registered Trademarks ® Include:

Granicus logo as a mark
Granicus®
Legistar®
MediaVault®
MinutesMaker®
Mobile Encoder®
Outcast Encoder®
StreamReplicator®

Granicus Trademark Names ™ Include:

CivicIdeas™
iLegislate™
InSite™
Integrated Public Record™
Intelligent Routing™
LinkedMinutes™
LiveManager™
MediaCenter™
MediaManager™
MediaVault™
MeetingMember™
MeetingServer™
Simulcast Encoder™
VoteCast™
VoteCast™ Classic
VoteCast™ Touch

For an updated list of Granicus registered trademarks, trademarks and servicemarks, please visit: http://www.granicus.com/help/legal/copyright-and-trademark/.

Client Trademarks

EXHIBIT E

TERMINATION OR EXPIRATION OPTIONS REGARDING CONTENT

In case of termination or expiration of the Agreement, Granicus and the Client shall work together to provide the Client with a copy of its Content. The Client shall have the option to choose one (1) of the following methods to obtain a copy of its Content:

- Option 1: Video/Audio files made available through an external hard drive or FTP site in its raw non-proprietary format. A CSV file will be included providing file name mapping and date. This option shall be provided to Client at Granicus' actual cost, which shall not be unreasonable.

- Option 2: Provide the Content via download from the application UI. This option shall be provided free of charge and is available anytime.

- Option 3: Provide the means to pull the content using the Granicus Application Programming Interface (API). This option is provided free of charge and is available at anytime.

- Option 4: Professional services can be contracted for a fee to customize the retrieval of content from the system.

The Client and Granicus shall work together and make their best efforts to transfer the Content within the sixty (60) day termination period. Granicus has the right to delete Content from its services after sixty (60) days, or whenever transfer of content is completed, whichever is later.

File #: 16-301, **Version:** 1

AUTHORIZATION TO ENTER INTO A LINKING AGREEMENT WITH COX ARIZONA TELCOM, L.L.C., FOR CARRIER AND BROADBAND SERVICES AND TO APPROVE THE EXPENDITURE OF FUNDS

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 city-wide, multi-year Linking Agreement with Cox Arizona Telcom, L.L.C. (Cox) for a term commencing on June 28, 2016 and ending on June 30, 2017; and to authorize the City Manager, at his discretion, to renew the agreement for three additional one-year periods until June 30, 2020. Under the terms of the agreement, Cox will provide products and services to the City using the State of Arizona cooperative purchasing agreement ADSPO15-088473. This request also includes approval of expenditure authority in an amount not to exceed $550,000 over the life of the agreement ($137,500 per year).

Background

Cox provides internet, television, and data circuits to the city at a monthly cost based on the state contract. In order for the city to take advantage of the state contract pricing, a new linking agreement is needed.

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

This new citywide linking agreement reflects the state contracted pricing for products and services from Cox Arizona Telcom, LLC. Every five years the State of Arizona negotiates new contract pricing for products and services from Cox for a multitude of television, voice and data communications services. In order for the city to take advantage of these changes a new linking agreement must be signed with Cox. Included in this agreement is a request for a data service from Cox to increase the internet bandwidth for the city to facilitate the transfer of Police-On-Body Camera video data to a hosted storage provider. This linking agreement will also allow the city to provide the internet, video and voice communication needed and requested by the city's departments.

Previous Related Council Action

On March 22, 2016, Council approved four customer services orders with Cox for the Glendale Fire Department.

Community Benefit/Public Involvement

Approval of this agreement will enable the city to benefit from the state contracted pricing for products and services provided by Cox.

Budget and Financial Impacts

The amount budgeted will fluctuate based on annual budget capacity and needs. It is estimated to be $137,500 per year, but not to exceed $550,000 over the entire term of the Agreement.

Cost	Fund-Department-Account
$550,000	varies

Capital Expense? No

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
COX ARIZONA TELCOM L.L.C.

THIS LINKING AGREEMENT (this "Agreement") is entered into as of this day of , 2016, between the City of Glendale, an Arizona municipal corporation (the "City"), and Cox Arizona Telcom L.L.C., a Delaware corporation authorized to do business in Arizona ("Contractor"), collectively, the "Parties."

RECITALS

A. On July 1, 2015, under the State of Arizona Cooperative Purchasing Agreement, the State of Arizona entered into a contract with Contractor to purchase the goods and services described in the Carrier and Broadband Provider Services Contract, Contract No. ADSPO15-088473 ("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 purchases can be made by governmental entities from the date of award, which was July 1, 2015, until the date the contract expires on June 30, 2020, 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 June 30, 2020. The initial period of this Agreement, therefore, is the period from the Effective Date of this Agreement until June 30, 2017. The City Manager or designee,

however, may renew the term of this Agreement for three (3) one-year periods until the Cooperative Purchasing Agreement expires on June 30, 2020. 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 B.

   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 provided in the Cooperative Purchasing Agreement, which is attached hereto as Exhibit C.

   B. The total purchase price for the supplies and/or services purchased under this Agreement shall not exceed one hundred thirty-seven thousand, five hundred dollars ($137,500) annually or five hundred fifty thousand dollars ($550,000) for the entire term of the Agreement (initial term plus any renewals).

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
c/o Connie Schneider, C.P.M.
5850 Glendale Ave, Suite 317
Glendale, Arizona 85301
623-930-2868
cschneider@glendaleaz.com

and

Cox Arizona Telcom L.L.C.
c/o Melissa Dus
1550 W. Deer Valley Rd.
Phoenix, AZ 85027
623-328-2940
Melissa.Dus@cox.com

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

"City"

City of Glendale, an Arizona municipal corporation

By: _____
Kevin R. Phelps
City Manager

"Contractor"

Cox Arizona Telcom L.L.C.,
a Delaware Corporation

By: _____
Name: Edward Aaronson
Title: Vice President, Cox Business Arizona

ATTEST:

_____
Pamela Hanna (SEAL)
City Clerk

APPROVED AS TO FORM:

_____
Michael D. Bailey
City Attorney

LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
COX ARIZONA TELCOM L.L.C.

EXHIBIT A
CARRIER AND BROADBAND PROVIDER SERVICES

Offer and Acceptance

EXHIBIT A

State of Arizona
State Procurement Office
100 North 15th Avenue, Suite 201
Phoenix, AZ 85007

Solicitation No: **ADSPO14-00004241**
Description: **Carrier and Broadband Provider Services**

OFFER

TO THE STATE OF ARIZONA:
The Undersigned hereby offers and agrees to furnish the material, service or construction in compliance with all terms, conditions, specifications and amendments in the Solicitation and any written exceptions in the offer. Signature also certifies Small Business status.

Cox Arizona Telcom L.L.C.
Company Name

1550 W. Deer Valley Rd.
Address

Phoenix AZ 85027
City State Zip

David.daniels3@cox.com
Contact Email Address

Signature of Person Authorized to Sign Offer

Steve Rowley
Printed Name

Senior Vice President
Title

Phone: (404) 269-5647

(404) 269-8128
Fax:

By signature in the Offer section above, the Offeror certifies:

1. The submission of the Offer did not involve collusion or other anticompetitive practices.
2. The Offeror shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, State Executive Order 2009-9 or A.R.S. §§ 41-1461 through 1465.
3. The Offeror has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer. Failure to provide a valid signature affirming the stipulations required by this clause shall result in rejection of the offer. Signing the offer with a false statement shall void the offer, any resulting contract and may be subject to legal remedies provided by law.
4. The Offeror certifies that the above referenced organization __IS/ X IS NOT a small business with less than 100 employees or has gross revenues of $4 million or less.

ACCEPTANCE OF OFFER

The Offer is hereby accepted.

The Contractor is now bound to sell the materials or services listed by the attached contract and based upon the solicitation, including all terms, conditions, specifications, amendments, etc., and the Contractor's Offer as accepted by the State.

This Contract shall henceforth be referred to as Contract No. ADSPO15-088473.

The effective date of the Contract is 7-1-15.

The Contractor is cautioned not to commence any billable work or to provide any material or service under this contract until Contractor receives purchase order, contract release document or written notice to proceed.

State of Arizona
Awarded this 6th **day of** February **20** 15

Barbara McCulla
Procurement Officer

Table of Content

EXHIBIT A

State of Arizona
State Procurement Office
100 North 15th Avenue, Suite 201
Phoenix, AZ 85007

Solicitation No: **ADSPO14-00004241**
Description: **Carrier and Broadband Provider Services**

1. PURPOSE

The State desires to establish a Contract or Contract Set for Carrier and Broadband Provider Services as described herein. The State acknowledges that the telecommunication and broadband industries and its suppliers are changing rapidly and as such desires to allow flexibility to accommodate open-standards-based products and new technologies.

2. BACKGROUND

The State currently holds nine (9) contracts for Telecommunication Carrier Services. Within these contracts a customer is able to obtain carrier services through a limited technology base. It is the intent of the State to widen the technologies and related services that are available for purchase by all eligible State customers from both traditional telecommunication carriers as well as broadband service providers to better serve the State of Arizona as a whole.

This contract will be utilized by two specific customer bases:

Primary Customers: Defined as all State Agencies, Boards and Commissions. These customers are *required* to be compliant with AZNet standards. The executive branch of the State has outsourced the management of its telecommunications infrastructure from a fragmented agency-centric model to a new enterprise network. Under this structure the State government has consolidated the purchasing power of all Executive Branch Agencies. At the direction of the State, AZNet has aggregated executive branch purchasing across the State.

Other Customers: Defined as customers who have membership in the State Purchasing Cooperative (specifically, all Arizona political subdivisions including, counties, cities, school districts and special districts.) Membership is also available to all non-profit organizations, as well as State governments, the US Federal Government and Tribal Nations or any other consortium of entities eligible to purchase under this contract.

3. OBJECTIVES

3.1 The objectives of this Solicitation are:

3.1.1 Standardized Carrier Services Descriptions: To provide Carriers more detailed and standardized communication service product descriptions, purchasable within this contract. The intention is to make Provider offerings more directly comparable with regard to functionality and specification as well as price.

3.1.2 Encourage Broader Participation: Encourage multiple Carriers and Broadband Providers to become contracted on a county-by-county basis so as to create robust and vital markets for multiple services throughout the State.

3.1.3 Harmonize with eRate: Allow contracts for eRate eligible purchasing. Align terms and product offerings in accordance with USAC's terms and approved products.

3.1.4 Strategic Infrastructure Investments: Encourage strategic investment by Carriers and Broadband Providers in building and expanding new high capacity (broadband) strategic infrastructure in Arizona counties and communities that currently have limited infrastructure capacity.

4. PRODUCT CATEGORIES

4.1 The following product categories are not exhaustive and are expected to evolve with emerging technologies and standards.

4.2 Standards and Quality of Service Guarantees.

4.2.1 *Current Standards and Standards Bodies:* At a minimum, all product and service offerings listed below and within the Product Categories of Attachment II shall be compliant with applicable standards for the particular

purchased product or service as required by the following standards setting bodies: Telcordia, ITU, ANSI, IEEE, IETF, FCC, NIST, CableLabs, Metro Ethernet Forum, and IP MPLS Forum.

4.2.2 *Quality of Service (QoS) Guarantees*: Specific types of QoS guarantees that are required to be included as part of the purchase price of offered services as described in the 'Product Description' section of Attachment II, associated with each service category. These guarantees are further specified as appropriate on a product-by-product basis in Attachment II. However, at a minimum, the following types of QoS guarantees shall be required by Bidder for every service category with stated Service Level Agreements (SLAs) appropriate to the specific product.

- Percentage of availability,
- Time to respond reported trouble,
- Time to repair reported trouble.

4.3 Desired Network Capabilities*:*

4.3.1 *Scalability*: The ability to increase delivery of service in number and/or size within a reasonable timeframe.

4.3.2 *Survivability*: The ability to continue to operate or quickly restore services in the face of unanticipated incidents, disasters, or catastrophes.

4.3.3 *Redundancy*: Having one or more circuits/systems available to sustain the operation of the service in case of failure of the main circuits/systems.

4.3.4 *Diversity*: Backbone network paths and infrastructure offered in such a way as to minimize the chance of a single point of failure.

4.4 CATEGORY 1: Dedicated Private Circuits and Networks (Leased Lines/Circuits, VPNs) requiring standards compliance.

4.4.1 Including but not limited to the following types of service:

4.4.1.1 Copper or Coaxial Analog Circuits:
4.4.1.1.1 Two Wire (POTS telephone line for voice or fax use)
4.4.1.1.2 Four wire (POTS telephone line for voice or fax use)
4.4.1.1.3 T1 (Channel bank termination up to 24 POTS lines)
4.4.1.1.4 T3 (Channel bank termination up to 72 POTS lines)

4.4.1.2 Digital TDM Circuits (Copper, Coax, Microwave, and HFC Transport)
4.4.1.2.1 DS0
4.4.1.2.2 DS1 (Data Transport or PBX Trunks, [CAS, or ISDN-PRI]
4.4.1.2.3 ISDN (BRI, PRI)
4.4.1.2.4 DS3 (Data Transport)

4.4.1.3 SONET Circuits (Optical Fiber, and/or Microwave Transport, and Fiber Terminal termination);
4.4.1.3.1 OC1
4.4.1.3.2 OC3
4.4.1.3.3 OC12
4.4.1.3.4 OC 24
4.4.1.3.5 OC 48
4.4.1.3.6 OC 192
4.4.1.3.7 OC 768

4.4.1.4 Virtual Private Circuits and Networks: may be transported over the following types of physical media: Copper pairs, Coax, Fiber, DWDM, Hybrid-Fiber/Coax (HFC), or Microwave and terminated

at the customer demarcation with the following types of access methods: 10/100/1000 Ethernet, Cable Modem, DSL Modem or Fiber Terminal.

4.4.1.4.1 Ethernet Virtual Connections (EVCs): Point-to-point, Hub and Spoke Service, Point to multi-point, Multi-point to Multi-point.
- 4.4.1.4.1.1 Ethernet Private Line (EPL)
- 4.4.1.4.1.2 Ethernet Virtual Private Line (EVPL)
- 4.4.1.4.1.3 Ethernet Virtual LAN (E-LAN)
- 4.4.1.4.1.4 Converged VoIP Services (Replicating Landline Voice Services over Metro Ethernet virtual networks and circuits and interoperable with the PSTN)
- 4.4.1.4.1.5 Stand Alone VoIP Services over Metro Ethernet virtual circuits and E-LANs
- 4.4.1.4.1.6 SIP Trunking over Metro Ethernet Virtual Circuits and E-LANs

4.4.1.4.2 MPLS-IP Virtual Network Services: Point-to-point, Hub and Spoke Service, Point to multi-point, Multi-point to Multi-point (Any-to-Any).
- 4.4.1.4.2.1 MPLS Virtual Private Line Service (point-to-point)
- 4.4.1.4.2.2 MPLS Virtual LAN service (multi-point to multi-point)
- 4.4.1.4.2.3 Converged VoIP Services (Replicating Landline Voice Services over MPLS networks and services and interoperable with the PSTN)
- 4.4.1.4.2.4 Stand Alone VoIP Services over MPLS virtual circuits and LANs
- 4.4.1.4.2.5 SIP Trunking over MPLS Virtual Circuits and E-LANs

4.5 CATEGORY 2: Voice Grade Services; Business phone “lines” shall be flexible, affordable and reliable. Carriers and Providers shall also provide options for call features. Phone “lines” can be provided as landline or VoIP services.

4.5.1 Basic telephone services: For Providers offering voice services, basic voice services shall include at a minimum: a “line” (Physical or Voice-over-Internet-Protocol (VoIP)) with an assigned telephone number and unlimited local calling with options for the following requested call features. Some of the features listed below, in section 4.5.3, must be enabled by the Provider; others may be enabled/disabled by the customer using Touch Tone commands, (Carrier provisioned or customer controlled). Local calling is defined as calls originating and terminating within a LATA or equivalent geographic boundary.

4.5.2 Number portability: Number portability shall be supported by telephone service Providers; allowing assigned numbers to be imported from other providers at the time of service activation and exported to other providers at the time of service termination using industry standard practices.

4.5.3 Basic telephone service optional features:

- 4.5.3.1 Call Back or equivalent;
- 4.5.3.2 Call Blocking or Selective Call Blocking;
- 4.5.3.3 Call Forwarding (Busy; No Answer; Selective; To Multiple Lines, etc)
- 4.5.3.4 Call Trace;
- 4.5.3.5 Call Transfer;
- 4.5.3.6 Call Waiting;
- 4.5.3.7 Caller ID Name and Number;
- 4.5.3.8 Distinctive Ringing Restricted Call Forwarding or equivalent;
- 4.5.3.9 Feature Blocking;
- 4.5.3.10 Line Hunting;
- 4.5.3.11 Long Distance Blocking;
- 4.5.3.12 Remote Access to Call Forwarding;
- 4.5.3.13 Teleconferencing
- 4.5.3.14 Three Way Calling;
- 4.5.3.15 Voice Mail; and
- 4.5.3.16 Other features that may not be listed above, or as emerge with technology.

4.5.4 Providers should also make available the following voice services:

4.5.4.1 Customer specified Default Long Distance provider;
4.5.4.2 Direct Inward Dialing Services (DID);
4.5.4.3 Domestic Long Distance and Global Long Distance access;
4.5.4.4 Foreign Exchange (FX) Services;
4.5.4.5 PBX ALI (Private Branch Exchange Automatic Location Identification); This is specific to a multiline telephone system (MLTS);
4.5.4.6 Teleconferencing Bridge Services (Audio Conferencing); and
4.5.4.7 Toll Free Services.

4.6 CATEGORY 3: WiFi Services. WiFi Access Services are eligible for purchase when the WiFi Access Points terminating the service at the customer premises are bundled with the Carrier or Broadband Provider's network access service for a private line or other network service. For such WiFi services the WiFi Access Points (and any required traffic aggregating routers located at the customer premises) shall be considered to be on the providers side of the provider's demark. The Provider of WiFi Access Service shall be responsible for all configuration and management of any equipment bundled with the service and necessary for its operation.

Primary Customers who may purchase WiFi Access Services shall require the Provider to support a user log-in splash screen capability and to comply with all other State Security Policies in the implementation of the service. The State of Arizona has adopted National Institute Standards and Technology (NIST) standards for security. The State of Arizona Security Policies will be available after contract award. Additionally, WiFi Access Services shall not be configured to connect directly to the State network. It is recommended that Other Customers who may order this service require the Provider to follow the same security guidelines as AZNet.

Please note: Specifically *not* eligible under *this* contract is the purchase, installation, or operation of any WiFi equipment by the customer.

4.6.1 WiFi Access Services:

4.6.1.1 Single 802.11a/g/n Access Point with 6 to 30 Mpbs access connection;
4.6.1.2 Single 802.11a/g/n/ac Access Point with 10 to 500 Mbps access connection;
4.6.1.3 Multiple 802.11a/g/n Access Points routed to a single access connection supporting up to 30 Mbps per Access Point;
4.6.1.4 Multiple 802.11a/g/n/ac Access Points routed to a single access connection supporting up to 500 Mbps per Access Point; and
4.6.1.5 Other services that may not be listed above, or as emerge with technology.

4.7 CATEGORY 4: Internet Access Services. These services may be bundled with transport or access services or provided separately for transport over private circuits and networks, or over Provider operated networks. Internet Access Services may also be bundled with Provider managed router services.

4.7.1 Feature functionality:

4.7.1.1 Symmetric
4.7.1.2 Asymmetric
4.7.1.3 Border Gateway Protocol (BGP)
4.7.1.4 Open Shortest Path First (OPSPF)
4.7.1.5 DNS Services
4.7.1.6 Carrier DHCP Addressing
4.7.1.7 Static IP Address
4.7.1.8 Private IP Address
4.7.1.9 Other features that may not be listed above, or as emerge with technology.

4.7.2 Providers may also make available the following Internet Security Services which may be bundled with Internet Access services or sold separately:

4.7.2.1 Next Generation Firewall Services;
4.7.2.2 Distributed Denial of Service Prevention (DDoS);
4.7.2.3 Data Loss Prevention (DLP);
4.7.2.4 Web Proxy Filtering;
4.7.2.5 Content Filtering;
4.7.2.6 Other Security Services that may not be listed above, or as emerge with technology.

4.8 CATEGORY 5: Fiber Services.

Fiber Services can be provided as:

4.8.1 Leased dedicated conduits or mirco-ducts within conduits (through which a customer can install and operate their own fiber and provide their electronics);

4.8.2 Leased "Dark" Dedicated Fiber Cable (point-to-point or ring configuration, Fiber Optic Distribution Unit (FODU) demarcation, customer provides electronics);

4.8.3 Leased "Dark" Fiber Strand Pairs on shared fiber cable (point-to-point or ring configuration, FODU demarcation, customer provides electronics);

4.8.4 Leased Dense Wavelength Division Multiplexing (DWDM) wavelength(s) on shared fiber pairs (point-to-point or ring configuration, Optical FODU Demarcation, Customers provides electronics); and

4.9 Excluded Products and Services: The following products and services shall be excluded from a resultant Contract:

4.9.1 Building Wiring System (BWS, cabling and connection devices beyond the telecommunications demarcation);
4.9.2 Mobile radio related products;
4.9.3 Wireless Mobility Services (specifically, cell phone carrier services)
4.9.4 Hardware and software for build-out of Buyer's campus networks (CPE); and
4.9.5 9-1-1 Services;
4.9.6 Integration Services; and
4.9.7 All other products and services not specified herein.

5. EXPANDING GEOGRAPHIC AVAILABILITY FOR TARIFFED AND NON-TARIFFED CARRIER TELECOMMUNICATION SERVICES

5.1 Geographic availability of ILEC and CLEC telecommunication services may change for an ILEC or CLEC during the life of a resultant contract. As such, under a resultant Contract is limited to the areas included herein. Based on technological advances and/or expanded capabilities and infrastructure, the Contractor may add supplemental Geographic Areas to the Contract as new ILEC or CLEC service territories and/or service capabilities become available. The addition of new Geographic Areas under the Contract shall be the State's discretion.

6. BROADBAND EXPANSION PROVISION

The state seeks to encourage the building and expansion of new broadband infrastructure by encouraging Providers to work aggressively and strategically with communities and anchor institutions in those communities in underserved areas of the State to coordinate the aggregation of demand and the coordinated purchase of new and expanded high capacity broadband services especially in underserved rural communities and counties in the state.

6.1 To encourage provider investment in, and implementation of such new infrastructure, the State will consider the following within a resultant contract:

6.1.1 Special Terms: When services are purchased in connection with new infrastructure expansion by Carriers and/or Broadband Providers, Special Terms and Conditions can be considered for approval, as follows:

6.1.1.1 Longer-Term Contracts. After the initial 5 years base the contract can be extended for one (1) three (3) year term. At the expiration of that three (3) year term, the contract can be extended a final time for two (2) additional years, making the max life of a resultant contract 10 years.

6.1.1.2 Longer-Term Service Contracts. If a Carrier or Provider wishes to seek special terms for a Longer-Term Service Contract (greater than five (5) years) with a customer, to justify investment in new infrastructure expansion, they shall submit a business case to the State Procurement Office for review and possible acceptance.

6.1.1.3 Early-Termination Terms. If a Carrier or Provider wishes to seek special terms for early-termination, a business case shall be submitted to the State Procurement Office for review and possible acceptance.

6.1.2 Non-Recurring Costs (NRC). NRC of new infrastructure construction can be amortized over the term of a service order by the allowance for an increase monthly recurring costs (MRC) for provided services beyond the awarded price for service(s) that may utilize such new infrastructure. This amortization can be for all or a portion of the term of those specific contracted services provided that the total cost shall not increase beyond the sum of the regular bid price and the quoted NRC.

6.1.2.1 The State considers that providing broadband capacity, requiring new infrastructure construction, to a community shall be defined as having at least one Provider Point of Presence within a Census Designated Place or a geographic Cluster of Census Designated Places having 4,000 or more households, connected with fiber-optic or microwave back-haul transport capacity equal to or greater than 1 Mbps per household to a Point of Presence in a metropolitan area. If a Census Designated Place with a population less than 4,000 households is to be considered as served with broadband capacity the minimum connection capacity between at least one Point of Presence in the community and a Point of Presence in metropolitan areas shall be 1 Gbps. Exhibit A lists all the recommended Backhaul Bandwidth for Census Designated Places and logical Clusters of Places.

6.1.3 Consortia / Group Buying. Eligible 'Other Customers', as defined in Section 2, Background, are allowed to create new consortia with or without the participation of Primary Customers, also defined in Section 2, Background, to increase their buying power for services and to enhance the likelihood of new infrastructure investments being made by Carriers and Broadband Providers.

6.1.3.1 Billing of Consortium Projects. If Carriers or Broadband Providers accept an order from a consortium that has more than one customer (example: a school district, a city, a county, a fire district, and a non-profit) the Carrier or Broadband Provider must agree to bill every member of the consortium separately for each of their agreed portion of the cost.

6.2 To be considered for an award within the broadband expansion provision of a resultant contract the Offeror shall follow the specific instructions on how to respond to this section stated with Attachment I, Offeror Questionnaire.

6.3 Pricing. If a Carrier or Broadband Provider can provide a services within a County only after committing to the construction of new Infrastructure in that County that would enable the delivery of said services the Carrier or Broadband Provider may request the negotiation of special terms and conditions for services that would utilize the new infrastructure in that County to justify their investment. In these cases the State acknowledges that pricing shall be negotiated.

6.4 Additional Expansion Proposals. If an infrastructure expansion opportunity arises in an area that was not originally identified to the State through the initial RFP process, the Contractor may submit a proposal to the State for review to be considered for the additional terms listed in 6.1.1.

7. SERVICE LEVEL GUARANTEES

7.1 Service Level Agreements (SLAs)

7.1.1 SLAs are required when establishing service for applicable products.

7.1.2 The customer shall negotiate SLAs directly with the carriers and providers when establishing requested service.

7.1.2.1 Once negotiated, the SLA shall be submitted the State Procurement Office for review and approval against the Terms and Conditions of a resultant contract.

7.1.3 Costs associated with more stringent guarantees then outlined below in section 7.2 may be added to a quote as a service premium.

7.1.3.1 The fixed rate MRC shall not be changed to reflect the premium associated with the SLAs rather it should be it's own monthly line item.

7.1.4 Carriers and Providers are required to monitor and report to customers monthly for agreed to Service Level Agreements performance and nonperformance.

7.2 Minimum Guarantees:

7.2.1 Restore and Response defined:

7.2.1.1 Restore – Means a 'full service restoration'.

7.2.1.2 Response – Means having a physical presence onsite.

7.2.2 Metro Areas defined:

7.2.2.1 Phoenix Metro, 50 mile radius of the Capital Mall circle

7.2.2.2 Tucson Metro, 50 mile radius of the University of Arizona

7.2.2.3 Yuma Metro, 25 mile radius of the Yuma County Court House

7.2.2.4 Flagstaff Metro, 25 mile radius of Coconino County Court House

7.2.2.5 Prescott Metro, 25 mile radius of Yavapai County Court House

7.2.3 Restore and Response times:

7.2.3.1 Metro Areas:

7.2.3.1.1 Specific sites to be provided after contract award.

7.2.3.1.1.1 Full restoration shall be completed within two (2) hours.

7.2.3.2 Rural Areas:

7.2.3.2.1 Specific sites to be provided after contract award.

7.2.3.2.1.1 Full restoration shall be completed within four (4) hours.

7.2.3.3 If full restoration cannot be achieved within the above stated time frames, the customer shall be notified immediately upon discovery of such event that hinders restoration.

7.2.3.3.1 Every hour that service has not been restored the carrier or provider shall be responsible for updating the customer of status on the restoration project.

7.2.4 Restore and Response penalties:

7.2.4.1 If Full Service Restoration is not completed the Contractor shall be liable for 1/720 of the MRC for each hour after the allowable response time has been exhausted. This will be seen in the form of a credit against the billed amount at the end of the month.

An "Outage" is an interruption in Service or use of the Equipment caused by a failure of the Contractor's Network, excluding degradation or disruption due to planned or emergency maintenance or an event outside of the Contractor's direct control.

7.2.4.2 If full restoration has not been completed within double the allowed time the customer will have the right to terminate services with that Carrier with no penalty.

7.2.4.2.1 Customer, at its discretion, can allow an exception to this within their negotiated SLA, based on agreed to terms by both parties, for allowances such as, but not limited to, force majeure.

7.2.5 Restore and Response tracking:

7.2.5.1 The two (2) or four (4) hour window shall start when the customer (AZNet, for the primary customer) calls the carrier directly and opens a repair ticket.

7.2.5.2 Once the service has been fully restored, the carrier shall call the customer and notify of completion.

7.2.5.3 Once notified the customer shall confirm that service has been fully restored before the carrier closes the open repair ticket. Once this confirmation has been completed the window for restoration shall be closed and calculated for any applicable penalties.

7.2.5.3.1 If the carrier or provider closes the repair ticket before confirmation has been provided by the customer and is required to open a new ticket, the restoration and response time shall not be restarted, rather merged with the original outage notification.

8. PROCESS FOR ESTABLISHING SERVICES:

8.1 Establishing Service for State Agencies, Boards and Commissions exclusively, please reference Exhibit B for the State of Arizona WAN Strategy Diagram:

8.1.1 Quote Process. The most current version of 10.5 AZNet II – RFI Carrier Order Process Guide can be found at https://aset.az.gov/aznet-ii-arizona-network.

8.1.1.1 Customer is required to open a Request for Information (RFI) ticket for requested Carrier products and services.

8.1.1.1.1 Within this request the Customer shall provide the 'AZ Service ID' found within Attachment II, Pricing Structure.

8.1.1.2 All Contractors awarded in geographical location are notified of an opportunity to provide a quote for requested products and services based on contract category.

8.1.1.3 Site Assessments:

8.1.1.3.1 Contractor will be notified at the time they are given the opportunity to quote that a site assessment is requested.

8.1.1.3.2 Site assessments shall be provided at no charge.

8.1.1.3.3 Contractor is able to waive the opportunity to walk the premises and still provide a quote, however, the quote shall not be revised if the Contractor waived their right to walk the site.

8.1.1.4 Providing the Quote:

8.1.1.4.1 Quote shall be in compliance with the Quote form provided by ASET-EIC.

8.1.1.4.2 NRC's quotes shall be firm fixed, ranges shall not be accepted.

8.1.1.4.3 MRC quotes shall be firm fixed.

8.1.1.4.4 Contractor(s) are required to submit the resulting quote to ASET_EIC_Carrier@azdoa.gov by the requested due date and time of the original RFI.

8.1.1.4.5 Late quotes shall not be accepted.

8.1.1.5 ASET-EIC compiles received quotes and sends them to the requesting customer for evaluation.

8.1.2 Ordering Process. The most current version of 10.6 AZNet II – MAC Project Carrier Order Process Guide can be found at https://aset.az.gov/aznet-ii-arizona-network.

8.1.2.1 Customer reviews quote(s) provided to them by ASET-EIC.
8.1.2.1.1 Decision shall be based on the results of the RFI.

8.1.2.2 Customer opens a new move, add, change (MAC) ticket.

8.1.2.3 AZNet sends the order to the Selected Carrier.

8.1.2.4 Carrier sends e-mail confirmation to AZNet within 24 hours of receipt of the order.

8.1.2.5 Depending on the product ordered the Carrier sends and e-mail to AZNet with applicable supporting information as follows:

8.1.2.5.1 Circuit Number;

8.1.2.5.2 Carrier Order Number; and

8.1.2.5.3 Due Date.

8.1.2.6 AZNet provides the supporting information to the AZNet Engineers and requesting Customer.

8.1.2.7 Carrier confirms that the product has been installed.

8.1.2.8 AZNet verifies with the AZNet Engineer and Customer that product was installed in compliance with the agreed upon project specifications.

8.2 Establishing Service for 'Other Customers':

As Eligible 'Other Customers' these customers are not required to follow the State of Arizona ASET requirements, nor are their networks and infrastructures managed by the State ASET department. As such, the customers may require the Contractor to assist in Order preparation by providing necessary product and services descriptions, operating parameters, and interface information. Contractor shall provide this assistance at no additional cost to the Customer.

8.2.1 Quote Process. Customers may request quotes for the specific products and/or services available under the Contract, through the issuance of a Contract Quote or Purchase Quote (Quote Request) to the Contractor. Quote Requests shall cite the Contract number and shall be limited to those products and/or services available under the Contract only.

Extra-contractual Products and Services Prohibited. Any attempt to use a Quote Request and/or any response thereto, to represent any products and/or services not specifically awarded and cited in the Contract as being included in the Contract is a violation of the Contract and the Arizona Procurement Code. Any such action is subject to the legal and contractual remedies available to the State, inclusive of but not limited to Contract termination for default, suspension and/or debarment of the Contractor.

8.2.1.1 Quote Request Form. Quote shall include, at a minimum, the following information:

8.2.1.1.1 Date the quote was requested;
8.2.1.1.2 Quote Number;
8.2.1.1.3 E-Rate SPIN number, if requested;
8.2.1.1.4 Customer information, to the individual department, division or office as applicable;
8.2.1.1.5 Customer contact person;
8.2.1.1.6 Term of the Service, including Service start date, expiration date – if applicable, and installation date – if applicable;
8.2.1.1.7 Total cost to the Customer; and
8.2.1.1.8 A list or description specifying the quantity, type and special options and/or provisions of the Service to be provided.

8.2.2 Ordering Process.

8.2.2.1 Purchase Order Issued. Purchase Orders shall be in accordance with the requirements set forth herein.

8.2.2.2 Order Acknowledgement. Contractor shall acknowledge receipt of all Orders. Contractor shall notify the Customer, in writing or electronically, within two (2) days of Order receipt. Customers may accept verbal Order acknowledgment when time and circumstances require.

8.2.2.3 Order Acceptance. Contractor shall acknowledge acceptance of all Orders. Contractor shall notify the Customer, in writing or electronically, within five (5) days of Order receipt. Orders that are not accepted and not specifically rejected by the Contractor within the five (5) days shall be considered accepted. Customers may accept verbal order acceptance when time and circumstances require. Order acceptance shall include the reservation of all elements necessary to deploy the ordered and accepted products and services.

8.2.2.4 Order Notification. Contractor shall, prior to the Order start date, notify Customer, in written or electronically, information pertaining to the installation of the Order's products and services.

8.2.2.5 Order Implementation. Contractor shall be responsible for and shall minimize the impact of any transition between the Customer's incumbent service providers and the Contractor. Contractor shall inform the Customer of all Customer responsibilities throughout service implementation. In general, Order implementation shall not exceed ninety (90) days but shorter or longer timeframes may be negotiated between the Customer and the Contractor on a case by case basis. Contractor shall be responsible for all billing variations incurred during an unsuccessful service implementation. For

example, new rates are not applied correctly or telephone numbers are not recognized in database, etc.

8.3 Additional Provisions regarding Service Establishment for both Primary and Other customers:

8.3.1 Major Service Implementations:

8.3.1.1 Inspection of all Major Services Implementations. A Major Services Implementation is defined as any Customers with ten (10) or more locations and / or ten (10) or more PVC's. Customer may appoint an Inspector(s) from time to time to serve as Customer's representative during, installation, testing, cutover, operation and maintenance of the Services (and its billing) and shall advise Contractor of same. Such inspection may extend to any part of the installation or operation of the Services. The Inspector shall not be permitted to modify in any way the provisions of the Contract, nor to delay the work by failing to complete the inspection with reasonable promptness. The Inspector shall not interfere with the Contractor's management of the work. Instructions given by the Inspector shall be respected and responded to by Contractor. Whenever required by the Inspector, Contractor shall furnish without additional charge, all tools, test equipment, and labor necessary to make an examination of the work completed or in progress or test the quality of the Services. If the Services, including its installation and operation, is found to be not in compliance with the Specifications, Contractor shall bear all expenses of such examination and of satisfactory correction of the deficiencies. After all Service installation and testing activities are completed, and upon delivery of all required Service and testing documentation, Final Services Acceptance (FCA) shall be executed.

8.3.1.2 Acceptance Testing of all Major Services Implementation. Upon notification of completion of Contractor testing, Customer shall commence its Acceptance Testing Period of 30 calendar days for compliance with Services performance requirements. In the event of apparent failure to meet any performance requirements or standards during any Acceptance Testing Period, it is not required that one 30-day period expire in order for another Acceptance Testing Period to begin. Furthermore, if, during any Acceptance Testing Period, Customer identifies Service Affecting deficiencies, it shall be at Customer's option if another 30-day Acceptance Testing Period is required after Contractor satisfactorily corrects such deficiencies. Customer's standard of performance shall be met when the Services operates in conformance with the SLA requirements during its operational-use-time for a period of 30 consecutive calendar days from the commencement date of the Performance Period. If Customer identifies Service Affecting deficiencies, during the Performance Period, Customer shall promptly notify Contractor in writing of such deficiencies. Contractor shall correct these deficiencies in a timely and satisfactory manner and shall notify Customer in writing when deficiencies are corrected. Customer shall make every effort to assist Contractor in the resolution of all deficiencies but the responsibility ultimately resides with Contractor. Promptly upon successful completion of the Performance Period, Customer may notify Contractor in writing that the Performance Period is now complete. Contractor's receipt of Customer's letter shall prompt the execution of the Final Services Acceptance Document. If the Performance Period Acceptance Testing is not completed within 90 calendar days of the Contractor's CSO Initiation date, Customer shall have the option of terminating the CSO, without penalty or of authorizing Contractor in writing of an extension of the Performance Period deadline. Customer's option to terminate the CSO shall remain in effect until such time as successful completion of the service performance requirements is attained.

8.3.2 Order Modifications and Cancellations:

8.3.2.1 Modifications or Cancellations **prior to** Order Acceptance:

Customer may, at any time prior to Order acceptance, modify or cancel the Order, in whole, or in part. Customer shall have no liability for making such modifications or cancellations.

8.3.2.2 Modifications or Cancellations **after** Order Acceptance:

Customer may modify or cancel an Order after Order acceptance. Contractors may modify Orders as authorized by the Customer. Modifications or cancellations shall be executed in writing or electronically. Any unauthorized modification or cancellation by Contractor shall constitute a material breach of the Contract and, at the Customer's option, cause the Order to be void. Customer liability for modifications or cancellation made after Oder acceptance shall be limited to the full cost of all non-recoverable expenses, including any special construction charges, caused by the modification, not to exceed the non-recurring costs for products and services in the Order. Customers may cancel an Order due to Contractor's failure to perform in accordance with the Order notification, and/or the service level agreements contained in the Contract. Cancellation for Contractor default shall limit Customer liability to the reoccurring and non-reoccurring costs already accepted and in use by Customer.

9. CONTRACT MANAGEMENT:

9.1 Performance Management. Contractor shall cooperate with the Procurement Officer in the administration of the Contract, to review performance indicators, to identify performance issues before, or promptly after, a problem occurs, and to address and resolve performance problems in a timely and responsible manner.

9.1.1 Annual and Semi-annual Meetings. Contractor shall, at least once annually and more frequently as required by the State, meet with the Procurement Officer and/or members of delegated representatives of the State's ASET-EIC department, to review Contractor performance against the terms, conditions and requirements of the Contract.

9.1.2 Issue and Problem Resolution. When an issue or problem requires notice and mitigation steps by the parties, the State and Contractor shall follow the same Dispute Resolution process as set forth herein. Depending on the severity of the issue or problem, the State may at its discretion, bypass the Dispute Resolution process herein and precede directly to the Remedies provisions of the Contract.

9.1.3 Responsibility Documentation. Contractor's past performance is a standard determinant of Offeror Responsibility in the award of Arizona State Contracts. Contractor performance, as documented in the Contract File, may positively or negatively effect future proposals submitted in response to solicitations conducted by the State of Arizona, its agencies, boards or commissions, as well as members of the State Purchasing Cooperative.

9.2 Broadband Expansion Management.

9.2.1 Annual and Semi-annual Meetings. Contractor shall, at least once annually and more frequently as required by the State, meet with the Procurement Officer and/or members of delegated representatives of the State's ASET-Broadband department, to review Contractor performance against the terms, conditions and requirements of the Contract. Reviewing progress on plans of expansion originally submitted.

9.2.2 Service Maps. Contractors shall provide maps of their current and planned broadband infrastructure in KMZ or an equivalent digital format for counties in which they intend to offer services under this contract, such maps need to include physical layer fiber routes, including long haul, middle mile and last mile segments; points-of-presence, interconnection/peering points, central offices, and data centers; other access points such as: manholes, splice points, etc. Direct information with regard to served customers need not be included. These maps are to be updated on a semi-annual basis and submitted to the State Procurement Office.

9.2.3 Issue and Problem Resolution. When an issue or problem requires notice and mitigation steps by the parties, the State and Contractor shall follow the same Dispute Resolution process as set forth herein. Depending on the severity of the issue or problem, the State may at its discretion, bypass the Dispute Resolution process herein and precede directly to the Remedies provisions of the Contract.

10. E-RATE COMPLIANCE

In order to provide the services listed within an awarded contract to E-Rate eligible entities a Carrier or Provider shall obtain a Service Provider Identification Number (SPIN) from the Universal Service Administrative Company as part of their response to this solicitation. Failure to do so will result in a Carrier or Provider being excluded from bidding services to said eligible entities.

If a provider chooses not to obtain a SPIN they will not be disqualified from consideration for this reason alone.

10.1 **The originating FCC Form 470 number for this RFP is 426480001240887.**

As required by federal law, providers of eligible services must comply with the Lowest Corresponding Price (LCP) rule:

a. **47 CFR § 54.500(f)**
Lowest corresponding price is the lowest price that a service provider charges to non-residential customers who are similarly situated to a particular school, library, or library consortium for similar services. ("Similarly situated" means the "geographic service area" in which a service provider is seeking to serve customers with any of its E-rate services.)

b. **47 CFR § 54.511(b)**
Providers of eligible services shall not charge schools, school districts, libraries, library consortia, or consortia including any of these entities a price above the lowest corresponding price for supported services, unless the Federal Communications Commission, with respect to interstate services or the state commission with respect to intrastate services, finds that the lowest corresponding price is not compensatory.

The Billed Entity Applicant Reimbursement (BEAR) FCC Form 472 is filed by the applicant and approved by the service provider after the applicant has paid for services in full. The Service Provider Invoice (SPI) FCC Form 474 is filed by the service provider after the applicant has been billed for the non-discount portion of the cost of eligible services. *Note: Applicants can choose their method of invoicing; service providers cannot force applicants to use a particular method*.

11. PRICING STRUCTURE

Providers shall only charge the pricing found within 'Attachment II, Pricing Structure', which shall be firm fixed pricing.

Providers are required to provide pricing as lowest corresponding price, which is defined as the lowest price that a service provider charges to non-residential customers, such as, schools, libraries, consortiums, and businesses who are similarly situated customers for similar services. "Similarly situated" means the "geographic service area" in which a service provider is seeking to serve customers.

11.1 Category 1, Dedicated Private Circuits and Networks:

11.1.1 Pricing Structure: Prices for Private (physical and virtual) circuit and network services shall be based on the service access medium and capacity, the provisioned bandwidth for the access connection, and the guaranteed QoS parameters of the service. The following are examples of allowed pricing elements:

11.1.1.1 Non-Recurring Costs (NRC) for installing and activating the service at a specific location;
11.1.1.2 'Extension' NRC for extending the provider's transport medium to an off-net location;
11.1.1.3 Monthly lease for Demarcation equipment if not provided by customer unless the description in Attachment II for a particular Type Of Service requires that any equipment associated with the service be bundled with the service and the cost to be included in the Monthly Recurring Cost (MRC);
11.1.1.4 Monthly Recurring Costs (MRC) for service at specified data rates with any required bundled equipment cost; and
11.1.1.5 MRC for any specific service level commitments not described in the product bid lists.

11.2 Category 2, Voice Grade Services:

11.2.1 Non-Recurring Costs (NRC) for installing and activating the service at a specific location;

11.2.1.1 Monthly Recurring Charge (MRC) for Voice Package:

11.2.1.1.1 Base voice service includes a local "line" with assigned local number and unlimited local calling.

11.2.1.1.2 Call feature packages including call features as selected by the Customer:

11.2.1.1.2.1 Base voice service with 1 include Call Feature;
11.2.1.1.2.2 Base voice service with bundled package of up to 5 Call Features;
11.2.1.1.2.3 Base voice service with bundled package of up to 10 Call Features; and
11.2.1.1.2.4 Base voice service with bundled package of 11 or more Call Features.

11.2.1.2 Long Distance Services:

11.2.1.2.1 Domestic: U.S. Long Distance rates shall be quotes as ICB on the following billing alternatives:

11.2.1.2.1.1 Flat Rate; and
11.2.1.2.1.2 Usage Based by 1/10th minute increments starting with called party answer.

11.2.1.2.2 Global: International Long Distance rates shall be quoted as ICB based on a country list provided by the Customer. Billing shall be based on the following alternatives:

11.2.1.2.2.1 Flat Rate by called country.; and
11.2.1.2.2.2 Usage Based by country called per 1/10th minute increments starting with called party answer.

11.2.1.3 'Extension' NRC for extending the provider's transport medium to an off-net location.

11.3 Category 3, WiFi Access Services:

11.3.1 Pricing for WiFi Access Services shall be based on, the provisioned bandwidth for the access connection, and the guaranteed QoS parameters of the service specified in the bid list. The following are examples of allowed pricing elements:

11.3.1.1 Non-Recurring Costs (NRC) for installing and activating the service per access point installed at a specific location;
11.3.1.2 'Extension' NRC for extending the provider's transport medium to an off-net location;
11.3.1.3 Monthly Recurring Costs (MRC) for transport service at specified data rates (including bundled Access Point(s) and any managed routers); and
11.3.1.4 MRC for any specific service level commitments not described in the product bid lists.

11.4 Category 4, Internet Access Services:

11.4.1 Pricing for Internet Access Services shall be based on the service access medium and capacity, the provisioned bandwidth for the access connection, and the guaranteed QoS parameters of the service. The following are examples of allowed pricing elements:

11.4.1.1 Non-Recurring Costs (NRC) for installing and activating the service at a specific location;
11.4.1.2 'Extension' NRC for extending the provider's transport medium to an off-net location;

11.4.1.3 Monthly cost for Demarcation equipment (such as cable modem, DSL modem, fiber termination panel, etc.) if not bundled with the service and included with the MRC. or if not provided by customer; and

11.4.1.4 Monthly Recurring Costs (MRC) for guarantee service at specified data rates and QoS/CoS levels.

11.5 Category 5, Fiber services:

11.5.1 Pricing for Fiber Services shall be based on the capacity, distance of the circuit, and Guaranteed Availability and Service Restoration commitments, as well as any bundled electronics on the Provider side of the demarcation. Examples of allowable charges are:

11.5.1.1 Non-Recurring Costs (NRC) for installing and activating the service at specific locations;

11.5.1.2 'Extension' NRC for extending the provider's transport medium to an off-net location;

11.5.1.3 Monthly lease for Demarcation equipment (such as fiber termination panel, FODUs etc.) if not bundled with the service and included with the MRC, or if not provided by customer; and

11.5.1.4 Monthly Recurring Costs (MRC) for guarantee service at specified data rates and QoS/CoS levels.

11.6 E-Rate Eligible Entities:

11.6.1 Specific only to E-Rate Eligible Entities, a Contractor may be required to quote the bundled rate pricing proposed within Attachment II, Pricing Structure, as a 'de-bundled' set of services separating Internet Access and transport services from managed router(s) and WiFi router service. If required to 'de-bundle' the pricing, the quoted price shall not exceed the pricing of the bundled rate proposed within Attachment II, pricing structure for the WiFi Access Service in question.

1. TERM OF CONTRACT

The contract shall begin on July 1, 2015 and shall continue for a term of five (5) years, unless terminated in accordance to the terms of this contract.

2. CONTRACT TYPE (AS NEEDED)

The contract shall be on an as needed, if needed basis at Firm Fixed Price rates.

3. NON-EXCLUSIVE CONTRACT

This contract has been awarded with the understanding and agreement that it is for the sole convenience of the State of Arizona. The State reserves the right to obtain like goods or services from another source when necessary. Off-contract purchase authorization(s) may be approved by the State Procurement Office. Approvals shall be at the exclusive discretion of the State and shall be final. Off-contract procurement shall be consistent with the Arizona Procurement Code.

4. ELIGIBLE AGENCIES (Statewide)

This Contract shall be for the use of all State of Arizona departments, agencies, commissions and boards. In addition, eligible State Purchasing Cooperative members may participate at their discretion. In order to participate in this contract, a cooperative member shall have entered into a Cooperative Purchasing Agreement with the Department of Administration, State Procurement Office as required by Arizona Revised Statues § 41-2632.

Membership in the State Purchasing Cooperative is available to all Arizona political subdivisions including cities, counties, school districts, and special districts. Membership is also available to all non-profit organizations, as well as State governments, the US Federal Government and Tribal Nations. Non-profit organizations are defined in A.R.S. § 41-2631(4) as any nonprofit corporation as designated by the internal revenue service under section 501(c)(3) through 501(c)(6).

5. ESTIMATED QUANTITIES (CONSIDERABLE)

The State anticipates considerable activity resulting from contract(s) that will be awarded as a result of this solicitation; however, no commitment of any kind is made concerning quantities actually acquired and that fact should be taken into consideration by each potential Contractor.

6. ADMINISTRATIVE FEE / USAGE REPORTS

6.1 Method Method of Assessment. At the completion of each quarter, the Contractor reviews all sales under their contract in preparation for submission of their Usage Report. The Contractor identifies all sales receipts transacted by members of the State Purchasing Cooperative and assesses one percent (1.0%) of this amount in their Usage Report. An updated list of State Purchasing Cooperative members may be found at: https://spo.az.gov/state-purchasing-cooperative. At its option, the State may expand or narrow the applicability of this fee.

For this contract only, the State of Arizona will not assess the 1% administrative fee to Contractors for E-Rate eligible purchases. E-Rate eligible purchases can be made by eligible recipients per 47 CFR §54.501. To determine if a customer is an eligible recipient the Contractor shall refer to the following web address: http://usac.org/sl/applicants/beforeyoubegin/definitions.aspx

The Contractor shall summarize all sales, along with all assessed Administrative Fee amounts within their Usage Report, including total amounts for the following:

- o Total sales receipts from State agencies, boards and commissions;
- o Total sales receipts from members of the State Purchasing Cooperative; and
- o Total Administrative Fee amount based on one percent (1.0%) of the sales receipts from members of the State Purchasing Cooperative.

6.2 Submission of Reports and Fees. Within thirty (30) days following the end of the quarter, the Contractor submits their Usage Report and if applicable, a check in the amount of one percent (1%) of their sales receipts from members of the State Purchasing Cooperative, to the Department of Administration, State

Procurement Office. Contractors are required to use the State's current report templates unless you have authorization from your contract officer to use a different format. You need to complete Form 799, which is a cover letter that gives the totals of your transactions; and Form 801, which is an Excel spreadsheet that details your transactions. Sales to state agencies and the cooperative members are to be totaled separately. The most current forms can be downloaded at https://spo.az.gov/statewide-contracts-administrative-fee.

6.2.1 The submission schedule for Administrative Fees and Usage reports shall be as follows:

FY Q1, July through September	Due October 31
FY Q2, October through December	Due January 31
FY Q3, January through March	Due by April 30
FY Q4, April through June	Due by July 31

6.2.2 Usage Reports and any questions are to be submitted by email to the state's designated usage report email address: usage@azdoa.gov

6.2.3 Administrative Fees shall be made out to the "State Procurement Office" and mailed to:

Department of Administration
General Services Division
ATTN: "Statewide Contracts Administrative Fee"
100 N. 15th Avenue, Suite 202
Phoenix, AZ 85007

6.3 The Administrative Fee shall be a part of the Contractor's unit prices and is not to be charged directly to the customer in the form of a separate line item. Statewide contracts shall not have separate prices for State Agency customers and State Purchasing Cooperative customers.

6.4 Contractor's failure to remit administrative fees in a timely manner consistent with the contract's requirements may result in the State exercising any recourse available under the contract or as provided for by law.

7. LICENSES

The Contractor shall maintain in current status all Federal, State and Local licenses and permits required for the operation of a business conducted by the Contractor.

8. SUBCONTRACTORS

Supplemental to the Subcontractor term in the Uniform Terms and Conditions, Contractor shall not enter into any Subcontract under this Contract, for the provision of supplies or performance of services under this Contract, without the advance written approval, by way of bilateral contract amendment, of the State Procurement Office. When requesting the Procurement Officer's approval, the Contractor shall list all new subcontractors, their contact information, certifications required of them, their Minority and Women Owned Enterprise status (cite any certifications use in determining such status) as well as the subcontractor's proposed responsibilities under the Contract. The Subcontractor's most current certificate of insurance shall be provided at this time as well. With the request, Contractor shall certify that all Subcontracts incorporate by reference the terms and conditions of this Contract.

Wholesale/Inter-carrier Agreements shall not be considered as subcontractor relationships that need to be disclosed or approved by the State Procurement Office.

9. PERFORMANCE BOND

The Contractor shall be required to furnish an irrevocable security in the amount of $1,000,000 payable to the State of Arizona, binding the Contractor to provide faithful performance of the contract. This shall be provided on an annual basis at the time of contract's annual anniversary.

Performance security shall be in the form of a performance bond, certified check or cashier's check. This security must be in the possession of the State Procurement Office within ten (10) calendar days from contract start date as defined in the Special Terms and Conditions Section 1. If the Contractor fails to execute the security document, as required, the Contractor may be found in default and contract terminated by the State. In case of default, the state reserves all rights to recover as provided by law.

10. NEW EQUPIMENT

All equipment, materials, parts and other components incorporated in the work or an item covered by this Contract shall be new, of the latest model and of the most suitable grade for the purpose intended. Any and all work under this Contract shall be performed in a skilled and workmanlike manner.

11. EMERGING TECHNOLOGIES

The telecommunication and broadband industries are changing rapidly and the types of services, technology, methods of deployment, and providers of product and services will likely change during the term of this Contract. The State seeks to ensure that Contracts can meet the shifting needs caused by these changes. If new services within the existing categories are identified the State at its option can add those new services within Attachment II via a bilateral contract amendment.

12. BROADBAND EXPANSION PROVISION

Contractors who are awarded the opportunity to provide new infrastructure expansion are eligible to receive consideration for the following additional terms:

12.1 Longer-Term Contracts. After the initial 5 years base the contract can be extended for one (1) three (3) year term. At the expiration of that three (3) year term, the contract can be extended a final time for two (2) additional years, making the max life of a resultant contract 10 years.

12.2 Longer-Term Service Contracts. If a Carrier or Provider wishes to seek special terms for a Longer-Term Service Contract (greater than five (5) years) with a customer, to justify investment in new infrastructure expansion, they shall submit a business case to the State Procurement Office for review and possible acceptance.

12.3 Early-Termination Terms. If a Carrier or Provider wishes to seek special terms for early-termination, a business case shall be submitted to the State Procurement Office for review and possible acceptance.

13. BRAND NAME

References made to items, identified by trade name, are intended to show kind and quality of products desired and is not intended to be restrictive or limit competition. The use of brand names or manufacturer's catalog references shall be constructed as quality level, method and type of performance and does not indicate that item cited is mandatory. The State reserves the right to determine what products are considered like or equal. Products substantially equivalent to those designated shall qualify for consideration.

14. WARRANTY

14.1 Liens. The Contractor warrants that the Materials supplied under this Contract are free of liens and shall remain free of liens.

14.2 Quality. Unless otherwise modified elsewhere in the terms and conditions, the Contractor warrants that, for one year after acceptance by the State, the Materials shall be:

- Of a quality to pass without objection in the trade under the Contract description;
- Fit for the intended purposes for which the Materials are used;
- Conform to the written promises or affirmations of fact made by the Contractor; and
- Fully compatible with the State's computer hardware and software environment.

14.3 Fitness. The Contractor warrants that any Materials supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.

14.4 Inspection/Testing. The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the Materials by the State.

14.5 Compliance with Applicable Laws. The Materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.

Contractor represents and warrants to the State that Contractor has the skill and knowledge possessed by members of its trade or profession and Contractor will apply that skill and knowledge with care and diligence so Contactor and Contractor's employees and any authorized subcontractors shall perform the Services described in this Contract in accordance with the Statement of Work.

Contractor represents and warrants that the Materials provided through this Contract and Statement of Work shall be free of viruses, backdoors, worms, spyware, malware and other malicious code that will hamper performance of the Materials, collect unlawful personally identifiable information on users or prevent the Materials from performing as required under the terms and conditions of this Contract.

15. AUTHORIZATION FOR SERVICES

Authorization for purchase of services shall be made only upon the issuance of a Purchase Order that is signed by an authorized agent. The Purchase Order will indicate the contract number and the dollar amount of funds authorized. The Contractor shall only be authorized to perform services up to the amount on the Purchase Order. The State shall not have any legal obligation to pay for services in excess of the amount indicated on the Purchase Order. No further obligation for payment shall exist unless a) the Purchase Order is changed or modified with an official Change Order, and/or b) an additional Purchase Order is issued for purchase of services under this Contract.

16. EXTRA-CONTRACTUAL PRODUCTS AND SERVICES PROHIBITED

Any attempt to use an Order to represent any products and/or services not specifically awarded and cited in the Contract as being included in the Contract is a violation of the Contract and the Arizona Procurement Code. Any such action is subject to the legal and contractual remedies available to the State, inclusive of but not limited to Contract termination for default, suspension and/or debarment of the Contractor.

17. BILLING

Contractors will be doing business with Customers of dramatically different size and need. As such, different levels of complexity in billing may be required. An objective of this contract is to meet the various needs of different customers in standard electronic format. The State desires electronic billing be adopted where possible for any purchased services by any customer for services covered by this Contract.

17.1 Billing Detail

Invoices submitted for payment shall contain the same description detail as provided in the Quote Form, at a minimum, shall identify all products and services (e.g. circuit number, BTN, WTN), the unit price, units of quantity, extended price, service address or location of Service, and invoice total, for both paper and electronic media. Additionally, the approved electronic media shall also include at a minimum; Call Detail Records identifying the actual originating phone extension (unless ANI not sent by customer for dedicated facilities), Discount Details, Tax Details, Feature Details, Other Fees and Surcharges details, approved Adjustment details, circuit detail at the CSR level, and USOC level invoice details. Invoice Identification Information. Invoice Identification Information (III) shall include at a minimum the following 16 data elements: 1) Vendor Name; 2) Vendor Account Number; 3) Invoice Date; 4) Total Invoice Amount; 5) Total Current Charges; 6) Vendor Remit Address; 7) Account-Level Late Fees; 8) Account Level Outstanding Balance; 9) Account Level Payment Received; 10) Account Level Miscellaneous Fees;11) Point of Service ID (e.g., Circuit number, phone number, etc.); 12) Monthly Fees; 13) Usage-based Charges; 14) Feature Charges; 15) Taxes; and 16) Total Charges for Point of Service

17.2 Billing and Payment Data

Contractor shall provide basic billing data to all Ordering Entities that request it. This data shall include at a minimum Usage Statistics; Applicable Discount Details; Call Detail for LD at the actual originating extension level (unless ANI is not sent by Customer for dedicated facilities); Circuit Detail, when applicable, at the Customer Service Record (CSR) or equivalent level; Tax Details; Feature Details; Other Fees and Surcharges Details; Approved Adjustment Details; and Universal Service Order Code (USOC) level or equivalent Invoice Details. Ordering Entities may request this data at any point during the Term of Contract.

17.3 Billing SLA Affected Services

Contractor shall process invoices in accordance with the Billing and Payment Section of resultant Service Level Agreements. If, after the SLA is resolved the Customer owes the disputed amount in part or in whole to the Contractor, Contractor may assess overdue account charges up to a maximum rate of two-thirds of one percent per month on the outstanding balance.

17.4 Billing Disputes

Contractor and Customers shall use the following process in identifying and mitigating performance issues or problems associated with billing issues under the Contract. Contractor shall work with Customer, or their designee (which may be an approved Subcontractor), to automate the dispute process between Contractor and Customer. Contractor shall provide a responsibility matrix identifying representatives, their phone number and email address, for questions and resolution of issues, including escalation of unresolved disputes.

17.4.1 Billing Dispute Resolution

Failure by Customer to pay any portion of or the entire invoiced amount based on Contractor billing errors or disputed charges shall not constitute default under this Contract. Customer will pay undisputed portions of disputed or incorrect invoices where Customer can easily identify the undisputed portion. Payment of an amount less than the total amount due on all unpaid invoices shall be credited as directed by Customer. In no event shall Contractor apply any payment or portion thereof to any particular amount or item that is subject to any claim of error or dispute between the parties.

17.5 Billing Adjustments

Revised invoices or billing adjustments shall apply only to Contractor's Services that can be verified by the Customer, and requests for such adjustments must be submitted in writing to the Customer within 60 days of Service invoice delivery; shall reference the original invoice in which the error was made, and contain sufficient level of detail to make a reasonable determination of fact. Billing Adjustments, once determined to be fact, shall be documented in writing on all forms of billing, paper and electronic, in the next billing cycle.

17.6 Billing Agent

Contractor may use an Agent (designated herein as a Subcontractor) to prepare and submit invoices and receive Customer payments, on behalf of, but in the Contractor's name. Contractor shall remain responsible for the accuracy and correctness of the invoices issued and payments collected by any billing Agent. If Contractor exercises this option, Contractor shall promptly notify Customer in writing of such arrangement for invoicing and collection, including name, mailing and street addresses, and telephone number for the firm and the individual person responsible for this function, and any changes thereto.

18. PAYMENT PROCEDURES

The State will not make payments to any Entity, Group or individual other than the Contractor with the Federal Employer Identification (FEI) Number identified in the Contract. Contractor invoices requesting payment to any Entity, Group or individual other than the contractually specified Contractor shall be returned to the Contractor for correction.

The Contractor shall review and insure that the invoices for services provided show the correct Contractor name prior to sending them for payment.

If the Contractor Name and FEI Number change, the Contractor must complete an "Assignment and Agreement" form transferring contract rights and responsibilities to the new Contractor. The State must indicate consent on the form. A written Contract Amendment must be signed by both parties and a new W-9 form must be submitted by the new Contractor and entered into the system prior to any payments being made to the new Contractor.

19. PRICING

19.1 Price Increase

Contractor prices accepted and subsequently awarded by a Contract shall remain in effect for a minimum of one (1) year. All written requests for price adjustments made by the Contractor shall be submitted 60 to 90 days prior to the anniversary or contract renewal date.

The State will review any requested rate increase to determine whether such request is reasonable in relation to increased supplier or material costs. Contractor shall provide written justification for any price adjustment requested, including information contained in the Consumer Price Index or similar official cost analysis to support any requested price increase. The State shall determine whether the requested price increase or an alternate option is in the best interest of the State. Any price increase adjustment, if approved, will be effective upon execution of a written Contract amendment.

Contract release order/purchase orders placed before a price increase is authorized shall be delivered at the purchase order price. However, if the price should decrease between receipt of the order, and shipment of the order, the Contractor shall invoice at the new lowest discounted price. The awarded contract price shall remain the same throughout the term of the contract, to include all renewals.

19.2 Price Reduction

Price reductions may be submitted in writing to the State for consideration at any time during the contract period. The State at its own discretion may accept a price reduction.

In relation to recurring costs based on most favored term pricing, after 3 years of completed service customer may request a review of the contract to bring pricing into line with current market pricing.

Any price reductions requests that are accepted by the State will be acknowledged by the issuance and acceptance of a fully executed bilateral contract amendment. Any accepted price reduction shall be available to all customers who may utilize this contract.

19.3 Bulk Pricing:

In addition to decreasing contract pricing in accordance with Special Terms and Conditions, Section 19.2, Price Reduction, Contractor(s) may offer bulk pricing at any time during the Contract. Such pricing shall be at a MRC of at least 10% less than the current contract pricing for said service. The Bulk Pricing may be presented for consideration by the State in the form of tiered pricing as well.

If electing to exercise this provision the Contractor shall submit to the following to the State Procurement Office, Procurement Officer:

- A Formal request to consider an addition of Bulk Pricing for specified products;
- Product Identification, identifying the 'Arizona Service ID' as listed in Attachment II, Pricing Structure; and
- The Bulk Pricing vs the existing contract pricing.

Approval of Bulk Pricing shall be in the form of a bilateral contract amendment. Bulk Pricing shall be available to all customers allowed to purchase under the Contract and available for the life of the Contract.

20. DATA SECURITY / SECURITY

20.1 Data Privacy/Security Incident Management.

Contractor and its agents shall cooperate and collaborate with appropriate State personnel to identify and respond to an information security or data privacy incident, including a security breach.

20.1.1 Threat of Security Breach
Contractor(s) agrees to notify the Customer's Chief Information Officer (CIO), the Customer's Chief Information Security Officer (CISO) and other key personnel as identified by the Customer of any perceived threats placing the supported infrastructure and/or applications in danger of breach of security. The speed of notice shall be at least commensurate with the level of threat, as perceived by the Contractor(s). Customer shall agree to provide contact information for the CIO, the CISO and key personnel to the Contractor if applicable.

20.1.2 Discovery of Security Breach
Contractor agrees to immediately notify the Customer's CIO, the CISO and key personnel as identified by the State of a discovered breach of security. Customer shall agree to provide contact information for the CIO, the CISO and key personnel to the Contractor if applicable.

20.2 Security Requirements for Contractor Personnel.
Each individual proposed to provide services through this contract agrees to security clearance and background check procedures, including fingerprinting, as defined by the Arizona Department of Administration in accordance with Arizona Revised Statutes §41-710. The results of the individual's background check procedures must meet all HIPAA and law enforcement requirements. Contractor is responsible for all costs to obtain security clearance for their consultants providing services through this contract. Contractor personnel, agents or sub-contractors that have administrative access to the State's networks may be subject to any additional security requirements of ADOA-ASET as may be required for the performance of the contract. The Contractor, its agents and sub-contractors shall provide documentation to ADOA-ASET confirming compliance with all such additional security requirements for performance of the contract. Additional security requirements include but are not limited to the following:

20.2.1 Identity and Address Verification – that verifies the individual is who he or she claims to be including verification of the candidate's present and previous addresses;
20.2.2 UNAX/confidentiality Training;
20.2.3 HIPAA Privacy and Security Training; and
20.2.4 Information Security Training.

20.3 Information Access. The Contractor shall, where applicable, implement and/or use network management and maintenance applications and tools and appropriate fraud prevention and detection and encryption technologies. The Contractor and its employees, agents and Subcontractors shall comply with all policies and procedures of the individual Customer regarding data access, privacy and security, including those prohibiting or restricting remote access to the Customer's systems and data. The Customer shall authorize, and the Contractor shall issue, any necessary information-access mechanisms, including access IDs and passwords, and the Contractor agrees that the same shall be used only by the personnel to whom they are issued. The Contractor shall provide to such personnel only such level of access as is minimally necessary to perform the tasks and functions for which such personnel are responsible. The Contractor shall from time-to-time, upon request from the Customer, but in the absence of any request from the Customer at least quarterly, provide the Customer with an updated list of the Contractor personnel having access to the Customer's systems, software, and data, and the level of such access. Computer data and software, including the Customers Data, provided by the Customer or accessed (or accessible) by the Contractor personnel or the Contractor's Subcontractor personnel, shall be used by such personnel only in connection with the obligations provided hereunder, and shall not be commercially exploited by the Contractor or its Subcontractors in any manner whatsoever. Failure of the Contractor or the Contractor's Subcontractors to comply with the provisions of this Contract may result in the Customer restricting offending personnel from access to the Customer computer systems or the Customer Data or immediate termination of this Contract. It shall be the Contractor's obligation to maintain and ensure the confidentiality and security of the Customer Data in its possession or on its systems.

20.4 Information Disclosure. The Contractor shall establish and maintain procedures and controls that are acceptable to the State for the purpose of assuring that no information contained in its records or obtained from the state or from others in carrying out its functions under the contract shall be used or disclosed by it,

its agents, officers, or employees, except as required to efficiently perform duties under the Contract. Persons requesting such information should be referred to the State. The Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of the Contractor as needed for the performance of duties under the Contract, unless otherwise agreed to in writing by the State.

20.5 Building Access.

20.5.1 Contractor access to Customer facilities and resources shall be properly authorized by Customer personnel, based on business need and will be restricted to least possible privilege. Upon approval of access privileges, the Contractor shall maintain strict adherence to all policies, standards, and procedures. Policies / Standards, ADOA/ASET Policies / Procedures, and Arizona Revised Statues (ARS) 28-447, 28-449, 28-450, 38-421, 13-2408, 13-2316, 41-770).

20.5.2 Failure of the Contractor, its agents or subcontractors to comply with policies, standards, and procedures including any person who commits an unlawful breach or harmful access (physical or virtual) will be subject to prosecution under all applicable state and / or federal laws. Any and all recovery or reconstruction costs or other liabilities associated with an unlawful breach or harmful access shall be paid by the Contractor.

21. SECTION 508 COMPLIANCE

Unless specifically authorized in the Contract, any electronic or information technology offered to the State of Arizona under this Contract shall comply with A.R.S. § 41-3531 and § 41-3532 and Section 508 of the Rehabilitation Act of 1973, which requires that employees and members of the public shall have access to and use of information technology that is comparable to the access and use by employees and members of the public who are not individuals with disabilities.

22. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996

The Contractor warrants that it is familiar with the requirements of HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH Act) of 2009, and accompanying regulations and will comply with all applicable HIPAA requirements in the course of this Contract. Contractor warrants that it will cooperate with the State in the course of performance of the Contract so that both the State and the Contractor will be in compliance with HIPAA, including cooperation and coordination with the Arizona Strategic Enterprise Technology (ASET) Group, Statewide Information Security and Privacy Office (SISPO), Chief Privacy Officer and HIPAA Coordinator and other compliance officials required by HIPAA and its regulations. Contractor will sign any documents that are reasonably necessary to keep the State and Contractor in compliance with HIPAA, including but not limited to, business associate agreements.

If requested, the Contractor agrees to sign a “Pledge to Protect Confidential Information” and to abide by the statements addressing the creation, use and disclosure of confidential information, including information designated as protected health information and all other confidential or sensitive information as defined in policy. In addition, if requested, Contractor agrees to attend or participate in job related HIPAA training that is: (1) intended to make the Contractor proficient in HIPAA for purposes of performing the services required and (2) presented by a HIPAA Privacy Officer or other person or program knowledgeable and experienced in HIPAA and who has been approved by the ASET/SISPO Chief Privacy Officer and HIPAA Coordinator.

23. FIRST PARTY LIMITATION OF LIABILITY

Contractor’s liability for first party damages to the State arising from this Contract shall be limited to two (2) times the maximum-not-to-exceed amount of this Contract. The foregoing limitation of liability shall not apply to: (i) liability, including indemnification obligations, for third party claims, including but not limited to, infringement of third party intellectual property rights; (ii) claims covered by any specific provision of the Contract calling for liquidated damages or other amounts, including but not limited to, performance requirements; or (iii) costs or attorneys’ fees that the State is entitled to recover as a prevailing party in any action.

24. INDEMNIFICATION

Contractor shall indemnify, defend with counsel reasonably approved by the State, and hold harmless, the State, its departments, agencies, boards, commissions, universities, officers, agents and employees (collectively, the

"Indemnitee") from and against any and all claims, actions, damages, costs (including attorneys' fees), and losses arising under this Contract, including, but not limited to, bodily injury or personal injury (including death) or loss or damage to tangible or intangible property, but excluding damages arising solely from the gross negligence or willful misconduct of the Indemnitee. This indemnification obligation includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of Contractor to comply with any federal, state or local law, statute, ordinance, rule, regulation or court decree. Contractor shall have control, subject to the reasonable approval of the State, of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when substantial principles of government or public law are involved, or when involvement of the State is otherwise mandated by law, the State may elect, in its sole and absolute discretion, to participate in such action at its own expense with respect to attorneys' fees and costs, but not liability, and the State shall have the right to approve or disapprove any settlement, which approval shall not be unreasonably withheld or delayed. The State shall reasonably cooperate in its defense and any related settlement negotiations.

25. IP INDEMNIFICATION

Indemnification - Patent and Copyright. With respect solely to Materials provided or proposed by Contractor or Contractor's agents, emp1oyees, or subcontractors (each a “Contractor Party”) for performance of this Contract, Contractor shall indemnify, defend and hold harmless the State, its departments, agencies, boards, commissions, universities, officers, agents and employees (collectively, the "Indemnitee"), against any third-party claims for liability, including, but not limited to, reasonable costs and expenses, including attorneys' fees, for infringement or violation of any patent, trademark, copyright or trade secret, by such Materials or the State’s use thereof.

In addition, with respect to claims arising from computer hardware or software manufactured or developed solely by a third party, Contractor shall pass through to the State such indemnity rights as it receives from such third party (the "Third Party Obligation") and will cooperate in enforcing them; provided, however, that (i) if the third party manufacturer fails to honor the Third Party Obligation, or (ii) the Third Party Obligation is insufficient to fully indemnify the State, Contractor shall indemnify, defend and hold harmless the State against such claims in their entirety or for the balance of any liability not fully covered by the Third Party Obligation.

The State shall reasonably notify the Contractor of any claim for which Contractor may be liable under this section. If the Contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply. Contractor shall have control, subject to the reasonable approval of the State, of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when substantial principles of government or public law are involved or when involvement of the State is otherwise mandated by law, the State may elect, in its sole and absolute discretion, to participate in such action at its own expense with respect to attorneys' fees and costs, but not liability, and the State shall have the right to approve or disapprove any settlement, which approval shall not be unreasonably withheld or delayed. The State shall reasonably cooperate in the defense and any related settlement negotiations.

If Contractor believes at any time that any Materials provided or in use pursuant to this Contract infringe a third party's intellectual property rights, Contractor shall, at Contractor's sole cost and expense, and upon receipt of the State's prior written consent, which shall not be unreasonably withheld, (i) replace an infringing Material with a non-infringing Material; (ii) obtain for the State the right to continue to use the infringing Material; or (iii) modify the infringing Material to be non-infringing, provided that following any replacement or modification made pursuant to the foregoing, the Material continues to function in accordance with the Contract. Contractor’s failure or inability to accomplish any of the foregoing shall be deemed a material breach of this Contract.

Notwithstanding the foregoing, Contractor shall not be liable for any claim for infringement based solely on any Indemnitee’s:

(i) modification of Materials provided by Contractor other than as contemplated by the Contract or the specifications of such Materials or as otherwise authorized or proposed in any way by Contractor or a Contractor Party;

(ii) use of the Materials in a manner other than as contemplated by this Contract or the specifications of such Materials, or as otherwise authorized or proposed in any way by Contractor or a Contractor Party; or

(iii) use of the Materials in combination, operation, or use with other products in a manner not contemplated by the Contract, or, the specifications of such Materials, or as otherwise authorized or proposed in any way by Contractor or a Contractor Party.

Contractor certifies, represents and warrants to the State that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of the Contract for the acquisition, operation or maintenance of Materials in violation of intellectual property laws.

26. INTELLECTUAL PROPERTY

20.1 Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, or trade secrets created or conceived solely pursuant to or as a result of this Contract and any related subcontract (collectively, the "Intellectual Property"), shall be work made for hire and the State shall be the owner of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this Contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Software and other Materials developed or otherwise obtained by or for Contractor or its affiliates independently of this Contract ("Independent Materials") do not constitute Intellectual Property. If Contractor creates derivative works of Independent Materials, then the elements of such derivative works created pursuant to this Contract shall constitute Intellectual Property owned by the State. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by Contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this Contract.

Notwithstanding the foregoing, if the State elects, in its sole and absolute discretion, to relinquish its ownership interest in any or all of the Intellectual Property, the State shall have the rights to use, modify, reproduce, release, perform, display, sublicense or disclose such Intellectual Property within State government and operations without restriction for any activity in which the State is a party (collectively, "Government Purpose Rights").

27. SURVIVAL OF RIGHTS AND OBLIGATIONS AFTER CONTRACT EXPIRATION OR TERMINATION

21.1 Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition the parties hereto acknowledge that pursuant to A.RS § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S. Title 12, Chapter 5.

21.2 Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer including, without limitation, all purchase orders received prior to, but not fully performed and satisfied at the expiration or termination of, this Contract.

28. INSURANCE REQUIREMENTS

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The *insurance requirements* herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work

under this contract by the Contractor, its agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance.

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

28.1.1 Commercial General Liability – Occurrence Form
Policy shall include bodily injury, property damage, personal and advertising injury and broad form contractual liability coverage.

• General Aggregate	$5,000,000
• Products – Completed Operations Aggregate	$1,000,000
• Personal and Advertising Injury	$1,000,000
• Damage to Rented Premises	$ 50,000
• Each Occurrence	$1,000,000

28.1.1.1 The policy shall be endorsed **(Blanket Endorsements are not acceptable)** to include the following additional insured language: ***"The State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor."*** Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract.

28.1.1.2 Policy shall contain a waiver of subrogation endorsement **(Blanket Endorsements are not acceptable)** in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

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

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

28.1.2.1 The policy shall be endorsed **(Blanket Endorsements are not acceptable)** to include the following additional insured language: ***"The State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor."*** Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract.

28.1.2.2 Policy shall contain a waiver of subrogation endorsement (**Blanket Endorsements are not acceptable)** in favor of the **"State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees"** for losses arising from work performed by or on behalf of the Contractor.

28.1.3 Worker's Compensation and Employers' Liability

• Workers' Compensation	Statutory
• Employers' Liability	
Each Accident	$1,000,000

Disease – Each Employee	$1,000,000
Disease – Policy Limit	$1,000,000

28.1.3.1 Policy shall contain a waiver of subrogation endorsement **(Blanket Endorsements are not acceptable)** in favor of the "**State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees"** for losses arising from work performed by or on behalf of the Contractor.

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

28.1.4 Technology Errors & Omissions Insurance

• Each Claim	$ 2,000,000
• Annual Aggregate	$ 2,000,000

28.1.4.1 Such insurance shall cover any and all errors, omissions, or negligent acts in the delivery of products, services, and/or licensed programs under this contract.

28.1.4.2 In the event that the Tech E&O insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

28.1.5 Network Security (Cyber) and Privacy Liability *(If applicable to service to be provided by the Contractor)*

• Each Claim	$ 2,000,000
• Annual Aggregate	$ 2,000,000

28.1.5.1 Such insurance shall include but not limited to coverage for third party claims and losses with respect to network risks (such as data breaches, unauthorized access or use, ID theft, theft of data) and invasion of privacy regardless of the type of media involved in the loss of private information, crisis management and identity theft response costs – includes breach notification costs, credit remediation and credit monitoring, defense and claims expenses, regulatory defense costs plus fines and penalties, cyber extortion, computer program and electronic data restoration expenses coverage (data asset protection), network business interruption, computer fraud coverage, funds transfer fund

28.1.5.2 In the event that the Network Security and Privacy Liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

28.2 **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed **(Blanket Endorsements are not acceptable)** to include, the following provisions:

28.2.1 The Contractor's policies shall stipulate that the insurance afforded the contractor shall be primary insurance and that any insurance carried by the Department, and its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

28.2.2 Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

28.3 **NOTICE OF CANCELLATION:** With the exception of (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this contract in the insurance policies above shall require (30) days written notice to the State of Arizona. Such notice shall be sent directly to **Charlotte Righetti, CPPB 100 N 15th Ave, Suite 201, Phoenix AZ 85007** and shall be sent by certified mail, return receipt requested.

28.4 **ACCEPTABILITY OF INSURERS:** Contractors insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

28.5 **VERIFICATION OF COVERAGE:** Contractor shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Contract. The certificates for each insurance policy are to be signed by an authorized representative.

All certificates and endorsements **(Blanket Endorsements are not acceptable)** are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Contract shall be sent directly to **Charlotte Righetti, CPPB 100 N 15th Ave, Suite 201, Phoenix AZ 85007**. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

28.6 **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as insured under its policies **or** Contractor shall furnish to the State of Arizona separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

28.7 **APPROVAL:** Any modification or variation from the *insurance requirements* in this Contract shall be made by the contracting agency in consultation with the Department of Administration, Risk Management Division. Such action will not require a formal Contract amendment, but may be made by administrative action.

28.8 **EXCEPTIONS:** In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance. If the contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

29. MARKET ACQUISITIONS

In the event a Contractor acquires a market within a geographical region which they were not originally awarded, the Contractor may request an amendment to its contract to include pricing of services for this newly acquired market. Documentation of the acquisition must be provided in order for the State to consider, at its option, this addition, via a bilateral contract amendment.

30. CUSTOMER SERVICE ORDERS (CSO's)

Contractors and Customers may enter into Customer Service Order Agreements for services covered within resultant contracts of this Solicitation. Agreement shall only be valid if the Customer has the legal authority to enter into these types of agreements without going through a competitive process. Additional Terms and Conditions found within a Contractors CSO shall not become part of the State of Arizona's Master Contract.

31. NON-RECURRING COSTS (NRC)

Providers are required to quote NRC for services provided within their awarded County(ies) and Categories as outlined within Attachment II, Pricing Structure. In the event that a Contractor elects to quote a Customer an additional NRC, over and above the listed NRC within Attachment II, the Contractor shall comply with the following:

- The reason for the 'Extension' NRC is based on extending the Provider's transport medium to an off-net location;
- 'Extension' NRC should not exceed six (6) times the firm fixed monthly recurring cost (MRC) for the service in question; and
- No more than 20% of the requested quotes submitted within a one year period, for the service in question, shall have an Extension NRC.

Final acceptance of the Extension NRC is at the sole option of the customer. Customer reserves the right to negotiate the proposed Extension NRC. Extension NRC shall not be permitted in lieu of or in connection with a Contractors Broadband Expansion Projects.

UNIFORM TERMS AND CONDITIONS

1. Definition of Terms

As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:

1.1 *"Attachment"* means any item the Solicitation requires the Offeror to submit as part of the Offer.

1.2 *"Contract"* means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.

1.3 "*Contract Amendment"* means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.

1.4 *"Contractor"* means any person who has a Contract with the State.

1.5 *"Days"* means calendar days unless otherwise specified.

1.6 *"Exhibit"* means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.

1.7 *"Gratuity"* means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

1.8 "*Materials"* means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.

1.9 *"Procurement Officer"* means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.

1.10 *"Services"* means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.

1.11 *"Subcontract"* means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.

1.12 *"State"* means the State of Arizona and Department or Agency of the State that executes the Contract.

1.13 *"State Fiscal Year"* means the period beginning with July 1 and ending June 30.

2. Contract Interpretation

2.1 Arizona Law. The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.

2.2 Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.

2.3 Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:

2.3.1 Special Terms and Conditions;

2.3.2 Uniform Terms and Conditions;

2.3.3 Statement or Scope of Work;

2.3.4 Specifications;

2.3.5 Attachments;

2.3.6 Exhibits;

2.3.7 Documents referenced or included in the Solicitation.

2.4 Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.

2.5 Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.

2.6 No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

2.7 No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3. Contract Administration and Operation

3.1 Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.

3.2 Non-Discrimination. The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.

3.3 Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.

3.4 Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.

3.5 Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.

3.6 Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.

3.7 Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.

3.8 Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire

and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.

3.9 Federal Immigration and Nationality Act. The contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.

3.10 E-Verify Requirements. In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.

3.11 Offshore Performance of Work Prohibited.
Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

4. Costs and Payments

4.1 Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.

4.2 Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.

4.3 Applicable Taxes.

4.3.1 Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.

4.3.2 State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.

4.3.3 Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

4.3.4 IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.

4.4 Availability of Funds for the Next State fiscal year. Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any

payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.

4.5 Availability of Funds for the current State fiscal year. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:

4.5.1 Accept a decrease in price offered by the contractor;

4.5.2 Cancel the Contract; or

4.5.3 Cancel the contract and re-solicit the requirements.

5. Contract Changes

5.1 Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.

5.2 Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.

5.3 Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

6. Risk and Liability

6.1 Risk of Loss: The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.

6.2 Indemnification

6.2.1 Contractor/Vendor Indemnification (Not Public Agency) The parties to this contract agree that the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.

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

6.3 Indemnification - Patent and Copyright**.** The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.

6.4 Force Majeure.

6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term *"force majeure"* means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.4.2 Force Majeure shall not include the following occurrences:

6.4.2.1 Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

6.4.2.2 Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or

6.4.2.3 Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

6.4.3 If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.4.4 Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

6.5 Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

7. Warranties

7.1 Liens. The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

7.2 Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:

7.2.1 Of a quality to pass without objection in the trade under the Contract description;

7.2.2 Fit for the intended purposes for which the materials are used;

7.2.3 Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;

7.2.4 Adequately contained, packaged and marked as the Contract may require; and

7.2.5 Conform to the written promises or affirmations of fact made by the Contractor.

7.3 Fitness. The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.

7.4 Inspection/Testing. The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.

7.5 Compliance With Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.

7.6 Survival of Rights and Obligations after Contract Expiration or Termination.

7.6.1 Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.

7.6.2 Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

8. State's Contractual Remedies

8.1 Right to Assurance. If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

8.2 Stop Work Order.

8.2.1 The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

8.2.2 If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

8.3 Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.

8.4 Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

8.5 Right of Offset. The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

9. Contract Termination

9.1 Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State 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 this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this

Contract as provided in A.R.S. § 38-511.

9.2 Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.

9.3 Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.

9.4 Termination for Convenience. The State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

9.5 Termination for Default.

9.5.1 In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

9.5.2 Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.

9.5.3 The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.

9.6 Continuation of Performance Through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

10. Contract Claims

All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.

11. Arbitration

The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).

12. Comments Welcome

The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 201, Phoenix, Arizona, 85007.

Exhibit A -
Backhaul Bandwidth for Census Designated Places

This Exhibit describes the State's minimum recommended back-haul desired for each Community or Community Area for each County in the State. Community Areas are defined those Communities whose boundaries are within at least one mile of the boundaries of another Community. The recommended minimum backhaul into a Community or Area to support residential broadband service is based on a potential market of 10% of the households in a Community or Area times 6 Mbps of minimum bandwidth per potentially served household.

From time to time the State intends to provide qualified Providers and Customers additional recommendations minimum backhaul bandwidth recommendations for Communities and Community Areas including for: Student, government entity, public safety, and business users of bandwidth. The purpose of this is to assist in defining sufficient demand aggregation in communities to justify investments in expanded bandwidth delivery infrastructure.

The State recognizes that in many Communities and Areas these minimum recommendations have already been significantly exceeded but in many Communities and Areas this minimal capacity is still lacking.

APACHE	Community or Community Area	Households	Population	Sq. Miles	Recommended Minimum Bandwidth To Community Or Area
	EAGAR	*2045*	*4885*	*11.2*	
	SPRINGERVILLE	*954*	*1961*	*11.7*	
	EAGAR AREA	2999	6846	22.9	1.8 Gbps
	CHINLE	1483	4518	16.1	0.9 Gbps
	WINDOW ROCK	*938*	*2712*	*5.3*	
	ST. MICHAELS	*518*	*1443*	*3.8*	
	WINDOW ROCK AREA	1456	4155	9.1	0.9 Gbps
	ST. JOHNS	1476	3480	26.1	0.9 Gbps
	FORT DEFIANCE	1250	3624	6.1	0.8 Gbps
	LUKACHUKAI	674	1701	22.0	0.5 Gbps
	MANY FARMS	491	1348	8.2	0.3 Gbps
	GANADO	445	1210	9.2	0.3 Gbps
	HOUCK	385	1024	42.5	0.3 Gbps
	TSAILE AREA	346	1205	6.0	0.3 Gbps
	DENNEHOTSO	264	746	10.0	0.2 Gbps
	ROUND ROCK	260	789	14.3	0.2 Gbps

	TEEC NOS POS	258	730	14.3	0.2 Gbps
	SAWMILL	243	748	5.8	0.2 Gbps
	SANDERS	242	630	2.4	0.2 Gbps
	ALPINE	205	145	0.6	0.2 Gbps
	ROCK POINT	205	642	14.2	0.2 Gbps
	RED MESA	202	480	12.8	0.2 Gbps
	BURNSIDE	174	537	9.3	0.2 Gbps
	GREER	167	41	0.5	0.2 Gbps
	ROUGH ROCK	160	414	12.8	0.1 Gbps
	NAZLINI	136	489	7.5	0.1 Gbps
	MCNARY	136	528	5.6	0.1 Gbps
	DEL MUERTO	103	329	1.0	0.1 Gbps
	STEAMBOAT	92	284	2.4	0.1 Gbps
	KLAGETOH	71	242	0.3	0.1 Gbps
	COTTONWOOD	66	226	0.1	0.1 Gbps
	RED ROCK	64	169	1.2	0.1 Gbps
	CORNFIELDS	62	255	0.4	0.1 Gbps
	VERNON	61	122	0.6	0.1 Gbps
	TSAILE AREA	52	135	0.7	0.1 Gbps
	CONCHO	36	38	0.5	0.1 Gbps
	NUTRIOSO	30	26	0.3	0.1 Gbps
	WIDE RUINS	24	176	0.4	0.1 Gbps
	OAK SPRINGS	21	63	0.2	0.1 Gbps
	LUPTON	8	25	0.4	0.1 Gbps
	TOYEI	6	13	0.3	0.1 Gbps
COCHISE					
	SIERRA VISTA	*18742*	*43888*	*152.4*	
	SIERRA VISTA SOUTHEAST	*6394*	*14797*	*110.8*	
	WHETSTONE	*1163*	*2617*	*11.9*	
	HUACHUCA	*920*	*1853*	*2.8*	
	MIRACLE VALLEY	*287*	*644*	*0.6*	
	PALOMINAS	*107*	*212*	*1.9*	
	SIERRA VISTA AREA	27613	64011	280.5	16.6 Gbps
	DOUGLAS	5652	17378	10.0	3.4 Gbps
	BISBEE	3284	5575	5.2	2 Gbps
	BENSON	2941	5105	41.4	1.8 Gbps
	WILLCOX	1659	3757	6.3	1 Gbps
	TOMBSTONE	864	1380	4.3	0.6 Gbps
	MESCAL	853	1812	4.9	0.6 Gbps
	ST. DAVID	804	1699	5.3	0.5 Gbps

	PIRTLEVILLE	631	1744	1.9	0.4 Gbps
	NACO	334	1046	3.3	0.3 Gbps
	BOWIE	256	449	1.7	0.2 Gbps
	ELFRIDA	243	459	3.8	0.2 Gbps
	SUNIZONA	206	281	8.5	0.2 Gbps
	SAN SIMON	127	165	0.7	0.1 Gbps
	MCNEAL	116	238	3.8	0.1 Gbps
	DRAGOON	115	209	1.8	0.1 Gbps
COCONINO					
	FLAGSTAFF	*26254*	*65870*	*63.9*	
	DONEY PARK	*1896*	*5395*	*14.9*	
	KACHINA VILLAGE	*1469*	*2622*	*1.2*	
	MOUNTAINAIRE	*621*	*1119*	*10.2*	
	FORT VALLEY	*371*	*779*	*7.6*	
	FLAGSTAFFAREA	30611	75785	97.9	18.4 Gbps
	PAGE	*2787*	*7247*	*16.6*	
	LECHEE	*359*	*1443*	*16.6*	
	PAGE AREA	3146	8690	33.2	1.9 Gbps
	MUNDS PARK	3019	631	22.3	1.9 Gbps
	WILLIAMS	*1426*	*3023*	*43.8*	
	PARKS	*1288*	*1188*	*172.3*	
	WILLIAMS AREA	2714	4211	216.0	1.7 Gbps
	TUBA	2465	8611	9.0	1.5 Gbps
	GRAND CANYON VILLAGE	858	2004	13.4	0.6 Gbps
	VALLE	583	832	243.8	0.4 Gbps
	FREDONIA	578	1314	7.3	0.4 Gbps
	KAIBITO	413	1522	15.9	0.3 Gbps
	TUSAYAN	289	558	8.9	0.2 Gbps
	CAMERON	285	885	18.7	0.2 Gbps
	MOENKOPI	284	964	1.5	0.2 Gbps
	LEUPP	255	951	13.6	0.2 Gbps
	TONALEA	132	549	9.9	0.1 Gbps
	BITTER SPRINGS	130	452	8.0	0.1 Gbps
	TOLANI LAKE	98	280	0.4	0.1 Gbps
	SUPAI	49	208	1.7	0.1 Gbps
GILA					
	PAYSON	*8958*	*15301*	*19.5*	
	STAR VALLEY	*1531*	*2310*	*36.1*	
	MESA DEL CABALLO	*406*	*765*	*0.3*	
	ROUND VALLEY	*227*	*487*	*4.8*	
	BEAVER VALLEY	*225*	*231*	*1.5*	
	TONTO VILLAGE	*215*	*256*	*0.3*	
	WASHINGTON PARK	*206*	*70*	*2.6*	
	WHISPERING PINES	*188*	*148*	*0.4*	
	EAST VERDE ESTATES	*165*	*170*	*2.5*	

OXBOW ESTATES	*141*	*217*	*0.5*	
KOHLS RANCH	*127*	*46*	*1.2*	
MEAD RANCH	*108*	*38*	*0.6*	
BEAR FLAT	*54*	*18*	*0.2*	
FREEDOM ACRES	*51*	*84*	*1.8*	
FLOWING SPRINGS	*39*	*42*	*1.7*	
PAYSON AREA	12641	20183	74.0	7.6 Gbps
GLOBE	*3386*	*7532*	*18.2*	
CENTRAL HEIGHTS-MIDLAND	*1191*	*2534*	*1.9*	
MIAMI	*973*	*1837*	*0.9*	
CLAYPOOL	*750*	*1538*	*1.2*	
SIX SHOOTER CANYON	*469*	*1019*	*2.9*	
WHEATFIELDS	*465*	*785*	*8.1*	
ICEHOUSE CANYON	*298*	*677*	*4.9*	
PINAL	*199*	*439*	*0.4*	
COPPER HILL	*63*	*108*	*7.3*	
EAST GLOBE	*61*	*226*	*3.4*	
CUTTER	*21*	*74*	*0.8*	
GLOBE AREA	7876	16769	50.1	4.8 Gbps
PINE	*2588*	*1963*	*32.4*	
STRAWBERRY	*1293*	*961*	*9.5*	
GERONIMO ESTATES	*122*	*60*	*1.3*	
PINE AREA	4003	2984	43.2	2.5 Gbps
TONTO BASIN	1383	1424	31.3	0.9 Gbps
SAN CARLOS	*998*	*4038*	*8.6*	
PERIDOT	*362*	*1350*	*5.2*	
SAN CARLOS AREA	1360	5388	13.7	0.9 Gbps
YOUNG	667	666	47.8	0.5 Gbps
GISELA	*331*	*570*	*2.9*	
DEER CREEK	*129*	*216*	*1.7*	
RYE	*63*	*77*	*0.5*	
GISELA AREA	523	863	5.1	0.4 Gbps
CHRISTOPHER CREEK	*388*	*156*	*3.0*	
HUNTER CREEK	*111*	*48*	*2.2*	
CHRISTOPHER CREEK AREA	499	204	5.2	0.3 Gbps
HAYDEN	*301*	*662*	*1.3*	
WINKELMAN	*163*	*353*	*0.8*	
HAYDEN AREA	464	1015	2.0	0.3 Gbps
CANYON DAY	310	1209	5.1	0.2 Gbps
TOP-OF-THE-WORLD	173	231	6.1	0.2 Gbps
DRIPPING SPRINGS	121	235	6.7	0.1 Gbps
CEDAR CREEK	97	318	17.0	0.1 Gbps
JAKES CORNER	81	76	1.4	0.1 Gbps
HAIGLER CREEK	46	19	1.6	0.1 Gbps
ROOSEVELT	43	28	3.1	0.1 Gbps
ROCK HOUSE	42	50	0.6	0.1 Gbps
CARRIZO	40	127	9.0	0.1 Gbps
EL CAPITAN	33	37	6.1	0.1 Gbps
GRAHAM				

	SAFFORD	*3908*	*9566*	*8.6*	
	THATCHER	*1840*	*4865*	*6.7*	
	PIMA	*870*	*2387*	*5.9*	
	SWIFT TRAIL JUNCTION	*679*	*2935*	*3.7*	
	CACTUS FLATS	*595*	*1518*	*6.2*	
	SAN JOSE	*211*	*506*	*4.2*	
	CENTRAL	*209*	*645*	*1.9*	
	SOLOMON	*171*	*426*	*0.2*	
	BRYCE	*60*	*175*	*0.8*	
	SAFFORD AREA	8543	23023	38.3	5.2 Gbps
	BYLAS	491	1962	4.4	0.3 Gbps
	FORT THOMAS	206	374	8.7	0.2 Gbps
GRENLEE					
	CLIFTON	1580	3311	14.8	1 Gbps
	MORENCI	792	1489	1.0	0.5 Gbps
	DUNCAN	398	696	2.2	0.3 Gbps
	YORK	336	557	1.9	0.3 Gbps
	FRANKLIN	51	92	1.0	0.1 Gbps
LAPAZ					
	CIENEGA SPRINGS	*2291*	*1798*	*3.9*	
	PARKER STRIP	*1387*	*662*	*4.2*	
	PARKER	*1098*	*3083*	*22.0*	
	BLUEWATER	*669*	*725*	*2.4*	
	CIENEGA SPRINGS AREA	5445	6268	32.4	3.3 Gbps
	QUARTZSITE	*3378*	*3677*	*36.8*	
	LA PAZ VALLEY	*695*	*699*	*29.4*	
	QUARTZSITE AREA	4073	4376	66.1	2.5 Gbps
	BOUSE	*914*	*996*	*136.4*	
	BRENDA	*725*	*676*	*6.9*	
	VICKSBURG	*687*	*597*	*143.1*	
	UTTING	*103*	*126*	*26.5*	
	BOUSE AREA	2429	2395	312.8	1.5 Gbps
	SALOME	1078	1530	33.4	0.7 Gbps
	EHRENBERG	948	1470	12.2	0.6 Gbps
	WENDEN	416	728	15.0	0.3 Gbps
	CIBOLA	307	250	20.2	0.2 Gbps
	POSTON	85	285	1.4	0.1 Gbps
	ALAMO LAKE	31	25	46.6	0.1 Gbps
	SUNWEST	31	15	24.3	0.1 Gbps
MARICOPA					
	PHOENIX	*590149*	*1445632*	*517.7*	
	SCOTTSDALE	*124001*	*217385*	*184.3*	
	GLENDALE	*90505*	*226721*	*60.1*	
	TEMPE	*73462*	*161719*	*40.2*	
	SURPRISE	*52586*	*117517*	*105.8*	
	SUN	*28169*	*37499*	*14.5*	
	AVONDALE	*27001*	*76238*	*45.6*	

SUN WEST	*18218*	*24535*	*10.9*	
BUCKEYE	*18207*	*50876*	*375.3*	
FOUNTAIN HILLS	*13167*	*22489*	*20.4*	
EL MIRAGE	*11326*	*31797*	*10.1*	
ANTHEM	*8801*	*21700*	*8.0*	
NEW RIVER	*6273*	*14952*	*55.7*	
PARADISE VALLEY	*5643*	*12820*	*15.5*	
YOUNG	*2831*	*6156*	*1.5*	
LITCHFIELD PARK	*2716*	*5476*	*3.3*	
CAVE CREEK	*2579*	*5015*	*37.9*	
CAREFREE	*2251*	*3363*	*8.8*	
TOLLESON	*2169*	*6545*	*5.7*	
CITRUS PARK	*1385*	*4028*	*5.8*	
GUADALUPE	*1376*	*5523*	*0.8*	
GILA BEND	*943*	*1922*	*55.4*	
WITTMANN	*301*	*763*	*1.0*	
KOMATKE	*246*	*821*	*2.2*	
MARICOPA COLONY	*201*	*709*	*5.6*	
GILA CROSSING	*141*	*621*	*0.9*	
ARLINGTON	*99*	*194*	*2.3*	
			1595.	
PHOENIX METRO AREA	1084746	2503016	4	650.9 Gbps
MESA	*201173*	*439041*	*137.0*	
CHANDLER	*94404*	*236123*	*64.5*	
GILBERT	*74907*	*208453*	*68.1*	
SUN LAKES	*10028*	*13975*	*5.3*	
QUEEN CREEK	*8557*	*26361*	*28.1*	
MESA METRO AREA	389069	923953	302.9	233.5 Gbps
PEORIA	64818	154065	177.9	38.9 Gbps
GOODYEAR	25027	65275	191.4	15.1 Gbps
WICKENBURG	3619	6363	18.8	2.2 Gbps
RIO VERDE	1647	1811	5.1	1 Gbps
AGUILA	304	798	1.6	0.2 Gbps
WINTERSBURG	173	136	0.5	0.2 Gbps
MORRIS	139	227	0.8	0.1 Gbps
ST. JOHNS	139	476	2.3	0.1 Gbps
KAKA	57	141	0.3	0.1 Gbps
THEBA	49	158	0.6	0.1 Gbps
TONOPAH	30	60	1.4	0.1 Gbps
MOHAVE				
LAKE HAVASU	*32327*	*52527*	*44.6*	
DESERT HILLS	*1847*	*2245*	*4.9*	
CRYSTAL BEACH	*171*	*279*	*0.3*	
LAKE HAVASU AREA	34345	55051	49.8	20.7 Gbps
BULLHEAD	*23464*	*39540*	*60.3*	
FORT MOHAVE	*7179*	*14364*	*16.7*	
WILLOW VALLEY	*1326*	*1062*	*5.0*	
MOHAVE VALLEY	*1300*	*2616*	*14.1*	
ARIZONA VILLAGE	*531*	*946*	*1.6*	
MESQUITE CREEK	*240*	*416*	*1.0*	
KATHERINE	*158*	*103*	*4.6*	

	MOJAVE RANCH ESTATES	*21*	*52*	*0.8*	
	BULLHEAD AREA	34219	59099	104.1	20.6 Gbps
	KINGMAN	*12724*	*28068*	*34.9*	
	NEW KINGMAN-BUTLER	*5863*	*12134*	*5.0*	
	GOLDEN VALLEY	*4342*	*8370*	*78.9*	
	WALNUT CREEK	*251*	*562*	*1.5*	
	SO-HI	*242*	*477*	*0.9*	
	LAZY Y U	*194*	*428*	*15.7*	
	PINION PINES	*102*	*186*	*1.5*	
	CLACKS CANYON	*83*	*173*	*3.3*	
	MCCONNICO	*56*	*70*	*6.6*	
	KINGMAN AREA	23857	50468	148.2	14.4 Gbps
	BEAVER DAM	*1202*	*1962*	*8.4*	
	SCENIC	*779*	*1643*	*16.5*	
	LITTLEFIELD	*153*	*308*	*12.0*	
	BEAVER DAM AREA	2134	3913	36.9	1.3 Gbps
	GOLDEN SHORES	1637	2047	8.2	1 Gbps
	DOLAN SPRINGS	1556	2033	58.2	1 Gbps
	MEADVIEW	1373	1224	31.1	0.9 Gbps
	VALLE VISTA	*936*	*1659*	*12.0*	
	ANTARES	*95*	*126*	*0.7*	
	VALLE VISTA AREA	1031	1785	12.7	0.7 Gbps
	COLORADO	*599*	*4821*	*10.3*	
	CENTENNIAL PARK	*225*	*1264*	*2.2*	
	CANE BEDS	*168*	*448*	*8.3*	
	COLORADO AREA	992	6533	20.8	0.6 Gbps
	PEACH SPRINGS	334	1090	7.9	0.3 Gbps
	WHITE HILLS	290	323	52.0	0.2 Gbps
	CHLORIDE	245	271	1.5	0.2 Gbps
	PINE LAKE	156	138	1.7	0.1 Gbps
	OATMAN	112	135	0.2	0.1 Gbps
	WIKIEUP	103	133	4.4	0.1 Gbps
	YUCCA	98	126	2.2	0.1 Gbps
	KAIBAB	*52*	*124*	*6.5*	
	MOCCASIN	*37*	*89*	*0.8*	
	KAIBAB AREA	89	213	7.2	0.1 Gbps
	TRUXTON	73	134	3.8	0.1 Gbps
	HACKBERRY	*45*	*68*	*17.6*	
	VALENTINE	*14*	*38*	*1.6*	
	CROZIER	*11*	*14*	*1.1*	
	HACKBERRY AREA	70	120	20.3	0.1 Gbps
	TOPOCK	31	10	0.3	0.1 Gbps
	GRAND CANYON WEST	19	2	17.6	0.1 Gbps
NAVAJO					
	SHOW LOW	*7722*	*10660*	*41.2*	
	PINETOP COUNTRY CLUB	*3789*	*1794*	*6.8*	
	PINETOP-LAKESIDE	*3451*	*4282*	*11.4*	
	LAKE OF THE WOODS	*2859*	*4094*	*4.1*	

SNOWFLAKE	*2074*	*5590*	*33.6*	
WHITE MOUNTAIN LAKE	*1772*	*2205*	*24.2*	
LINDEN	*1468*	*2597*	*30.5*	
TAYLOR	*1464*	*4112*	*32.7*	
WAGON WHEEL	*1163*	*1652*	*3.1*	
WHITERIVER	*1072*	*4104*	*15.8*	
NORTH FORK	*396*	*1417*	*61.6*	
HONDAH	*286*	*812*	*12.3*	
RAINBOW	*226*	*968*	*2.2*	
SEVEN MILE	*176*	*707*	*2.3*	
EAST FORK	*170*	*699*	*1.9*	
TURKEY CREEK	*77*	*294*	*0.8*	
FORT APACHE	*53*	*143*	*1.2*	
SHOW LOW AREA	28218	46130	285.4	17 Gbps
HEBER-OVERGAARD	3593	2822	6.9	2.2 Gbps
WINSLOW	*3362*	*9655*	*12.3*	
WINSLOW WEST	*173*	*438*	*17.9*	
WINSLOW AREA	3535	10093	30.19	2.2 Gbps
HOLBROOK	1881	5053	17.4	1.2 Gbps
KAYENTA	1602	5189	13.2	1 Gbps
FIRST MESA	*555*	*1555*	*15.7*	
SECOND MESA	*325*	*962*	*40.1*	
SHONGOPOVI	*240*	*831*	*1.6*	
KEAMS CANYON	*142*	*304*	*16.6*	
JEDDITO	*115*	*293*	*5.4*	
FIRST MESA AREA	1377	3945	79.5	0.9 Gbps
JOSEPH	547	1386	7.4	0.4 Gbps
CIBECUE	455	1713	6.0	0.3 Gbps
DILKON	361	1184	16.6	0.3 Gbps
PINON	338	904	6.5	0.3 Gbps
HOTEVILLA-BACAVI	*412*	*957*	*11.8*	
KYKOTSMOVI VILLAGE	*328*	*746*	*16.9*	
HOTEVILLA-BACAVI AREA	740	1703	28.67	0.5 Gbps
PINEDALE	332	487	9.7	0.2 Gbps
WHITECONE	300	817	45.1	0.2 Gbps
LOW MOUNTAIN	260	757	36.9	0.2 Gbps
CHILCHINBITO	228	506	23.8	0.2 Gbps
SHONTO	205	591	4.6	0.2 Gbps
GREASEWOOD	181	547	5.4	0.2 Gbps
CLAY SPRINGS	164	401	2.8	0.1 Gbps
SUN VALLEY	150	316	31.6	0.1 Gbps
TEES TOH	149	448	17.0	0.1 Gbps
WOODRUFF	85	191	5.8	0.1 Gbps
INDIAN WELLS	75	255	10.4	0.1 Gbps
SEBA DALKAI	57	136	15.1	0.1 Gbps
OLJATO-MONUMENT VALLEY	46	154	12.4	0.1 Gbps
HARD ROCK	41	94	5.9	0.1 Gbps

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TUCSON	*229762*	*520116*	*226.9*	
CASAS ADOBES	*30364*	*66795*	*26.9*	
CATALINA FOOTHILLS	*27211*	*50796*	*42.1*	
ORO VALLEY	*20340*	*41011*	*35.6*	
GREEN VALLEY	*17322*	*21391*	*32.2*	
MARANA	*14726*	*34961*	*122.1*	
SAHUARITA	*10615*	*25259*	*31.0*	
DREXEL HEIGHTS	*9684*	*27749*	*20.2*	
FLOWING WELLS	*7505*	*16419*	*4.0*	
TANQUE VERDE	*7340*	*16901*	*33.0*	
TUCSON ESTATES	*6152*	*12192*	*13.0*	
PICTURE ROCKS	*4177*	*9563*	*70.8*	
VAIL	*3754*	*10208*	*22.6*	
CATALINA	*3290*	*7569*	*14.1*	
VALENCIA WEST	*3206*	*9355*	*10.4*	
AVRA VALLEY	*2487*	*6050*	*22.2*	
CORONA DE TUCSON	*2165*	*5675*	*6.1*	
SOUTH TUCSON	*2137*	*5652*	*1.0*	
RINCON VALLEY	*2044*	*5139*	*27.8*	
SUMMIT	*1708*	*5372*	*4.5*	
ARIVACA JUNCTION	*388*	*1090*	*2.9*	
LITTLE	*277*	*873*	*0.1*	
ELEPHANT HEAD	*253*	*612*	*7.4*	
AMADO	*207*	*295*	*5.3*	
NELSON	*100*	*259*	*0.4*	
RILLITO	*50*	*97*	*0.1*	
TUCSON METRO AREA	407264	901399	782.7	244.4 Gbps
THREE POINTS	2487	5581	46.4	1.5 Gbps
AJO	2175	3304	33.3	1.4 Gbps
SELLS	736	2495	9.5	0.5 Gbps
ARIVACA	492	695	27.8	0.3 Gbps
PIMACO TWO	313	682	4.5	0.2 Gbps
SUMMERHAVEN	259	40	4.5	0.2 Gbps
SANTA ROSA	223	628	6.5	0.2 Gbps
WHY	177	167	9.0	0.2 Gbps
TOPAWA	135	299	5.2	0.1 Gbps
PISINEMO	116	321	2.3	0.1 Gbps
ALI CHUKSON	*55*	*132*	*2.1*	
ALI MOLINA	*30*	*71*	*0.8*	
CHIAWULI TAK	*21*	*78*	*2.4*	
ALICHUKSON AREA	106	281	5.3	0.1 Gbps
GU OIDAK	91	188	7.1	0.1 Gbps
SAN MIGUEL	79	197	5.7	0.1 Gbps
WILLOW CANYON	68	1	0.3	0.1 Gbps
SOUTH KOMELIK	65	111	3.9	0.1 Gbps
ALI CHUK	60	161	1.4	0.1 Gbps
MAISH VAYA	59	158	4.2	0.1 Gbps
WAHAK HOTRONTK	46	114	1.5	0.1 Gbps

	ANEGAM	43	151	2.3	0.1 Gbps
	COWLIC	41	135	0.8	0.1 Gbps
	HAIVANA NAKYA	39	96	1.9	0.1 Gbps
	VENTANA	29	49	1.0	0.1 Gbps
	CHARCO	26	52	0.9	0.1 Gbps
	KO VAYA	16	46	1.1	0.1 Gbps
	NOLIC	15	37	0.5	0.1 Gbps
	AK CHIN	11	30	0.5	0.1 Gbps
	COMOBABI	5	8	1.2	0.1 Gbps
PINAL					
	SAN TAN VALLEY	*29417*	*81321*	*35.8*	
	APACHE JUNCTION	*22564*	*35840*	*35.0*	
	CASA GRANDE	*22400*	*48571*	*109.6*	
	MARICOPA	*17240*	*43482*	*47.5*	
	GOLD CANYON	*6874*	*10159*	*22.4*	
	FLORENCE	*5224*	*25536*	*52.5*	
	ARIZONA	*5064*	*10475*	*6.2*	
	COOLIDGE	*4796*	*11825*	*56.5*	
	ELOY	*3691*	*16631*	*111.5*	
	SACATON	*671*	*2672*	*8.1*	
	CASA BLANCA	*388*	*1388*	*15.8*	
	BLACKWATER	*332*	*1062*	*17.9*	
	CACTUS FOREST	*287*	*594*	*2.7*	
	AK-CHIN VILLAGE	*256*	*862*	*10.6*	
	PICACHO	*185*	*471*	*6.4*	
	STOTONIC VILLAGE	*181*	*659*	*5.0*	
	SACATON FLATS VILLAGE	*168*	*541*	*6.2*	
	UPPER SANTAN VILLAGE	*136*	*495*	*7.1*	
	GOODYEAR VILLAGE	*121*	*457*	*3.4*	
	LOWER SANTAN VILLAGE	*103*	*374*	*4.2*	
	CHUICHU	*96*	*269*	*6.9*	
	WET CAMP VILLAGE	*76*	*229*	*4.4*	
	SACATE VILLAGE	*50*	*169*	*3.5*	
	SWEET WATER VILLAGE	*26*	*83*	*0.8*	
	SAN TAN VALLEY AREA	120346	294165	579.7	72.3 Gbps
	SADDLEBROOKE	5671	9614	29.3	3.5 Gbps
	ORACLE	*1772*	*3686*	*16.4*	
	SAN MANUEL	*1541*	*3551*	*20.7*	
	CAMPO BONITO	*48*	*74*	*4.0*	
	ORACLE AREA	3361	7311	41.1	2.1 Gbps
	SUPERIOR	1465	2837	1.9	0.9 Gbps
	KEARNY	878	1950	2.8	0.6 Gbps
	RED ROCK	786	2169	47.3	0.5 Gbps
	MAMMOTH	635	1426	1.0	0.4 Gbps
	QUEEN VALLEY	621	788	9.7	0.4 Gbps
	DUDLEYVILLE	423	959	6.7	0.3 Gbps
	STANFIELD	222	740	3.9	0.2 Gbps
	VAIVA VO	29	128	0.5	0.1 Gbps

	KOHATK	15	27	0.1	0.1 Gbps
	SANTA CRUZ	13	37	1.6	0.1 Gbps
	TAT MOMOLI	9	10	0.9	0.1 Gbps
SANTA CRUZ					
	RIO RICO	*6356*	*18962*	*62.4*	
	TUBAC	*1067*	*1191*	*10.8*	
	TUMACACORI-CARMEN	*187*	*393*	*2.0*	
	RIO RICO AREA	7610	20546	75.1	4.6 Gbps
	NOGALES	*7260*	*20837*	*20.8*	
	BEYERVILLE	*55*	*177*	*0.3*	
	NOGALES AREA	7315	21014	21.2	4.4 Gbps
	PATAGONIA	576	913	1.3	0.4 Gbps
	SONOITA	462	818	10.6	0.3 Gbps
	ELGIN	85	161	5.9	0.1 Gbps
	KINO SPRINGS	65	136	0.3	0.1 Gbps
YAVAPAI					
	PRESCOTT	*22159*	*39843*	*41.6*	
	PRESCOTT VALLEY	*17494*	*38822*	*38.6*	
	CHINO VALLEY	*4967*	*10817*	*63.4*	
	WILLIAMSON	*2779*	*5438*	*56.9*	
	PAULDEN	*2268*	*5231*	*57.0*	
	DEWEY-HUMBOLDT	*1888*	*3894*	*18.6*	
	CORDES LAKES	*1463*	*2633*	*10.8*	
	MAYER	*849*	*1497*	*20.1*	
	SPRING VALLEY	*629*	*1148*	*10.6*	
	PRESCOTT AREA	54496	109323	317.6	32.7 Gbps
	COTTONWOOD	*5866*	*11265*	*16.4*	
	VERDE VILLAGE	*4989*	*11605*	*7.0*	
	CAMP VERDE	*4726*	*10873*	*43.1*	
	LAKE MONTEZUMA	*2334*	*4706*	*12.0*	
	CLARKDALE	*2059*	*4097*	*10.6*	
	JEROME	*290*	*444*	*0.9*	
	COTTONWOOD AREA	20264	42990	90.0	12.2 Gbps
	SEDONA	6367	10031	19.2	3.9 Gbps
	VILLAGE OF OAK CREEK (BIG PARK)	4076	6147	5.3	2.5 Gbps
	CORNVILLE	1695	3280	13.2	1.1 Gbps
	BLACK CANYON	1563	2837	24.3	1 Gbps
	CONGRESS	1226	1975	37.7	0.8 Gbps
	YARNELL	*597*	*649*	*8.8*	
	PEEPLES VALLEY	*338*	*428*	*15.1*	
	YARNELL AREA	935	1077	24.0	0.6 Gbps
	BAGDAD	838	1876	8.0	0.6 Gbps
	WILHOIT	483	868	15.7	0.3 Gbps
	SELIGMAN	292	445	6.4	0.2 Gbps

	ASH FORK	218	396	2.3	0.2 Gbps
YUMA					
	YUMA AREA	*38626*	*93064*	*120.7*	
	YUMA AREA	*21642*	*26265*	*40.2*	
	YUMA AREA	*6525*	*25505*	*32.2*	
	YUMA AREA	*4052*	*14287*	*7.3*	
	YUMA AREA	*2081*	*2882*	*29.0*	
	YUMA AREA	*1968*	*4176*	*0.7*	
	YUMA AREA	*394*	*1508*	*0.1*	
	YUMA AREA	*225*	*678*	*2.0*	
	YUMA AREA	*199*	*504*	*1.0*	
	YUMA AREA	*174*	*594*	*0.1*	
	YUMA AREA	*162*	*625*	*0.1*	
	YUMA AREA	*131*	*258*	*0.6*	
	YUMA AREA	*115*	*415*	*0.4*	
	YUMA AREA	*84*	*272*	*0.2*	
	YUMA AREA	*46*	*171*	*0.3*	
	YUMA AREA	76424	171204	234.9	45.9 Gbps
	MARTINEZ LAKE	510	798	9.2	0.4 Gbps
	TACNA	291	602	1.9	0.2 Gbps
	DATELAND	*221*	*416*	*22.1*	
	AZTEC	*24*	*47*	*6.2*	
	DATELAND AREA	245	463	28.3	0.2 Gbps
	BUCKSHOT	75	153	0.3	0.1 Gbps

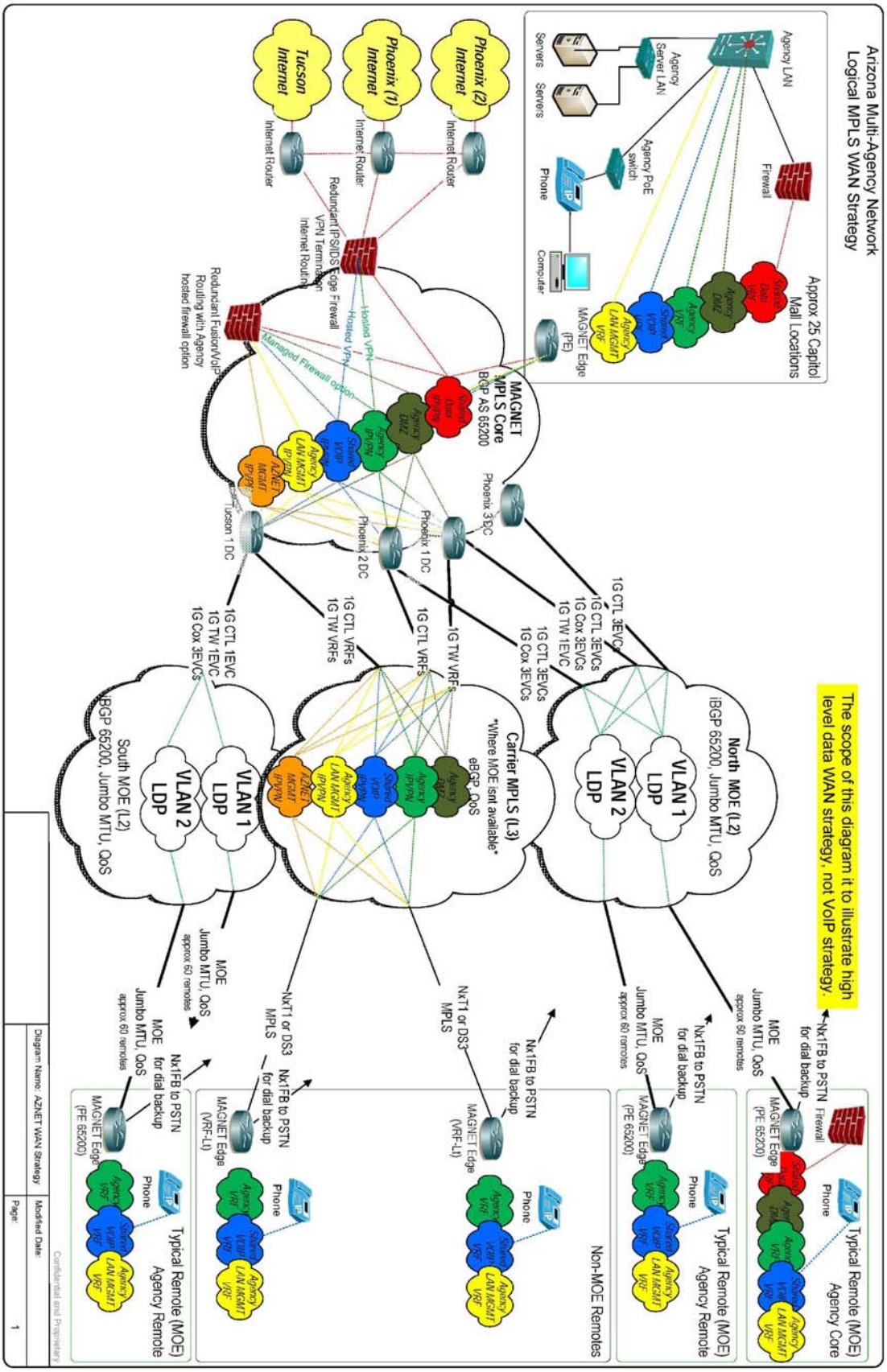
Arizona Multi-Agency Network
Logical MPLS WAN Strategy
Approx 25 Capitol Mall Locations
Agency LAN
Agency Server LAN
Servers
Servers
Agency PoE switch
Phone
Computer
Firewall
MAGNET Edge (PE)
Tucson Internet
Phoenix (1) Internet
Phoenix (2) Internet
Internet Router
Redundant IPSIDS Edge Firewall VPN Termination Internet Routing
Redundant FusionVoIP Routing with Agency hosted firewall option
Hosted VPN
Managed Firewall option
MAGNET MPLS Core BGP AS 65200
Phoenix 3DC
Phoenix 2DC
Phoenix 1DC
Tucson 1DC
1G CTL 1EVC
1G TW 1EVC
1G Cox 3EVCs
1G CTL VRFs
1G TW VRFs
Carrier MPLS (L3)
Where MOE isnt available
eBGP, QoS
North MOE (L2)
iBGP 65200, Jumbo MTU, QoS
South MOE (L2)
iBGP 65200, Jumbo MTU, QoS
VLAN 1 LDP
VLAN 2 LDP
The scope of this diagram it to illustrate high level data WAN strategy, not VoIP strategy.
MOE
Jumbo MTU, QoS
approx 60 remotes
Nx1FB to PSTN for dial backup
Nx1T1 or DS3 MPLS
MAGNET Edge (PE 65200)
MAGNET Edge (VRF-Lt)
Typical Remote (MOE) Agency Core
Typical Remote (MOE) Agency Remote
Non-MOE Remotes
Phone
Firewall
Diagram Name: AZNET WAN Strategy
Modified Date:
Page:
1
Confidential and Proprietary

EXHIBIT A

Final Exception Document

Mutually agreed to by the State of Arizona and Cox Arizona Telcom, LLC

The following are the exceptions which were submitted by Cox Arizona Telcom LLC in response to the State of Arizona's solicitation ADSPO14-00004241. Any exceptions not addressed by the State in this document were not considered and shall be deemed not accepted by the State and shall not become a part of any resultant contract.

All accepted exceptions shall be incorporated within in applicable sections of a resultant contract. Approved exceptions shall override the original RFP language, unless the acceptance was only clarification.

1) Solicitation section reference: Scope of Work

7.2.3 Restore and Response times:
- 7.2.3.1 Metro Areas:
  - 7.2.3.1.1 Specific sites to be provided after contract award.
    - 7.2.3.1.1.1 Full restoration shall be completed within two (2) hours.
- 7.2.3.2 Rural Areas:
  - 7.2.3.2.1 Specific sites to be provided after contract award.
    - 7.2.3.2.1.1 Full restoration shall be completed within four (4) hours.
- 7.2.3.3 If full restoration cannot be achieved within the above stated time frames, the customer shall be notified immediately upon discovery of such event that hinders restoration.
  - 7.2.3.3.1 Every hour that service has not been restored the carrier or provider shall be responsible for updating the customer of status on the restoration project.

7.2.4 Restore and Response penalties:
- 7.2.4.1 Every 15 minutes that 'full service restoration' is not completed the Contractor shall be charged a penalty of 5% of the customer's monthly bill. This will be seen in the form of a credit against the billed amount at the end of the month.
- 7.2.4.2 If full restoration has not been completed within double the allowed time the customer will have the right to terminate services with that Carrier with no penalty.
  - 7.2.4.2.1 Customer, at its discretion, can allow an exception to this within their negotiated SLA, based on agreed to terms by both parties, for allowances such as, but not limited to, force majeure.

Cox Exception:

RESPONSE: Cox has a long-standing relationship with the State of Arizona, with well-established ticket response, maintenance and repair processes. These processes have successfully served the State for many years. During regular stewardship meetings, Cox reviews outage reports with ASET/EIC, continually striving to identify gaps and improve performance if needed. Cox believes that the Restore and Response times and associated penalties are significantly narrower than industry standards for both Metro and Rural areas. The State's largest current carrier publicly posts a restoration SLA of 4 hours; 8 hours if a cable failure for most services.

Cox Alternative Language:

Therefore, Cox proposes the following service-specific, Restoration SLAs detailed on the following pages in lieu of those stated in the Scope of Work. Section 7.2.4.2, Cox proposes that the word "services" be replaced by "the specific service". Further, if the carrier has incurred Cap-Ex cost to extend its network to a customer site, the customer remains liable for cost recovery, as outlined Scope of Work Section 8.3.2.2

State Response: Unacceptable with alternate language proposed
The State would accept the following alternate language:

7.2.4.1 The contractor shall be liable for 1/720 of the MRC for each hour after the Contractor is notified of an outage. This will be seen in the form of a credit against the billed amount at the end of the month.

An "Outage" is an interruption in Service or use of the Equipment caused by a failure of the Contractor's Network, excluding degradation or disruption due to planned or emergency maintenance or an event outside of the Contractor's direct control.

7.2.4.2 If full restoration has not been completed within double the allowed time the customer will have the right to terminate the specific service with that Carrier with no penalty.

COX RESPONSE: Cox agrees to accept the State's Alternative language above.

State's Final Response: Revised language for section 7.2.4.1 is found at the end of this exception document, change to language was discussed and accepted by COX at discussion meeting held 1/23/15.

EXHIBIT A

Final Exception Document

Mutually agreed to by the State of Arizona and Cox Arizona Telcom, LLC

2) Solicitation section reference: Special Terms and Conditions

22. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996

The Contractor warrants that it is familiar with the requirements of HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH Act) of 2009, and accompanying regulations and will comply with all applicable HIPAA requirements in the course of this Contract. Contractor warrants that it will cooperate with the State in the course of performance of the Contract so that both the State and the Contractor will be in compliance with HIPAA, including cooperation and coordination with the Arizona Strategic Enterprise Technology (ASET) Group, Statewide Information Security and Privacy Office (SISPO), Chief Privacy Officer and HIPAA Coordinator and other compliance officials required by HIPAA and its regulations. Contractor will sign any documents that are reasonably necessary to keep the State and Contractor in compliance with HIPAA, including but not limited to, business associate agreements.

If requested, the Contractor agrees to sign a "Pledge to Protect Confidential Information" and to abide by the statements addressing the creation, use and disclosure of confidential information, including information designated as protected health information and all other confidential or sensitive information as defined in policy. In addition, if requested, Contractor agrees to attend or participate in job related HIPAA training that is: (1) intended to make the Contractor proficient in HIPAA for purposes of performing the services required and (2) presented by a HIPAA Privacy Officer or other person or program knowledgeable and experienced in HIPAA and who has been approved by the ASET/SISPO Chief Privacy Officer and HIPAA Coordinator.

Cox Exception:

RESPONSE: Cox notes that HIPAA referenced in the RFP is not applicable to Cox as the requirements of HIPAA do not apply to businesses who act merely as a "conduit" for protected health information. As stated by the Department of Health and Human Services "the conduit exception … is intended to exclude only those entities providing mere courier services … and their electronic equivalents, such as internet service providers (ISPs) …. For example, a telecommunications company may have occasional, random access to protected health information…. Such occasional, random access to protected health information would not qualify the company as a business associate." 78 Federal Register, No. 17, 5571-72.

Therefore, Cox proposes that this section be deleted from the contract and the parties acknowledge that the services provided by Cox are exempt from HIPAA.

State Response: Unacceptable, the state is not accepting changes to these requirements

COX RESPONSE: Cox withdraws its exception.

State's Final Response: Exception withdrawn by Cox.

3) Solicitation section reference: Special Terms and Conditions

23. FIRST PARTY LIMITATION OF LIABILITY

Contractor's liability for first party damages to the State arising from this Contract shall be limited to two (2) times the maximum-not-to-exceed amount of this Contract. The foregoing limitation of liability shall not apply to: (i) liability, including indemnification obligations, for third party claims, including but not limited to, infringement of third party intellectual property rights; (ii) claims covered by any specific provision of the Contract calling for liquidated damages or other amounts, including but not limited to, performance requirements; or (iii) costs or attorneys' fees that the State is entitled to recover as a prevailing party in any action.

Cox Exception:

RESPONSE: The parties need to address that neither is responsible for consequential damages and that except for the warranties provided in the agreement, there are no other warranties. Therefore, Cox proposes the following language be added to the contract: Under no circumstances will either party be liable for any indirect, incidental, special or consequential damages arising from this agreement or its provision of the services. Cox and/or its agents shall not be liable for damages for failure to furnish or interruption of any services, nor shall Cox or its agents be responsible for failure or errors in signal transmission, lost data, files or software damage regardless of the cause. Cox shall not be liable for damage to property or for injury to any person arising from the installation or removal of equipment unless caused by the negligence of Cox. Except as provided in this agreement, there are no other agreements, warranties or representations, express or implied, either in fact or by operation of law, statutory or otherwise, including warranties of merchantability and fitness for a particular purpose, relating to the services. Services provided are a best efforts service and Cox does not warrant that the services, equipment or software shall be error free or without interruption. Internet and WIFI speeds will vary. Cox makes no warranty as to transmission or upstream or downstream speeds of the network.

State Response: Unacceptable, the state is not accepting changes to these requirements

COX RESPONSE: Cox withdraws its exception.

State's Final Response: Exception withdrawn by Cox.

4) Solicitation section reference: Special Terms and Conditions

24. INDEMNIFICATION

Contractor shall indemnify, defend with counsel reasonably approved by the State, and hold harmless, the State, its departments, agencies, boards, commissions, universities, officers, agents and employees (collectively, the "Indemnitee") from and against any

and all claims, actions, damages, costs (including attorneys' fees), and losses arising under this Contract, including, but not limited to, bodily injury or personal injury (including death) or loss or damage to tangible or intangible property, but excluding damages arising solely from the gross negligence or willful misconduct of the Indemnitee. This indemnification obligation includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of Contractor to comply with any federal, state or local law, statute, ordinance, rule, regulation or court decree. Contractor shall have control, subject to the reasonable approval of the State, of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when substantial principles of government or public law are involved, or when involvement of the State is otherwise mandated by law, the State may elect, in its sole and absolute discretion, to participate in such action at its own expense with respect to attorneys' fees and costs, but not liability, and the State shall have the right to approve or disapprove any settlement, which approval shall not be unreasonably withheld or delayed. The State shall reasonably cooperate in its defense and any related settlement negotiations.

Cox Exception:
RESPONSE: Cox states that part of the State's indemnification section is too broad as it requires Cox to indemnify the State's for injury or damage not caused by Cox. Cox proposes adding the following language after "tangible or intangible property": "to the extent such claims, actions, damages, costs (including attorneys' fees), and losses are caused by the intentional misconduct or negligence of Contractor" ending before the word "but".
State Response: Unacceptable, the state is not accepting changes to these requirements

RESPONSE: Cox withdraws its exception.

State's Final Response: Exception withdrawn by Cox.

5) Solicitation section reference: Special Terms and Conditions

26. INTELLECTUAL PROPERTY

26.1 Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, or trade secrets created or conceived solely pursuant to or as a result of this Contract and any related subcontract (collectively, the "Intellectual Property"), shall be work made for hire and the State shall be the owner of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this Contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Software and other Materials developed or otherwise obtained by or for Contractor or its affiliates independently of this Contract ("Independent Materials") do not constitute Intellectual Property. If Contractor creates derivative works of Independent Materials, then the elements of such derivative works created pursuant to this Contract shall constitute Intellectual Property owned by the State. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by Contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this Contract.

Notwithstanding the foregoing, if the State elects, in its sole and absolute discretion, to relinquish its ownership interest in any or all of the Intellectual Property, the State shall have the rights to use, modify, reproduce, release, perform, display, sublicense or disclose such Intellectual Property within State government and operations without restriction for any activity in which the State is a party (collectively, "Government Purpose Rights").

Cox Exception:
RESPONSE: Cox is not providing any Work Product in the provision of services and, therefore, this provision should be inapplicable.

Cox Alternative Language:
Cox proposes the following language replace the stated language:

The parties agree that, generally, Contractor is not providing any Work Product to the State and title to the network or any equipment provided by Contractor related to the services shall NOT be conveyed to State. The design of the services and Contractor's network, as well as any other pre-existing or newly developed intellectual property of Contractor created during the term shall remain the property of Contractor.

State Response: Unacceptable with clarification that a custom network design built on state owned infrastructure would be the ownership of the State.

RESPONSE: Cox withdraws its exception.

State's Final Response: Exception withdrawn by Cox.

6) Solicitation section reference: Special Terms and Conditions

31. NON-RECURRING COSTS (NRC)

Providers are required to quote NRC for services provided within their awarded County(ies) and Categories as outlined within Attachment II, Pricing Structure. In the event that a Contractor elects to quote a Customer an additional NRC, over and above the listed NRC within Attachment II, the Contractor shall comply with the following:

- The reason for the 'Extension' NRC is based on extending the Provider's transport medium to an off-net location;
- 'Extension' NRC should not exceed six (6) times the firm fixed monthly recurring cost (MRC) for the service in question; and
- No more than 20% of the requested quotes submitted within a one year period, for the service in question, shall have an Extension NRC.

Final acceptance of the Extension NRC is at the sole option of the customer. Customer reserves the right to negotiate the proposed Extension NRC. Extension NRC shall not be permitted in lieu of or in connection with a Contractors Broadband Expansion Projects.

Cox Exception:

RESPONSE: Cox takes exception to this Term as each build-out of network facilities to meet specific customer requests for service is unique. Engineering, costing and the resultant Extension NRC cannot be predicted in advance of RFI's for specific sites. It is therefore not realistic in certain circumstances to be able to adhere to the requirements in Section 31 above. Cox has built facilities with associated build cost to numerous agencies that exceed the 6 times limitation. Agencies have selected Cox for reasons including ROI versus cost of current service and lowest 5- year TCO versus other carrier proposals. With the requirement to bid all quotes to the limitations of the Extension NRC, it could be potentially crippling to any agency that needs reliable, high speed services that would require a provider to build such service. Cox requests the removal of this Term in its entirety as it significantly limits competition and could cause harm to agencies and the public whom they serve, should carriers refuse to bid because they cannot recover costs.

State Response: Unacceptable, the state is not accepting changes to these requirements

COX RESPONSE: Cox requests further discussion on this item. . We would like the opportunity to have some open discussion to bring to light how the language in its current structure may disadvantage the state's costs and in some instances preclude fair competition.

There are recent examples where the extension NRC exceeded the constructs in this new NRC language, yet the ROI was acceptable to the agency.

There are other scenarios where an AZNET RFI was issued resulting in a response which required an extension NRC. Subsequent RFI's for additional services for the same agency or service(s) for a different agency in the same building were issued by AZNET. Had these services been offered together, there may not have been any NRC.

Rural AZ is another scenario altogether, where any carrier offering service will likely need to build a network extension in order to provide the level of service required by the state's network constructs.

State's Final Response: Exception withdrawn by Cox during discussion held on 1/23/15.

7) Solicitation section reference: Uniform Terms and Conditions

9.5 Termination for Default.

9.5.1 In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

9.5.2 Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.

9.5.3 The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.

Cox Exception:

RESPONSE: Specific to 9.5.1, A notice period and opportunity to cure any default should be added to the contract so Cox has an opportunity to address any issues prior to termination. Cox will work with the State in good faith at all times to make sure the State is fully satisfied with the services.

Cox Alternative Language:

Cox proposes the following language be added:

The State may terminate if Contractor materially fails to comply with the terms and/or conditions of the Contract, provided that the State shall first give Contractor at least thirty (30) days written notice and right to cure prior to any termination for default or cause. If within thirty (30) days after

receipt of such written notice, Contractor shall have corrected such failure or, in the case of failure which cannot be corrected in (30) days, begun in good faith to correct such failure and thereafter proceeded diligently to complete such correction, then there shall be no right to terminate for default or cause. In addition to force majeure events, Contractor shall not be liable for delays due to the State or its agents or any issues from causes beyond Contractor's reasonable control. Specific to 9.5.3. Cox agrees to an appropriate termination for default section, but does not agree to be responsible for the excess cost of substituted services. Cox proposes the last sentence of 9.5.3 be deleted.

State Response: Unacceptable. Uniform Terms and Conditions, Section 8 – State's Contractual Remedies, gives the Contractor steps to prevent termination of contract.

RESPONSE: Cox withdraws its exception.

State's Final Response: Exception withdrawn by Cox.

The State of Arizona has revised language within resultant contracts as follows:

1. Scope of Work section 7.2.4.1, shall be deleted in its entirety and replaced with the following language:

7.2.4.1 If Full Service Restoration is not completed the Contractor shall be liable for 1/720 of the MRC for each hour after the allowable response time has been exhausted. This will be seen in the form of a credit against the billed amount at the end of the month.

An "Outage" is an interruption in Service or use of the Equipment caused by a failure of the Contractor's Network, excluding degradation or disruption due to planned or emergency maintenance or an event outside of the Contractor's direct control.

2. Special Terms and Conditions section 6.1 Method of Assessment shall be deleted in its entirety and replaced with the following language:

6.1 Method of Assessment. At the completion of each quarter, the Contractor reviews all sales under their contract in preparation for submission of their Usage Report. The Contractor identifies all sales receipts transacted by members of the State Purchasing Cooperative and assesses one percent (1.0%) of this amount in their Usage Report. An updated list of State Purchasing Cooperative members may be found at: https://spo.az.gov/state-purchasing-cooperative. At its option, the State may expand or narrow the applicability of this fee.

For this contract only, the State of Arizona will not assess the 1% administrative fee to Contractors for E-Rate eligible purchases. E-Rate eligible purchases can be made by eligible recipients per 47 CFR §54.501. To determine if a customer is an eligible recipient the Contractor shall refer to the following web address:
http://usac.org/sl/applicants/beforeyoubegin/definitions.aspx

The Contractor shall summarize all sales, along with all assessed Administrative Fee amounts within their Usage Report, including total amounts for the following:

- o Total sales receipts from State agencies, boards and commissions;
- o Total sales receipts from members of the State Purchasing Cooperative; and
- o Total Administrative Fee amount based on one percent (1.0%) of the sales receipts from members of the State Purchasing Cooperative.

Solicitation No: **ADSPO14-00004241**
Description: **Carrier and Broadband Provider Services**

Notice of Request for Proposal

In accordance with A.R.S. § 41-2534, competitive sealed proposals for the materials or services specified, will be received by the State Procurement Office **online** through the State's e-Procurement system, ProcureAZ (https://procure.az.gov) at the date and time posted in ProcureAZ. Proposals received by the correct time and date will be opened and the name of each Offeror will be publically available. **Proposals must be in the actual possession of the State on or prior to the time and date indicated in the Notice. Late proposals will not be considered.**

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the appropriate Procurement Agency. Requests should be made as early as possible to allow time to arrange the accommodation. A person requiring special accommodations may contact the solicitation contact person responsible for this procurement as identified above.

OFFERORS ARE STRONGLY ENCOURAGED TO CAREFULLY READ THE ENTIRE SOLICITATION

Offer and Acceptance

EXHIBIT B

State of Arizona
State Procurement Office
100 North 15th Avenue, Suite 201
Phoenix, AZ 85007

Solicitation No: **ADSPO14-00004241**
Description: **Carrier and Broadband Provider Services**

OFFER

TO THE STATE OF ARIZONA:

The Undersigned hereby offers and agrees to furnish the material, service or construction in compliance with all terms, conditions, specifications and amendments in the Solicitation and any written exceptions in the offer. Signature also certifies Small Business status.

Company Name

Address

City State Zip

Contact Email Address

Signature of Person Authorized to Sign Offer

Printed Name

Title

Phone:

Fax:

By signature in the Offer section above, the Offeror certifies:

1. The submission of the Offer did not involve collusion or other anticompetitive practices.
2. The Offeror shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, State Executive Order 2009-9 or A.R.S. §§ 41−1461 through 1465.
3. The Offeror has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer. Failure to provide a valid signature affirming the stipulations required by this clause shall result in rejection of the offer. Signing the offer with a false statement shall void the offer, any resulting contract and may be subject to legal remedies provided by law.
4. The Offeror certifies that the above referenced organization ___ **IS/** ___ **IS NOT** a small business with less than 100 employees or has gross revenues of $4 million or less.

ACCEPTANCE OF OFFER

The Offer is hereby accepted.

The Contractor is now bound to sell the materials or services listed by the attached contract and based upon the solicitation, including all terms, conditions, specifications, amendments, etc., and the Contractor's Offer as accepted by the State.

This Contract shall henceforth be referred to as Contract No. _____.

The effective date of the Contract is _____.

The Contractor is cautioned not to commence any billable work or to provide any material or service under this contract until Contractor receives purchase order, contact release document or written notice to proceed.

State of Arizona
Awarded this _____ day of _____ 20_____.

Procurement Officer

Table of Content

State of Arizona
State Procurement Office
100 North 15th Avenue, Suite 201
Phoenix, AZ 85007

Solicitation No: **ADSPO14-00004241**
Description: **Carrier and Broadband Provider Services**

1. PURPOSE

The State desires to establish a Contract or Contract Set for Carrier and Broadband Provider Services as described herein. The State acknowledges that the telecommunication and broadband industries and its suppliers are changing rapidly and as such desires to allow flexibility to accommodate open-standards-based products and new technologies.

2. BACKGROUND

The State currently holds nine (9) contracts for Telecommunication Carrier Services. Within these contracts a customer is able to obtain carrier services through a limited technology base. It is the intent of the State to widen the technologies and related services that are available for purchase by all eligible State customers from both traditional telecommunication carriers as well as broadband service providers to better serve the State of Arizona as a whole.

This contract will be utilized by two specific customer bases:

Primary Customers: Defined as all State Agencies, Boards and Commissions. These customers are *required* to be compliant with AZNet standards. The executive branch of the State has outsourced the management of its telecommunications infrastructure from a fragmented agency-centric model to a new enterprise network. Under this structure the State government has consolidated the purchasing power of all Executive Branch Agencies. At the direction of the State, AZNet has aggregated executive branch purchasing across the State.

Other Customers: Defined as customers who have membership in the State Purchasing Cooperative (specifically, all Arizona political subdivisions including, counties, cities, school districts and special districts.) Membership is also available to all non-profit organizations, as well as State governments, the US Federal Government and Tribal Nations or any other consortium of entities eligible to purchase under this contract.

3. OBJECTIVES

3.1 The objectives of this Solicitation are:

3.1.1 Standardized Carrier Services Descriptions: To provide Carriers more detailed and standardized communication service product descriptions, purchasable within this contract. The intention is to make Provider offerings more directly comparable with regard to functionality and specification as well as price.

3.1.2 Encourage Broader Participation: Encourage multiple Carriers and Broadband Providers to become contracted on a county-by-county basis so as to create robust and vital markets for multiple services throughout the State.

3.1.3 Harmonize with eRate: Allow contracts for eRate eligible purchasing. Align terms and product offerings in accordance with USAC's terms and approved products.

3.1.4 Strategic Infrastructure Investments: Encourage strategic investment by Carriers and Broadband Providers in building and expanding new high capacity (broadband) strategic infrastructure in Arizona counties and communities that currently have limited infrastructure capacity.

4. PRODUCT CATEGORIES

4.1 The following product categories are not exhaustive and are expected to evolve with emerging technologies and standards.

4.2 Standards and Quality of Service Guarantees.

4.2.1 *Current Standards and Standards Bodies:* At a minimum, all product and service offerings listed below and within the Product Categories of Attachment II shall be compliant with applicable standards for the particular

purchased product or service as required by the following standards setting bodies: Telcordia, ITU, ANSI, IEEE, IETF, FCC, NIST, CableLabs, Metro Ethernet Forum, and IP MPLS Forum.

4.2.2 *Quality of Service (QoS) Guarantees*: Specific types of QoS guarantees that are required to be included as part of the purchase price of offered services as described in the 'Product Description' section of Attachment II, associated with each service category. These guarantees are further specified as appropriate on a product-by-product basis in Attachment II. However, at a minimum, the following types of QoS guarantees shall be required by Bidder for every service category with stated Service Level Agreements (SLAs) appropriate to the specific product.

- Percentage of availability,
- Time to respond reported trouble,
- Time to repair reported trouble.

4.3 Desired Network Capabilities*:*

4.3.1 *Scalability*: The ability to increase delivery of service in number and/or size within a reasonable timeframe.

4.3.2 *Survivability*: The ability to continue to operate or quickly restore services in the face of unanticipated incidents, disasters, or catastrophes.

4.3.3 *Redundancy*: Having one or more circuits/systems available to sustain the operation of the service in case of failure of the main circuits/systems.

4.3.4 *Diversity*: Backbone network paths and infrastructure offered in such a way as to minimize the chance of a single point of failure.

4.4 CATEGORY 1: Dedicated Private Circuits and Networks (Leased Lines/Circuits, VPNs) requiring standards compliance.

4.4.1 Including but not limited to the following types of service:

4.4.1.1 Copper or Coaxial Analog Circuits:
- 4.4.1.1.1 Two Wire (POTS telephone line for voice or fax use)
- 4.4.1.1.2 Four wire (POTS telephone line for voice or fax use)
- 4.4.1.1.3 T1 (Channel bank termination up to 24 POTS lines)
- 4.4.1.1.4 T3 (Channel bank termination up to 72 POTS lines)

4.4.1.2 Digital TDM Circuits (Copper, Coax, Microwave, and HFC Transport)
- 4.4.1.2.1 DS0
- 4.4.1.2.2 DS1 (Data Transport or PBX Trunks, [CAS, or ISDN-PRI]
- 4.4.1.2.3 ISDN (BRI, PRI)
- 4.4.1.2.4 DS3 (Data Transport)

4.4.1.3 SONET Circuits (Optical Fiber, and/or Microwave Transport, and Fiber Terminal termination);
- 4.4.1.3.1 OC1
- 4.4.1.3.2 OC3
- 4.4.1.3.3 OC12
- 4.4.1.3.4 OC 24
- 4.4.1.3.5 OC 48
- 4.4.1.3.6 OC 192
- 4.4.1.3.7 OC 768

4.4.1.4 Virtual Private Circuits and Networks: may be transported over the following types of physical media: Copper pairs, Coax, Fiber, DWDM, Hybrid-Fiber/Coax (HFC), or Microwave and terminated

at the customer demarcation with the following types of access methods: 10/100/1000 Ethernet, Cable Modem, DSL Modem or Fiber Terminal.

4.4.1.4.1 Ethernet Virtual Connections (EVCs): Point-to-point, Hub and Spoke Service, Point to multi-point, Multi-point to Multi-point.
- 4.4.1.4.1.1 Ethernet Private Line (EPL)
- 4.4.1.4.1.2 Ethernet Virtual Private Line (EVPL)
- 4.4.1.4.1.3 Ethernet Virtual LAN (E-LAN)
- 4.4.1.4.1.4 Converged VoIP Services (Replicating Landline Voice Services over Metro Ethernet virtual networks and circuits and interoperable with the PSTN)
- 4.4.1.4.1.5 Stand Alone VoIP Services over Metro Ethernet virtual circuits and E-LANs
- 4.4.1.4.1.6 SIP Trunking over Metro Ethernet Virtual Circuits and E-LANs

4.4.1.4.2 MPLS-IP Virtual Network Services: Point-to-point, Hub and Spoke Service, Point to multi-point, Multi-point to Multi-point (Any-to-Any).
- 4.4.1.4.2.1 MPLS Virtual Private Line Service (point-to-point)
- 4.4.1.4.2.2 MPLS Virtual LAN service (multi-point to multi-point)
- 4.4.1.4.2.3 Converged VoIP Services (Replicating Landline Voice Services over MPLS networks and services and interoperable with the PSTN)
- 4.4.1.4.2.4 Stand Alone VoIP Services over MPLS virtual circuits and LANs
- 4.4.1.4.2.5 SIP Trunking over MPLS Virtual Circuits and E-LANs

4.5 CATEGORY 2: Voice Grade Services; Business phone “lines” shall be flexible, affordable and reliable. Carriers and Providers shall also provide options for call features. Phone “lines” can be provided as landline or VoIP services.

4.5.1 Basic telephone services: For Providers offering voice services, basic voice services shall include at a minimum: a “line” (Physical or Voice-over-Internet-Protocol (VoIP)) with an assigned telephone number and unlimited local calling with options for the following requested call features. Some of the features listed below, in section 4.5.3, must be enabled by the Provider; others may be enabled/disabled by the customer using Touch Tone commands, (Carrier provisioned or customer controlled). Local calling is defined as calls originating and terminating within a LATA or equivalent geographic boundary.

4.5.2 Number portability: Number portability shall be supported by telephone service Providers; allowing assigned numbers to be imported from other providers at the time of service activation and exported to other providers at the time of service termination using industry standard practices.

4.5.3 Basic telephone service optional features:

- 4.5.3.1 Call Back or equivalent;
- 4.5.3.2 Call Blocking or Selective Call Blocking;
- 4.5.3.3 Call Forwarding (Busy; No Answer; Selective; To Multiple Lines, etc)
- 4.5.3.4 Call Trace;
- 4.5.3.5 Call Transfer;
- 4.5.3.6 Call Waiting;
- 4.5.3.7 Caller ID Name and Number;
- 4.5.3.8 Distinctive Ringing Restricted Call Forwarding or equivalent;
- 4.5.3.9 Feature Blocking;
- 4.5.3.10 Line Hunting;
- 4.5.3.11 Long Distance Blocking;
- 4.5.3.12 Remote Access to Call Forwarding;
- 4.5.3.13 Teleconferencing
- 4.5.3.14 Three Way Calling;
- 4.5.3.15 Voice Mail; and
- 4.5.3.16 Other features that may not be listed above, or as emerge with technology.

4.5.4 Providers should also make available the following voice services:

4.5.4.1 Customer specified Default Long Distance provider;
4.5.4.2 Direct Inward Dialing Services (DID);
4.5.4.3 Domestic Long Distance and Global Long Distance access;
4.5.4.4 Foreign Exchange (FX) Services;
4.5.4.5 PBX ALI (Private Branch Exchange Automatic Location Identification); This is specific to a multiline telephone system (MLTS);
4.5.4.6 Teleconferencing Bridge Services (Audio Conferencing); and
4.5.4.7 Toll Free Services.

4.6 CATEGORY 3: WiFi Services. WiFi Access Services are eligible for purchase when the WiFi Access Points terminating the service at the customer premises are bundled with the Carrier or Broadband Provider's network access service for a private line or other network service. For such WiFi services the WiFi Access Points (and any required traffic aggregating routers located at the customer premises) shall be considered to be on the providers side of the provider's demark. The Provider of WiFi Access Service shall be responsible for all configuration and management of any equipment bundled with the service and necessary for its operation.

Primary Customers who may purchase WiFi Access Services shall require the Provider to support a user log-in splash screen capability and to comply with all other State Security Policies in the implementation of the service. The State of Arizona has adopted National Institute Standards and Technology (NIST) standards for security. The State of Arizona Security Policies will be available after contract award. Additionally, WiFi Access Services shall not be configured to connect directly to the State network. It is recommended that Other Customers who may order this service require the Provider to follow the same security guidelines as AZNet.

Please note: Specifically *not* eligible under *this* contract is the purchase, installation, or operation of any WiFi equipment by the customer.

4.6.1 WiFi Access Services:

4.6.1.1 Single 802.11a/g/n Access Point with 6 to 30 Mpbs access connection;
4.6.1.2 Single 802.11a/g/n/ac Access Point with 10 to 500 Mbps access connection;
4.6.1.3 Multiple 802.11a/g/n Access Points routed to a single access connection supporting up to 30 Mbps per Access Point;
4.6.1.4 Multiple 802.11a/g/n/ac Access Points routed to a single access connection supporting up to 500 Mbps per Access Point; and
4.6.1.5 Other services that may not be listed above, or as emerge with technology.

4.7 CATEGORY 4: Internet Access Services. These services may be bundled with transport or access services or provided separately for transport over private circuits and networks, or over Provider operated networks. Internet Access Services may also be bundled with Provider managed router services.

4.7.1 Feature functionality:

4.7.1.1 Symmetric
4.7.1.2 Asymmetric
4.7.1.3 Border Gateway Protocol (BGP)
4.7.1.4 Open Shortest Path First (OPSPF)
4.7.1.5 DNS Services
4.7.1.6 Carrier DHCP Addressing
4.7.1.7 Static IP Address
4.7.1.8 Private IP Address
4.7.1.9 Other features that may not be listed above, or as emerge with technology.

4.7.2 Providers may also make available the following Internet Security Services which may be bundled with Internet Access services or sold separately:

4.7.2.1 Next Generation Firewall Services;
4.7.2.2 Distributed Denial of Service Prevention (DDoS);
4.7.2.3 Data Loss Prevention (DLP);
4.7.2.4 Web Proxy Filtering;
4.7.2.5 Content Filtering;
4.7.2.6 Other Security Services that may not be listed above, or as emerge with technology.

4.8 CATEGORY 5: Fiber Services.

Fiber Services can be provided as:

4.8.1 Leased dedicated conduits or mirco-ducts within conduits (through which a customer can install and operate their own fiber and provide their electronics);

4.8.2 Leased "Dark" Dedicated Fiber Cable (point-to-point or ring configuration, Fiber Optic Distribution Unit (FODU) demarcation, customer provides electronics);

4.8.3 Leased "Dark" Fiber Strand Pairs on shared fiber cable (point-to-point or ring configuration, FODU demarcation, customer provides electronics);

4.8.4 Leased Dense Wavelength Division Multiplexing (DWDM) wavelength(s) on shared fiber pairs (point-to-point or ring configuration, Optical FODU Demarcation, Customers provides electronics); and

4.9 Excluded Products and Services: The following products and services shall be excluded from a resultant Contract:

4.9.1 Building Wiring System (BWS, cabling and connection devices beyond the telecommunications demarcation);
4.9.2 Mobile radio related products;
4.9.3 Wireless Mobility Services (specifically, cell phone carrier services)
4.9.4 Hardware and software for build-out of Buyer's campus networks (CPE); and
4.9.5 9-1-1 Services;
4.9.6 Integration Services; and
4.9.7 All other products and services not specified herein.

5. EXPANDING GEOGRAPHIC AVAILABILITY FOR TARIFFED AND NON-TARIFFED CARRIER TELECOMMUNICATION SERVICES

5.1 Geographic availability of ILEC and CLEC telecommunication services may change for an ILEC or CLEC during the life of a resultant contract. As such, under a resultant Contract is limited to the areas included herein. Based on technological advances and/or expanded capabilities and infrastructure, the Contractor may add supplemental Geographic Areas to the Contract as new ILEC or CLEC service territories and/or service capabilities become available. The addition of new Geographic Areas under the Contract shall be the State's discretion.

6. BROADBAND EXPANSION PROVISION

The state seeks to encourage the building and expansion of new broadband infrastructure by encouraging Providers to work aggressively and strategically with communities and anchor institutions in those communities in underserved areas of the State to coordinate the aggregation of demand and the coordinated purchase of new and expanded high capacity broadband services especially in underserved rural communities and counties in the state.

6.1 To encourage provider investment in, and implementation of such new infrastructure, the State will consider the following within a resultant contract:

6.1.1 Special Terms: When services are purchased in connection with new infrastructure expansion by Carriers and/or Broadband Providers, Special Terms and Conditions can be considered for approval, as follows:

6.1.1.1 Longer-Term Contracts. After the initial 5 years base the contract can be extended for one (1) three (3) year term. At the expiration of that three (3) year term, the contract can be extended a final time for two (2) additional years, making the max life of a resultant contract 10 years.

6.1.1.2 Longer-Term Service Contracts. If a Carrier or Provider wishes to seek special terms for a Longer-Term Service Contract (greater than five (5) years) with a customer, to justify investment in new infrastructure expansion, they shall submit a business case to the State Procurement Office for review and possible acceptance.

6.1.1.3 Early-Termination Terms. If a Carrier or Provider wishes to seek special terms for early-termination, a business case shall be submitted to the State Procurement Office for review and possible acceptance.

6.1.2 Non-Recurring Costs (NRC). NRC of new infrastructure construction can be amortized over the term of a service order by the allowance for an increase monthly recurring costs (MRC) for provided services beyond the awarded price for service(s) that may utilize such new infrastructure. This amortization can be for all or a portion of the term of those specific contracted services provided that the total cost shall not increase beyond the sum of the regular bid price and the quoted NRC.

6.1.2.1 The State considers that providing broadband capacity, requiring new infrastructure construction, to a community shall be defined as having at least one Provider Point of Presence within a Census Designated Place or a geographic Cluster of Census Designated Places having 4,000 or more households, connected with fiber-optic or microwave back-haul transport capacity equal to or greater than 1 Mbps per household to a Point of Presence in a metropolitan area. If a Census Designated Place with a population less than 4,000 households is to be considered as served with broadband capacity the minimum connection capacity between at least one Point of Presence in the community and a Point of Presence in metropolitan areas shall be 1 Gbps. Exhibit A lists all the recommended Backhaul Bandwidth for Census Designated Places and logical Clusters of Places.

6.1.3 Consortia / Group Buying. Eligible 'Other Customers', as defined in Section 2, Background, are allowed to create new consortia with or without the participation of Primary Customers, also defined in Section 2, Background, to increase their buying power for services and to enhance the likelihood of new infrastructure investments being made by Carriers and Broadband Providers.

6.1.3.1 Billing of Consortium Projects. If Carriers or Broadband Providers accept an order from a consortium that has more than one customer (example: a school district, a city, a county, a fire district, and a non-profit) the Carrier or Broadband Provider must agree to bill every member of the consortium separately for each of their agreed portion of the cost.

6.2 To be considered for an award within the broadband expansion provision of a resultant contract the Offeror shall follow the specific instructions on how to respond to this section stated with Attachment I, Offeror Questionnaire.

6.3 Pricing. If a Carrier or Broadband Provider can provide a services within a County only after committing to the construction of new Infrastructure in that County that would enable the delivery of said services the Carrier or Broadband Provider may request the negotiation of special terms and conditions for services that would utilize the new infrastructure in that County to justify their investment. In these cases the State acknowledges that pricing shall be negotiated.

6.4 Additional Expansion Proposals. If an infrastructure expansion opportunity arises in an area that was not originally identified to the State through the initial RFP process, the Contractor may submit a proposal to the State for review to be considered for the additional terms listed in 6.1.1.

7. SERVICE LEVEL GUARANTEES

7.1 Service Level Agreements (SLAs)

7.1.1 SLAs are required when establishing service for applicable products.

7.1.2 The customer shall negotiate SLAs directly with the carriers and providers when establishing requested service.

7.1.2.1 Once negotiated, the SLA shall be submitted the State Procurement Office for review and approval against the Terms and Conditions of a resultant contract.

7.1.3 Costs associated with more stringent guarantees then outlined below in section 7.2 may be added to a quote as a service premium.

7.1.3.1 The fixed rate MRC shall not be changed to reflect the premium associated with the SLAs rather it should be it's own monthly line item.

7.1.4 Carriers and Providers are required to monitor and report to customers monthly for agreed to Service Level Agreements performance and nonperformance.

7.2 Minimum Guarantees:

7.2.1 Restore and Response defined:

7.2.1.1 Restore – Means a 'full service restoration'.

7.2.1.2 Response – Means having a physical presence onsite.

7.2.2 Metro Areas defined:

7.2.2.1 Phoenix Metro, 50 mile radius of the Capital Mall circle

7.2.2.2 Tucson Metro, 50 mile radius of the University of Arizona

7.2.2.3 Yuma Metro, 25 mile radius of the Yuma County Court House

7.2.2.4 Flagstaff Metro, 25 mile radius of Coconino County Court House

7.2.2.5 Prescott Metro, 25 mile radius of Yavapai County Court House

7.2.3 Restore and Response times:

7.2.3.1 Metro Areas:

7.2.3.1.1 Specific sites to be provided after contract award.

7.2.3.1.1.1 Full restoration shall be completed within two (2) hours.

7.2.3.2 Rural Areas:

7.2.3.2.1 Specific sites to be provided after contract award.

7.2.3.2.1.1 Full restoration shall be completed within four (4) hours.

7.2.3.3 If full restoration cannot be achieved within the above stated time frames, the customer shall be notified immediately upon discovery of such event that hinders restoration.

7.2.3.3.1 Every hour that service has not been restored the carrier or provider shall be responsible for updating the customer of status on the restoration project.

7.2.4 Restore and Response penalties:

7.2.4.1 Every 15 minutes that 'full service restoration' is not completed the Contractor shall be charged a penalty of 5% of the customer's monthly bill. This will be seen in the form of a credit against the billed amount at the end of the month.

7.2.4.2 If full restoration has not been completed within double the allowed time the customer will have the right to terminate services with that Carrier with no penalty.

7.2.4.2.1 Customer, at its discretion, can allow an exception to this within their negotiated SLA, based on agreed to terms by both parties, for allowances such as, but not limited to, force majeure.

7.2.5 Restore and Response tracking:

7.2.5.1 The two (2) or four (4) hour window shall start when the customer (AZNet, for the primary customer) calls the carrier directly and opens a repair ticket.

7.2.5.2 Once the service has been fully restored, the carrier shall call the customer and notify of completion.

7.2.5.3 Once notified the customer shall confirm that service has been fully restored before the carrier closes the open repair ticket. Once this confirmation has been completed the window for restoration shall be closed and calculated for any applicable penalties.

7.2.5.3.1 If the carrier or provider closes the repair ticket before confirmation has been provided by the customer and is required to open a new ticket, the restoration and response time shall not be restarted, rather merged with the original outage notification.

8. PROCESS FOR ESTABLISHING SERVICES:

8.1 Establishing Service for State Agencies, Boards and Commissions exclusively, please reference Exhibit B for the State of Arizona WAN Strategy Diagram:

8.1.1 Quote Process. The most current version of 10.5 AZNet II – RFI Carrier Order Process Guide can be found at https://aset.az.gov/aznet-ii-arizona-network.

8.1.1.1 Customer is required to open a Request for Information (RFI) ticket for requested Carrier products and services.

8.1.1.1.1 Within this request the Customer shall provide the 'AZ Service ID' found within Attachment II, Pricing Structure.

8.1.1.2 All Contractors awarded in geographical location are notified of an opportunity to provide a quote for requested products and services based on contract category.

8.1.1.3 Site Assessments:

8.1.1.3.1 Contractor will be notified at the time they are given the opportunity to quote that a site assessment is requested.

8.1.1.3.2 Site assessments shall be provided at no charge.

8.1.1.3.3 Contractor is able to waive the opportunity to walk the premises and still provide a quote, however, the quote shall not be revised if the Contractor waived their right to walk the site.

8.1.1.4 Providing the Quote:

8.1.1.4.1 Quote shall be in compliance with the Quote form provided by ASET-EIC.

8.1.1.4.2 NRC's quotes shall be firm fixed, ranges shall not be accepted.

8.1.1.4.3 MRC quotes shall be firm fixed.

8.1.1.4.4 Contractor(s) are required to submit the resulting quote to ASET_EIC_Carrier@azdoa.gov by the requested due date and time of the original RFI.

8.1.1.4.5 Late quotes shall not be accepted.

8.1.1.5 ASET-EIC compiles received quotes and sends them to the requesting customer for evaluation.

8.1.2 Ordering Process. The most current version of 10.6 AZNet II – MAC Project Carrier Order Process Guide can be found at https://aset.az.gov/aznet-ii-arizona-network.

8.1.2.1 Customer reviews quote(s) provided to them by ASET-EIC.
8.1.2.1.1 Decision shall be based on the results of the RFI.

8.1.2.2 Customer opens a new move, add, change (MAC) ticket.

8.1.2.3 AZNet sends the order to the Selected Carrier.

8.1.2.4 Carrier sends e-mail confirmation to AZNet within 24 hours of receipt of the order.

8.1.2.5 Depending on the product ordered the Carrier sends and e-mail to AZNet with applicable supporting information as follows:

8.1.2.5.1 Circuit Number;

8.1.2.5.2 Carrier Order Number; and

8.1.2.5.3 Due Date.

8.1.2.6 AZNet provides the supporting information to the AZNet Engineers and requesting Customer.

8.1.2.7 Carrier confirms that the product has been installed.

8.1.2.8 AZNet verifies with the AZNet Engineer and Customer that product was installed in compliance with the agreed upon project specifications.

8.2 Establishing Service for 'Other Customers':

As Eligible 'Other Customers' these customers are not required to follow the State of Arizona ASET requirements, nor are their networks and infrastructures managed by the State ASET department. As such, the customers may require the Contractor to assist in Order preparation by providing necessary product and services descriptions, operating parameters, and interface information. Contractor shall provide this assistance at no additional cost to the Customer.

8.2.1 Quote Process. Customers may request quotes for the specific products and/or services available under the Contract, through the issuance of a Contract Quote or Purchase Quote (Quote Request) to the Contractor. Quote Requests shall cite the Contract number and shall be limited to those products and/or services available under the Contract only.

Extra-contractual Products and Services Prohibited. Any attempt to use a Quote Request and/or any response thereto, to represent any products and/or services not specifically awarded and cited in the Contract as being included in the Contract is a violation of the Contract and the Arizona Procurement Code. Any such action is subject to the legal and contractual remedies available to the State, inclusive of but not limited to Contract termination for default, suspension and/or debarment of the Contractor.

8.2.1.1 Quote Request Form. Quote shall include, at a minimum, the following information:

8.2.1.1.1 Date the quote was requested;
8.2.1.1.2 Quote Number;
8.2.1.1.3 E-Rate SPIN number, if requested;
8.2.1.1.4 Customer information, to the individual department, division or office as applicable;
8.2.1.1.5 Customer contact person;
8.2.1.1.6 Term of the Service, including Service start date, expiration date – if applicable, and installation date – if applicable;
8.2.1.1.7 Total cost to the Customer; and
8.2.1.1.8 A list or description specifying the quantity, type and special options and/or provisions of the Service to be provided.

8.2.2 Ordering Process.

8.2.2.1 Purchase Order Issued. Purchase Orders shall be in accordance with the requirements set forth herein.

8.2.2.2 Order Acknowledgement. Contractor shall acknowledge receipt of all Orders. Contractor shall notify the Customer, in writing or electronically, within two (2) days of Order receipt. Customers may accept verbal Order acknowledgment when time and circumstances require.

8.2.2.3 Order Acceptance. Contractor shall acknowledge acceptance of all Orders. Contractor shall notify the Customer, in writing or electronically, within five (5) days of Order receipt. Orders that are not accepted and not specifically rejected by the Contractor within the five (5) days shall be considered accepted. Customers may accept verbal order acceptance when time and circumstances require. Order acceptance shall include the reservation of all elements necessary to deploy the ordered and accepted products and services.

8.2.2.4 Order Notification. Contractor shall, prior to the Order start date, notify Customer, in written or electronically, information pertaining to the installation of the Order's products and services.

8.2.2.5 Order Implementation. Contractor shall be responsible for and shall minimize the impact of any transition between the Customer's incumbent service providers and the Contractor. Contractor shall inform the Customer of all Customer responsibilities throughout service implementation. In general, Order implementation shall not exceed ninety (90) days but shorter or longer timeframes may be negotiated between the Customer and the Contractor on a case by case basis. Contractor shall be responsible for all billing variations incurred during an unsuccessful service implementation. For

example, new rates are not applied correctly or telephone numbers are not recognized in database, etc.

8.3 Additional Provisions regarding Service Establishment for both Primary and Other customers:

8.3.1 Major Service Implementations:

8.3.1.1 Inspection of all Major Services Implementations. A Major Services Implementation is defined as any Customers with ten (10) or more locations and / or ten (10) or more PVC's. Customer may appoint an Inspector(s) from time to time to serve as Customer's representative during, installation, testing, cutover, operation and maintenance of the Services (and its billing) and shall advise Contractor of same. Such inspection may extend to any part of the installation or operation of the Services. The Inspector shall not be permitted to modify in any way the provisions of the Contract, nor to delay the work by failing to complete the inspection with reasonable promptness. The Inspector shall not interfere with the Contractor's management of the work. Instructions given by the Inspector shall be respected and responded to by Contractor. Whenever required by the Inspector, Contractor shall furnish without additional charge, all tools, test equipment, and labor necessary to make an examination of the work completed or in progress or test the quality of the Services. If the Services, including its installation and operation, is found to be not in compliance with the Specifications, Contractor shall bear all expenses of such examination and of satisfactory correction of the deficiencies. After all Service installation and testing activities are completed, and upon delivery of all required Service and testing documentation, Final Services Acceptance (FCA) shall be executed.

8.3.1.2 Acceptance Testing of all Major Services Implementation. Upon notification of completion of Contractor testing, Customer shall commence its Acceptance Testing Period of 30 calendar days for compliance with Services performance requirements. In the event of apparent failure to meet any performance requirements or standards during any Acceptance Testing Period, it is not required that one 30-day period expire in order for another Acceptance Testing Period to begin. Furthermore, if, during any Acceptance Testing Period, Customer identifies Service Affecting deficiencies, it shall be at Customer's option if another 30-day Acceptance Testing Period is required after Contractor satisfactorily corrects such deficiencies. Customer's standard of performance shall be met when the Services operates in conformance with the SLA requirements during its operational-use-time for a period of 30 consecutive calendar days from the commencement date of the Performance Period. If Customer identifies Service Affecting deficiencies, during the Performance Period, Customer shall promptly notify Contractor in writing of such deficiencies. Contractor shall correct these deficiencies in a timely and satisfactory manner and shall notify Customer in writing when deficiencies are corrected. Customer shall make every effort to assist Contractor in the resolution of all deficiencies but the responsibility ultimately resides with Contractor. Promptly upon successful completion of the Performance Period, Customer may notify Contractor in writing that the Performance Period is now complete. Contractor's receipt of Customer's letter shall prompt the execution of the Final Services Acceptance Document. If the Performance Period Acceptance Testing is not completed within 90 calendar days of the Contractor's CSO Initiation date, Customer shall have the option of terminating the CSO, without penalty or of authorizing Contractor in writing of an extension of the Performance Period deadline. Customer's option to terminate the CSO shall remain in effect until such time as successful completion of the service performance requirements is attained.

8.3.2 Order Modifications and Cancellations:

8.3.2.1 Modifications or Cancellations **prior to** Order Acceptance:

Customer may, at any time prior to Order acceptance, modify or cancel the Order, in whole, or in part. Customer shall have no liability for making such modifications or cancellations.

8.3.2.2 Modifications or Cancellations **after** Order Acceptance:

Customer may modify or cancel an Order after Order acceptance. Contractors may modify Orders as authorized by the Customer. Modifications or cancellations shall be executed in writing or electronically. Any unauthorized modification or cancellation by Contractor shall constitute a material breach of the Contract and, at the Customer's option, cause the Order to be void. Customer liability for modifications or cancellation made after Offer acceptance shall be limited to the full cost of all non-recoverable expenses, including any special construction charges, caused by the modification, not to exceed the non-recurring costs for products and services in the Order. Customers may cancel an Order due to Contractor's failure to perform in accordance with the Order notification, and/or the service level agreements contained in the Contract. Cancellation for Contractor default shall limit Customer liability to the reoccurring and non-reoccurring costs already accepted and in use by Customer.

9. CONTRACT MANAGEMENT:

9.1 Performance Management. Contractor shall cooperate with the Procurement Officer in the administration of the Contract, to review performance indicators, to identify performance issues before, or promptly after, a problem occurs, and to address and resolve performance problems in a timely and responsible manner.

9.1.1 Annual and Semi-annual Meetings. Contractor shall, at least once annually and more frequently as required by the State, meet with the Procurement Officer and/or members of delegated representatives of the State's ASET-EIC department, to review Contractor performance against the terms, conditions and requirements of the Contract.

9.1.2 Issue and Problem Resolution. When an issue or problem requires notice and mitigation steps by the parties, the State and Contractor shall follow the same Dispute Resolution process as set forth herein. Depending on the severity of the issue or problem, the State may at its discretion, bypass the Dispute Resolution process herein and precede directly to the Remedies provisions of the Contract.

9.1.3 Responsibility Documentation. Contractor's past performance is a standard determinant of Offeror Responsibility in the award of Arizona State Contracts. Contractor performance, as documented in the Contract File, may positively or negatively effect future proposals submitted in response to solicitations conducted by the State of Arizona, its agencies, boards or commissions, as well as members of the State Purchasing Cooperative.

9.2 Broadband Expansion Management.

9.2.1 Annual and Semi-annual Meetings. Contractor shall, at least once annually and more frequently as required by the State, meet with the Procurement Officer and/or members of delegated representatives of the State's ASET-Broadband department, to review Contractor performance against the terms, conditions and requirements of the Contract. Reviewing progress on plans of expansion originally submitted.

9.2.2 Service Maps. Contractors shall provide maps of their current and planned broadband infrastructure in KMZ or an equivalent digital format for counties in which they intend to offer services under this contract, such maps need to include physical layer fiber routes, including long haul, middle mile and last mile segments; points-of-presence, interconnection/peering points, central offices, and data centers; other access points such as: manholes, splice points, etc. Direct information with regard to served customers need not be included. These maps are to be updated on a semi-annual basis and submitted to the State Procurement Office.

9.2.3 Issue and Problem Resolution. When an issue or problem requires notice and mitigation steps by the parties, the State and Contractor shall follow the same Dispute Resolution process as set forth herein. Depending on the severity of the issue or problem, the State may at its discretion, bypass the Dispute Resolution process herein and precede directly to the Remedies provisions of the Contract.

10. E-RATE COMPLIANCE

In order to provide the services listed within an awarded contract to E-Rate eligible entities a Carrier or Provider shall obtain a Service Provider Identification Number (SPIN) from the Universal Service Administrative Company as part of their response to this solicitation. Failure to do so will result in a Carrier or Provider being excluded from bidding services to said eligible entities.

If a provider chooses not to obtain a SPIN they will not be disqualified from consideration for this reason alone.

10.1 **The originating FCC Form 470 number for this RFP is 426480001240887.**

As required by federal law, providers of eligible services must comply with the Lowest Corresponding Price (LCP) rule:

a. 47 CFR § 54.500(f)
Lowest corresponding price is the lowest price that a service provider charges to non-residential customers who are similarly situated to a particular school, library, or library consortium for similar services. ("Similarly situated" means the "geographic service area" in which a service provider is seeking to serve customers with any of its E-rate services.)

b. 47 CFR § 54.511(b)
Providers of eligible services shall not charge schools, school districts, libraries, library consortia, or consortia including any of these entities a price above the lowest corresponding price for supported services, unless the Federal Communications Commission, with respect to interstate services or the state commission with respect to intrastate services, finds that the lowest corresponding price is not compensatory.

The Billed Entity Applicant Reimbursement (BEAR) FCC Form 472 is filed by the applicant and approved by the service provider after the applicant has paid for services in full. The Service Provider Invoice (SPI) FCC Form 474 is filed by the service provider after the applicant has been billed for the non-discount portion of the cost of eligible services. *Note: Applicants can choose their method of invoicing; service providers cannot force applicants to use a particular method*.

11. PRICING STRUCTURE

Providers shall only charge the pricing found within 'Attachment II, Pricing Structure', which shall be firm fixed pricing.

Providers are required to provide pricing as lowest corresponding price, which is defined as the lowest price that a service provider charges to non-residential customers, such as, schools, libraries, consortiums, and businesses who are similarly situated customers for similar services. "Similarly situated" means the "geographic service area" in which a service provider is seeking to serve customers.

11.1 Category 1, Dedicated Private Circuits and Networks:

11.1.1 Pricing Structure: Prices for Private (physical and virtual) circuit and network services shall be based on the service access medium and capacity, the provisioned bandwidth for the access connection, and the guaranteed QoS parameters of the service. The following are examples of allowed pricing elements:

11.1.1.1 Non-Recurring Costs (NRC) for installing and activating the service at a specific location;
11.1.1.2 'Extension' NRC for extending the provider's transport medium to an off-net location;
11.1.1.3 Monthly lease for Demarcation equipment if not provided by customer unless the description in Attachment II for a particular Type Of Service requires that any equipment associated with the service be bundled with the service and the cost to be included in the Monthly Recurring Cost (MRC);

11.1.1.4 Monthly Recurring Costs (MRC) for service at specified data rates with any required bundled equipment cost; and
11.1.1.5 MRC for any specific service level commitments not described in the product bid lists.

11.2 Category 2, Voice Grade Services:

11.2.1 Non-Recurring Costs (NRC) for installing and activating the service at a specific location;

11.2.1.1 Monthly Recurring Charge (MRC) for Voice Package:
11.2.1.1.1 Base voice service includes a local "line" with assigned local number and unlimited local calling.

11.2.1.1.2 Call feature packages including call features as selected by the Customer:
11.2.1.1.2.1 Base voice service with 1 include Call Feature;
11.2.1.1.2.2 Base voice service with bundled package of up to 5 Call Features;
11.2.1.1.2.3 Base voice service with bundled package of up to 10 Call Features; and
11.2.1.1.2.4 Base voice service with bundled package of 11 or more Call Features.

11.2.1.2 Long Distance Services:
11.2.1.2.1 Domestic: U.S. Long Distance rates shall be quotes as ICB on the following billing alternatives:

11.2.1.2.1.1 Flat Rate; and
11.2.1.2.1.2 Usage Based by 1/10th minute increments starting with called party answer.

11.2.1.2.2 Global: International Long Distance rates shall be quoted as ICB based on a country list provided by the Customer. Billing shall be based on the following alternatives:

11.2.1.2.2.1 Flat Rate by called country.; and
11.2.1.2.2.2 Usage Based by country called per 1/10th minute increments starting with called party answer.
11.2.1.3 'Extension' NRC for extending the provider's transport medium to an off-net location.

11.3 Category 3, WiFi Access Services:

11.3.1 Pricing for WiFi Access Services shall be based on, the provisioned bandwidth for the access connection, and the guaranteed QoS parameters of the service specified in the bid list. The following are examples of allowed pricing elements:

11.3.1.1 Non-Recurring Costs (NRC) for installing and activating the service per access point installed at a specific location;
11.3.1.2 'Extension' NRC for extending the provider's transport medium to an off-net location;
11.3.1.3 Monthly Recurring Costs (MRC) for transport service at specified data rates (including bundled Access Point(s) and any managed routers); and
11.3.1.4 MRC for any specific service level commitments not described in the product bid lists.

11.4 Category 4, Internet Access Services:

11.4.1 Pricing for Internet Access Services shall be based on the service access medium and capacity, the provisioned bandwidth for the access connection, and the guaranteed QoS parameters of the service. The following are examples of allowed pricing elements:

11.4.1.1 Non-Recurring Costs (NRC) for installing and activating the service at a specific location;
11.4.1.2 'Extension' NRC for extending the provider's transport medium to an off-net location;
11.4.1.3 Monthly cost for Demarcation equipment (such as cable modem, DSL modem, fiber termination panel, etc.) if not bundled with the service and included with the MRC. or if not provided by customer; and
11.4.1.4 Monthly Recurring Costs (MRC) for guarantee service at specified data rates and QoS/CoS levels.

11.5 Category 5, Fiber services:

11.5.1 Pricing for Fiber Services shall be based on the capacity, distance of the circuit, and Guaranteed Availability and Service Restoration commitments, as well as any bundled electronics on the Provider side of the demarcation. Examples of allowable charges are:

11.5.1.1 Non-Recurring Costs (NRC) for installing and activating the service at specific locations;
11.5.1.2 'Extension' NRC for extending the provider's transport medium to an off-net location;
11.5.1.3 Monthly lease for Demarcation equipment (such as fiber termination panel, FODUs etc.) if not bundled with the service and included with the MRC, or if not provided by customer; and
11.5.1.4 Monthly Recurring Costs (MRC) for guarantee service at specified data rates and QoS/CoS levels.

11.6 E-Rate Eligible Entities:

11.6.1 Specific only to E-Rate Eligible Entities, a Contractor may be required to quote the bundled rate pricing proposed within Attachment II, Pricing Structure, as a 'de-bundled' set of services separating Internet Access and transport services from managed router(s) and WiFi router service. If required to 'de-bundle' the pricing, the quoted price shall not exceed the pricing of the bundled rate proposed within Attachment II, pricing structure for the WiFi Access Service in question.

1. TERM OF CONTRACT

The contract shall begin on July 1, 2015 and shall continue for a term of five (5) years, unless terminated in accordance to the terms of this contract.

2. CONTRACT TYPE (AS NEEDED)

The contract shall be on an as needed, if needed basis at Firm Fixed Price rates.

3. NON-EXCLUSIVE CONTRACT

This contract has been awarded with the understanding and agreement that it is for the sole convenience of the State of Arizona. The State reserves the right to obtain like goods or services from another source when necessary. Off-contract purchase authorization(s) may be approved by the State Procurement Office. Approvals shall be at the exclusive discretion of the State and shall be final. Off-contract procurement shall be consistent with the Arizona Procurement Code.

4. ELIGIBLE AGENCIES (Statewide)

This Contract shall be for the use of all State of Arizona departments, agencies, commissions and boards. In addition, eligible State Purchasing Cooperative members may participate at their discretion. In order to participate in this contract, a cooperative member shall have entered into a Cooperative Purchasing Agreement with the Department of Administration, State Procurement Office as required by Arizona Revised Statues § 41-2632.

Membership in the State Purchasing Cooperative is available to all Arizona political subdivisions including cities, counties, school districts, and special districts. Membership is also available to all non-profit organizations, as well as State governments, the US Federal Government and Tribal Nations. Non-profit organizations are defined in A.R.S. § 41-2631(4) as any nonprofit corporation as designated by the internal revenue service under section 501(c)(3) through 501(c)(6).

5. ESTIMATED QUANTITIES (CONSIDERABLE)

The State anticipates considerable activity resulting from contract(s) that will be awarded as a result of this solicitation; however, no commitment of any kind is made concerning quantities actually acquired and that fact should be taken into consideration by each potential Contractor.

6. ADMINISTRATIVE FEE / USAGE REPORTS

6.1 Method of Assessment. At the completion of each quarter, the Contractor reviews all sales under their contract in preparation for submission of their Usage Report. The Contractor identifies all sales receipts transacted by members of the State Purchasing Cooperative and assesses one percent (1.0%) of this amount in their Usage Report. An updated list of State Purchasing Cooperative members may be found at: https://spo.az.gov/state-purchasing-cooperative. At its option, the State may expand or narrow the applicability of this fee. The State shall provide thirty (30) written notice prior to exercising or changing this option. The Contractor shall summarize all sales, along with all assessed Administrative Fee amounts within their Usage Report, including total amounts for the following:

- Total sales receipts from State agencies, boards and commissions;
- Total sales receipts from members of the State Purchasing Cooperative; and
- Total Administrative Fee amount based on one percent (1.0%) of the sales receipts from members of the State Purchasing Cooperative.

6.2 Submission of Reports and Fees. Within thirty (30) days following the end of the quarter, the Contractor submits their Usage Report and if applicable, a check in the amount of one percent (1%) of their sales receipts from members of the State Purchasing Cooperative, to the Department of Administration, State Procurement Office. Contractors are required to use the State's current report templates unless you have authorization from your contract officer to use a different format. You need to complete Form 799, which is a cover letter that gives the totals of your transactions; and Form 801, which is an Excel spreadsheet that details your transactions. Sales to state agencies and the cooperative members are to be totaled

separately. The most current forms can be downloaded at https://spo.az.gov/statewide-contracts-administrative-fee.

6.2.1 The submission schedule for Administrative Fees and Usage reports shall be as follows:

FY Q1, July through September	Due October 31
FY Q2, October through December	Due January 31
FY Q3, January through March	Due by April 30
FY Q4, April through June	Due by July 31

6.2.2 Usage Reports and any questions are to be submitted by email to the state's designated usage report email address: usage@azdoa.gov

6.2.3 Administrative Fees shall be made out to the "State Procurement Office" and mailed to:

Department of Administration
General Services Division
ATTN: "Statewide Contracts Administrative Fee"
100 N. 15th Avenue, Suite 202
Phoenix, AZ 85007

6.3 The Administrative Fee shall be a part of the Contractor's unit prices and is not to be charged directly to the customer in the form of a separate line item. Statewide contracts shall not have separate prices for State Agency customers and State Purchasing Cooperative customers.

6.4 Contractor's failure to remit administrative fees in a timely manner consistent with the contract's requirements may result in the State exercising any recourse available under the contract or as provided for by law.

7. LICENSES

The Contractor shall maintain in current status all Federal, State and Local licenses and permits required for the operation of a business conducted by the Contractor.

8. SUBCONTRACTORS

Supplemental to the Subcontractor term in the Uniform Terms and Conditions, Contractor shall not enter into any Subcontract under this Contract, for the provision of supplies or performance of services under this Contract, without the advance written approval, by way of bilateral contract amendment, of the State Procurement Office. When requesting the Procurement Officer's approval, the Contractor shall list all new subcontractors, their contact information, certifications required of them, their Minority and Women Owned Enterprise status (cite any certifications use in determining such status) as well as the subcontractor's proposed responsibilities under the Contract. The Subcontractor's most current certificate of insurance shall be provided at this time as well. With the request, Contractor shall certify that all Subcontracts incorporate by reference the terms and conditions of this Contract.

Wholesale/Inter-carrier Agreements shall not be considered as subcontractor relationships that need to be disclosed or approved by the State Procurement Office.

9. PERFORMANCE BOND

The Contractor shall be required to furnish an irrevocable security in the amount of $1,000,000 payable to the State of Arizona, binding the Contractor to provide faithful performance of the contract. This shall be provided on an annual basis at the time of contract's annual anniversary.

Performance security shall be in the form of a performance bond, certified check or cashier's check. This security must be in the possession of the State Procurement Office within ten (10) calendar days from contract start date as defined in the Special Terms and Conditions Section 1. If the Contractor fails to execute the security document, as

required, the Contractor may be found in default and contract terminated by the State. In case of default, the state reserves all rights to recover as provided by law.

10. NEW EQUPIMENT

All equipment, materials, parts and other components incorporated in the work or an item covered by this Contract shall be new, of the latest model and of the most suitable grade for the purpose intended. Any and all work under this Contract shall be performed in a skilled and workmanlike manner.

11. EMERGING TECHNOLOGIES

The telecommunication and broadband industries are changing rapidly and the types of services, technology, methods of deployment, and providers of product and services will likely change during the term of this Contract. The State seeks to ensure that Contracts can meet the shifting needs caused by these changes. If new services within the existing categories are identified the State at its option can add those new services within Attachment II via a bilateral contract amendment.

12. BROADBAND EXPANSION PROVISION

Contractors who are awarded the opportunity to provide new infrastructure expansion are eligible to receive consideration for the following additional terms:

12.1 Longer-Term Contracts. After the initial 5 years base the contract can be extended for one (1) three (3) year term. At the expiration of that three (3) year term, the contract can be extended a final time for two (2) additional years, making the max life of a resultant contract 10 years.

12.2 Longer-Term Service Contracts. If a Carrier or Provider wishes to seek special terms for a Longer-Term Service Contract (greater than five (5) years) with a customer, to justify investment in new infrastructure expansion, they shall submit a business case to the State Procurement Office for review and possible acceptance.

12.3 Early-Termination Terms. If a Carrier or Provider wishes to seek special terms for early-termination, a business case shall be submitted to the State Procurement Office for review and possible acceptance.

13. BRAND NAME

References made to items, identified by trade name, are intended to show kind and quality of products desired and is not intended to be restrictive or limit competition. The use of brand names or manufacturer's catalog references shall be constructed as quality level, method and type of performance and does not indicate that item cited is mandatory. The State reserves the right to determine what products are considered like or equal. Products substantially equivalent to those designated shall qualify for consideration.

14. WARRANTY

14.1 Liens. The Contractor warrants that the Materials supplied under this Contract are free of liens and shall remain free of liens.

14.2 Quality. Unless otherwise modified elsewhere in the terms and conditions, the Contractor warrants that, for one year after acceptance by the State, the Materials shall be:

- Of a quality to pass without objection in the trade under the Contract description;
- Fit for the intended purposes for which the Materials are used;
- Conform to the written promises or affirmations of fact made by the Contractor; and
- Fully compatible with the State's computer hardware and software environment.

14.3 Fitness. The Contractor warrants that any Materials supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.

14.4 Inspection/Testing. The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the Materials by the State.

14.5 Compliance with Applicable Laws. The Materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.

Contractor represents and warrants to the State that Contractor has the skill and knowledge possessed by members of its trade or profession and Contractor will apply that skill and knowledge with care and diligence so Contactor and Contractor's employees and any authorized subcontractors shall perform the Services described in this Contract in accordance with the Statement of Work.

Contractor represents and warrants that the Materials provided through this Contract and Statement of Work shall be free of viruses, backdoors, worms, spyware, malware and other malicious code that will hamper performance of the Materials, collect unlawful personally identifiable information on users or prevent the Materials from performing as required under the terms and conditions of this Contract.

15. AUTHORIZATION FOR SERVICES

Authorization for purchase of services shall be made only upon the issuance of a Purchase Order that is signed by an authorized agent. The Purchase Order will indicate the contract number and the dollar amount of funds authorized. The Contractor shall only be authorized to perform services up to the amount on the Purchase Order. The State shall not have any legal obligation to pay for services in excess of the amount indicated on the Purchase Order. No further obligation for payment shall exist unless a) the Purchase Order is changed or modified with an official Change Order, and/or b) an additional Purchase Order is issued for purchase of services under this Contract.

16. EXTRA-CONTRACTUAL PRODUCTS AND SERVICES PROHIBITED

Any attempt to use an Order to represent any products and/or services not specifically awarded and cited in the Contract as being included in the Contract is a violation of the Contract and the Arizona Procurement Code. Any such action is subject to the legal and contractual remedies available to the State, inclusive of but not limited to Contract termination for default, suspension and/or debarment of the Contractor.

17. BILLING

Contractors will be doing business with Customers of dramatically different size and need. As such, different levels of complexity in billing may be required. An objective of this contract is to meet the various needs of different customers in standard electronic format. The State desires electronic billing be adopted where possible for any purchased services by any customer for services covered by this Contract.

17.1 Billing Detail

Invoices submitted for payment shall contain the same description detail as provided in the Quote Form, at a minimum, shall identify all products and services (e.g. circuit number, BTN, WTN), the unit price, units of quantity, extended price, service address or location of Service, and invoice total, for both paper and electronic media. Additionally, the approved electronic media shall also include at a minimum; Call Detail Records identifying the actual originating phone extension (unless ANI not sent by customer for dedicated facilities), Discount Details, Tax Details, Feature Details, Other Fees and Surcharges details, approved Adjustment details, circuit detail at the CSR level, and USOC level invoice details. Invoice Identification Information. Invoice Identification Information (III) shall include at a minimum the following 16 data elements: 1) Vendor Name; 2) Vendor Account Number; 3) Invoice Date; 4) Total Invoice Amount; 5) Total Current Charges; 6) Vendor Remit Address; 7) Account-Level Late Fees; 8) Account Level Outstanding Balance; 9) Account Level Payment Received; 10) Account Level Miscellaneous Fees;11) Point of Service ID (e.g., Circuit number, phone number, etc.); 12) Monthly Fees; 13) Usage-based Charges; 14) Feature Charges; 15) Taxes; and 16) Total Charges for Point of Service

17.2 Billing and Payment Data

Contractor shall provide basic billing data to all Ordering Entities that request it. This data shall include at a minimum Usage Statistics; Applicable Discount Details; Call Detail for LD at the actual originating extension level (unless ANI is not sent by Customer for dedicated facilities); Circuit Detail, when

applicable, at the Customer Service Record (CSR) or equivalent level; Tax Details; Feature Details; Other Fees and Surcharges Details; Approved Adjustment Details; and Universal Service Order Code (USOC) level or equivalent Invoice Details. Ordering Entities may request this data at any point during the Term of Contract.

17.3 Billing SLA Affected Services

Contractor shall process invoices in accordance with the Billing and Payment Section of resultant Service Level Agreements. If, after the SLA is resolved the Customer owes the disputed amount in part or in whole to the Contractor, Contractor may assess overdue account charges up to a maximum rate of two-thirds of one percent per month on the outstanding balance.

17.4 Billing Disputes

Contractor and Customers shall use the following process in identifying and mitigating performance issues or problems associated with billing issues under the Contract. Contractor shall work with Customer, or their designee (which may be an approved Subcontractor), to automate the dispute process between Contractor and Customer. Contractor shall provide a responsibility matrix identifying representatives, their phone number and email address, for questions and resolution of issues, including escalation of unresolved disputes.

17.4.1 Billing Dispute Resolution

Failure by Customer to pay any portion of or the entire invoiced amount based on Contractor billing errors or disputed charges shall not constitute default under this Contract. Customer will pay undisputed portions of disputed or incorrect invoices where Customer can easily identify the undisputed portion. Payment of an amount less than the total amount due on all unpaid invoices shall be credited as directed by Customer. In no event shall Contractor apply any payment or portion thereof to any particular amount or item that is subject to any claim of error or dispute between the parties.

17.5 Billing Adjustments

Revised invoices or billing adjustments shall apply only to Contractor's Services that can be verified by the Customer, and requests for such adjustments must be submitted in writing to the Customer within 60 days of Service invoice delivery; shall reference the original invoice in which the error was made, and contain sufficient level of detail to make a reasonable determination of fact. Billing Adjustments, once determined to be fact, shall be documented in writing on all forms of billing, paper and electronic, in the next billing cycle.

17.6 Billing Agent

Contractor may use an Agent (designated herein as a Subcontractor) to prepare and submit invoices and receive Customer payments, on behalf of, but in the Contractor's name. Contractor shall remain responsible for the accuracy and correctness of the invoices issued and payments collected by any billing Agent. If Contractor exercises this option, Contractor shall promptly notify Customer in writing of such arrangement for invoicing and collection, including name, mailing and street addresses, and telephone number for the firm and the individual person responsible for this function, and any changes thereto.

18. PAYMENT PROCEDURES

The State will not make payments to any Entity, Group or individual other than the Contractor with the Federal Employer Identification (FEI) Number identified in the Contract. Contractor invoices requesting payment to any Entity, Group or individual other than the contractually specified Contractor shall be returned to the Contractor for correction.

The Contractor shall review and insure that the invoices for services provided show the correct Contractor name prior to sending them for payment.

If the Contractor Name and FEI Number change, the Contractor must complete an "Assignment and Agreement" form transferring contract rights and responsibilities to the new Contractor. The State must indicate consent on the

form. A written Contract Amendment must be signed by both parties and a new W-9 form must be submitted by the new Contractor and entered into the system prior to any payments being made to the new Contractor.

19. PRICING

19.1 Price Increase

Contractor prices accepted and subsequently awarded by a Contract shall remain in effect for a minimum of one (1) year. All written requests for price adjustments made by the Contractor shall be submitted 60 to 90 days prior to the anniversary or contract renewal date.

The State will review any requested rate increase to determine whether such request is reasonable in relation to increased supplier or material costs. Contractor shall provide written justification for any price adjustment requested, including information contained in the Consumer Price Index or similar official cost analysis to support any requested price increase. The State shall determine whether the requested price increase or an alternate option is in the best interest of the State. Any price increase adjustment, if approved, will be effective upon execution of a written Contract amendment.

Contract release order/purchase orders placed before a price increase is authorized shall be delivered at the purchase order price. However, if the price should decrease between receipt of the order, and shipment of the order, the Contractor shall invoice at the new lowest discounted price. The awarded contract price shall remain the same throughout the term of the contract, to include all renewals.

19.2 Price Reduction

Price reductions may be submitted in writing to the State for consideration at any time during the contract period. The State at its own discretion may accept a price reduction.

In relation to recurring costs based on most favored term pricing, after 3 years of completed service customer may request a review of the contract to bring pricing into line with current market pricing.

Any price reductions requests that are accepted by the State will be acknowledged by the issuance and acceptance of a fully executed bilateral contract amendment. Any accepted price reduction shall be available to all customers who may utilize this contract.

19.3 Bulk Pricing:

In addition to decreasing contract pricing in accordance with Special Terms and Conditions, Section 19.2, Price Reduction, Contractor(s) may offer bulk pricing at any time during the Contract. Such pricing shall be at a MRC of at least 10% less than the current contract pricing for said service. The Bulk Pricing may be presented for consideration by the State in the form of tiered pricing as well.

If electing to exercise this provision the Contractor shall submit to the following to the State Procurement Office, Procurement Officer:

- A Formal request to consider an addition of Bulk Pricing for specified products;
- Product Identification, identifying the 'Arizona Service ID' as listed in Attachment II, Pricing Structure; and
- The Bulk Pricing vs the existing contract pricing.

Approval of Bulk Pricing shall be in the form of a bilateral contract amendment. Bulk Pricing shall be available to all customers allowed to purchase under the Contract and available for the life of the Contract.

20. DATA SECURITY / SECURITY

20.1 Data Privacy/Security Incident Management.

Contractor and its agents shall cooperate and collaborate with appropriate State personnel to identify and respond to an information security or data privacy incident, including a security breach.

20.1.1 Threat of Security Breach

Contractor(s) agrees to notify the Customer's Chief Information Officer (CIO), the Customer's Chief Information Security Officer (CISO) and other key personnel as identified by the Customer of any perceived threats placing the supported infrastructure and/or applications in danger of breach of security. The speed of notice shall be at least commensurate with the level of threat, as perceived by the Contractor(s). Customer shall agree to provide contact information for the CIO, the CISO and key personnel to the Contractor if applicable.

20.1.2 Discovery of Security Breach
Contractor agrees to immediately notify the Customer's CIO, the CISO and key personnel as identified by the State of a discovered breach of security. Customer shall agree to provide contact information for the CIO, the CISO and key personnel to the Contractor if applicable.

20.2 Security Requirements for Contractor Personnel.
Each individual proposed to provide services through this contract agrees to security clearance and background check procedures, including fingerprinting, as defined by the Arizona Department of Administration in accordance with Arizona Revised Statutes §41-710. The results of the individual's background check procedures must meet all HIPAA and law enforcement requirements. Contractor is responsible for all costs to obtain security clearance for their consultants providing services through this contract. Contractor personnel, agents or sub-contractors that have administrative access to the State's networks may be subject to any additional security requirements of ADOA-ASET as may be required for the performance of the contract. The Contractor, its agents and sub-contractors shall provide documentation to ADOA-ASET confirming compliance with all such additional security requirements for performance of the contract. Additional security requirements include but are not limited to the following:

20.2.1 Identity and Address Verification – that verifies the individual is who he or she claims to be including verification of the candidate's present and previous addresses;
20.2.2 UNAX/confidentiality Training;
20.2.3 HIPAA Privacy and Security Training; and
20.2.4 Information Security Training.

20.3 Information Access. The Contractor shall, where applicable, implement and/or use network management and maintenance applications and tools and appropriate fraud prevention and detection and encryption technologies. The Contractor and its employees, agents and Subcontractors shall comply with all policies and procedures of the individual Customer regarding data access, privacy and security, including those prohibiting or restricting remote access to the Customer's systems and data. The Customer shall authorize, and the Contractor shall issue, any necessary information-access mechanisms, including access IDs and passwords, and the Contractor agrees that the same shall be used only by the personnel to whom they are issued. The Contractor shall provide to such personnel only such level of access as is minimally necessary to perform the tasks and functions for which such personnel are responsible. The Contractor shall from time-to-time, upon request from the Customer, but in the absence of any request from the Customer at least quarterly, provide the Customer with an updated list of the Contractor personnel having access to the Customer's systems, software, and data, and the level of such access. Computer data and software, including the Customers Data, provided by the Customer or accessed (or accessible) by the Contractor personnel or the Contractor's Subcontractor personnel, shall be used by such personnel only in connection with the obligations provided hereunder, and shall not be commercially exploited by the Contractor or its Subcontractors in any manner whatsoever. Failure of the Contractor or the Contractor's Subcontractors to comply with the provisions of this Contract may result in the Customer restricting offending personnel from access to the Customer computer systems or the Customer Data or immediate termination of this Contract. It shall be the Contractor's obligation to maintain and ensure the confidentiality and security of the Customer Data in its possession or on its systems.

20.4 Information Disclosure. The Contractor shall establish and maintain procedures and controls that are acceptable to the State for the purpose of assuring that no information contained in its records or obtained from the state or from others in carrying out its functions under the contract shall be used or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Contract.

Persons requesting such information should be referred to the State. The Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of the Contractor as needed for the performance of duties under the Contract, unless otherwise agreed to in writing by the State.

20.5 Building Access.

20.5.1 Contractor access to Customer facilities and resources shall be properly authorized by Customer personnel, based on business need and will be restricted to least possible privilege. Upon approval of access privileges, the Contractor shall maintain strict adherence to all policies, standards, and procedures. Policies / Standards, ADOA/ASET Policies / Procedures, and Arizona Revised Statues (ARS) 28-447, 28-449, 28-450, 38-421, 13-2408, 13-2316, 41-770).

20.5.2 Failure of the Contractor, its agents or subcontractors to comply with policies, standards, and procedures including any person who commits an unlawful breach or harmful access (physical or virtual) will be subject to prosecution under all applicable state and / or federal laws. Any and all recovery or reconstruction costs or other liabilities associated with an unlawful breach or harmful access shall be paid by the Contractor.

21. SECTION 508 COMPLIANCE

Unless specifically authorized in the Contract, any electronic or information technology offered to the State of Arizona under this Contract shall comply with A.R.S. § 41-3531 and § 41-3532 and Section 508 of the Rehabilitation Act of 1973, which requires that employees and members of the public shall have access to and use of information technology that is comparable to the access and use by employees and members of the public who are not individuals with disabilities.

22. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996

The Contractor warrants that it is familiar with the requirements of HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH Act) of 2009, and accompanying regulations and will comply with all applicable HIPAA requirements in the course of this Contract. Contractor warrants that it will cooperate with the State in the course of performance of the Contract so that both the State and the Contractor will be in compliance with HIPAA, including cooperation and coordination with the Arizona Strategic Enterprise Technology (ASET) Group, Statewide Information Security and Privacy Office (SISPO), Chief Privacy Officer and HIPAA Coordinator and other compliance officials required by HIPAA and its regulations. Contractor will sign any documents that are reasonably necessary to keep the State and Contractor in compliance with HIPAA, including but not limited to, business associate agreements.

If requested, the Contractor agrees to sign a “Pledge to Protect Confidential Information” and to abide by the statements addressing the creation, use and disclosure of confidential information, including information designated as protected health information and all other confidential or sensitive information as defined in policy. In addition, if requested, Contractor agrees to attend or participate in job related HIPAA training that is: (1) intended to make the Contractor proficient in HIPAA for purposes of performing the services required and (2) presented by a HIPAA Privacy Officer or other person or program knowledgeable and experienced in HIPAA and who has been approved by the ASET/SISPO Chief Privacy Officer and HIPAA Coordinator.

23. FIRST PARTY LIMITATION OF LIABILITY

Contractor’s liability for first party damages to the State arising from this Contract shall be limited to two (2) times the maximum-not-to-exceed amount of this Contract. The foregoing limitation of liability shall not apply to: (i) liability, including indemnification obligations, for third party claims, including but not limited to, infringement of third party intellectual property rights; (ii) claims covered by any specific provision of the Contract calling for liquidated damages or other amounts, including but not limited to, performance requirements; or (iii) costs or attorneys’ fees that the State is entitled to recover as a prevailing party in any action.

24. INDEMNIFICATION

Contractor shall indemnify, defend with counsel reasonably approved by the State, and hold harmless, the State, its departments, agencies, boards, commissions, universities, officers, agents and employees (collectively, the

"Indemnitee") from and against any and all claims, actions, damages, costs (including attorneys' fees), and losses arising under this Contract, including, but not limited to, bodily injury or personal injury (including death) or loss or damage to tangible or intangible property, but excluding damages arising solely from the gross negligence or willful misconduct of the Indemnitee. This indemnification obligation includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of Contractor to comply with any federal, state or local law, statute, ordinance, rule, regulation or court decree. Contractor shall have control, subject to the reasonable approval of the State, of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when substantial principles of government or public law are involved, or when involvement of the State is otherwise mandated by law, the State may elect, in its sole and absolute discretion, to participate in such action at its own expense with respect to attorneys' fees and costs, but not liability, and the State shall have the right to approve or disapprove any settlement, which approval shall not be unreasonably withheld or delayed. The State shall reasonably cooperate in its defense and any related settlement negotiations.

25. IP INDEMNIFICATION

Indemnification - Patent and Copyright. With respect solely to Materials provided or proposed by Contractor or Contractor's agents, emp1oyees, or subcontractors (each a “Contractor Party”) for performance of this Contract, Contractor shall indemnify, defend and hold harmless the State, its departments, agencies, boards, commissions, universities, officers, agents and employees (collectively, the "Indemnitee"), against any third-party claims for liability, including, but not limited to, reasonable costs and expenses, including attorneys' fees, for infringement or violation of any patent, trademark, copyright or trade secret, by such Materials or the State’s use thereof.

In addition, with respect to claims arising from computer hardware or software manufactured or developed solely by a third party, Contractor shall pass through to the State such indemnity rights as it receives from such third party (the "Third Party Obligation") and will cooperate in enforcing them; provided, however, that (i) if the third party manufacturer fails to honor the Third Party Obligation, or (ii) the Third Party Obligation is insufficient to fully indemnify the State, Contractor shall indemnify, defend and hold harmless the State against such claims in their entirety or for the balance of any liability not fully covered by the Third Party Obligation.

The State shall reasonably notify the Contractor of any claim for which Contractor may be liable under this section. If the Contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply. Contractor shall have control, subject to the reasonable approval of the State, of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when substantial principles of government or public law are involved or when involvement of the State is otherwise mandated by law, the State may elect, in its sole and absolute discretion, to participate in such action at its own expense with respect to attorneys' fees and costs, but not liability, and the State shall have the right to approve or disapprove any settlement, which approval shall not be unreasonably withheld or delayed. The State shall reasonably cooperate in the defense and any related settlement negotiations.

If Contractor believes at any time that any Materials provided or in use pursuant to this Contract infringe a third party's intellectual property rights, Contractor shall, at Contractor's sole cost and expense, and upon receipt of the State's prior written consent, which shall not be unreasonably withheld, (i) replace an infringing Material with a non-infringing Material; (ii) obtain for the State the right to continue to use the infringing Material; or (iii) modify the infringing Material to be non-infringing, provided that following any replacement or modification made pursuant to the foregoing, the Material continues to function in accordance with the Contract. Contractor’s failure or inability to accomplish any of the foregoing shall be deemed a material breach of this Contract.

Notwithstanding the foregoing, Contractor shall not be liable for any claim for infringement based solely on any Indemnitee’s:

(i) modification of Materials provided by Contractor other than as contemplated by the Contract or the specifications of such Materials or as otherwise authorized or proposed in any way by Contractor or a Contractor Party;

(ii) use of the Materials in a manner other than as contemplated by this Contract or the specifications of such Materials, or as otherwise authorized or proposed in any way by Contractor or a Contractor Party; or

(iii) use of the Materials in combination, operation, or use with other products in a manner not contemplated by the Contract, or, the specifications of such Materials, or as otherwise authorized or proposed in any way by Contractor or a Contractor Party.

Contractor certifies, represents and warrants to the State that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of the Contract for the acquisition, operation or maintenance of Materials in violation of intellectual property laws.

26. INTELLECTUAL PROPERTY

26.1 Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, or trade secrets created or conceived solely pursuant to or as a result of this Contract and any related subcontract (collectively, the "Intellectual Property"), shall be work made for hire and the State shall be the owner of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this Contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Software and other Materials developed or otherwise obtained by or for Contractor or its affiliates independently of this Contract ("Independent Materials") do not constitute Intellectual Property. If Contractor creates derivative works of Independent Materials, then the elements of such derivative works created pursuant to this Contract shall constitute Intellectual Property owned by the State. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by Contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this Contract.

Notwithstanding the foregoing, if the State elects, in its sole and absolute discretion, to relinquish its ownership interest in any or all of the Intellectual Property, the State shall have the rights to use, modify, reproduce, release, perform, display, sublicense or disclose such Intellectual Property within State government and operations without restriction for any activity in which the State is a party (collectively, "Government Purpose Rights").

27. SURVIVAL OF RIGHTS AND OBLIGATIONS AFTER CONTRACT EXPIRATION OR TERMINATION

27.1 Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition the parties hereto acknowledge that pursuant to A.RS § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S. Title 12, Chapter 5.

27.2 Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer including, without limitation, all purchase orders received prior to, but not fully performed and satisfied at the expiration or termination of, this Contract.

28. INSURANCE REQUIREMENTS

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The *insurance requirements* herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, its agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance.

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

28.1.1 Commercial General Liability – Occurrence Form
Policy shall include bodily injury, property damage, personal and advertising injury and broad form contractual liability coverage.

• General Aggregate	$5,000,000
• Products – Completed Operations Aggregate	$1,000,000
• Personal and Advertising Injury	$1,000,000
• Damage to Rented Premises	$ 50,000
• Each Occurrence	$1,000,000

28.1.1.1 The policy shall be endorsed **(Blanket Endorsements are not acceptable)** to include the following additional insured language: ***"The State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor."*** Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract.

28.1.1.2 Policy shall contain a waiver of subrogation endorsement **(Blanket Endorsements are not acceptable)** in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

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

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

28.1.2.1 The policy shall be endorsed **(Blanket Endorsements are not acceptable)** to include the following additional insured language: ***"The State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor."*** Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract.

28.1.2.2 Policy shall contain a waiver of subrogation endorsement (**Blanket Endorsements are not acceptable)** in favor of the **"State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees"** for losses arising from work performed by or on behalf of the Contractor.

28.1.3 Worker's Compensation and Employers' Liability

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

28.1.3.1 Policy shall contain a waiver of subrogation endorsement **(Blanket Endorsements are not acceptable)** in favor of the "**State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees"** for losses arising from work performed by or on behalf of the Contractor.

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

28.1.4 Technology Errors & Omissions Insurance

- Each Claim — $ 2,000,000
- Annual Aggregate — $ 2,000,000

28.1.4.1 Such insurance shall cover any and all errors, omissions, or negligent acts in the delivery of products, services, and/or licensed programs under this contract.

28.1.4.2 In the event that the Tech E&O insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

28.1.5 Network Security (Cyber) and Privacy Liability *(If applicable to service to be provided by the Contractor)*

- Each Claim — $ 2,000,000
- Annual Aggregate — $ 2,000,000

28.1.5.1 Such insurance shall include but not limited to coverage for third party claims and losses with respect to network risks (such as data breaches, unauthorized access or use, ID theft, theft of data) and invasion of privacy regardless of the type of media involved in the loss of private information, crisis management and identity theft response costs – includes breach notification costs, credit remediation and credit monitoring, defense and claims expenses, regulatory defense costs plus fines and penalties, cyber extortion, computer program and electronic data restoration expenses coverage (data asset protection), network business interruption, computer fraud coverage, funds transfer fund

28.1.5.2 In the event that the Network Security and Privacy Liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

28.2 **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed **(Blanket Endorsements are not acceptable)** to include, the following provisions:

28.2.1 The Contractor's policies shall stipulate that the insurance afforded the contractor shall be primary insurance and that any insurance carried by the Department, and its agents, officials,

employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

28.2.2 Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

28.3 **NOTICE OF CANCELLATION:** With the exception of (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this contract in the insurance policies above shall require (30) days written notice to the State of Arizona. Such notice shall be sent directly to **Charlotte Righetti, CPPB 100 N 15th Ave, Suite 201, Phoenix AZ 85007** and shall be sent by certified mail, return receipt requested.

28.4 **ACCEPTABILITY OF INSURERS:** Contractors insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

28.5 **VERIFICATION OF COVERAGE:** Contractor shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Contract. The certificates for each insurance policy are to be signed by an authorized representative.

All certificates and endorsements **(Blanket Endorsements are not acceptable)** are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Contract shall be sent directly to **Charlotte Righetti, CPPB 100 N 15th Ave, Suite 201, Phoenix AZ 85007**. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

28.6 **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as insured under its policies **or** Contractor shall furnish to the State of Arizona separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

28.7 **APPROVAL:** Any modification or variation from the *insurance requirements* in this Contract shall be made by the contracting agency in consultation with the Department of Administration, Risk Management Division. Such action will not require a formal Contract amendment, but may be made by administrative action.

28.8 **EXCEPTIONS:** In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance. If the contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

29. MARKET ACQUISITIONS

In the event a Contractor acquires a market within a geographical region which they were not originally awarded, the Contractor may request an amendment to its contract to include pricing of services for this newly acquired market. Documentation of the acquisition must be provided in order for the State to consider, at its option, this addition, via a bilateral contract amendment.

30. CUSTOMER SERVICE ORDERS (CSO's)

Contractors and Customers may enter into Customer Service Order Agreements for services covered within resultant contracts of this Solicitation. Agreement shall only be valid if the Customer has the legal authority to enter into these types of agreements without going through a competitive process. Additional Terms and Conditions found within a Contractors CSO shall not become part of the State of Arizona's Master Contract.

31. NON-RECURRING COSTS (NRC)

Providers are required to quote NRC for services provided within their awarded County(ies) and Categories as outlined within Attachment II, Pricing Structure. In the event that a Contractor elects to quote a Customer an additional NRC, over and above the listed NRC within Attachment II, the Contractor shall comply with the following:

- The reason for the 'Extension' NRC is based on extending the Provider's transport medium to an off-net location;
- 'Extension' NRC should not exceed six (6) times the firm fixed monthly recurring cost (MRC) for the service in question; and
- No more than 20% of the requested quotes submitted within a one year period, for the service in question, shall have an Extension NRC.

Final acceptance of the Extension NRC is at the sole option of the customer. Customer reserves the right to negotiate the proposed Extension NRC. Extension NRC shall not be permitted in lieu of or in connection with a Contractors Broadband Expansion Projects.

UNIFORM TERMS AND CONDITIONS

1. Definition of Terms

As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:

1.1 *"Attachment"* means any item the Solicitation requires the Offeror to submit as part of the Offer.

1.2 *"Contract"* means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.

1.3 "*Contract Amendment*" means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.

1.4 *"Contractor"* means any person who has a Contract with the State.

1.5 *"Days"* means calendar days unless otherwise specified.

1.6 *"Exhibit"* means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.

1.7 *"Gratuity"* means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

1.8 "*Materials"* means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.

1.9 *"Procurement Officer"* means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.

1.10 *"Services"* means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.

1.11 *"Subcontract"* means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.

1.12 *"State"* means the State of Arizona and Department or Agency of the State that executes the Contract.

1.13 *"State Fiscal Year"* means the period beginning with July 1 and ending June 30.

2. Contract Interpretation

2.1 Arizona Law. The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.

2.2 Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.

2.3 Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:

2.3.1 Special Terms and Conditions;

2.3.2 Uniform Terms and Conditions;

2.3.3 Statement or Scope of Work;

2.3.4 Specifications;

2.3.5 Attachments;

2.3.6 Exhibits;

2.3.7 Documents referenced or included in the Solicitation.

2.4 Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.

2.5 Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.

2.6 No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

2.7 No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3. Contract Administration and Operation

3.1 Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.

3.2 Non-Discrimination. The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.

3.3 Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.

3.4 Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.

3.5 Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.

3.6 Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.

3.7 Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.

3.8 Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or

as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.

3.9 Federal Immigration and Nationality Act. The contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.

3.10 E-Verify Requirements. In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.

3.11 Offshore Performance of Work Prohibited.
Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

4. Costs and Payments

4.1 Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.

4.2 Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.

4.3 Applicable Taxes.

4.3.1 Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.

4.3.2 State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.

4.3.3 Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

4.3.4 IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.

4.4 Availability of Funds for the Next State fiscal year. Funds may not presently be available for performance

under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.

4.5 Availability of Funds for the current State fiscal year. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:

4.5.1 Accept a decrease in price offered by the contractor;

4.5.2 Cancel the Contract; or

4.5.3 Cancel the contract and re-solicit the requirements.

5. Contract Changes

5.1 Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.

5.2 Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.

5.3 Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

6. Risk and Liability

6.1 Risk of Loss: The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.

6.2 Indemnification

6.2.1 Contractor/Vendor Indemnification (Not Public Agency) The parties to this contract agree that the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.

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

6.3 Indemnification - Patent and Copyright**.** The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not

apply.

6.4 Force Majeure.

6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term *"force majeure"* means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.4.2 Force Majeure shall not include the following occurrences:

6.4.2.1 Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

6.4.2.2 Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or

6.4.2.3 Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

6.4.3 If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.4.4 Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

6.5 Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

7. Warranties

7.1 Liens. The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

7.2 Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:

7.2.1 Of a quality to pass without objection in the trade under the Contract description;

7.2.2 Fit for the intended purposes for which the materials are used;

7.2.3 Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;

7.2.4 Adequately contained, packaged and marked as the Contract may require; and

7.2.5 Conform to the written promises or affirmations of fact made by the Contractor.

7.3 Fitness. The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.

7.4 Inspection/Testing. The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.

7.5 Compliance With Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.

7.6 Survival of Rights and Obligations after Contract Expiration or Termination.

7.6.1 Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.

7.6.2 Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

8. State's Contractual Remedies

8.1 Right to Assurance. If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

8.2 Stop Work Order.

8.2.1 The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

8.2.2 If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

8.3 Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.

8.4 Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

8.5 Right of Offset. The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

9. Contract Termination

9.1 Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State 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 this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.

9.2 Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.

9.3 Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.

9.4 Termination for Convenience. The State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

9.5 Termination for Default.

9.5.1 In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

9.5.2 Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.

9.5.3 The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.

9.6 Continuation of Performance Through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

10. Contract Claims

All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.

11. Arbitration

The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).

12. Comments Welcome

The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 201, Phoenix, Arizona, 85007.

1. PRE-OFFER CONFERENCE:

A Pre-Offer Conference will be held at the time and place indicated in the solicitation's 'Pre-Bid Conference' field as found within the State's e-Procurement system, ProcureAZ (https://procure.az.gov); attendance is not required. The purpose of the conference will be to clarify the contents of the solicitation in order to prevent any misunderstanding of the State of Arizona's position. Any doubt as to the requirements of the solicitation or any apparent omission or discrepancy should be presented to the State at the conference. The State of Arizona will then determine the appropriate action necessary, if any, and issue a written amendment to the solicitation if required. Oral statements or instructions will not constitute an amendment to the solicitation.

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, or this document in an alternative format, by contacting the State Procurement Office. Requests should be made as early as possible to allow sufficient time to arrange for accommodation.

2. INQUIRIES:

Any question related to this Request for Proposal shall be submitted utilizing the "Q&A" tab within ProcureAZ. The Offeror shall not contact or ask questions of the department for which the requirement is being procured.

3. PREPARATION OF PROPOSAL:

A responsive, responsible Offeror shall submit the following:

3.1 Offer and Acceptance. Offers shall include a signed Offer and Acceptance Form. The Offer and Acceptance Form shall be signed with an original signature by the person signing the Offer, and shall be submitted electronically with the submitted bid no later than the Offer due date and time. Failure to return an Offer and Acceptance Form may result in rejection of the offer.

3.2 Acknowledgement of Solicitation Amendments. Solicitation Amendments shall be acknowledged electronically prior to the Offer due date and time. Failure to acknowledge all Solicitation Amendments may result in rejection of the Offer.

3.3 Offer Forms: Offers shall include the following Offer Forms, completed accurately, in the format provided and according to any instructions contained within the form. Failure to follow Offer Form Instructions may result in rejection of Offer.

3.3.1 Offer and Acceptance Form (completed and signed)

3.3.2 Attachment I – Offeror Questionnaire

3.3.3 Attachment II – Pricing Structure

3.4 Price Submission. Offers shall submit their pricing as follows, failure to complete ProcureAZ and Attachments as follows may result in Offeror(s) submission being deemed non-responsive:

3.4.1 *ProcureAZ:* Offerors shall enter 1 in the unit cost of lines one (1) through five (5), based on categories in which they wish to be considered for award, within ProcureAZ, as a zero, or leaving these lines blank, will result in a no bid for that category.

3.4.2 *Attachment II:* Offerors shall submit pricing based on the counties which they currently service, based on product categories as defined within the attachment.

3.4.2.1 Within Attachment II Offerors shall fill in the data within the appropriate cells as follows:

3.4.2.1.1 Provider Service ID (Carrier or Provider Product/Service Internal Identification Number)

3.4.2.1.2 Feature Description

3.4.2.1.3 Feature Restrictions, Limitations and Additional Information

3.4.2.2 Within Attachment II Offerors shall fill in the applicable Non-Recurring Costs as well as Recurring Costs per month, if either is applicable. If they are not applicable, Offeror shall place and NA within that cell.

3.4.2.3 Cells only need to be filled out, regarding pricing, for counties in which the Offeror is wishing to be considered for award.

3.4.2.4 *Additional Services For Consideration 'Tab'*. If an Offeror is presenting to the State additional Services for consideration, as a new standard offered product within Attachment II, which was not originally requested within the Scope of Work Section 4, this is the Tab within Attachment II that the Offeror shall utilize. The Offeror shall fill out the tab as the instructions indicate listed within this Tab of Attachment II.

The intention of this tab is to identify industry standard services that may have been unintentionally omitted by the state, services listed within this tab shall not be proprietary services to a single Offeror.

3.5 Contract Payment Terms. Offerors shall indicate the prompt payment terms that they will offer to the State (for example: 2/10 Net 30; 2/15 Net 30, etc.) At a minimum, Offeror's payment terms shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days.

4. SUBMISSION OF OFFER

4.1 ProcureAZ Offer Submission, Due Date and Time. Offers in response to this solicitation shall be submitted within the State's eProcurement system, PROCUREAZ (https://procure.az.gov). Please be advised that utilizing ProcureAZ requires a certain level of technical competency that should be considered when selecting staff to work in the system. The successful submission of your offer in ProcureAZ is critical in order for the State to receive and evaluate your offer. Therefore, particular focus should be placed on the selection of staff given the responsibility for submitting your offer in ProcureAZ. Offers shall be received before the date/time listed in the solicitation's 'Bid Opening Date' field. Offers submitted outside PROCUREAZ, or those that are received after the date/time stated in the 'Bid Opening Date' field, shall be rejected. Questions in this regard shall be directed to the Procurement Officer or to the PROCUREAZ Help Desk (procure@azdoa.gov or 602-542-7600).

4.2 Responsibility, Responsiveness and Acceptability. In accordance with A.R.S. 41-2534(G), A.A.C. R2-7-330 and R2-7-354, State shall consider, at a minimum, the following in determining Offerors' responsibility, as well, as the proposal's responsiveness and acceptability for contract award.

4.2.1 Whether the Offeror has had a contract within the last five (5) years that was terminated for cause due to breach or similar failure to comply with the terms of the contract;

4.2.2 Weather the Offeror's record of performance includes factual evidence of failure to satisfy the terms of the Offeror's agreements with any party to a contract. Factual evidence may consist of documented vendor performance reports, customer complaints and/or negative references;

4.2.3 Whether the Offeror is legally qualified to contract with the State and the Offeror's financial, business, personnel, or other resources, including subcontractors;

4.2.3.1 Legally qualified includes if the vendor or if key personnel have been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body.

4.2.4 Whether the Offeror promptly supplied all requested information concerning its responsibility;

4.2.5 Whether the Offer was sufficient to permit evaluation by the State, in accordance with the evaluation criteria identified in this Solicitation or other necessary offer components. Necessary offer components include: attachments, documents or forms to be submitted with the offer, an indication of the intent to be bound, reasonable or acceptable approach to perform the Scope of Work, acknowledged Solicitation Amendments, references to include experience verification, adequacy of financial/business/personal or other resources to include a performance bond and stability including subcontractors and any other data specifically requested in the Solicitation;

4.2.6 Whether the Offer was in conformance with the requirements contained in the Scope of Work, Terms and Conditions, and Instructions for the Solicitation including its Amendments and all documents incorporated by reference;

4.2.7 Whether the Offer limits the rights of the State;

4.2.8 Whether the Offer includes or is subject to unreasonable conditions, to include conditions upon the State necessary for successful Contract performance. The State shall be the sole determiner as to the reasonableness of a condition;

4.2.9 Whether the Offer materially changes the contents set forth in the Solicitation, which includes the Scope of Work, Terms and Conditions, or Instructions; and,

4.2.10 Whether the Offeror provides misleading or inaccurate information.

4.3 Proposal Content: The Offeror shall make a firm commitment to provide services as required and proposed. The material contained in your proposal should be relevant to the service requirements stated in the solicitation and submitted in a sequence that reflects the scope of work portion of this document and information relevant to the designated evaluation criteria as stated herein. Failure to include the requested information may have a negative impact on the evaluation of the Offeror's proposal.

4.4 Electronic Documents. The Solicitation document is provided in an electronic format. Any unidentified alteration or modification to any Solicitation documents, to any attachments, exhibits, forms, charts or illustrations contained herein shall be null and void. In those instances where modifications are identified, the original document published by the State shall take precedence. As provided in the Solicitation Instructions, Offerors are responsible for clearly identifying any and all changes or modifications to any Solicitation documents upon submission to the State.

4.5 Acceptable Formats. Offer electronic files shall be submitted in a format acceptable to the State. Acceptable formats include .DOC and .DOCX (Microsoft Word), .XLS and .XLSX (Microsoft Excel), .PPT and .PPTX (Microsoft PowerPoint) and .PDF (Adobe Acrobat). Other file formats may also be acceptable, including .ZIP, .MDB, .MDBX, .MPP, MPPX, .VSD, .JPG, .GIF, .BMP and KMZ. Offerors wishing to submit files in these or other formats shall submit an inquiry to the Procurement Officer.

4.6 Confidential Information. If a person believes that any portion of a proposal, bid, offer, specification, protest or correspondence contains information that should be withheld, then the Procurement Officer shall be so advised in writing (Price is not confidential and will not be withheld). Such material shall be identified as confidential wherever it appears. The State, pursuant to A.C.R.R. R2-7-104, shall review all requests for confidentiality and provide a written determination. If the confidential request is denied, such information shall be disclosed as public information, unless the person utilizes the 'Protest' provision as noted in §41-2611 through §41-2616.

5. EVALUATION

In accordance with the Arizona Procurement Code 41-2534, awards shall be made to the responsible Offeror(s) whose proposal is determined in writing to be the most advantageous to the State based upon the evaluation criteria listed below. The evaluation factors are listed in their relative order of importance.

Exceptions to the Terms and Conditions, as stated in the Special Instructions Section 4.2.6, will impact an Offeror's susceptibility for award.

- Cost;
- Method of Approach (Methodology); and
- Capacity of Offeror.

6. OPENING

Proposals received by the correct time and date will be opened and the name of each Offeror will be publically available. Proposals will not be subject to public inspection until after contract award.

7. CLARIFICATIONS

Upon receipt and opening of proposals submitted in response to this solicitation, the State may request oral or written clarifications, including demonstrations or questions and answers, for the sole purpose of information gathering or of eliminating minor informalities or correcting nonjudgmental mistakes in proposals. Clarifications shall not otherwise afford the Offerors the opportunity to alter or change its proposal.

8. DISCUSSIONS

In accordance with A.R.S. 41-2534, after the initial receipt of proposals, the State may conduct discussions with those Offerors who submit proposals determined by the State to be reasonably susceptible of being selected for award.

9. FINAL PROPOSAL REVISIONS

If discussions are conducted, the State shall issue a written request for Final Proposal Revisions. The request shall set forth the date, time and place for the submission of Final Proposal Revisions. Final Proposal Revisions shall be requested only once; unless the State makes a determination that it is advantageous to conduct further discussions.

10. CONTRACT AWARD

Award of a contract(s) will be made to the most responsive and responsible Offeror(s) whose proposal is determined to be the most advantageous to the State based on the evaluation criteria set forth in the solicitation.

11. PUBLIC RECORD

All Proposals submitted in response to this Request For Proposal shall become the property of the State and shall become a matter of Public Record available for review, subsequent to the award notification, as provided for by the Arizona Procurement Code.

UNIFORM INSTRUCTIONS TO OFFERORS

1. Definition of Terms

As used in these Instructions, the terms listed below are defined as follows:

1.1 "*Attachment*" means any item the Solicitation requires an Offeror to submit as part of the Offer.

1.2 *'Best and Final Offer"* means a revision to an Offer submitted after negotiations are completed that contains the Offeror's most favorable terms for price, service, and products to be delivered. Sometimes referred to as a Final Proposal Revision.

1.3 "*Contract*" means the combination of the Solicitation, including the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer, any Clarifications, and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.

1.4 "*Contract Amendment*" means a written document signed by the Procurement Officer issued for the purpose of making changes in the Contract.

1.5 "Contractor" means any person who has a Contract with a state governmental unit.

1.6 "*Day*" means calendar days unless otherwise specified.

1.7 "*eProcurement (Electronic Procurement)"* means conducting all or some of the procurement function over the Internet. Point, click, buy and ship Internet technology is replacing paper-based procurement and supply management business processes. Elements of eProcurement also include Invitation for Bids, Request for Proposals, and Request for Quotations.

1.8 "*Exhibit*" means any document or object labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.

1.9 "*Offer*" means a response to a solicitation.

1.10 "*Offeror*" means a person who responds to a Solicitation.

1.11 *"Person"* means any corporation, business, individual, union, committee, club, or other organization or group of individuals.

1.12 "*Procurement Officer*" means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.

1.13 "*Solicitation*" means an Invitation for Bids ("IFB"), a Request for Technical Offers, a Request for Proposals ("RFP"), a Request for Quotations ("RFQ"), or any other invitation or request issued by the purchasing agency to invite a person to submit an offer.

1.14 "*Solicitation Amendment*" means a change to the Solicitation issued by the Procurement Officer.

1.15 "*Subcontract*" means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.

1.16 "*State*" means the State of Arizona and Department or Agency of the State that executes the Contract.

2. Inquiries

2.1 Duty to Examine. It is the responsibility of each Offeror to examine the entire Solicitation, seek clarification in writing (inquiries), and examine its Offer for accuracy before submitting an Offer. Lack of care in preparing an Offer shall not be grounds for modifying or withdrawing the Offer after the Offer due date and time.

2.2 Solicitation Contact Person. Any inquiry related to a Solicitation, including any requests for or inquiries regarding standards referenced in the Solicitation shall be directed solely to the Procurement Officer.

2.3 Submission of Inquiries. All inquiries related to the Solicitation are required to be submitted in the State's eProcurement system. All responses to inquiries will be answered in the State's eProcurement system. Any inquiry related to the Solicitation should reference the appropriate solicitation page and paragraph number. Offerors are prohibited from contacting any State employee other than the Procurement Officer

concerning the procurement while the solicitation and evaluation are in process.

2.4 Timeliness. Any inquiry or exception to the Solicitation shall be submitted as soon as possible and should be submitted at least seven days before the Offer due date and time for review and determination by the State. Failure to do so may result in the inquiry not being considered for a Solicitation Amendment.

2.5 No Right to Rely on Verbal or Electronic Mail Responses. An Offeror shall not rely on verbal or electronic mail responses to inquiries. A verbal or electronic mail reply to an inquiry does not constitute a modification of the solicitation.

2.6 Solicitation Amendments. The Solicitation shall only be modified by a Solicitation Amendment.

2.7 Pre-Offer Conference. If a pre-Offer conference has been scheduled under the Solicitation, the date, time and location shall appear in the State's eProcurement system . Offerors should raise any questions about the Solicitation at that time. An Offeror may not rely on any verbal responses to questions at the conference. Material issues raised at the conference that result in changes to the Solicitation shall be answered solely through a Solicitation Amendment.

2.8 Persons With Disabilities. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Procurement Officer. Requests shall be made as early as possible to allow time to arrange the accommodation.

3. Offer Preparation

3.1 Electronic Documents. The Solicitation is provided in an electronic format. Offerors are responsible for clearly identifying any and all changes or modifications to any Solicitation documents upon submission to the State's eProcurement system. Any unidentified alteration or modification to any Solicitation, attachments, exhibits, forms, charts or illustrations contained herein shall be null and void. Offeror's electronic files shall be submitted in a format acceptable to the State. Acceptable formats include .doc and .docx (Microsoft Word), .xls and .xlsx (Microsoft Excel), .ppt and .pptx (Microsoft PowerPoint) and .pdf (Adobe Acrobat). Offerors wishing to submit files in any other format shall submit an inquiry to the Procurement Officer.

3.2 Evidence of Intent to be Bound. The Offer and Acceptance form within the Solicitation shall be submitted with the Offer in the State's eProcurement system and shall include a signature by a person authorized to sign the Offer. The signature shall signify the Offeror's intent to be bound by the Offer and the terms of the Solicitation and that the information provided is true, accurate and complete. Failure to submit verifiable evidence of an intent to be bound, such as a signature, shall result in rejection of the Offer.

3.3 Exceptions to Terms and Conditions. All exceptions included with the Offer shall be submitted in the State's eProcurement system in a clearly identified separate section of the Offer in which the Offeror clearly identifies the specific paragraphs of the Solicitation where the exceptions occur. Any exceptions not included in such a section shall be without force and effect in any resulting Contract unless such exception is specifically accepted by the Procurement Officer in a written statement. The Offeror's preprinted or standard terms will not be considered by the State as a part of any resulting Contract.

3.3.1 Invitation for Bids. An Offer that takes exception to a material requirement of any part of the Solicitation, including terms and conditions, shall be rejected.

3.3.2 Request for Proposals. All exceptions that are contained in the Offer may negatively impact an Offeror's susceptibility for award. An Offer that takes exception to any material requirement of the solicitation may be rejected.

3.4 Subcontracts. Offeror shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities in the Offer.

3.5 Cost of Offer Preparation. The State will not reimburse any Offeror the cost of responding to a Solicitation.

3.6 Federal Excise Tax. The State is exempt from certain Federal Excise Tax on manufactured goods. Exemption Certificates will be provided by the State.

3.7 Provision of Tax Identification Numbers. Offerors are required to provide their Arizona Transaction Privilege Tax Number and/or Federal Tax Identification number in the space provided on the Offer and

Acceptance form.

3.7.1 Employee Identification. Offeror agrees to provide an employee identification number or social security number to the State for the purposes of reporting to appropriate taxing authorities, monies paid by the State under this Contract. If the federal identifier of the Offeror is a social security number, this number is being requested solely for tax reporting purposes and will be shared only with appropriate state and federal officials. This submission is mandatory under 26 U.S.C. § 6041A.

3.8 Identification of Taxes in Offer. The State is subject to all applicable state and local transaction privilege taxes. All applicable taxes shall be identified as a separate item offered in the Solicitation. When applicable, the tax rate and amount shall be identified on the price sheet.

3.9 Disclosure. If the person submitting this Offer has been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity, including being disapproved as a subcontractor with any federal, state or local government, or if any such preclusion from participation from any public procurement activity is currently pending, the Offeror shall fully explain the circumstances relating to the preclusion or proposed preclusion in the Offer. The Offeror shall set forth the name and address of the governmental unit, the effective date of the suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating to the suspension or debarment. If suspension or debarment is currently pending, a detailed description of all relevant circumstances including the details enumerated above shall be provided.

3.10 Delivery. Unless stated otherwise in the Solicitation, all prices shall be F.O.B. Destination and shall include all freight, delivery and unloading at the destination(s).

3.11 Federal Immigration and Nationality Act. By signing of the Offer, the Offeror warrants that both it and all proposed subcontractors are in compliance with federal immigration laws and regulations (FINA) relating to the immigration status of their employees. The State may, at its sole discretion require evidence of compliance during the evaluation process. Should the State request evidence of compliance, the Offeror shall have five days from receipt of the request to supply adequate information. Failure to comply with this instruction or failure to supply requested information within the timeframe specified shall result in the Offer not being considered for contract award.

3.12 Offshore Performance of Work Prohibited. Any services that are described in the specifications or scope of work that directly serve the State or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers. Offerors shall declare all anticipated offshore services in the Offer.

4. Submission of Offer

4.1 Offer Submission, Due Date and Time. Offerors responding to a Solicitation must submit the Offer electronically through the State's eProcurement system. Offers shall be received before the due date and time stated in the solicitation. Offers submitted outside of the State's eProcurement system or those that are received after the due date and time shall be rejected.

4.2 Offer and Acceptance. Offers shall include a signed Offer and Acceptance form. The Offer and Acceptance form shall be signed with a signature by the person authorized to sign the Offer, and shall be submitted in the State's eProcurement system with the Offer no later than the Solicitation due date and time. Failure to return an Offer and Acceptance form may result in rejection of the Offer.

4.3 Solicitation Amendments. A Solicitation Amendment shall be acknowledged in the State's eProcurement system no later than the Offer due date and time. Failure to acknowledge a Solicitation Amendment may result in rejection of the Offer.

4.4 Offer Amendment or Withdrawal. An Offer may not be amended or withdrawn after the Offer due date and time except as otherwise provided under applicable law.

4.5 Confidential Information. If an Offeror believes that any portion of an Offer, protest, or correspondence contains a trade secret or other proprietary information, the Offeror shall clearly designate the trade secret and other proprietary information, using the term "confidential." An Offeror shall provide a statement detailing the reasons why the information should not be disclosed including the specific harm or prejudice that may arise upon disclosure. The Procurement Officer shall review all requests for confidentiality and provide a written determination. Until a written determination is made, a Procurement Officer shall not disclose information designated as confidential except to those individuals deemed to have a legitimate State interest. In the event the Procurement Officer denies the request for confidentiality, the Offeror may appeal the determination to the State Procurement Administrator within the time specified in the written determination. Contract terms and conditions, pricing, and information generally available to the public are not considered confidential information.

4.6 Public Record. All Offers submitted and opened are public records and must be retained by the State for six years. Offers shall be open and available to public inspection through the State's eProcurement system after Contract award, except for such Offers deemed to be confidential by the State.

4.7 Non-collusion, Employment, and Services. By signing the Offer and Acceptance form or other official contract form, the Offeror certifies that:

4.7.1 The Offeror did not engage in collusion or other anti-competitive practices in connection with the preparation or submission of its Offer; and

4.7.2 The Offeror does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and that it complies with an applicable federal, state and local laws and executive orders regarding employment.

5. Evaluation

5.1 Unit Price Prevails. In the case of discrepancy between the unit price or rate and the extension of that unit price or rate, the unit price or rate shall govern.

5.2 Taxes. If the products and/or services specified require transaction privilege or use taxes, they shall be described and itemized separately on the Offer. Arizona transaction privilege and use taxes shall not be considered for evaluation.

5.3 Prompt Payment Discount. Prompt payment discounts of thirty (30) days or more set forth in an Offer shall be deducted from the Offer for the purpose of evaluating that price.

5.4 Late Offers. An Offer submitted after the exact Offer due date and time shall be rejected.

5.5 Disqualifications. An Offeror (including each of its principals) who is currently debarred, suspended or otherwise lawfully prohibited from any public procurement activity shall have its Offer rejected.

5.6 Offer Acceptance Period. An Offeror submitting an Offer under the Solicitation shall hold its Offer open for the number of days from the Offer due date that is stated in the Solicitation. If the Solicitation does not specifically state a number of days for Offer acceptance, the number of days shall be one hundred twenty (120). If a Best and Final Offer is requested pursuant to a Request for Proposals, an Offeror shall hold its Offer open for one hundred twenty (120) days from the Best and Final Offer due date.

5.7 Waiver and Rejection Rights. Notwithstanding any other provision of the Solicitation, the State reserves the right to:

5.7.1 Waive any minor informality;

5.7.2 Reject any and all Offers or portions thereof; or

5.7.3 Cancel the Solicitation.

6. Award

6.1 Number of Types of Awards. The State reserves the right to make multiple awards or to award a Contract by individual line items or alternatives, by group of line items or alternatives, or to make an aggregate award, or regional awards, whichever is most advantageous to the State.

6.2 Contract Inception. An Offer does not constitute a Contract nor does it confer any rights on the Offeror to the award of a Contract. A Contract is not created until the Offer is accepted in writing by the Procurement Officer's signature on the Offer and Acceptance form. A notice of award or of the intent to award shall not constitute acceptance of the Offer.

6.3 Effective Date. The effective date of the Contract shall be the date that the Procurement Officer signs the Offer and Acceptance form or other official contract form, unless another date is specifically stated in the Contract.

7. Protests

A protest shall comply with and be resolved according to Arizona Revised Statutes Title 41, Chapter 23, Article 9 and rules adopted thereunder. Protests shall be in writing and be filed with both the Procurement Officer of the purchasing agency and with the State Procurement Administrator. A protest of the Solicitation shall be received by the Procurement Officer before the Offer due date. A protest of a proposed award or of an award shall be filed within ten (10) days after the Procurement Officer makes the procurement file available for public inspection. A protest shall include:

1. The name, address, email address and telephone number of the interested party;
2. The signature of the interested party or its representative;
3. Identification of the purchasing agency and the Solicitation or Contract number;
4. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
5. The form of relief requested.

8. Comments Welcome

The State Procurement Office periodically reviews the Uniform Instructions to Offerors and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 201, Phoenix, Arizona, 85007.

OFFEROR QUESTIONNAIRE

1. Cost Proposal:

1.1 Scenarios. Offerors are required to select and describe, as requested, all of the following scenarios for which they have provided firm fixed pricing for services described within Attachment II, failure to do so may result in an Offeror being deemed non responsive. Each scenario has intentionally been left without a service address as well as a county, as to not hinder an Offeror from responding based on the areas in which they provide service. Offerors are to state within their response to each scenario which county they are going to provide the service for within the Scenario so that it can be cross referenced with Attachment II.

Each scenario response shall have the following data provided:

- County to provide the scenario service;
- Corresponding Arizona Service ID as identified within Attachment II;
- MRC, if applicable to the service requested within the scenarios chosen; and
- NRC, if applicable to the service requested within the scenarios chosen.

1.1.1 Scenario One: Analog Line

Service requested: One (1) analog voice line with three features (transfer, call forward, and caller ID). Include cost to extend past demarcation point to customer provided location.

1.1.2 Scenario Two: Metro Ethernet.

Service requested: Metro Ethernet for 20Mbs Access with minimum 2Mbs CoS/QoS.

1.1.3 Scenario Three: MPLS or equivalent

Service requested: MPLS or equivalent, Bandwidth 3Mbps. Include cost to extend past demarcation point.

1.1.4 Scenario Four: PBX ALI

Service requested: PBX ALI added to existing DID ranges (XXX)XXX-5780 thru 5999 And (XXX)XXX-7000 thru 9999. That is a total of 3,220 DID's.

1.1.5 Scenario Five: MPLS with Ethernet Port service or equivalent

Service requested: MPLS Transport w/ Ethernet Port service at minimum line rate of 150 Mbps

1.1.6 Scenario Six: Stand Alone Internet Access service

Service requested: Stand Alone Internet Access with bandwidth of 50 Mbps download and 10 Mbps upload (must be provided with bundled DSL modem or Cable modem)

1.1.7 Scenario Seven: High Speed Internet Access service

Service requested: High speed Internet Access service from Internet Point-of-Presence to customer location with bandwidth of 1Gbps. (Describe the transport and access service proposed)

1.1.8 Scenario Eight: Managed WiFi Access-Point service

Service requested: Managed WiFi Access-Point service with 100 Mbps Download and 10 Mbps upload "Best Efforts" Internet connection

1.1.9 Scenario Nine: PRI

Service requested: Two (2) PRI that will terminate on existing DS3 with 20 DID, 2B Call Transfer, N1-2, and 10 digit dialing. Include cost to extend past demarcation point.

1.1.10 Scenario Ten: Fiber Lease service:

.

Service requested: Lease of one dedicated pair of dark fiber, configured as a ring comprised a set of point-to-point routes, This ring will consist of 5 locations; the provider's point-of-presence (PoP) [location, A] and four customer locations (B,C,D,E). Locations A to B are connected by two 1-mile physically diverse routes of existing fiber. Location B to C, C to D, D to E, and E to B are each 5 mile point-to-point routes. Assume that all routes except A to B will require new fiber construction. Provide estimated conceptual Lease NRC and Lease and Maintenance MRCs and desired contract terms to be negotiated. Conceptual pricing shall include any provider assumptions with regard to demand aggregation Note fiber services are assumed by the state to be offered under Infrastructure expansion terms.

1.1.11 Scenario Eleven: Regional transport network. Provide estimated conceptual Lease NRC and Lease and Maintenance MRCs and desired contract terms to be negotiated. Conceptual pricing shall include any provider assumptions with regard to demand aggregation.

Service requested: Three Node Off-Net MPLS Ethernet Port Network Bundled with VPN Access, Managed Router and MPLS Transport Service at Minimum Line Rate of 10 Gbps between each node. Each Node and its managed router is located at a customer location in a separate community. Each community is separated from the nearest other community by an average distance of 30 miles.

2. Method of Approach: The Offeror shall provide a narrative response to each question that demonstrates the understanding of the Scope of Work and describes your company's overall method of approach for providing the services stated in this solicitation. Within the Offeror's response, the narrative shall include:

2.1 E-Rate. Offeror shall provide the following information in response to this Request for Proposal to be considered for future business with E-Rate Eligible Entities. If Offeror is choosing not to do business with E-Rate Eligible Entities for the duration on a resultant contract, please state that in lieu of providing the number requested below.

Service Provider Identification Number (SPIN): _____

2.2 Categories to be offered by County. Offeror shall confirm in writing, utilizing the table provided below, which of the five (5) categories they want to be considered for award. Within each cell please state one of the following responses:

2.2.1 **Yes.** Meaning that the Offeror will provide this selected category to the entire county.

2.2.2 **Yes w/exception.** Meaning that the Offeror will only provide this selected category to certain cities. If this is a chosen response by the Offeror shall complete the table in section 2.3.

2.2.3 **No Bid.** Meaning that the Offeror will not provide this selected category within the specific county.

County	Category 1 Circuits & Networks	Category 2 Voice Services	Category 3 WiFi	Category 4 Internet Services	Category 5 Fiber Services
Apache County					
Cochise County					

Coconino County					
Gila County					
Graham County					
Greenlee County					
La Paz County					
Maricopa County					
Mohave County					
Navajo County					
Pima County					
Pinal County					
Santa Cruz County					
Yavapai County					
Yuma County					

2.3 Excluded Cities Serviced by County. Offeror shall confirm in writing, utilizing the table provided below, which jurisdictions cannot be services within a specific county in which they have selected to be considered for award in the above table.

County	Specific jurisdiction excluded
Apache County	
Cochise County	
Coconino County	
Gila County	
Graham County	
Greenlee County	
La Paz County	
Maricopa County	
Mohave County	
Navajo County	
Pima County	
Pinal County	
Santa Cruz County	
Yavapai County	
Yuma County	

2.4 Compliance to Requested Services by Category: Any exceptions taken but not documented as instructed below will be deemed invalid and will not be considered.

The Offeror has read, understands and shall comply with all Services requested within Section 4 of the Scope of Work within this Request for Proposal. Offerors that accept the States requests shall check YES to clearly indicate their acceptance. Offerors who take exceptions shall check NO, and clearly indicate the exception according to the instructions below.

☐ **YES**, I acknowledge that I have read and understand the requested services to be provided within each category in which my firm is bidding, my Firm shall comply by providing all with in any resultant contract.

☐ **NO**, I acknowledge that I have read and understand the requested services to be provided within each category in which my firm is bidding, my Firm shall comply with the exceptions listed below.

Exceptions (If checked NO)

2.4.1 Offerors that take exception to any requested services shall justify their exception as well as propose alternate language for the State's consideration. Exceptions shall be within a separate document appropriately titled "Service Exceptions" and contain the paragraph number from the Scope of Work, rationale for exception and the proposed alternate language. Additional pages may be added as long as all exceptions are submitted as one document. Any exceptions not contained and submitted on this form or attached document shall not be reviewed or contained in any resultant contract.

2.4.2 Please note that exceptions taken to the Requirements described in the Scope of Work, the Instructions, or the Terms and Conditions of this solicitation may negatively affect the final evaluation score of the Offer. Both the number of exceptions and the severity of the exceptions can affect your score and may result in your Offer deemed non-responsive for this solicitation.

2.5 Expanding Geographic Availability for Tariffed and Non-Tariffed carrier telecommunication Services. Offerors who are registered CLEC's shall identify their strategy for establishing agreements with ILEC's in areas open to competition as defined by the Arizona Corporation Commission necessary to provide end-to-end service in these area. *Agreements shall be in effect at Contract award, if not already in place.* If Offeror is not a CLEC, please state so as your Firm's response to this question.

2.6 Broadband Expansion. If your Firm is not wishing to participate in the Broadband expansion portion of a resultant contract, please state that as your response to this question. If your Firm wants to be considered for award within this provision please respond to the following questions accordingly.

2.6.1 Offeror shall provide their five (5) year plan for building new broadband infrastructure to and within regions or communities in which the Provider currently has no or insufficient broadband infrastructure and for which they intend to provide services under this contract.

2.6.1.1 At a minimum the plan shall include the following information:

2.6.1.1.1 Scope of Work.
2.6.1.1.2 Key Personnel, with contact information.
2.6.1.1.3 Responsibilities of Contractor and Customer.
2.6.1.1.4 Time Line.
2.6.1.1.5 Installation Cost, broken down by time and material.
2.6.1.1.6 Final Acceptance, service switched on date.

2.6.2 Offeror shall provide detailed maps of their current and planned broadband infrastructure in KMZ or an equivalent digital format for counties in which they intend to offer services under this contract, such maps need not include served buildings or any direct or indirect information with regard to served customers.

2.6.3 Submit to semi-annual meetings. Offeror shall state their compliance to having semi-annual meetings with the State Procurement Office and the ASET-Broadband department to provide assurance that commercially reasonable progress has been accomplished against their submitted infrastructure plans.

3. **Capacity of Offeror:** The Offeror shall provide a narrative response that describes their ability to provide all services stated in this solicitation. Within the Offeror's response, the narrative shall include at a minimum:

3.1 Overall Company Information. Provide the following as requested:

3.1.1 Brief overview of business operations, including the Company's Mission and Philosophy Statement;

3.1.2 Date Company was established;

3.1.3 Ownership (public, partnership, subsidiary, etc.);

3.1.4 Location in where the Offeror is incorporated;

3.1.5 Office location(s) responsible for performance of contract;

3.1.6 Offeror's organizational chart relevant to this RFP, including contact information for the individual who is responsible for any clarifications or discussions regarding the submitted response;

3.1.7 Offeror shall document the number of the firm's technical staff members dedicated to new development verses those assigned to support of existing applications.

3.1.8 A Statement of whether, in the last ten (10) years, the Offeror has filed (or had filed against it) any bankruptcy or insolvency proceeding, whether voluntary or involuntary, or undergone the appointment of a receiver, trustee, or assignee for the benefit of creditors, and if so, an explanation providing relevant details;

3.1.9 A Statement of whether there are any pending Securities Exchange Commission investigations involving the Offeror, and if such are pending or in progress, an explanation providing relevant details and an attached opinion of counsel as to whether the pending investigation(s) may impair the Offeror's performance in a Contract under this RFP;

3.1.10 A Statement documenting all open or pending litigation initiated by the Offeror or where the Offeror is a defendant or party in an litigation that may have a material impact on Offeror's ability to deliver the contracted services;

3.1.11 A Statement documenting all open or pending litigation initiated by the Offeror or where the Offeror is a defendant or party in an litigation with a public sector client; and

3.1.12 Full disclosure of any public sector contracts terminated for cause or convenience in the past five (5) years.

3.2 Audited Financials. Offeror shall provide the last two years of audited or reviewed financial Statements either has hard copy uploaded PDF documents within ProcureAZ at time of submittal or Offeror shall provide the web address where the audited financials can be located.

3.3 Subcontracting. If any part of the Offeror's business is subcontracted please identify as requested below:

3.3.1 Offeror shall list each subcontractor's name, location, type of service to be provided, and the certifications they possess.

3.3.2 A description of how the Offeror will monitor and evaluate subcontractor performance; and

3.3.3 The length of the contractual relationship with each proposed subcontractor and provide details of future term dates of such contracts.

Subcontractor Name	Location	Service to Perform	Certifications

3.4 Current Customer Base. The State intends to conduct reference checks for client references provided by Offerors. It may, at its sole discretion, contact additional clients not presented as references. Offers shall provide at least three (3) client references that replicate or mirror the requirements of this RFP. All references shall be for engagements received and completed within the last five (5) years. The following information shall be provided for references using the table structure:

Reference Information	Client One	Client Two	Client Three
Organization Name			
Type of Contract Product and Services Delivered			
Contact Name, Mailing Address, Phone Number and E-mail Address			
Contract State and End Date			
Contract Value			

Please note: This Attachment, “Attachment II, Pricing Structure”, is a separate document found within ProcureAZ as an .xls document.

Please note: This Exhibit, “Exhibit A, Backhaul Bandwidth for Census Designated Places”, is a separate document found within ProcureAZ as a PDF document.

Exhibit B, State of Arizona WAN Strategy Diagram

State of Arizona
State Procurement Office
100 North 15th Avenue, Suite 201
Phoenix, AZ 85007

Solicitation No: **ADSPO14-00004241**
Description: **Telecommunications and Broadband Provider Services**

Please note: This Exhibit, “Exhibit B, State of Arizona WAN Strategy Diagram”, is a separate document found within ProcureAZ as a PDF document

LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
COX ARIZONA TELCOM L.L.C.

EXHIBIT C

METHOD AND AMOUNT OF COMPENSATION

A service order document provided by Cox Arizona Telcom, L.L.C. must be provided with each order.

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 $137,500 annually or $550,000 for the entire term of the Agreement.

DETAILED PROJECT COMPENSATION

For details on pricing, please contact the City of Glendale Material Management Department.

File #: 16-332, **Version:** 1

AUTHORIZATION TO ENTER INTO A CONSTRUCTION MANAGER AT RISK AGREEMENT WITH ACHEN-GARDNER CONSTRUCTION, LLC, FOR CONSTRUCTION PHASE SERVICES FOR WATER LINE REPLACEMENT AT VARIOUS LOCATIONS

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 Manager at Risk (CMAR) agreement with Achen-Gardner Construction, LLC (Achen-Gardner) for construction phase services for various waterline replacements and approve the expenditure of funds in an amount not to exceed $4,694,759.75.

Background

The city's water distribution system is a vast network of water mains, service lines, valves and fire hydrants which foster the conveyance of potable water for domestic and fire protection purposes. There are over 994 miles of water lines, including 24,000 valves, 61,000 service lines and 8,400 fire hydrants.

Moving water through the city's distribution system is a key component in ensuring uninterrupted service and reliability. Proactive rehabilitation and replacement efforts minimize maintenance issues, emergency disruptions and assist with maintaining the integrity of the water distribution system. The project is part of an on-going proactive preventive maintenance effort to maintain the operational reliability of the city's water distribution system.

The project is needed to replace aging waterlines that have required excessive maintenance and reached their useful life. Staff identified seven (7) locations, city-wide where existing waterlines are in need of replacement.

Analysis

A Request for Qualifications was issued in August 2015 by the Engineering Department to provide design phase assistance and construction services as the Construction Manager at Risk (CMAR) for waterline replacement and new waterline installation at various locations throughout the City. Five (5) firms' submitted qualifications and Achen-Gardner Construction was determined to be the most qualified.

This will be a multi-year/multi-phase project. The phases/locations are prioritized based on their condition, age and ease of constructability to minimize cost and public impact. This proposal is a guaranteed maximum price (GMP1) proposal for phase I and includes the replacement of the water lines at the 59th Avenue and Olive intersection, 67th Avenue and Bethany Home Rd. intersection, and 59th Avenue and Bethany Home Rd. intersection, and the water line from 59th to 60th Avenues on Bethany Home Rd. and includes all related

equipment. The remaining phases will be brought to the Council at a future date.

Previous Related Council Action

On May 10, 2015, Council approved a Construction Manager at Risk agreement with Achen-Gardner for design services for the seven locations.

On December 18, 2014, Council approved a Professional Services Agreement with Stantec Consulting Services, Inc. for design and construction administration services.

Community Benefit/Public Involvement

The project will enhance the integrity of the water distribution infrastructure, minimize pipeline breakage, service interruptions, and improve water quality.

Budget and Financial Impacts

Funding is available in the Water Services FY2015-16 capital budget for $1,676,000, the Council tentatively approved Water Services FY2016-17 capital budget for $2,250,000, and the Water Service CIP Contingency fund for the remaining amount plus administration charges.

Cost	Fund-Department-Account
$4,694,759.75	**2400-61013-551200 Water Line Replacement**

Capital Expense? Yes

Budgeted? Yes

Requesting Budget or Appropriation Transfer? Yes

If yes, where will the transfer be taken from? Water Services CIP Contingency fund.

CITY OF GLENDALE

CONSTRUCTION MANAGER AT RISK AGREEMENT

Project: CITY OF GLENDALE
WATERLINE IMPROVEMENTS
VARIOUS LOCATIONS

Project No.: 131424

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CONSTRUCTION MANAGER AT RISK AGREEMENT

This Construction Manager at Risk Agreement (this "Agreement") is made by and between the City of Glendale, an Arizona municipal corporation ("City"), and Achen-Gardner Construction, LLC (AGC), Arizona Limited Liability Company corporation, authorized to do business in the State of Arizona ("CMAR").

RECITALS

A. City is undertaking the design and construction of a public works project, as described in detail in **Exhibit A**, to benefit its citizens and visitors and the region generally (the "Project").

B. City has engaged Stantec Consulting Services, Inc. to prepare design, programs, budgets, and other criteria for the project (the "Design Documents").

C. CMAR's Statement of Qualifications ("SOQ") was submitted in response to the City's Request for Qualifications dated September 18, 2015. CMAR was selected by a qualification-based process in accordance with Title 34 of the Arizona Revised Statutes.

D. City will engage CMAR under the terms of this Agreement to manage and be responsible for the timely and proper construction and commissioning of the fully completed and functional Project (the "Work").

E. Achen-Gardner Construction was retained to provide "value engineering" and "constructability" reviews of the design documents pursuant to a separate contract. Achen-Gardner Construction will therefore not be paid for suggesting additional design changes for this Project, as the City has already paid for such professional services. Any further design changes shall be performed by Achen-Gardner Construction at its own risk and own cost.

AGREEMENT

City, subject to the terms and conditions of this Agreement, hereby engages CMAR to construct the Project. CMAR accepts this engagement as provided herein. Therefore, City and CMAR agree as follows:

1. **Definitions.** For the purposes of this Contract, the following words and terms shall have the respective meanings set forth below. All other words shall be given their ordinary and common usage, unless otherwise noted.

   a. **"Change Order"** means a written amendment to this Agreement, executed on behalf of City and CMAR that specifies the Change, and the adjustment to the Contract Sum and/or Contract Times.

   b. **"Construction Documents"** means those stamped and sealed documents containing all of the elements required in this Agreement and prepared by a registered design professional in connection with the Work that have been accepted by both CMAR and City and approved and released for construction by the applicable governmental permitting authorities.

   c. **"Construction Materials"** means all fixtures, materials, and supplies provided for incorporation in the Project.

   d. **"Project Documents"** include:
      (A) this Agreement and any amendments,
      (B) Design Documents,
      (C) Construction Documents,
      (D) any Change Orders, Change Directives, or Field Orders,

(E) Notice to Proceed,
(F) Project related specifications and drawings,
(G) permits,
(H) FFE Procurement Schedules,
(I) provisions of the required bonds and insurance policies, and
(J) other documents identified in **Exhibit A**.

e. **"Construction Services"** means all procurement and construction services of every kind and description, including all construction services, expertise, labor, materials, equipment, tools, utilities, supervision, coordination, scheduling, permitting, shop drawings, transportation, insurance, testing, inspection, procurement, installation and other facilities and services of every kind and description, and calculations incidental and required in connection therewith and as further described in **Exhibit A**.

f. **"Excusable Delay"** means a delay that the City determines has or will cause the Project Schedule not to be met as a result of an event that is not attributable in any manner to CMAR's actions or inactions, or attributable in any manner to the actions or inactions of any entity under CMAR's control or direction, and cannot be avoided or mitigated by CMAR's best efforts. A Force Majeure, as defined in Section 6.7 herein, would constitute an Excusable Delay.

g. **"FFE"** means the furniture, fixtures, and moveable equipment and other items of Work that are required for the completed Project. City may distinguish between furniture, fixtures, and moveable equipment that will be provided by City outside CMAR's scope and that which CMAR will provide as a part of this Agreement.

h. **"Final Completion"** means the date when all of the following have occurred:

(A) All punch list items have been completed to the satisfaction of the governmental permitting authority;

(B) A permanent certificate of occupancy has been secured;

(C) The Architect of Record has accepted the Project and submitted the property Certificate of Final Completion to City; and

(D) City has accepted the Project.

i. **"Hazardous Substance"** means any element, compound, mixture, solution, particle or substance which is or may become dangerous, or harmful to the health and welfare of life or the physical environment if not used, stored or disposed of in accordance with applicable law, such as, but not limited to, explosives, petroleum products, radioactive materials, hazardous wastes, toxic substances, pollutants or contaminants, including without limitation: (1) any substance or material included within the definitions of "hazardous substances," "hazardous wastes," "special wastes," "regulated substances," "Hazardous Substances," "toxic substances," "hazardous pollutants" or "toxic pollutants" in any of the Resource Conservation and Recovery Act, 42 U.S.C. § 9601, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 6901, the Toxic Substances Control Act, the Clean Air Act and/or the Clean Water Act, as the foregoing may be amended from time to time, or any regulations promulgated thereunder, and any analogous state, local or other governmental laws, rules or regulations; (2) any "PCBs" or "PCB items," as defined in 40 CFR § 761.3; and (3) any "asbestos," as defined in 40 CFR § 763.63.

j. **"Subcontractor"** means any person or entity, including materialmen, that has a direct contract with CMAR to furnish any element of the Work. The prime contractor of CMAR is not a subcontractor.

k. **"Substantial Completion"** of the Work means the date when all of the following have occurred:

(A) The Work is approved by City and deemed by the City to be substantially complete;

(B) The applicable permitting authorities have each issued its respective written approval(s) of the Work as being sufficiently complete so that it may lawfully be occupied by City for City's intended use;

(C) The Architect of Record has accepted the Project and submitted the property Certificate of Substantial Completion to City certifying that the work is substantially complete; and

(D) Subject only to specified punch list items.

l. **"Supplier"** means any entity, except the CMAR and a direct Subcontractor of the CMAR, that is contracted to furnish any labor, equipment, professional services, Construction Materials or other goods or services to accomplish or complete the Work required in this Agreement.

m. **"Vendor"** means a Subcontractor or Supplier who sells, but does not attach or install Construction Materials that are not specially manufactured or fabricated for the Project.

n. **"Withholding"** means the amount of each Progress Payment, Final Payment, or other amount otherwise payable to CMAR will be reduced for the reasons provided in this Agreement.

o. **"Work"** means that activity required for the timely, cost-effective, and proper design, engineering, construction, implementation and commission of the Project. Work includes, and is the result of, CMAR performing, furnishing, and incorporating as necessary all labor, materials, and equipment into the construction of the Project, and CMAR performing, furnishing, or making provision for the services and documents required by this Agreement, including and Project documents, which are incorporated hereto by reference.

p. **"Work Product"** means the documents generated by CMAR and its Supplier(s), including, but not limited to, all preliminary and completed evaluations, programs, reports, drawings, plans, operational documents or other work product in any media or form that CMAR and its Supplier(s) generate, or arrange for, in connection with the Project, together with the design of the buildings and structures embodied within them, and all items and matters included within the definition of "architectural work" as provided in 17 U.S.C. § 101.

2. Construction Services.

2.1 CMAR Obligation.

(A) CMAR will furnish all Construction Services, including those further described in **Exhibit A**, that are necessary for the Project's timely and proper construction, completion, and use by City.

(B) Construction Services includes the completion of every improvement depicted, required by or reasonably inferable from any portion of the Project Documents.

3. Representatives and Key Personnel.

3.1 CMAR Representative.

(A) Responsibilities. CMAR's Representative is authorized to act on CMAR's behalf and may not be discharged, replaced or have diminished responsibilities on the Project without City's prior consent, which may not be unreasonably withheld.

(B) Address. CMAR's Representative address for Notice, as required in this Agreement, is:

Daniel J. Spitza, P.E.
Achen-Gardner Construction, LLC
550 S. 79th Street

Chandler, AZ 85226

3.2 City's Representative.

(A) Designation of City Representative. City's Representative is authorized to act on City's behalf, whose address for Notice, as required in this Agreement, is:

David Beard
City Engineer
City of Glendale
5850 W. Glendale Avenue, Suite 315
Glendale, Arizona 85301

With required copies to:

City Attorney
City of Glendale
City Attorney's Office
5850 W. Glendale Avenue, Suite 450
Glendale, Arizona 85301

(B) Concurrent Notices.

(1) Except to the extent otherwise directed to CMAR in writing, all Notices to City's Representative must be given concurrently to the Project Coordinator and City Attorney.

(2) Notices are not considered received by City's Representative until the time that it has also been received by the Project Coordinator and City Attorney.

(C) Construction Administration Project Manager. The Construction Administration representative (the "Project Manager") with authority to act for the Construction Administration Firm for the Project whose information for Notices is:

Tricia Cook, P.E.
Stantec Consulting Services, Inc.
8211 South 48th Street
Phoenix, AZ 85044

Email: tricia.cook@stantec.com

3.3 Key Personnel.

(A) Employment of Key Personnel. CMAR and its Subcontractors will employ key personnel in connection with the Work, in categories of persons identified in **Exhibit B** (collectively, "Key Personnel") and each of whom will be acceptable to and approved by City.

(B) Approval of Key Personnel.

(1) All personnel listed in CMAR's SOQ will be assigned to the Project and will be dedicated to performing work on the Project at not less than the frequency or amount of time identified in the SOQ.

(2) Prior to the commencement of the Work, CMAR must deliver to City a written proposal identifying the names, duties and titles, and attaching the resumes of each person who CMAR proposes as the Key Personnel.

(3) Except for those Key Personnel identified in the SOQ, City will have the right to disapprove CMAR's choice of any Key Personnel, provided City does so by giving written notice to CMAR.

(4) If City disapproves any of CMAR's proposed Key Personnel, CMAR must provide City with the name and qualifications of proposed alternates and the procedure will continue until a complement of Key Personnel who meet with City's approval is selected.

(5) Each Key Personnel will remain assigned to the Project throughout the Project's duration; and

(6) As long as each Key Personnel remains employed by CMAR or its Subcontractors, he or she must not be discharged, reassigned, replaced, or have his or her responsibility diminished without City's prior written consent.

4. Documents.

4.1 CMAR Documents. CMAR represents that it has carefully examined, has had the opportunity to object to, and had the opportunity to obtain limitations to the Solicitation during the RFQ process, and fully understands this Agreement, including CMAR Documents and all other items, conditions, and things that may affect the performance of its obligations. Such items or conditions may include, but are not limited to, the nature or local field conditions of the Project Site that are observable to CMAR without intrusive inspection, or are documented in any environmental reports, surveys and other information regarding the Site that City has furnished to CMAR.

4.2 Design Documents. AGC has already reviewed Design Documents under a separate professional services contract with the City. Accordingly:

(A) CMAR must consider the Design Documents in agreeing to the Guaranteed Maximum Price (as required by Section 5 of this Agreement).

(B) CMAR hereby waives all claims, demands or requirements for extras or changes to the Work or the Guaranteed Maximum Price based on facts related to the Site that were discoverable by CMAR prior to the Effective Date of this Agreement.

(C) CMAR will not receive any additional compensation for a change to the design documents unless such changes are necessitated by new information or changed conditions discovered during the course of performing the work, as provided in Section 20.3 herein.

4.3 Work Product Formatting. Any drawings created by CMAR, its Subcontractors, or its Supplier(s) will be generated and furnished to City in hardcopy and in freely modifiable AutoCAD format, as City may reasonably request.

4.4 Intellectual Property Rights Assignment. CMAR hereby irrevocably conveys and assigns to City the exclusive Ownership of, and copyright in, any Work Product that is generated by CMAR, its Subcontractors, and its Supplier(s) in connection with the Project, together with all copyright renewals and extensions and the right to reproduce, publish, modify, and create and publish derivative works from the Work Product.

(A) Use of Intellectual Property. CMAR warrants that it, its Subcontractors, and its Supplier(s) will not utilize any of the Work Product in connection with any other project without City's prior written consent, which may not be unreasonably withheld but which may be denied to the extent the requested use is for the other project and involves any unique or signature elements of the Project.

(B) Non-Infringement. CMAR further warrants to City that all Work Product generated or arranged for by CMAR, its Subcontractors, and its Supplier(s) in connection with the Project, and CMAR's conveyance and assignment to City of the ownership of, and copyrights in, the Work Product and/or copyrights in them, as provided in this section, will not infringe on the copyrights or another party's contractual or proprietary interests.

(C) CMAR will include provisions equivalent to the provision(s) contained in this Section 4 of this Agreement in each of CMAR's subcontracts and third party agreements with its Suppliers.

5. Guaranteed Maximum Price. The maximum amount for completion of the Work as required by the Design Documents, as reviewed, modified and approved by CMAR, will be the Guaranteed Maximum Price ("GMP").

5.1 GMP Elements. The GMP will incorporate into one amount::

(A) All CMAR's direct and indirect costs and expenses incurred in connection with the Work, whether at the home office, Site, or elsewhere;

(B) The cost of all construction, construction materials, engineering services, architectural services, geotechnical services, transportation costs, labor, supplies, services, equipment and other elements necessary for the Project's proper and timely completion;

(C) All profit, home office overhead, job site overhead, wages, salaries and fringe benefits paid to supervisory and other employees and representatives;

(D) Job trailer rental, utilities, telephone, and other related expenses;

(E) Printing;

(F) Long distance charges;

(G) Deliveries;

(H) Transportation;

(I) Insurance, as allowed in Section 31 of this Agreement;

(J) Bonds, as allowed in Section 31 of this Agreement;

(K) All building permit costs and fees required by any federal, state or local governmental entity;

(L) All federal, state and local taxes imposed on labor, construction materials, equipment and services furnished, including transaction privilege, excise, sales, use, personal property and similar taxes, as allowed in Section 7.4 of this Agreement; and

(M) All other general and administrative expenses incurred in connection with the Work.

5.2 Insurance and Bond Premiums. CMAR's Reimbursable Construction Insurance and Bond Premiums are the amounts equal to the premiums CMAR is required to pay to secure:

(A) The Builder's Risk Policy that CMAR is required to furnish with City's approval as provided in this Agreement;

(B) The liability insurance CMAR and its Supplier(s) are required to furnish under the provisions of **Exhibit E** in connection with the Construction Services; and

(C) CMAR's statutory payment and performance bonds as provided in Section 31.3 of this Agreement, if the premium has been included in the GMP Schedule approved in writing by City.

5.3 Contingencies. Any line item identified in the GMP Schedule as a contingency ("Contingency") belongs solely to City, and may not be drawn upon or reallocated by CMAR without City and Project Coordinator's prior written approval.

(A) Draws Including a Contingency. CMAR must include with each monthly Application for Progress Payment an itemization of each draw from the Contingency (by date, payee, purpose and amount of each transfer or payment) made during the Billing Month, together with a copy of City's written approval for the draw.

(B) Required Designation of Contingency. Unless the GMP Schedule conspicuously designates a line item as a "contingency," the GMP does not include any contingency amount of any kind or nature.

5.4 Allowance. There are no line item costs identified as allowances in the GMP Schedule ("Allowance Item"). Accordingly, the GMP may only be increased or decreased by a written amendment to this Agreement, signed by both of the Parties.

5.5 Unit Priced Items. There are no line item costs identified as a unit price item ("Unit Price Item") or extended price ("Unit Price Extension Amount") in the GMP Schedule. Accordingly, the GMP may only modified to include a Unit Price Item or

a Unit Price Extension Amount by a written amendment to this Agreement, signed by both of the Parties.

5.6 **FFE**. FFE not specified in the Construction Documents will be procured in accordance with the FFE Procurement Schedules to be developed by CMAR subject to CMAR and City's mutual agreement.

(A) FFE Warranty. CMAR warrants to City that:

(1) Construction materials and equipment and FFE furnished under this Agreement will be of good quality and new unless otherwise required or permitted by the Construction Documents and the FFE Procurement Schedules;

(2) The construction will be free from faults and defects; and

(3) The construction and FFE will conform to this Agreement's requirements, the Construction Documents, and the FFE Procurement Schedules.

(B) Correction of Nonconforming FFE. Construction and FFE not conforming to these requirements, including substitutions not properly approved by City, must be corrected in accordance with Section 22 and 23 of this Agreement.

(C) "FFE Procurement Schedules" means the interior design drawings and listings of specific FFE to be purchased for the Project.

5.7 **CMAR Risk.** CMAR bears the sole risk that any element of cost, overhead, or profit might cause the Guaranteed Maximum Price to be exceeded. If the GMP is exceeded, the City is not liable for such additional cost or expense unless the City agrees to such a change in an amendment to this Agreement signed by both of the Parties.

5.8 **GMP Savings.** If, upon the Work's Final Completion, the Contract Sum is less than an amount equal to the GMP, the resulting amount will belong solely to City.

5.9 **GMP Schedule.** The GMP is apportioned among the Work's various elements as provided in **Exhibit C** (the "GMP Schedule"). **Exhibit C** may be used by City as a basis for evaluating CMAR's Applications for Progress Payment. To the extent there is any inconsistency between any of the provisions in **Exhibit C**, and any of this Agreement's provisions, this Agreement's provisions govern.

6. Schedules.

6.1 **Commencement Date.** The date of City's written notice to proceed ("Notice to Proceed") will be the Construction Services commencement date.

(A) City will not issue a Notice to Proceed until City has approved the applicable Construction Documents, and all necessary Permits have been issued.

(B) CMAR must not commence any Construction Services at the Site until City has issued a written Notice to Proceed.

6.2 **Time of the Essence.** Time is of the essence in completing the Project.

6.3 **Project Schedule.** CMAR must perform the Work in a logical and efficient manner in accordance with City's project schedule ("Project Schedule"), attached as **Exhibit D**.

(A) Initial Project Schedule. Within 15 days of the execution of this Agreement, CMAR must submit an initial Project Schedule, which will include the following:

(1) Times (number of days or dates) for starting and completing the various stages of the Work, including milestones as specified in CMAR Documents;

(2) A Schedule of Values; and

(3) Construction Management Plan ("CMP").

(a) CMAR's CMP will include:

(i) Project milestone dates and the Project Schedule, including the broad sequencing of the construction of the Project;

(ii) Investigations, if any, to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities, including underground utilities;

(iii) Alternate strategies for fast tracking and/or phasing the construction;

(iv) Number of separate sub-agreements to be awarded to Subcontractors and Suppliers for the Project construction;

(v) Permitting strategy;

(vi) Safety and training programs;

(vii) Construction quality control;

(viii) Commissioning program;

(ix) Cost estimate and basis of the model; and

(x) A matrix summarizing each Project Team member's responsibilities and roles.

(b) During the course of performance of the Work on this Project, CMR will add detail to its previous version of the CMP to keep it current throughout the construction phase and to take into account:

(i) Revisions in Drawings and Specifications;

(ii) CMAR's examination of the results of any additional investigatory reports of subsurface conditions, drawings of physical conditions of existing surface and subsurface facilities and documents depicting underground utilities placement and physical condition, whether obtained by City, Design Professional or CMAR;

(iii) Unresolved permitting issues, and significant issues, if any, pertaining to the acquisition of land and right of way;

(iv) Fast-tracking, if any, of the construction, or other chosen construction delivery methods;

(v) Requisite number of separate bidding documents to be advertised;

(vi) Status of the procurement of long-lead time equipment (if any) and/or materials; and

(vii) Funding issues identified by City.

(B) Adherence to Project Schedule. CMAR must adhere to the major milestone dates of the Project Schedule at all times during the Work, unless it has received City's prior written approval for a deviation from or modification to the major milestone dates of the Project Schedule. CMAR must not depart from the major milestone dates of the Project Schedule without prior consultation with and approval from City.

(C) Project Schedule Revision. The Project Schedule must be revised at least monthly, or at more frequent intervals as required by the conditions of the Work and Project, but each Project Schedule revision must allow for expeditious and practicable execution of the Work consistent with the Contract Times.

(1) The monthly revision will be a condition precedent to any payment otherwise due to CMAR.

(2) Each revised Project Schedule must be prepared in sufficient detail to demonstrate for each element of the work its timing, duration, and sequence, all integrated to show a logical order and reasonable critical path consistent with the Substantial Completion and Final Completion Dates.

(a) The revised Project Schedule may take into account an appropriate number of weather delays reasonably anticipatable based on experience in the area, but not less than one day per month.

(b) Each revised Project Schedule must include activities and logic for mitigating the cost and time impact of any anticipated or potential delays to any critical path elements that CMAR wishes City to consider an Excusable Delay.

(D) Weekly Progress Meeting. From the Effective Date until Final Completion, CMAR will meet with City every week (or more or less frequently, as requested by City or CMAR) to review the Work's progress.

(1) In advance of each such meeting, CMAR must provide City a written progress report in the format and detail as provided in **Exhibit D** (each a "Progress Report").

(a) The Progress report will identify:

(i) Whether the Work is on schedule in accordance with the Project Schedule; or

(ii) Whether there are anticipated or potential delays to any critical path elements in the Work's construction, then CMAR must include an

analysis identifying CMAR's plan for making up or mitigating the delay.

(b) Unless a delay is identified in the Progress Report, CMAR's Progress Report will be its certification that it has not incurred any delays to the critical path elements at least to the extent that a cause for the delay can then be reasonably identified.

(2) Unless the delay is an Excusable Delay, CMAR must take all actions, at its expense, including working overtime and hiring additional personnel, to comply with such Project Schedule.

(3) If the delay is an Excusable Delay, the Project Schedule may be modified to the extent mutually agreed upon by City and CMAR.

(4) Notwithstanding any provision to the contrary in this Agreement, CMAR is solely responsible for the timing, sequencing, coordination, and supervision of the Work consistent with the Substantial Completion and Final Completion Dates.

(5) City's review, acceptance or approval of a Project Schedule or Progress Report provided by CMAR is not:

(a) A waiver or bar to any rights or claims City may have against CMAR in the event City subsequently discovers a deficiency in such Project Schedule or Progress Report; and

(b) An acceptance of any delay as an Excused Delay, which may only be granted, along with any extension of time, by a Change Directive or amendment to this Agreement.

6.4 Substantial Completion Notification. CMAR will notify City and Project Coordinator in writing when CMAR, Architect of Record, and Engineer of Record believe that CMAR has accomplished Substantial Completion of the Project.

(A) Incomplete Items. If City concurs the Substantial Completion has been accomplished, City, Project Coordinator, CMAR, Architect of Record, and Engineer of Record will determine whether any items remain incomplete.

(B) Certificate of Substantial Completion. If City concurs the Substantial Completion has been accomplished, Architect of Record, and Engineer of Record will then each issue a "Certificate of Substantial Completion" to City, which will:

(1) Record the Substantial Completion date as determined by City;

(2) State each party's responsibility for security, maintenance, air conditioning, heat, utilities, damage to the Work and insurance;

(3) Include a list of items identified by City, CMAR, Architect of Record and Engineer of Record to be completed or corrected; and

(4) Fix a reasonable period of time for their inspection.

(C) Disagreement as to Substantial Completion. Disagreements between City and CMAR regarding the Certificate of Substantial Completion will be resolved in accordance with provisions of Section 11 of this Agreement.

6.5 **Substantial Completion.** CMAR must accomplish substantial completion by **November 30, 2016 or 180 calendar days from the Notice to Proceed,** (the "Substantial Completion Date").

(A) Extensions. The Substantial Completion and Final Completion Dates ("Contract Time") may be extended for cause, or by Change Order, as provided in Section 6.7 of this Agreement.

(B) Failure to Meet Substantial Completion Date. City will be substantially damaged if CMAR fails to accomplish Substantial Completion of the Work by the Substantial Completion Date, and it will be extremely difficult and impractical to ascertain the actual damages resulting from such delay; therefore:

(1) CMAR will pay City liquidated damages ("Liquidated Damages") in the event of a delay.

(2) Accordingly, if CMAR fails to accomplish Substantial Completion by the Substantial Completion Date, as it is extended in a signed writing by both parties, in accordance with this Agreement, City may assess, and CMAR must pay to City as Liquidated Damages, **$1,070** for each day of delay until CMAR accomplishes Substantial Completion.

(3) CMAR acknowledges that these sums:

(a) Will be paid as Liquidated Damages and not as a penalty;

(b) Are reasonable under the circumstances existing as of the Effective Date; and

(c) Are based on the parties' best estimate of damages City would likely suffer in the event of a delay.

(4) CMAR must pay City any Liquidated Damages within ten (10) days after demand, or City may deduct these sums from any monies due or that may become due to CMAR under this Agreement.

(5) City's collection of Liquidated Damages will not affect its rights to seek other remedies in law or at equity, including but not limited to exercising its rights under the Payment and Performance Bonds.

6.6 **Final Completion.** Final Completion must be accomplished by **December 30, 2016 or 210 calendar days from the Notice to Proceed** (the "Final Completion Date").

(A) Extensions. The Final Completion and Final Completion Dates may be extended for cause, by Change Order or other amendment of this Agreement, as provided in Section 6.7 below.

(B) Failure to Meet Final Completion Date. If CMAR does not accomplish Final Completion by the Final Completion Date, as it is extended in accordance with this Agreement, City may thereafter take control of the Site, effective upon delivery of written Notice to CMAR, and City may exercise its rights under the terms of any Payment or Performance Bond, and seek any remedy in law or at equity, including engaging other contractors to complete the remaining Work, at CMAR's expense.

(1) City may deduct its resulting expenses plus 20% from amounts otherwise payable to CMAR.

(2) CMAR must pay any amounts not so deducted within ten (10) days after demand.

6.7 Completion Dates Extension. The Substantial Completion and Final Completion Dates may be equitably extended by a written, signed amendment to this Agreement. Causes for extending the completion dates may include:

(A) City Delay. Any of the following (each a "City Delay") to the extent they necessarily result in unreasonable delays that are not caused or contributed to by CMAR:

(1) City's failure to make a decision regarding a major milestone item within a reasonable time (not exceed 10 days) after written request from CMAR accompanied by all documents and other information necessary for making the decision; or

(2) Any material breach of this Agreement by City.

(B) Force Majeure. The following items shall constitute a force majeure ("Force Majeure") event, provided they are not caused or contributed to by CMAR, or by any Subcontractor, Supplier or other person or entity for whom CMAR is responsible:

(1) Fire;

(2) War;

(3) Damage or disruption committed on behalf of any foreign interests to further international political objectives;

(4) Injunction in connection with litigation, governmental action;

(5) Severe and adverse weather conditions beyond those that can be reasonably anticipated as of the Effective Date of this Agreement.

(C) Excusable Delay. The Substantial and Final Completion Dates may be extended by the number of days the City, in its sole discretion, determines is an Excusable Delay, as such term is defined in Section 1(g.) of this Agreement.

(D) Mitigation of Delays. CMAR must use its best efforts to minimize any such time and cost impact of delays and must cooperate with City to mitigate the impact of any delays encountered by CMAR that would entitle it to an extension of time, even if its performance is unreasonably delayed by City.

(E) Remedies for Delays.

(1) Pursuant to A.R.S. § 34-607(E), the parties agree to negotiate in good faith any increased costs incurred by CMAR for any unreasonable delay that is attributable solely to a delay caused by City; however, CMAR will not be entitled to additional funds for any increase in cost due to any type of delay.

(2) CMAR's sole and exclusive remedy for a Force Majeure event is an extension of time.

7. **Compensation.**

7.1 Contract Sum. The City shall pay AGC a contract sum not to exceed the GMP for its performance of the Work under this Contract.

Cost Contract Sum is calculated by adding the Construction Services plus the CMAR's Fee (as defined in Section 7.2) and the amount paid for FFE Services (as defined in Section 1(h.) herein). In no event shall the Contract Sum exceed the GMP($4,694,759.75).

7.2 CMAR's Fee. CMAR's Fee is the sole and exclusive compensation for CMAR's direct and/or indirect profit, home office overhead expense including, without limitation, home office administration, accounting, support, clerical services, insurance not specifically reimbursable under this Agreement, rent, all other direct and indirect home office expenses (including the costs specifically identified by CMAR to recruit and relocate employees and bonuses (at a not-to-exceed amount) that are previously approved by City as reimbursable); taxes other than reimbursable payroll related taxes and any other cost or expense not specifically included within the Cost of Construction Services.

Cost Fee may not exceed 9% of the Construction Services minus Privilege Taxes and CMAR's Reimbursable Construction Insurance and Bond Premiums, as specified by Section 5.2 of this Agreement.

7.3 Construction Services Cost.

(A) Costs included in Construction Services. Construction Services Cost consists of the expenses incurred and paid by CMAR in the Project's proper and timely construction for:

(1) Payments to City-approved Subcontractors or Supplier for the performance of the Construction Services and/or the furnishing of Construction Materials, fixtures, equipment and supplies in accordance with the provisions of their respective Subcontracts or Sub-subcontracts;

(2) Wages, salaries and normal fringe benefits (as approved by City), and normal employer taxes paid by CMAR thereon, of CMAR's supervisory staff and general field labor assigned to the Work, but only for the portion of time actually devoted to the Work, all subject to and as approved in writing by City, provided such costs are not included in the costs to be paid from CMAR's Fee per Section 7.2 of this Agreement;

(3) Elements of the Construction Services to be self-performed by CMAR with City's approval, in amounts approved by City (which will not include any mark-up for CMAR's Fee);

(4) Permit, licenses, connection fees, and other such fees to the extent required by any governmental entity;

(5) Construction Materials suitably stored on the Site with City's approval as provided in Section 12.5 of this Agreement;

(6) Construction equipment used on the Site by CMAR with City's approval, at rates not to exceed the lesser of:

(a) The prevailing rates charged by others for rental of similar equipment; or

(b) The purchase price of the Construction equipment less the reasonable depreciation in value of that equipment as a result of its use on the Site;

(7) Construction utilities, job site telephone, job trailer rental, portable toilets, dumpsters, cleanup and other job site general conditions as approved by City;

(8) Premiums paid by CMAR for Reimbursable Construction Insurance and Bond Premiums as provided in Section 5.2 of this Agreement, without any markup for CMAR's Fee;

(9) Any other reasonable construction expense necessarily required for proper performance of the Work at the Site required by this Agreement as approved in writing by City; and

(10) Reimbursable Privilege Taxes, without any mark up for CMAR's Fee. Expenses that do not meet the criteria set forth above are not reimbursable as Costs. All discounts received by CMAR from Supplier accrue to City's benefit.

(B) Cost Excluded from Construction Services. The Cost of the Construction Services ***may not*** include reimbursement for:

(1) Any amounts for FFE Services;

(2) The performance of any Construction Services by CMAR's own forces or use of any equipment owned by CMAR without City's prior written approval;

(3) Any Construction Materials not yet incorporated in the Project or stored at the Site with City's approval, as defined in Section 12.5(A) of this Agreement;

(4) Payment to CMAR or a subcontractor or supplier of amounts in excess of the amounts approved by the City for CMAR's self-performed Construction Services or for such performance by a subcontractor or supplier;

(5) Repair or replacement of defective or nonconforming Work;

(6) Repair or replacement of Work damaged by the negligence or failure to perform a responsibility hereunder by CMAR or by any Supplier;

(7) Any interest or penalties;

(8) Premiums for business automobile insurance, workers compensation and employers liability insurance, and any general liability and other insurance normally carried by CMAR;

(9) Any legal expense incurred by CMAR;

(10) Any other home office expense;

(11) Any expense that causes the GMP, as amended, to be exceeded; or

(12) CMAR's Fee or any Privilege Tax(es);

(13) Any other expense that does not meet the criteria set forth in Section 7.3(A) of this Agreement, and

(14) Any costs associated with changes to the Design or Design Documents that were not required by the discovery of new information or changed conditions during the construction of the Project, as provided in Section 20.3 herein.

(C) Schedule of Rates. City will consider approving written schedules of rates upon which CMAR may base its monthly estimated costs for purposes of Applications for Progress Payment of certain Construction Services costs, such as supervisory salaries and equipment; but only on condition that adoption of any schedule for these purposes is subject to audit and adjustment necessary to reflect the actual costs of these items to CMAR.

7.4 Taxes.

(A) Reimbursement.

(1) Provided such payments do not cause the CMAR to exceed the GMP, City will reimburse CMAR for Privilege Taxes paid by CMAR on gross receipts received by CMAR. Such payments may be made by the City if Privilege Taxes were timely paid by CMAR and are not otherwise exempt from such taxation.

(2) Provided such payments do not cause the CMAR to exceed the GMP, City will reimburse CMAR for Privilege Taxes paid by CMAR on amounts received from City for the direct costs paid by its Subcontractors for FFE. City will not reimburse CMAR for any amounts paid as and for Privilege Taxes by CMAR to its Supplier(s) or by a Supplier to another Supplier, or for any markup for profit and overhead for costs paid to Subcontractors.

(B) Application.

(1) Each Application for Progress Payment and Application for Final Payment will separately identify that part which represents FFE.

(2) CMAR and its Supplier(s) will not report transaction privilege or use taxes paid for FFE.

(3) CMAR will not seek reimbursement for Privilege Taxes computed on receipts for these expenses.

(C) Tax Licenses. CMAR must take all steps necessary to obtain state and local retail tax licenses, issue exemption certificates to vendors, and otherwise perfect its right to be exempt from the payment of Privilege Tax for FFE purchases, and CMAR must require its Supplier(s) to also obtain state and retail tax licenses, issue exemption certificates to vendors, and otherwise perfect their rights to be exempt from the payment of Privilege Tax for FFE purchases.

7.5 FFE Services.

(A) The amount to be paid to CMAR for the FFE Services will be an amount equal to the direct expenses (exclusive of any Privilege Taxes) paid by CMAR (or by a Subcontractor or Supplier) for the FFE, without markup for profit or overhead of CMAR (or of the Subcontractor or Supplier).

(B) "FFE Services" means interior design of the Project and the procurement of the FFE.

8. **Payments.**

8.1 Cash Flow Report.

(A) CMAR will prepare a Cash Flow Report for projected monthly project cash flow on the form provided by City.

(B) The Cash Flow Report will be submitted for approval prior to issuance of the Notice to Proceed, as issued in accordance with Section 6 of this Agreement.

(C) The Cash Flow Report will be updated and submitted with each Application for Progress Payment and at any time City requests if the projected monthly project cash flow varies by more than 10% of the GMP.

(D) The Cash Flow Report will reflect the following:

(1) Initially, the accumulation of month pay estimates costs will be plotted versus time in accordance with the proposed construction schedule; and

(2) For each update, CMAR's actual month payment versus the actual elapsed time on the Project.

8.2 Draft Application for Progress Payment. Based on draft applications (each a "Draft Application") followed by formal applications for progress payment (each an "Application for Progress Payment"), City will make monthly progress payments on Contract Sum account as provided in this Section. The Draft Application is for informational purposes only and its submission is not an Application for Progress Payment.

(A) Period. The period covered by each Application for Progress Payment will be one calendar month (the "Billing Month") ending on the last day of each month.

(B) Date for Submission. On or before the 25th day of each Billing Month, CMAR will submit to City its Draft Application, which must identify all amounts CMAR expects to invoice for the entire Billing Month.

(C) Review Meeting. The parties will thereafter meet and make good faith efforts to reach agreement on the Draft Application by the end of the Billing Month, whereupon CMAR will formalize its Application for Progress Payment for the Billing Month, incorporating all of the agreements reached during the parties' review of the Draft Application.

8.3 Application for Progress Payment. Provided that CMAR has submitted its Draft Application for review as provided above, CMAR may submit its Application for Progress Payment for the Billing Month to City, no earlier than the 1st day of the month following the Billing Month.

(A) Date for Submission. City will make a Progress Payment, subject to applicable Withholdings, to CMAR not later than 21 days after the date on which the Application for Progress Payment has been received by City, subject to this Agreement.

(B) One Progress Payment Per Month. Unless City agrees otherwise, CMAR may submit only one Application for Progress Payment in a month and City will make only one Progress Payment in a month to CMAR.

(C) Progress Payment Application Form. The Application for Progress Payment will be in such form as City may reasonably require, and will be accompanied by the following to City's reasonable satisfaction:

(1) A sworn statement of the Cost of the Work furnished during the Billing Month, together with the required form of application as City requires, properly completed so as to allocate all Construction Services and FFE Services according to the most recent City-approved GMP Schedule;

(2) An itemized report of the Work performed during the Billing Month;

(3) Proof of CMAR's compliance with testing, submittals, permits, and other requirements applicable to the Work requested by City;

(4) Conditional and unconditional waivers and releases from CMAR and from Subcontractors, Supplier, vendors, and others relating to Work for which the Application for Progress payment is requested, or receipt of amounts for which payment has previously been made, as requested by City;

(5) Payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, payrolls, requisitions from Subcontractors and material suppliers, vendors receipted invoices, purchase orders, and delivery tickets;

(6) CMAR's monthly updated Project Schedule as provided in Section 6 of this Agreement; and

(7) Such other evidence substantiating the particulars of CMAR's Application for Progress Payment as may be required by City.

(D) Complete Application Required. A complete Application for Progress Payment, including all required documentation, will be a condition precedent to CMAR's right to have the Application for Progress Payment reviewed or to receive any Progress Payments.

(E) Incomplete or Untimely Applications. If CMAR submits an Application for Progress Payment that is incomplete or untimely, in City's reasonable judgment, CMAR must resubmit the Application for Progress Payment, with any applicable corrections.

(F) Correspondence to Other Documents. CMAR's Application for Progress Payment must be organized so that all back-up for each line item of the Application for Payment corresponds to the most recently City-approved GMP Schedule and that the back-up for the amount requested for each item of the Construction Services, and FFE Services, and each Change Directive or Change Order is separately provided for and is available for review by City.

(G) Certification. The Application for Progress Payment must be signed by CMAR, the Architect of Record or the Engineer of Record certifying that:

(1) The Work has progressed to the point indicated in the Application for Progress Payment;

(2) That the Work is in accordance with the Project Documents;

(3) CMAR is entitled to payment in the amount requested; and

(4) Applications for Progress Payment to City will not be deemed delivered until actually received by City.

(H) Review of Work by City. City will have the right to review the Work after receipt of CMAR's application.

(1) Within three business days after receipt of the Application for Progress Payment, City will prepare and issue a written statement ("Deficiency Notice") specifying those items covered by the Application for Progress Payment that are not approved and certified for payment if:

(a) City reasonably determines that the Work actually completed is less than that represented on the Application for Progress Payment;

(b) The Work is defective;

(c) The Work does not comply with this Agreement's requirements; or

(d) The other grounds for withholding as provided in Section 12.3(B) below apply.

(2) The Deficiency Notice may be given in any reasonable manner, including handwritten annotations on a copy of the Application for Progress Payment returned to CMAR.

(3) City may withhold such sums as are permitted pursuant to A.R.S. § 34-607 to pay the expenses City reasonably expects to incur in correcting the deficiencies so identified.

(4) If sums were withheld in connection with a prior Application for Progress Payment, and the associated deficiencies have been corrected, the amount so withheld may be included as part of the current Application for Progress Payment.

(5) City will have the right to amend any previously-given Deficiency Notice, or approval for payment, in whole or in part, based on mistake, newly-discovered information, or other grounds permitted by Law, and such amendments will apply to any Application for Progress Payment.

(6) However, the failure by City to specify any defect in the Work in a Deficiency Notice will not act as a waiver or otherwise prevent City from raising defect issues at any time.

(I) Progress Payment to CMAR. Within 21 days after receipt of the properly completed Application for Progress Payment, City will pay to CMAR the entire amount set forth in the Application for Progress Payment, less any applicable Withholding and less retainage as provided in A.R.S. § 34-607(B).

(J) Progress Payment to Suppliers. Within 7 days after receipt of payment by City, CMAR will make payment available to its Subcontractors or Supplier entitled to payment in accordance with A.R.S. § 34-607(F).

(1) CMAR bears all costs and damages, without reimbursement, that arise from CMAR's failure to pay Subcontractors entitled to

payment in a timely manner as provided by law, to the extent such payment has been received by CMAR from City.

(2) City has no obligation under this Agreement to pay or to be responsible in any way for payment to a Subcontractor or Supplier performing portions of the Work.

8.4 Proof of Payment.

(A) Duty to Discharge Debts and Obligations. All CMAR's debts and obligations for labor, materials, equipment or fixtures incorporated into the Project or any other element of Work, including that shown in any estimate, Application for Progress Payment, requisition or claim and upon which CMAR has received a payment must be paid or discharged by CMAR.

(B) Proof. Receipts or vouchers showing payment or discharge must, if City so requires, be provided to City before CMAR will be entitled to receive any other or further payment under this Agreement.

(C) Joint Check Alternative. At CMAR's election, CMAR may satisfy this requirement by requesting City issue joint checks in accordance with Section 12.4 of this Agreement.

9. Final Payment.

9.1 Application for Final Payment. Provided that CMAR has accomplished Final Completion in a timely fashion and to the City's satisfaction, CMAR may submit an application for final payment ("Application for Final Payment"); however, neither final payment nor amounts retained, if any, will be due until:

(A) CMAR submits to City an application for final payment with all required documentations in accordance with Section 9.2 below; and

(B) City has thereafter conducted a review or audit of CMAR's Final Accounting, as defined in Section 9.2 below.

9.2 Application for Final Payment Form. The Application for Final Payment must be in such form as City may reasonably require.

(A) Required Information. Application for Final Payment must be accompanied by the following to City's satisfaction:

(1) Waivers and Releases on Final Payment as provided in Section 12.1 of this Agreement;

(2) CMAR's accounting ("Final Accounting"), bearing the certificates of CMAR's chief executive and chief financial officers attesting to the completeness and accuracy of the Cost of the Work for which CMAR has received or seeks reimbursement from City;

(3) Architect of Record or the Engineer of Record certification to City that the Project is complete;

(4) Proof that CMAR has furnished to City the redlines, warranties, manuals and other close-out documents required by any of the Project Documents or applicable laws of City, county and state governments, or other authorities with jurisdiction over the Project;

(5) Certificates that demonstrate all insurance required by the Project Documents will remain in force after Final Payment is made and will be in effect as required;

(6) Such other documents substantiating the particulars of CMAR's Application for Final Payment (including additional backup for CMAR's accounting) as required by City, the Financing Parties and CMAR's Surety;

(7) Consent of CMAR's surety to the Final Payment; and

(8) City may require CMAR to submit and meet to discuss a Draft Application for Final Payment, following the procedure provided in Section 9 of this Agreement.

(B) Other Required Documents. CMAR must prepare or obtain and furnish to City upon completion, prior to and as a condition of the Application for Final Payment, in addition to any other documents as provided elsewhere in this Agreement, the following Project Documents:

(1) A list of capital assets as described in Governmental Accounting Standards Board Statement No. 34, as it has been supplemented by subsequent pronouncements of the Governmental Accounting Standards Board;

(2) Warranties from Subcontractors and Suppliers;

(3) Manufacturer's warranties and manuals for all furniture, fixtures and/or equipment installed or furnished by CMAR (whether as Construction Services or as FFE);

(4) Air balance reports, equipment operation and maintenance manuals;

(5) Building certificates required prior to occupancy, mechanical, electrical and plumbing certificates, all other required approvals and acceptances by city, county and state governments, or other authority having jurisdiction; and

(6) Two sets (one reproducible on Mylar), plus one electronic set, of redline record drawings in size to match the Construction Documents showing complete information including descriptions, drawings, sketches, marked prints and similar data indicating the final "as built" conditions of the Work, and CMAR must keep redline record drawings up to date concurrently as the Work progresses.

(C) Application for Final Payment Review. City will have thirty (30) days after its receipt of the fully completed Application for Final Payment within which to audit and/or review CMAR's Final Accounting.

(1) City review will result in a Notice to CMAR:

(a) Identifying and disallowing any expenses that City has determined were not incurred and paid consistent with this Agreement;

(b) Approving the Contract Sum that the City will agree to pay; and

(c) The amount of the Final Payment to be transmitted to CMAR, after deduction for all payments previously made and applicable Withholding.

(2) CMAR must cooperate with City's review and/or audit by making all of its records available for inspection and copying, answering questions, and otherwise facilitating City's review promptly upon its request.

(3) City's review and/or audit of the Final Accounting will be conducted in accordance with City's established auditing policies and practices and shall not be subject to review or challenge by CMAR or any third party.

(D) Final Payment. Subject to the exchange of unconditional waivers and releases on Final Payment as provided in Section 12.1 of this Agreement, City will make the Final Payment to CMAR, within ten (10) days after City has issued its Notice of Final Payment in accordance with Section 9.2(C)(1)(c) above.

(E) Payment for Withholding. If applicable Withholding exceeds amounts otherwise payable, CMAR must pay the difference to City within ten (10) days after demand from City.

(F) Acceptance and Waiver. CMAR's acceptance of Final Payment will constitute a waiver of all Claims or Disputes that have not been timely submitted to City as CMAR Claims prior to CMAR's submission of the Application for Final Payment.

10. Changes. Changes in the scope of the Work or in the Project Schedule may be accomplished only by Change Order as defined in this Agreement.

10.1 Change Orders.

(A) Request for Proposal. If City requests CMAR to submit a proposal for a Change Order, CMAR will do so promptly, within ten (10) days after written request from City, on a form and following a procedure established by Project Manager. Any Change Order proposals shall specify CMAR's technical proposal for implementation of the proposed Change, together with CMAR's proposal for the resulting adjustment to the Contract Sum and/or Contract Times.

(B) Acceptance. City may, in its sole discretion, accept or reject the Change Order proposal and negotiate an amendment to the Scope of Work which will be memorialized in an agreed upon Change Order. The Change Order may be subject to City Council approval. If the parties cannot reach agreement within ten (10) days after City has received the proposal, the Change Order proposed will be deemed denied and no change will be implemented.

10.2 Field Orders. City or Project Coordinator, when reasonable under the circumstances, may issue a written order that makes or authorizes minor deviations in the Work or provides necessary interpretation of the Construction Documents.

(A) City may issue a Field Order unilaterally or at the request of CMAR.

(B) The total value of the work performed under any and all Field Order(s) may not exceed $50,000 without City Council approval.

(C) If CMAR disagrees that the deviation or interpretation is appropriate for a Field Order, it will provide Notice to City of its disagreement and City and CMAR may agree upon a Change Order.

(D) Change Orders shall not be subdivided to avoid the requirements of the Procurement provisions of the City Code, as provided in Section 2-145.

10.3 Authorization Required. CMAR may not perform any Change, or be entitled to any compensation or extension of time, unless CMAR has first received a Change Order or Field Order as provided in this Section 10.

11. CMAR's Claims. CMAR may request an increase in the GMP or extension of the Contract Times, or both, that is otherwise permissible under this Agreement ("CMAR Claim") using the following procedure:

11.1 CMAR's Duty to Mitigation Claims. CMAR must at all times, and in an all circumstances, use its best efforts to avoid or mitigate any potential impact of a CMAR Claim.

11.2 Notice of CMAR Claim. The request for a CMAR Claim must be preceded in each case by a written notice from the CMAR, submitted to both the City and its Project Coordinator, within five days of when CMAR first knew or should have known of the matter, occurrence or event that is the basis for the request for additional compensation or time ("Notice of Claim").

(A) Information. The Notice of Claim must furnish sufficient detail to inform City and its Project Coordinator of the basis and cause of the CMAR Claim and must include:

(1) A reasonable estimate of the amount of compensation or time CMAR anticipates it will require to avoid or mitigate any potential impact of the matter occurrence or event; and

(2) A list of action CMAR intends to take in order to mitigate the time and cost impact of the situation that gave rise to or is related to CMAR Claim.

(B) Supplementation. CMAR must supplement the Notice of Claim during the course of the Work as additional information becomes available.

(C) Continuing Delays. Only one notice is necessary in the case of a continuing delay that is attributable to the same cause described in the Notice of Claim.

(D) Waiver. If CMAR fails to submit a Notice of Claim within five days after CMAR first knew or should have known of the basis of the CMAR Claim, CMAR will be deemed to have waived the right to request or pursue a Notice of Claim arising from such matter, occurrence or event.

11.3 Procedures for Resolving a CMAR Claim. The procedures of this Section apply to requests for a CMAR Claim only. However, as provided in Section 36.2 of this Agreement, CMAR must continue to perform the Work during the pendency of any request for additional compensation or time under this Section.

12. Additional Terms and Condition of Payment.

12.1 Lien Waivers and Releases. Except as otherwise expressly set forth elsewhere herein, with each Application for Progress Payment, application for release of retention or other withholding, and Application for Final Payment, CMAR must submit lien waivers and sworn statements for the application from CMAR, and lien

waivers and sworn statements from all Suppliers and third parties who have furnished labor, Construction Materials, equipment, tools, fixtures, services or other work directly or indirectly to or for CMAR, in form and substance as required by City to assure that the Site and Project will be free of liens arising from the Work for which the payment is requested.

12.2 Reservations upon Payment.

(A) No Determination of Standard. No approval given or payment made by City is intended to be evidence of satisfactory performance of any Work, or of the sufficiency of any applicable application for payment.

(B) Non-Acceptance. No payment to CMAR will constitute an acceptance of any Work not in accordance with this Agreement's requirements.

(C) No Waiver of Defective Work. Any application for payment approval pursuant to A.R.S. § 34-607 will constitute approval solely for purposes of making payments and will not constitute a waiver of City's right to have all defective or incomplete Work corrected and performed in accordance with this Agreement, or to later modify or amend a Deficiency Notice or any approval or deemed approval previously given by City.

12.3 Retainer. An amount will be held by City as additional security for performance of CMAR's obligations, and may be applied by City towards payment of any back-charge, setoff, or other amount payable by CMAR to City.

(A) Discretionary Reduction of Retainer. After the Work is 50% complete, CMAR may submit a request for reduction of the amount withheld from subsequent Progress Payments.

(1) If CMAR has performed its obligations on schedule and is otherwise in compliance with the Project Documents, City may, but will not be required to, reduce the retained amount from future Progress Payments to not less than 5%, subject to City's right to later reinstate an appropriate retainer if CMAR thereafter fails to perform any responsibility under the Project Documents.

(2) With the regular Progress Payment after CMAR has accomplished Substantial Completion, City may release unapplied retainer to CMAR, less an amount equal to 200% times City's estimate of the costs it would incur to engage a third party to complete any remaining Work.

(3) With the Final Payment, any retainer will be released to CMAR.

(B) Withholding.

(1) The amount of each Progress Payment, or Final Payment, otherwise payable to CMAR will be reduced by the following amounts ("Withholding"), as applicableand such amounts shall be applied to any outstanding debts or charges owed to the City::

(a) Sums as permitted under applicable law on account of:

(i) The items identified in all applicable Certificates for Payment and/or Deficiency Notices and amendments thereto; or

(ii) Any additional amounts City in good faith believes are necessary to withhold, back-charge, or setoff in order to satisfy or cover any actual or reasonably anticipated loss, liability, damage or judgment that City has incurred or may incur in connection with CMAR's performance or non-performance of this Agreement;

(b) Any Liquidated Damages then due.

(2) City will make appropriate adjustments to Withholding after final disposition of the Application for Payment, Deficiency Notice, CMAR Claim or other cause that resulted in such Withholding.

(3) If the expense incurred by City is less than the amount withheld, City may release the difference to CMAR within fourteen (14) days after such final disposition.

(4) If, however, such expense exceeds the unpaid amounts otherwise due, CMAR must pay the difference within fourteen (14) days after demand from City.

12.4 Payments to Supplier.

(A) Remittance to Supplier. Although not required by Section 8 or elsewhere in this Agreement, the City, at its sole discretion, may:

(1) Pay any Subcontractor or Supplier directly for performance of the Work, or

(2) Issue joint checks For payment to Subcontractor or Supplier if:

(a) CMAR agrees to accept joint checks and to execute, when requested by City, joint check agreements in a form acceptable to City.

(b) Joint checks and direct payments made pursuant to this section will be credited against the Contract Sum.

(B) Communications with Supplier. Although not required before the City makes such direct payment, CMAR consents to the City's direct payment and to City communicating directly with CMAR's Subcontractors, Suppliers and other Vendors.

12.5 Non-Incorporated Construction Materials. CMAR must not charge City for any Construction Materials that are not used for the Work or to complete the Project, unless City has given its written agreement to pay such charges.

(A) Storage of Materials. City may condition its approval on its determination that the Construction Materials are suitably stored and properly secured from casualty, properly insured, and that title has passed to City free and clear of any liens or encumbrances.

(B) Receipt of Documentation. City may further condition the making of payments for Construction Materials not used for the work or to complete the Projectupon receipt of contracts, bills of sale, or other agreements satisfactory to City to establish City's title to the Construction Materials, or otherwise protect City's interest.

13. **Project Coordinator**. The City's Project Coordinator will assist City in this Agreement's administration and overall Project administration.

13.1 Project Coordinator's Authority. The City's Project Coordinator and his/her staff, if any, have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent and has no authority, express or implied, to bind City to any obligations.

13.2 Project Coordinator's Duties.

(A) The City's Project Coordinator shall provide direction and communicate with CMAR, and will review and make recommendations to City regarding:

(1) The Work and Work Product;

(2) The Services furnished by CMAR in connection with the Project; and

(3) CMAR's invoices.

(B) The City's Project Coordinator may have other duties and responsibilities as the City may delegate or designate in writing from time to time.

13.3 Cooperation. CMAR agrees to cooperate with the City's Project Coordinator so as not to result in any delay in the progress of the Work or completion of the Project.

14. **Subcontractors and Supplier.**

14.1 Subcontractors Unless otherwise agreed upon in writing by City and CMAR, the Construction Services will be performed by qualified Subcontractors and Suppliers, who will be selected and engaged by the CMAR, with approval of the City, as provided in Section 14.2 and 14.3 below.

CMAR will be responsible and liable to City for the Work's proper and timely performance by any and all of its Subcontractors, Suppliers and any other person or entity who furnishes any Work for this Project on CMAR's behalf.

14.2 Subcontractor Selection. Subcontractors will be selected on the basis of qualifications alone, or a combination of qualifications and price, but not price alone, as provided in the Subcontractor's Selection Plan developed by CMAR and submitted during the selection process. The process for Subcontractor selection will include:

(A) Selection may be a single step process, based on a combination of qualifications and price, or a two-step process, where the first step is a screening of applicants based on qualifications and the second step is based on a combination of qualifications and price or on price alone;

(B) CMAR will then determine, with City's advice, which bids or proposals will be accepted;

(C) CMAR may obtain bids or proposals from Subcontractors from the list previously reviewed and, after analyzing such bids or proposals, will deliver copies of such bids or proposals to City;

(D) CMAR will not be required to contract with anyone to whom CMAR has a reasonable objection;

(E) Requests for submittal of qualifications must be in writing, and kept by CMAR in its Project records; and

(F) Each Subcontract must meet other requirements set forth in all applicable sections of this Agreement, including, but not limited to, this Section and Sections 17, 18 and 30.

(G) Solicitation and selection of subcontractors shall be conducted in accordance with ARS Title 34, the City's Procurement policies, and the City Code.

14.3 Subcontracts. Except as provided in Section 14.5 of this Agreement, each subcontract must:

(A) Be in writing, and signed by both the CMAR and Subcontractor;

(B) Provide for a fixed, or not-to-exceed amount as the Subcontractor's entire compensation;

(C) State that the Subcontract is subject to this Agreement's terms and conditions and specifically incorporate this Agreement's provisions (except its compensation terms);

(D) Bind and obligate the Subcontractor to CMAR as CMAR is bound to City under this Agreement;

(E) State that City is the intended third-party beneficiary of the subcontract, with the right (but not the obligation) to pursue claims for damages and/or equitable or other relief or remedies directly against Subcontractor for any breach of Subcontractor's obligations under the Subcontract, or any breach of any warranty given by Subcontractor;

(F) State that City may exercise its rights as a third-party beneficiary if a breach of contract or warranty continues without cure for seven days after written notice has been given to CMAR;

(G) Contingently assign the subcontract to City in the event this Agreement is terminated, subject to City's election to accept the assignment by delivery to Subcontractor of written notice—which City is not obligated to give;

(H) Obligate Subcontractor to be joined as a party to any arbitration or other dispute resolution proceeding in which City or CMAR are parties and which arises out of or relates to Subcontractor's performance or nonperformance of the subcontract;

(I) Include a termination for convenience clause equivalent to Section 35.5 of this Agreement;

(J) Contain an indemnity that is, at a minimum, equivalent to the provisions of Section 30 herein and identifying, as Indemnities, all Indemnified parties identified in Section 30 of this Agreement;

(K) Include any other provision required by the Project Documents; and

(L) Agree to contract with Supplier as provide in Section 14.4 below.

(M) Confirm that the City is not liable to Subcontractor for compensation for any work performed for the Project, unless the City so agrees;

(N) Contain the City's non-discrimination clause prohibiting the Subcontractor from discriminating against any employee based on his/her race, color, religion, sex, national origin, age, marital status, sexual orientation, gender

identity or expression, genetic characteristics, familial status, US military veteran status or disability.

14.4 Supplier. Except as provided in Section 14.5 below, each agreement between CMAR and Supplier, between any Subcontractor and Supplier or any other parties contracted to provide Work or perform tasks, activities or actions on the Project must:

(A) Be in writing, and signed by both the CMAR and Supplier;

(B) Provide for a fixed, or not-to-exceed amount as the Supplier's entire compensation;

(C) State that the Supplier's contract is subject to this Agreement's terms and conditions and specifically incorporate this Agreement's provisions (except its compensation terms);

(D) Bind and obligate the Supplier to CMAR as CMAR is bound to City under this Agreement;

(E) State that City is the intended third-party beneficiary of the Supplier's contract, with the right (but not the obligation) to pursue claims for damages and/or equitable or other relief or remedies directly against Supplier for any breach of Supplier's obligations under its contract with CMAR, or any breach of any warranty given by Supplier;

(F) State that City may exercise its rights as a third-party beneficiary if a breach of contract or warranty continues without cure for seven days after written notice has been given to CMAR;

(G) Contingently assign the Supplier's contract to City in the event this Agreement is terminated, subject to City's election to accept the assignment by delivery to Supplier of written notice—which City is not obligated to give;

(H) Obligate Supplier to be joined as a party to any arbitration or other dispute resolution proceeding in which City or CMAR are parties and which arises out of or relates to Supplier's performance or nonperformance of the subcontract;

(I) Include a termination for convenience clause equivalent to Section 35 of this Agreement;

(J) Contain an indemnity that is, at a minimum, equivalent to the provisions of Section 30 herein and identifying, as Indemnitees, all Indemnified parties identified in Section 30 of this Agreement; and

(K) Include any other provision required by the Project Documents.

(L) Confirm that the City is not liable to Subcontractor for compensation for any work performed for the Project, unless the City so agrees;

(M) Contain the City's non-discrimination clause prohibiting the Subcontractor from discriminating against any employee based on his/her race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, US military veteran status or disability.

14.5 Immigration Law Compliance.

(A) 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.

(B) 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.

(C) 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.

(D) 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.

(E) 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.

(F) 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.14.5.7 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.

14.5 Condition Precedent to Work of Supplier. Satisfaction of all requirements of this Section 14 is a condition precedent of Subcontractor or Supplier's right to commence any Work element and to receive the payment of any amount otherwise payable to CMAR for any Work performed by the Subcontractor or Supplier.

(A) Compliance Warranty. By permitting a Subcontractor or Supplier to commence any Work element, CMAR conclusively warrants to City that all of this Agreement's requirements have been fulfilled and must continue to be fulfilled as to the Subcontractor or Supplier.

(B) CMAR Responsibility for Supplier. CMAR is solely responsible and liable to City for the Work's proper and timely performance by each Subcontractor and Supplier.

(C) Copies of Subcontracts. CMAR shall furnish a copy of any subcontract or third party contract, including those with any Supplier, to City within two

(2) days after it is requested by City. City shall have no obligation to make such a request, or to review any Subcontract or Supplier when received, and no review, non-review, objection or failure to object by City shall relieve CMAR and its Subcontractors and Suppliers from their responsibilities for fulfilling this Agreement's requirements.

(D) Change of Subcontractor Approval. CMAR will not change a Subcontractor after the Subcontractor has been approved by City, without City's written consent to the change.

15. Self-Performed Work.

15.1 Selection of CMAR. CMAR, its subsidiary, affiliate or entity under control of CMAR, may seek to self-perform portions of the Construction Services only if selected by City following this Agreement's full subcontractor procurement process, and if and only:

(A) CMAR has been selected by City in accordance with City Code 2-145 and as provided in Section 14.2 of this Agreement, or

(B) City has given prior written approval to CMAR's self-performance of *de minimus* Construction Services, such as minor clean-up work (but only to the extent of the type of *de minimus* work and the not-to-exceed amount authorized in City's written approval).

15.2 Contract for Self-Performed Work. If CMAR is selected to self-perform portions of the Construction Services, a written subcontract will not be required, as this Agreement's provisions will apply. Prior to initiation of the self-performance of Work, the City and CMAR will agree to a written scope of work to be self-performed and a lump sum to be paid for such self-performed work. This lump sum will not exceed the amount budgeted for performance of the same work by a Subcontractor or other third party and will include CMAR's direct and indirect compensation, labor, labor burden, supervision, overhead, and all other costs. CMAR's self-performance of any Work allowed under this Section will not change, in any way, the amount CMAR is entitled to as compensation under this Agreement or the Contract Sum, CMAR's Fee or the GMP, as those terms are defined and calculated in Section 7 of this Agreement.

16. Performance Standards. CMAR warrants to City that:

16.1 Standard of Care. CMAR, its Subcontractors and Suppliers, will perform their respective obligations under this Agreement with the professional diligence and care prevailing among highly skilled and experienced members of the industry with demonstrated ability to timely and properly complete construction projects equivalent to the Project (the "Standard of Care"), on schedule, within budget, and without obvious or latent defects.

16.2 Standard of Work. The Work must be:

(A) In accordance with the requirements of the Project Documents;

(B) Free from defects; and

(C) Fit for City's intended use.

16.3 Standard of Construction Materials. All Construction Materials will be new and in excellent condition, except to the extent specifically provided otherwise in the Project Documents.

16.4 Quality Control. CMAR must establish, maintain, and implement a quality control program that is consistent with that described in the CMP and which is:

(A) Sufficient to insure proper supervision, examination, inspection, and testing of all item of Work at appropriate intervals, including the work of Subcontractors, Supplier, suppliers; and

(B) Sufficient to assure conformance to the Project Documents with respect to Specifically Described Items, as defined in Section 22.2 of this Agreement, and general workmanship, construction, and equipment (including maintenance, while-idle, and functional performance) requirements.

17. Regulatory Compliance.

17.1 Duty to Comply. CMAR must comply with all federal, state, county, and local laws, including, statutes, rules, regulations, codes, ordinances, executive orders, and other legislative, executive, or judicial requirements and/or decisions (collectively, "Laws") applicable to the Work whether or not specifically referenced elsewhere in this Agreement. Compliance with such Laws shall include, but not be limited to:

(A) Compliance with Laws pertaining to contractor licensing, occupational health, safety, disabilities, building codes, construction standards, licensure, social security, employment, workers compensation, immigration, wages, payrolls, health, discrimination, equal employment opportunity, civil rights, storm water, solid wastes, Hazardous Substances, grading, air pollution, water pollution, waste disposal, human remains, land use, historic preservation, endangered or threatened species, navigable waters, waters of the United States and tributaries thereof, and any other Laws applicable to the performance of the Work; and

(B) Compliance with any applicable standards, specifications, manuals, or codes of any technical society, organization, or association, adopted by City (and as may be modified from time to time), or those commonly used as the industry standard in the design and construction of projects comparable to the Project being performed and completed in accordance with this Agreement by the CMAR.

17.2 Notification of Investigations. To the fullest extent permitted by applicable Law, CMAR will notify City, and, in each case, require its Subcontractors and Suppliers to notify City, within twenty-four (24) hours of a demand for records or notice of audit being received and/or any inspection or other investigation is commenced by any federal, state or local governmental agency that relates to the Work, including, without limitation:

(A) Any Site inspection or investigation conducted to a determine compliance with any Laws or permits pertaining to Hazardous Substances, waste, dust control, air quality, water pollution, storm water runoff, endangered species, navigable waters, occupational health or safety; and

(B) Any inspection, audit or other investigation, whether on- or off-Site, conducted to verify the immigration and/or worker authorization status of any person employed or contracted by CMAR, its Subcontractors, or any Supplier.

17.3 City's Rules. City has the right, but not the obligation, to adopt and prescribe from time to time one or more rules and regulations ("City's Rule(s)") governing parking, access, times of work, noise, behavior towards City's employees, customers, guests

or invitees, and such other matters not involving the means, method, techniques or manner of the Work's performance that City deems pertinent to preventing disruption to City's ongoing operations.

(A) CMAR will enforce, and will be responsible to City for, the failure of its employees, or employees of its Subcontractors or Supplier to comply with City's Rules.

(B) Compliance with City's Rules will be a condition to the right of any person to enter upon any of City's property. City has the right to revoke such right of access to any person who has breached or failed to comply with any of City's Rules.

(C) The issuance or non-issuance, enforcement or non-enforcement of City's Rules by City will not relieve CMAR from its sole and exclusive responsibility to City for taking all appropriate precautions, in accordance with applicable Laws, to ensure the health and safety of persons and property with respect to the Work.

17.4 Compliance Assurances. CMAR warrants to City that CMAR and its Subcontractors and Suppliers are in compliance with all of the following:

(A) Subcontractors and Supplier now hold—and, at all times relevant to this Project, will hold—all licenses, registrations and other approvals necessary for the lawful performance of the work; and

(B) Subcontractors and Suppliers are not—and, at all times relevant to this Project, will not—be debarred or otherwise legally excluded ("Debarred") from contracting with any federal, state or local governmental entity; and

(C) Except with City's knowledge and consent, Subcontractors and Suppliers will not:

(1) Accept trade discounts;

(2) Have a significant direct or indirect financial interest in CMAR or any of its Subcontractors or Supplier; or

(3) Undertake any activity or employment or accept any contribution that conflicts, directly or indirectly, with the City's interests.

18. Health and Safety.

18.1 General Safety Duty.

(A) CMAR is solely responsible for the safety and health effects of the Work as it may impact all persons and property whether or not under CMAR's control.

(B) CMAR shall at all times:

(1) Provide proper traffic control, warnings, and all other measures necessary to protect City and City's residents, employees, invitees, licensees, and agents, and all other third persons from illness, sickness, death, personal injury or property damage arising from or relating to the Work; and

(2) Maintain a safe working environment, in full compliance with all applicable Laws, especially such laws relating to occupational health and safety and drugs in the workplace.

18.2 Hazardous Substances. CMAR is responsible for the proper handling, management, storage, transportation and disposal of every substance, material and equipment it brings to the Site, and in the conduct of its operations, so as to prevent the release of any Hazardous Substance:

(A) Remediation. CMAR is responsible for the cost of investigation, characterization, management, response and/or remediation of a release or threatened release of a hazardous substance. CMAR is also responsible for all other losses and damages to City or any third party resulting from any release or threatened release of a hazardous substance by CMAR or any of its subcontractors or suppliers.

(B) Actions upon Discovery. If CMAR discovers material on the Site that may be a Hazardous Substance, then CMAR must immediately:

(1) Notify the City and the National Response Center if the Hazardous Substance presents or may present an imminent threat or endangerment to public health or welfare or the environment;

(2) Notify City in writing of the discovery of the Hazardous Substance and provide all relevant information if the Hazardous Substance does not present an imminent threat or endangerment to public health or welfare or the environment;

(3) Discontinue Work and take whatever precautions are necessary to protect persons and property from exposure to the Hazardous Substance, including, but not limited to, taking actions to prevent the release or threatened release of such material or any action that may accelerate the release of or threatened release of such Hazardous substance in accordance with applicable Laws or the direction provided by any regulatory agency such as the EPA, ADEQ or the Maricopa County Environmental Services Department;

(4) CMAR may resume operations in the affected area only after City has determined that the material is either not a Hazardous Substance or that it is a Hazardous Substance but the response has remedied, eliminated, mitigated or managed the risk in accordance with applicable Law; and

(5) If the remedy directed by City results in a delay to the Work's critical path, and if CMAR did not cause, allow, or contribute to the release or threat of release of the Hazardous Substance, CMAR may seek an equitable adjustment of the Contract Times and Contract Sum, in accordance with Section 11 or Section 20.3(E) of this Agreement.

18.3 Waste.

(A) Waste Defined. "Waste" includes any dust, solids, liquids or other form of inert or discardable material that is not a Hazardous Substance, pollutant or contaminant.

(B) Waste Management. CMAR must maintain proper precautions so that the amount of Waste resulting from CMAR's Work is at all times:

(1) Kept at minimum;

(2) Confined within the Site; and

(3) Not permitted to interfere with or disturb City's ongoing operations or the activities of City's employees, customers, residents, guests, invitees, or licensees.

(C) Waste Removal. All Waste must be removed from the Site each day, pursuant to a plan approved by City, and the Waste must be properly transported and disposed of at an appropriate disposal facility in accordance with applicable Law.

(D) Contract. CMAR must contract with City for any Waste removal. CMAR may be charged for the City's provision of waste management collection and disposal services at the then market rate. Such charges shall be considered part of the Contruction Services Cost and will not effect the CMAR's Fee, the Contract Sum or the GMP.

19. Permits.

19.1 Duty to Secure. CMAR will timely and proactively apply for, and undertake all actions necessary to secure and comply with all federal, state and local permits, licenses and approvals required for the Work. CMAR must also provide adequate time in the construction schedule to secure all required permits and approvals.

19.2 Costs of Permits. The cost of permits, licenses, connection fees, and other such fees must be included in the Construction Services Costs. If CMAR's actions cause the cost of the Work to increase because permit application review and issuance may cause it to fail to meet the Construction Schedule, the cost for obtaining expedited review and approval of such permit applications must be borne solely by CMAR. Such cost will also not be reimbursed by City or be used as a justification to seek an adjustment or increase of the GMP.

19.3 Public Hearings. CMAR will attend and participate in all public hearings held by local governmental jurisdictions and utilities in connection with the issuance and compliance with such permits, licenses and approvals.

19.4 Compliance. CMAR and each of its Subcontractors and Suppliers must comply with, give all notices and take all actions required by all permits issued for the Work. Any failure to comply with the terms and conditions of such permits will be the responsibility of the CMAR and any penalties imposed for such failure(s) shall be borne by the CMAR alone.

20. Site.

20.1 Title to Project Site. City warrants that it owns title to the Project site and that all known easements, licenses, and restrictions that may affect the Project have or will be timely disclosed.

20.2 On-Site Locations.

(A) Reference Points. City will provide engineering surveys to establish reference points for construction which in City's judgment are necessary to enable CMAR to begin the Work.

(B) Site Layout. CMAR will be responsible for laying out the Work, protecting and preserving the established reference points and must not make change relocations without the proper written approval of City.

(C) CMAR's Responsibilities. CMAR must report to City whenever any reference point is lost or destroyed or whenever relocation of a reference point is required due to necessary changes in grades or locations. CMAR will be responsible for the accurate replacement or relocation of the reference points by professionally qualified personnel.

20.3 Newly Discovered or Changed Conditions. As Design Phase Consultant, CMAR has specialized and detailed knowledge of the site and the conditions pre-existing for construction of the Project. Based on this knowledge, CMAR warrants and represents that CMAR:

(A) Inspection. Has conducted a visual inspection of the Site, reviewed the soils report, and performed all other due diligence activities CMAR considers adequate to verify the conditions of the soils and other conditions at the Site;

(B) No Defects. Has observed no defects, discrepancies, deficiencies or faults with the Site making it unsuitable for the Project or found any defects, discrepancies, deficiencies or faults in any Project Documents that would require further investigation (except those that have already been reported to City in writing as the Design Phase oversight contractor); and

(C) Acceptance. Accepts the condition of the soils and the Site as being fit and proper to allow for the full performance of the Work.

(D) Discovery of Conditions. If, at any time CMAR during the performance of the Work, CMAR encounters previously unknown conditions at the Site, which could not reasonably have been detected by CMAR's investigation or during CMAR's performance prior of Design Phase services at the site, and that make it unsuitable for the Work's proper and accurate performance, CMAR must promptly:

(1) Discontinue Work in the affected area;

(2) Leave the Newly Discovered or Changed Conditions as they are found (taking reasonable precautions for the protection of persons and property);

(3) Notify City and its Project Coordinator (immediately by phone or email, followed by written notice within 24 hours identifying the Newly Discovered or Changed Conditions with specificity); and

(4) Await clarification and direction before CMAR proceeds with any Work that may be affected.

For purposes of this Section, "Newly Discovered" or "Changed" conditions shall include, without limitation: conditions in or beneath the Site that differ materially from indications in the Design Documents or information that was known or could have been reasonably discovered by CMAR during its performance of Design Phase Services, or other newly discovered or changed conditions that may adversely impact the Work that occurred after Design Documents were approved as final.

(E) Equitable Adjustment. If the Newly Discovered or Changed Conditions could not be reasonably discovered or foreseeable by CMAR during its performance of Design Phase review services, CMAR may seek an equitable adjustment of the Contract Times and GMP for any resulting

critical path delays or additional expenses incurred by CMAR, subject to Sections 10 and 11 of this Agreement

(F) Liability and Responsibility. If CMAR proceeds with Work after discovery of a Newly Discovered or Changed Condition without notifying City, suspending applicable Work as provided in this Section and getting the City's approval to proceed, CMAR will be liable and responsible to City for all resulting losses, liabilities, damages, and expenses. CMAR proceeds without so notifying the City and obtaining its approval, CMAR will have waived any right to seek a CMAR Claim or Equitable Adjustment as provided herein based on any Newly Discovered or Changed Condition.

20.4 Underground Facilities. CMAR will comply with the provisions of A.R.S. § 40-360.21 *et. seq.*, relating to underground facilities, and further:

(A) Other Owners. CMAR acknowledges that City is not the owner of some underground facilities on, or contiguous to, the Project Site. "Underground facilities" includes, but is not limited to, electrical conduit, water irrigation canals and ditches, gas lines, telecommunications lines, or other communications fibers, and such facilities may be owned and/or operated by governmental or private entities;

(B) Information and Data. The information and data shown or indicated on the Design Documents and other site specific documents concerning existing underground facilities at, or contiguous to, the Project Site will be based on the information and data furnished to City by the owners or operators of the underground facilities;

(C) CMAR's Responsibilities. City will not be responsible for the accuracy or completeness of the information or data provided by others. CMAR will have the responsibility for the following activites, the cost of which are included in the GMP:

(1) Reviewing and verifying the information and data provided by others;

(2) Locating all underground facilities on, or contiguous to, the Project Site, to the extent knowledge of adjacent underground facilities is necessary and reasonable to secure;

(3) Coordinating the Work with the owners of the underground facilities during construction;

(4) Providing for the safety and protection of all underground facilities affected by the Work; and

(5) Integrating any underground facility into the Work as necessary.

(D) Repair and Replacement. City will not be responsible for any repair or consequential damages resulting from CMAR's mistake in locating or failing to locate underground facilities and taking such locations into account when performing the Work.

(E) City-Owned Underground Facilities. City will provide CMAR with information and data about the location and characteristics of any underground facility that it owns, such as water and sewer lines. The CMAR may rely on that information and data.

20.5 Archaeological Deposits. In accordance with A.R.S. § 41-844, if CMAR discovers any archaeological sites or objects, CMAR must promptly report them to City and Director of the Arizona State Museum:

(A) CMAR will further ensure compliance with the provisions of State law with respect to archaeological sites or objects; and

(B) CMAR may be allowed an adjustment for time depending on the extent of the tasks required to catalogue and preserve the find and to mitigate any impact such find may have on the Work.

21. On-Site City Activity.

21.1 Partial Utilization. Before Final Completion of the Project, as defined in Section 6.6 of this Agreement, City may divide the Project and place a portion of the Project into use, if such that portion has been completed. The City may exercise the option to divide and use a portion of the Project if:

(A) The Design Documents identify a distinct phase of the Project, and the part of the Project being sought to be placed into use has been completed ; or

(B) City and CMAR agree that the portion sought to be placed into use is a separately functioning and usable part of the Work that can be used by City for its intended purpose without significantly interfering with CMAR's timely and proper performance of the remainder of the Work.

(C) If the Project is not phased and City decides to place a part of the Project into use such that CMAR incurs additional costs or requires additional time, CMAR may present a CMAR Claim for additional time or compensation in accordance with Section 11 of this Agreement.

21.2 City's Performance of On-site Work. City may perform other work on-site that is related to the Project using the City's own work force, or contractors, vendors or suppliers. Such work may include, but not limited to, utility relocation or co-location, (*e.g.*, electric, gas, telecommunications)("City's On-site Work").

(A) Access. CMAR will assure that the entities handling the City's On-site Work have safe and proper access to all portions of the Project Site necessary for the performance of the City's On-site Work.

(B) Materials and Equipment. CMAR will assure that persons performing the City's On-site Work have adequate space to transport, handle, stage and store materials and equipment and adequate space and opportunity to conduct the City's On-site Work.

(C) Coordination. CMAR will coordinate its Work with the City's On-site Work so that both parties may perform their Work in a timely and efficient manner.

(1) Unless otherwise provided in the Project Documents, CMAR will perform all cutting, fitting, and patching of material or elements of the Work that may be required to make the CMAR's Work and the City's On-site Work consistent and functional.

(2) CMAR will not endanger the City's On-site Work while integrating the parties' performance.

(3) If the CMAR's completion of any portion of the Work depends on the completion of City's On-site Work, CMAR will inspect the

City's On-site Work and timely report to City any delays, defects, or deficiencies that may delay or hinder CMAR's completion of the Work. A failure by CMAR to inspect and report the City's On-Site Work will constitute acceptance of that Work and any objection or request for a CMAR Claim or Equitable Adjustment CMAR may have is deemed to be waived.

21.3 Transfer of Control. In the event control of the Project Site is transferred from CMAR to a third party, CMAR and City will work to assure that safety of the Project Site is not compromised, that access to and control of the Project Site is maintained, that proper insurance is in place and that the Work will continue without undue delay.

22. Inspection of Work.

22.1 City Inspections. City has the right to inspect the Work at any time for any purpose.

(A) Required Inspections. Certain aspects of the Work will require inspections in accordance with existing City Ordinances and City Code provisions or in accordance with the scope of Work as set forth in this Agreement.

(1) CMAR must timely schedule and perform or participate in any required inspections and testing.

(2) CMAR will pay all costs associated with any required inspections, and these costs shall be included in the GMP. The costs of any testing or collection of data that is required for the inspection of City shall not be the basis for any Change Order, CMAR Claim, Equitable Adjustment, or an amendment to the GMP.

(3) CMAR must obtain and provide to City Certifications or warranties required or any test results or analyses which were generated from the required inspection or testing.

(B) Cooperation. CMAR will cooperate fully with any inspections conducted by the City. The City will attempt to coordinate its inspections with the CMAR so as not to disrupt the Work; however, inspections for life or safety issues will be handled by both parties on a priority basis.

(C) Independent Inspections. City may employ the services of an independent party to conduct any tests or inspections at City's cost and expense.

22.2 Specifically Described Items. If any material, component, or equipment (collectively, an "Item") is specified or described in the Project Document, Construction Document, or other document submitted to City by CMAR or required by industry standard, trade, proprietary, or supplier name, that Item shall be used in performing or completing the Work.

(A) "Or-equal". If the specification or description contains or is followed by the words "or-equal", other Items of a similar kind or nature may be accepted by City, in its sole discretion, if the City determines, prior to the substitution, that the Item proposed by CMAR is qualitatively and functionally equal to of the Specifically Designed Item.

(B) Substitutions. If CMAR proposes to use an Item different than that which is specifically described or named, CMAR must obtain the City's approval

of such substitution prior to use or prior to any modification or deviation intended to accommodate the use.

(1) CMAR must submit a request for substitution in writing to City.

(2) CMAR must submit with the request for substitution the following:

(a) Information about the Item sufficient for City to make a determination whether the Item is essentially equivalent to that named and is an acceptable substitute.

(b) Any effect the substitution may have on timely achievement of the Substantial Completion date;

(c) Any cost or credits that will result from the substitution; and

(d) Any other relevant information requested by City.

(3) City approval of any substitute Item will be within its sole discretion.

(4) CMAR is responsible for the costs associated with making the request for substitution, including the cost of obtaining the data.

(5) Approval of such substitution does not constitute an agreement to increase the GMP or constitute issuance of a Field Order or Change Order. CMAR must still obtain separate approval for the increased cost in accordance with the procedures continued elsewhere in this Agreement.

22.3 Uncovering Work. City or its Project Coordinator may require CMAR to uncover Work for inspection and testing.

(A) Builder's Responsibility. If the Work had been covered without CMAR's compliance with all applicable inspection and approval requirements of the Project Documents, CMAR must properly remedy or replace all nonconforming or deficient Work, and adjacent property damaged thereby, to City's satisfaction. CMAR must also pay the costs City incurred in connection with uncovering, testing, inspecting, remedingand recovering the Work.

(B) City Responsibility. If the Work had been covered in accordance with all applicable inspection and approval requirements of CMAR Documents, City will pay the costs CMAR reasonably incurred to uncover, test, inspect, and remed the Work, subject to § 11.

22.4 Rejected Work. CMAR must promptly, and so as not to interfere with the Project Schedule, remove and replace, at CMAR's sole expense, any Work that is rejected by City or its Project Coordinator as defective, contrary to CMAR's warranties, or otherwise not in accordance with the Project Documents.

22.5 City's Remedy. If CMAR does not correct such deficient or nonconforming Work within seven (7) days, or initiate any Work that would reasonably take longer than seven (7) days, after receipt of written notice from City to do so, City may, without prejudice to any other remedies it may have, take whatever steps are necessary to correct the deficient or nonconforming Work, and CMAR will pay City the costs City incurs in connection with any corrective action.

23. Warranties.

23.1 CMAR Warranty. CMAR warrants that the Work performed pursuant to this Agreement is free from defects. Upon 20 days written notice from the City, and within two years from the Final Completion of the Work, CMAR must, at CMAR's sole expense, uncover, correct, and remedy any and all defects in CMAR's Work or any defects in work of CMAR's Subcontractors or Suppliers.

23.2 Third Party Warranties. If any other Contract Document or third party warranty provides for a period longer than two years, the longer period applies.

23.3 Call-Back Remedial Work. CMAR, at CMAR's sole expense, will properly restore any of the Work or property that is damaged by reason of any remedial Work, to City's satisfaction.

(A) Warranty on Remedial Work. All remedial Work will have an extended warranty equal to the later of Final Completion or six (6) months after completion of the remedial Work.

(B) Self-Help. If CMAR fails to correct any defects in accordance with this call-back warranty, then City may correct the defects and CMAR must reimburse City for all expenses incurred by City.

(C) Non-exclusivity. This express call-back warranty is given in addition to, and without any limitation on, any other claim, right or remedy City may have under this Agreement or applicable Law including, without limitation, any claim, right or remedy arising from tort, contract breach, license bond, recovery fund, latent defect, breach of the implied warranty of habitability, CMAR's violation of any Law, or any other claim, right or remedy, whether discovered before or after the above described call-back period (as may be extended above).

(D) No Fault of CMAR. This express call-back warranty excludes remedy for damage or defect caused by abuse, modifications not executed by CMAR, improper or insufficient maintenance, improper operation, or ordinary wear and tear usage.

24. Liens and Stop Notices.

24.1 Title to Work. CMAR warrants that title to all Work covered by an Application for Progress Payment or Application for Final Payment will pass to City no later than the time of payment.

24.2 Work Free of Liens. CMAR further warrants that, upon Application for Progress Payment or Application for Final Payment submittal, all Work for which payment is requested and received from City must, to the best of CMAR's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances.

24.3 Duty to Remove Liens. In the event any document intending to give rise to a lien, or any other claim is asserted, filed, or maintained against the Project or City contrary to the foregoing warranty by CMAR, Subcontractor, or any Supplier, then CMAR agrees to cause such lien or claim to be satisfied, removed, or otherwise discharged at its own expense, by payment, bond or otherwise, within ten (10) days from the lien's filing date.

24.4 City's Remedy for Liens.

(A) City Right to Action. If CMAR fails to take such action promptly after notice from City, then City has the right, in addition to all other rights and remedies available under this Agreement or at Law, to cause each such lien or claim to be removed, satisfied or discharged by whatever means City chooses.

(B) Costs and Expenses. CMAR will be responsible for the entire cost and expense of this lien removal action, including reasonable attorneys' fees and expenses incurred by City, and will remit payment for these costs and expenses immediately upon demand by City.

25. No Waiver. Any review or approval given, or payment made, by City or any of its representatives does not:

25.1 Constitute acceptance of CMAR's Work or of the sufficiency of any request for payment;

25.2 Operate as an acquiescence to, or waiver of, any departure from, or CMAR's failure to perform in accordance with, any of this Agreement's requirements;

25.3 Constitute approval of:

(A) The adequacy, form or content of any subcontract; or

(B) Any actions taken by CMAR or by any Subcontractor.

25.4 Relieve CMAR, any Subcontractor or Supplier of any obligations or responsibilities under this Agreement;

25.5 Be accepted as evidence of satisfactory performance of any Work; or

25.6 Diminish in any manner City's rights and remedies under this Agreement or applicable Law.

26. CMAR's Warranties and Representations.

26.1 Warranty. As an inducement to City to enter into this Agreement, CMAR represents and warrants the following to City (in addition to the other representations and warranties contained in the Agreement) that:

(A) Financial Condition. CMAR, its subsidiaries and its affiliated entities are financially solvent and able to pay their debts as they mature, and possessed of sufficient working capital to complete the Work and perform all obligations under this Agreement, provided that City satisfies its payment and other obligations under this Agreement;

(B) Performance Ability. CMAR is able to furnish the Construction Services and FFE Services required to complete the Project and perform its obligations hereunder, provided that City satisfies its payment and other obligations, and that CMAR has sufficient experience and competence to do so;

(C) Litigation Status. There are no pending or threatened legal actions or proceedings which might materially impair CMAR or its subsidiaries or affiliated entities' ability to satisfy their obligations hereunder;

(D) Legal Status. CMAR, its subsidiaries and affiliated entities are licensed by the Arizona Registrar of Contractors to perform construction and that all construction Subcontractors and Suppliers used on this Project by CMAR also will be so licensed; and

(E) Proper Authorization. That execution of this Agreement and its performance are within its authorized powers.

26.2 Survival. These representations and warranties survive this Agreement's termination and the Project's Final Completion, whichever is later.

27. CMAR Relationship to City.

27.1 CMAR's relationship to City is in all respects that of an independent contractor.

27.2 CMAR is solely responsible for the means, manner, method, supervision, performance, coordination, safety programs, or control of the Work to be performed by CMAR.

27.3 CMAR is not and will not be found to be an employee, instrumentality, department or agent of City for any purpose.

27.4 This Agreement will in no respect be construed to create a partnership, joint venture, or agency between the parties.

27.5 Neither party has right or power to bind or obligate the other party for any liabilities or obligations without the other party's prior written consent.

28. Assignments.

28.1 City Assignment. City may assign or transfer this Agreement without CMAR's consent.

28.2 City Financing. CMAR agrees that if City assigns this Agreement to any lender or other third party source of funding for the Project (each, a "Financing Party");

(A) CMAR will cooperate with any such assignments, and will execute any consents, assignments and other instruments reasonably required to facilitate the assignments;

(B) CMAR will cooperate with any inspectors engaged by a Financing Party to observe or inspect the work; and

(C) CMAR will execute any documents that the Financing Party reasonably requests it to execute in connection with its review of any of CMAR's Work or any of City's requests to Financing Party for disbursements on account of the Work.

28.3 CMAR Assignment. CMAR will not, without City's prior written consent, which may not be unreasonably withheld, do the following:

(A) Sell, transfer, assign or delegate any interest in this Agreement or any rights or CMAR's obligations; or

(B) Until Final Payment is made, cause, suffer or permit:

(1) Any sale, transfer or assignment of any stock, membership or other equity ownership interest in CMAR, or

(2) The issuance of any new stock or other equity ownership in CMAR.

28.4 Void Assignments. Any transfer, sale, assignment, delegation, or issuance of any stock, membership, or other interest in CMAR without City's written consent is void.

29. **Taxation of Revenue Bonds.** City may issue revenue bonds to fund the Project's design, construction and implementation. If City issues these bonds:

29.1 CMAR, to the extent within its control, and so long as it does not increase CMAR's time or cost of performance of the Work, covenants that it will not knowingly take any action, or fail to take any action, that adversely affects the inclusion from gross income of the interest on any of revenue bonds under § 103(a) of the *Internal Revenue Code of 1986, as amended* (the "Code");

29.2 CMAR will not cause the interest on any revenue bonds to become an item of tax preference for purposes of the alternative minimum tax imposed on individuals and corporations under the Code; and

29.3 In the event of such action or omission, CMAR will, promptly upon having any action or inaction brought to its attention, take any reasonable actions based upon an opinion of bond counsel to City, as may rescind or otherwise negate such action or omission.

29.4 CMAR, to the extent within its control, and so long as it does not increase CMAR's time or cost of performance of the Work, will not knowingly directly or indirectly use or permit the use of any proceeds of any revenue bonds or any other funds of City to take or omit to take any action that would cause any revenue bonds issued to be or become "arbitrage bonds" within the meaning of § 148(a) of the Code or to fail to meet any other applicable requirement of §§ 103, 141, 148, 149 and 150 of the Code to the extent applicable to the Revenue Bonds.

30. **Indemnity.**

30.1 **Duty to Indemnify, Defend, and Hold Harmless.** To the fullest extent permitted by Law, CMAR will indemnify, defend, save and hold harmless City and its elected officials, officers, employees, agents, consultants, sub-consultants, representatives, and agents (individually, an "Indemnified Party"; collectively, the "Indemnified Parties") for, from and against any and all third-party claims, demands, causes of action, damages (including compensatory, consequential, liquidated, and punitive), judgments, penalties, settlements and all other losses arising (collectively "Claim") from the performance or nonperformance of this Agreement by CMAR or of a Subcontractor, Supplier, or any other person or entity for whom CMAR is responsible and all attorneys' fees, consultants' fees, court costs (whether or not taxable by statute), and expenses incurred by each Indemnified Party.

30.2 **Extent of Indemnification.**

(A) This indemnification is comprehensive and encompassing to the maximum extent permitted by Law and includes, but is not limited to, a Claim, just or unjust, of any kind, nature or description whatsoever, whether sounding in a tort, warranty, contract (including breach of this Agreement), equity, a statute, or any other theory of liability, and whether Claim is based on an alleged death, personal injury, sickness, conversion, breach of contract, breach of warranty (express or implied), breach of representation, defective work not remedied, lien, stop notice, property damage (including property damage to the Work), patent infringement, copyright infringement, loss of use and all other economic loss, release of a petroleum byproduct or other substance regulated by applicable Law, legal violations or other claimed damage.

(B) This indemnity is in addition to and will not be deemed to limit any other indemnity given by CMAR.

30.3 Defense of Indemnified Party. CMAR will defend each Indemnified Party under this indemnity at CMAR's expense with counsel reasonably acceptable to the Indemnified Party, subject to the following:

(A) The Indemnified Party has the opportunity to participate in the defense against the Claim;

(B) If there are potential conflicting interests that would make it inappropriate for the same counsel to represent both CMAR and the Indemnified Party, or the Indemnified Party has defenses available to it that are not available to CMAR, then the Indemnified Party may select separate counsel to represent it at CMAR's expense;

(C) No settlement or compromise can be effected by CMAR without the prior consent of the Indemnified Party; and

(D) If CMAR does not, within fifteen (15) days after receipt of Notice from the Indemnified Party (or such shorter period of time as may be necessary to avoid a default on a Claim), give Notice to the Indemnified Party of CMAR's election to assume the defense of the Claim, the Indemnified Party has right to undertake, at the expense and risk of CMAR, the defense, compromise or settlement of the Claim.

30.4 Negligence of Indemnified Party. The foregoing obligations to indemnify, defend, save and hold harmless apply even if a Claim results in part from the negligence of an Indemnified Party, but, in such event, the ultimate liability of CMAR is only to the extent the Claim is found to have resulted from the negligence of CMAR or of any Subcontractor or Supplier.

(A) In no event, however, will an Indemnified Party be indemnified for a Claim to the extent it results from the gross negligence or intentional conduct of the Indemnified Party or the Indemnified Party's agents, employees or indemnity as provided in A.R.S.§ 34-226.

(B) An Indemnified Party's acting or failing to act in reliance on promises, representations or agreements made by CMAR in the performance of the Work may not be considered gross negligence or an intentional act or failure to act by the Indemnified Party.

31. Insurance Requirements.

31.1 Insurance Obligation. CMAR must, as a material obligation to City and a condition precedent to any payment otherwise due to CMAR, furnish and maintain, and cause its Subcontractors and Suppliers to furnish and maintain, insurance in accordance with the Insurance Requirements attached as **Exhibit E.**

(A) Force Placement. In the event CMAR fails, or any Subcontractor or Supplier fails, to maintain all insurance as provided in **Exhibit E**, City may, in addition to, and without prejudice to any other remedies available to it under this Agreement or applicable Law, on two (2) days' notice, purchase equivalent insurance.

(B) Reimbursement for Force Placement. CMAR will reimburse City upon demand, or, at City's option, by way of withholding or off-setting amounts otherwise due to CMAR, for all expenses City incurs in connection with obtaining such insurance.

31.2 Risk of Loss.

(A) CMAR bears the risk of loss to all materials, equipment, fixtures, supplies, or other Work element, whether in transit, stored off-site, or stored or housed on site, until such elements(s) have been incorporated into the Project, at which time CMAR risk of loss will be addressed in accordance with the other portions of this Agreement.

(B) CMAR is solely responsible for insuring all such materials, equipment fixtures or other Work element from loss until such materials, equipment, fixtures or other elements have been physically incorporated in the Project, at which time CMAR risk of loss will be addressed in accordance with the other portions of this Agreement.

31.3 Bonds. Upon this Agreement's execution, CMAR must furnish Payment and Performance Bonds required under the provisions of A.R.S. § 34-608. The forms of the bonds will comply with the statute and be provided by a surety approved by City.

31.4 Builder's Risk Insurance. CMAR will furnish an all risk property insurance ("Builder's Risk") for the replacement value of the Work performed.

(A) Form. The form of policy for this Builder's Risk coverage must be non-reporting, in completed value with no co-insurance, and valued at replacement cost with non-standard (broad) form all risk policy.

(B) Coverage Value. The value utilized must be 100% of the completed value (including Contract Amendments) of the renovation, repairs or construction.

31.5 Other Property Lost Coverage. Insurance against loss of tools, equipment, or other items not incorporated into the Work, but required for the Work's performance, is CMAR's responsibility.

32. Records. CMAR must keep full and detailed accounts and exercise controls as may be reasonably necessary for the Work's proper financial management using generally accepted accounting methods and control systems reasonably satisfactory to City.

32.1 City and its properly authorized representatives—who may be City employees or independent contractors as determined by City—will be afforded access at all times on reasonable advance notice to all CMAR's tangible and electronic records received or generated in connection with the Project, including, without limitation, records, books, ledgers, correspondence, instructions, drawings, receipts, contracts, subcontracts, vouchers, memoranda, electronic data bases and other electronically stored data and printouts thereof, and similar data relating to this Agreement ("Project Data").

(A) Project Data availability will allow for audit, review, inspection and copying, at the Site or at CMAR's offices, if these offices are located in Maricopa County, Arizona.

(B) Access will be available during regular business hours.

(C) Project Data will be available for this inspection for at least one year after Final Completion of the Project or one year after the City has issued its Final Payment and resolved all disputes regarding payments under this Agreement, whichever is later.

32.2 CMAR will be entitled to a reasonable charge for furnishing more than one hard copy of any document that is requested by City. CMAR will provide electronic copies to the City upon request.

32.3 CMAR must preserve all such Project Data for a period of six (6) years after Final Payment, or longer where required by Law, and prior to destruction, Project Data will be delivered to City if City requests.

32.4 CMAR must include these record keeping and record retention provisions in its subcontracts and contracts with Suppliers and require these parties to afford the City similar access for audit, inspection and copying, to all of the hard copy and electronically stored Project Data.

33. Equal Employment Opportunity.

33.1 Non-Discrimination Policies. CMAR must develop, consistently implement, and effectively maintain non-discrimination policies.

(A) Duty to Not Discrimination. CMAR and CMAR's Subcontractors and Suppliers must not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, national origin, age, marital status, gender identity or expression, genetic characteristics, familial status, US military veteran status or disability.

(B) Affirmative Action. CMAR must take affirmative action to attract diverse applicants, and ensure that the employees are treated during employment without regard to their race, religion, color, sex, sexual orientation, national origin, age, marital status, gender identity or expression, genetic characteristics, familial status, US military veteran status or disability. This affirmative action includes, but not be limited to, the following:

(1) employment;

(2) upgrading;

(3) demotion or transfer;

(4) recruitment or recruitment advertising;

(5) layoff or termination;

(6) rates of pay or other compensation; and

(7) selection for training, including apprenticeship.

33.2 Notices of Non-Discrimination Policies. CMAR will post in conspicuous places, available to employees and applicants for employment, notices that set forth the non-discrimination policies and CMAR, its Subcontractors and Suppliers will, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, sexual orientation, national origin, age, marital status, gender identity or expression, genetic characteristics, familial status, US military veteran status or disability.

34. Immigration Law Compliance: CMAR, and on behalf any Subcontractor and Supplier, 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.

34.1 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.

34.2 City retains the legal right to inspect the papers of any CMAR, Subcontractor or Supplier employee who performs work under this Agreement to ensure that CMAR, its Subcontractors and Suppliers are fully in compliance with any warranty under this Section.

34.3 City may conduct random inspections, and upon request of City, CMAR shall provide copies of papers and records of CMAR demonstrating continued compliance with the warranty under this Section. CMAR 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.

34.4 CMAR agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon CMAR and expressly accrue those obligations directly to the benefit of the City. CMAR 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.

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

34.6 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.

35. Termination.

35.1 **For Cause.** City has the right to terminate this Agreement without notice if CMAR:

(A) Fails to maintain insurance required by this Agreement;

(B) Violates any applicable Law regulating Hazardous Substances, occupational health, job safety, or environmental matters;

(C) Jeopardizes the health, safety or welfare of persons or property;

(D) Is Debarred by any governmental entity (in which event the termination will be effective as of the date of the sanction or debarment); or

(E) Abandons the Work.

35.2 **For Breach.** If this Agreement is breached by CMAR, City may terminate this Agreement if CMAR fails to cure the breach within seven (7) calendar days after delivery of written notice specifying the breach or within such longer period of time as City may agree to in writing.

35.3 **Remedy after Termination.** If this Agreement is terminated, CMAR will immediately stop Work and remove its employees from the Project Site. City may, without prejudice to any other right or remedy available at Law or in equity, complete the Project through alternate means and in whatever manner City deems appropriate. City may also, at its election, take possession of and use the materials,

equipment, tools and machinery of CMAR, a Subcontractor, or any Supplier to complete the Work otherwise required of the CMAR under this Agreement.

35.4 Payment after Termination. CMAR will have no right to any further payment until after City has completed the Project and determined the amount of its costs, and expenses and damages resulting from the termination.

(A) If the unpaid balance of the Contract Sum exceeds the costs City incurs to complete the Project, plus other expenses and damages incurred by City resulting from CMAR's breach of this Agreement, City will pay CMAR the difference.

(B) If the expense of completing the Project, plus City's damages and other expenses, exceeds such unpaid balance, CMAR will pay the difference to City upon demand.

35.5 For Convenience. City may terminate this Agreement as to all or any part of the Work for convenience at any time without cause upon five (5) days written notice.

(A) Notice of Termination for Convenience. Notice of termination for convenience:

(1) Will be provided no less than five (5) days before cessation of Work;

(2) Will specify the date of termination for that part of the Work; and

(3) Will direct the sequence and manner in which the termination will be implemented.

(B) Payment after Termination for Convenience. Upon termination for convenience, City will pay CMAR the reasonable value of all Work performed prior to the date of termination, including costs necessarily incurred, reasonable costs of demobilization and shut down, and reasonable overhead and profit on Work performed, but excluding any profit or overhead on unexecuted Work.

35.6 Abandonment.

(A) City's Right to Terminate. In the event CMAR, any Subcontractor or Supplier suspends or terminates its performance under this Agreement for any reason, City has the right to suspend or terminate all or any part of this Agreement and finish the suspended or terminated Work by whatever means City determines is appropriate.

(B) Replacement. To prevent termination, CMAR must replace Subcontractor or Supplier within five (5) days by procurement of a Subcontractor or Supplier in a manner that is acceptable to City.

(C) Withholding of Payments. If the abandoning Subcontractor or Supplier is not timely replaced, City may complete the Work at CMAR's expense, in which case:

(1) CMAR will not be entitled to receive any further payment hereunder until:

(a) The entire Project is complete; and

(b) All direct and indirect costs incurred by City to complete CMAR's Work, plus a reasonable allowance for City's

overhead and profit, has been paid or offset against the GMP.

(2) Direct and indirect costs and the allowance for overhead and profit will apply against the Contract Price and, if the cost to complete the Project is greater than the amount due CMAR, CMAR will pay that difference immediately to City.

36. Dispute Resolution.

36.1 Each claim, controversy and dispute (each a "Dispute," collectively, "Disputes") will be initiated and resolved as provided in **Exhibit G.**

36.2 CMAR will continue performance of the Work pending resolution of any CMAR Claim, request for Equitable Adjustment or any Dispute, unless otherwise directed by City in writing.

37. Notices.

37.1 Any communication or notice required to be issued or given under this Agreement (each, a "Notice") will be effective only if:

(A) Notice is in writing; and

(B) Delivered to the physical or electronic address given in Section 3 of this Agreement on a business day observed by City ("Business Day"):

(1) in person;

(2) by private express overnight delivery service (delivery service charges prepaid);

(3) certified or registered mail (return receipt requested); or

(4) electronic mail, if confirmation of receipt is given and received.

37.2 A notice will be deemed delivered to the party:

(A) As of the date of receipt if received before 5:00 PM on a Business Day at the address for Notices identified in Section 3 of this Agreement; or

(B) As of the next Business Day if received after 5:00 PM on a Business Day at the address for Notices identified in Section 3 of this Agreement.

37.3 The party giving Notice will have the burden of proof as to the time and place of delivery.

37.4 A party may only change its representative or the information for giving Notice by giving Notice of the change to the other party in writing at least ten (10) days prior to the date such change becomes effective.

38. Miscellaneous.

38.1 **Contract Amendment.** The parties may, at any time, modify this Agreement by written agreement ("Contract Amendment") signed by both City and CMAR. The Contract Amendment shall become effective and an enforceable pat of this Agreement upon its execution.

38.2 **Integration.** This is the entire agreement of City and CMAR, and it supersedes all negotiations and any prior agreements between them relating to the Work and the Project. No other documents are included unless incorporated herein by reference.

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

38.4 Successor and Assigns. This Agreement will inure to the benefit of and be binding on the parties' successors and assigns.

38.5 Rights and Remedies.

(A) All rights and remedies provided in this Agreement are cumulative and the exercise or assertion of one or more rights or remedies will not affect any other rights or remedies allowed by Law or equity or this Agreement.

(B) Neither the failure nor any delay on the part of a party to exercise any right, remedy, power or privilege under this Agreement's provisions, or with respect to any occurrence, shall operate as a waiver with respect to such provision or occurrence thereof.

(C) No single or partial exercise of any right, remedy, power or privilege precludes any other or further exercise of the same or of any right, remedy, power or privilege.

38.6 No Waiver. No waiver is effective unless it is in writing and is signed by the party asserted to have granted such waiver.

38.7 Severability. If any provision of this Agreement is held by any court to be void or unenforceable, that provision will not affect the validity of the remaining provisions of this Agreement.

38.8 Survival. Except as specifically provided otherwise in this Agreement, each warranty, representation, indemnification provision, insurance requirement, and every other right, remedy and responsibility of City or CMAR under this Agreement will survive the Project's completion, or this Agreement's earlier termination.

39. Conditions Precedent. This Agreement's effectiveness, and City's obligations hereunder, are contingent upon City's written confirmation to CMAR that each of the following contingencies have been fulfilled:

39.1 Funding. City has allocated funds specifically for the purpose of the Project or has secured financing it deems satisfactory for the Project.

39.2 Approval. This Agreement has been approved by the Glendale City Council.

40. Exhibits. The following exhibits are incorporated by this reference:

Exhibit	Title
A	The Project
B	The Work; Key Personnel
C	GMP Schedule
D	Project Schedule
E	CMAR's Insurance Requirements
F	Forms of Payment and Performance Bonds
G	Dispute Resolution Procedures

IN WITNESS WHEREOF, City and CMAR enter into this agreement and it shall become effective as of the ___ day of _____, 2016 (the "Effective Date").

CITY OF GLENDALE

_____

Kevin R. Phelps, City Manager

Date:_____

Approved as to Form:

_____

Michael D. Bailey, City Attorney

Attestation:

_____

Pamela Hanna, City Clerk (SEAL)

Achen-Gardner Construction, LLC,
a Arizona Limited Liability Company Corporation

By: _____

Its: John Walstrom / President

Registrar of Contactors License: 261745

Date: 6-14-16

INDEX OF EXHIBITS

GMP 1 PROPOSAL (04/24/16)

City of Glendale Waterline Improvements Var. Locations, Construction Manager at Risk
COG Project Number 131424 / Achen-Gardner No. 3493100

Exhibit A

THE PROJECT

EXHIBIT A – PROJECT DESCRIPTION

GMP 1 PROPOSAL (04/24/16)

City of Glendale Waterline Improvements Var. Locations, Construction Manager at Risk
COG Project Number 131424 / Achen-Gardner No. 3493100

The City has identified multiple locations throughout the City where the existing waterlines have deteriorated, causing operational issues. The new waterline improvements include the replacement of aged ACP water lines, with the installation of new ductile iron pipe (DIP), fire hydrants, valves, service lines and other associated accessories. These improvements are being constructed as under multiple GMPs. GMP 1 includes the following Project Areas and associated packages, including the approximate descriptions, sizes and lengths, as listed below.:

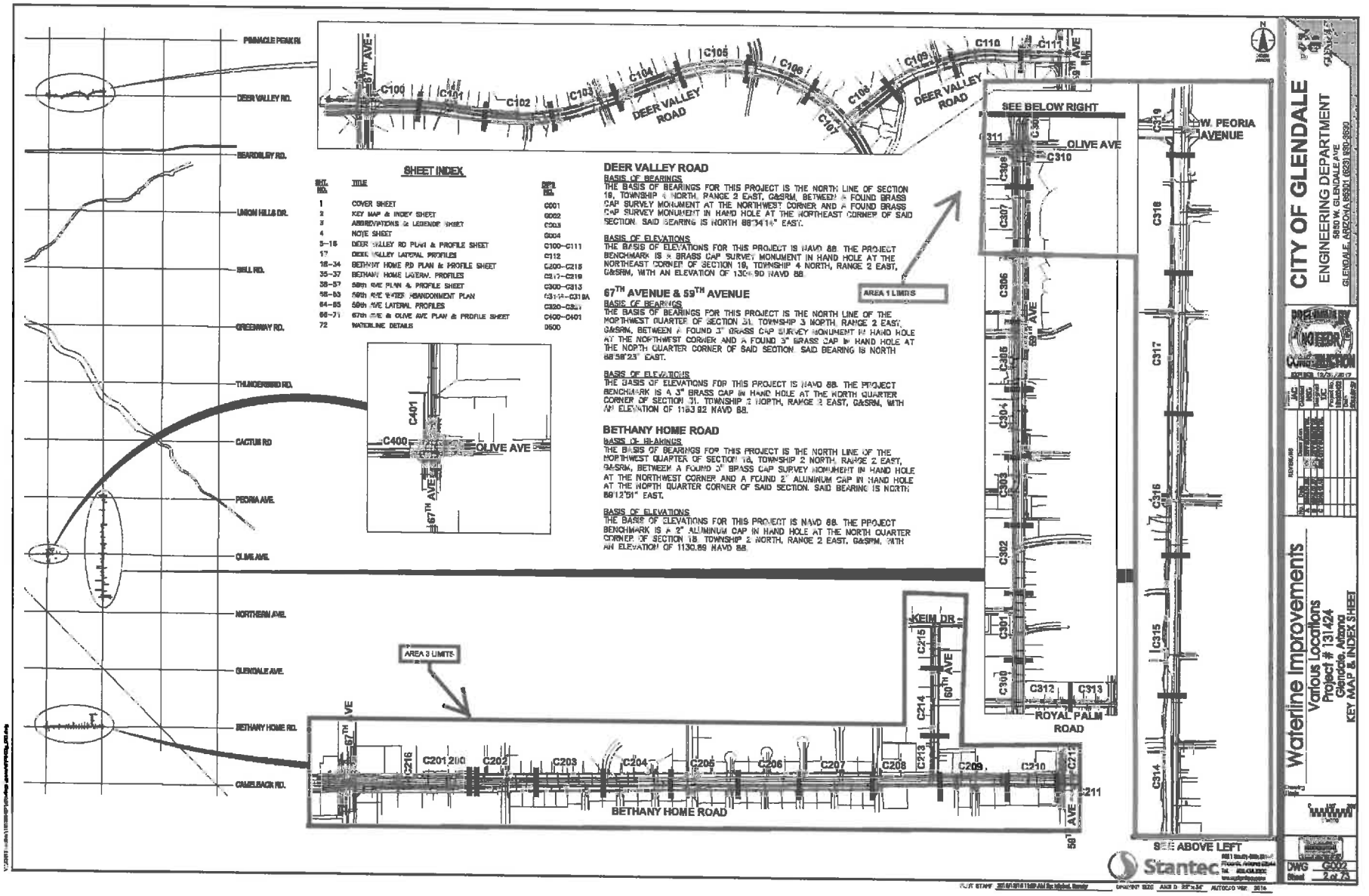
Area 1 (Approximately 1,800 L.F. of replacement, Plan Sheets C314-C319)

- QS 26-14, 59th Avenue & Olive Avenue Intersection: Replace existing 6-inch and 8 and 12-inch ACP with new ductile iron pipe.
- QS 26-14, 59th Avenue 6" Waterline Abandonment from Olive Avenue to Peoria Avenue.

Area 3 (Approximately 9,000 L.F. of replacement - Bethany Home Rd. including 60th Avenue, and Olive Avenue Intersections - 67th and 59th Avenues scopes)

- QS 20-13, 67th Avenue & Bethany Home Road Intersection: Replace existing 12-inch ACP with new 6, 8, and 12-inch ductile iron pipe
- QS 20-13 & 20-14, on Bethany Home from 59th Avenue to 67th Avenue: Replace existing 12-inch ACP pipeline with new 8 and 12-inch ductile iron pipe including 59th Avenue Intersection
- QS 21-15, on 60th Avenue from Bethany Home Road to Keim Drive: Replace existing 8-inch ACP with new 8-inch ductile iron pipe.

(Note: See GMP 1 Area Exhibit dated 3-31-16 for locations and associated Plan Sheet Numbers.)



SHEET INDEX

DEER VALLEY ROAD

BASIS OF BEARINGS
THE BASIS OF BEARINGS FOR THIS PROJECT IS THE NORTH LINE OF SECTION 18, TOWNSHIP 4 NORTH, RANGE 2 EAST, G&SRM, BETWEEN A FOUND BRASS CAP SURVEY MONUMENT AT THE NORTHWEST CORNER AND A FOUND BRASS CAP SURVEY MONUMENT IN HAND HOLE AT THE NORTHEAST CORNER OF SAID SECTION. SAID BEARING IS NORTH 88°34'14" EAST.

BASIS OF ELEVATIONS
THE BASIS OF ELEVATIONS FOR THIS PROJECT IS NAVD 88. THE PROJECT BENCHMARK IS A BRASS CAP SURVEY MONUMENT IN HAND HOLE AT THE NORTHEAST CORNER OF SECTION 18, TOWNSHIP 4 NORTH, RANGE 2 EAST, G&SRM, WITH AN ELEVATION OF 1304.90 NAVD 88.

67TH AVENUE & 59TH AVENUE

BASIS OF BEARINGS
THE BASIS OF BEARINGS FOR THIS PROJECT IS THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 3 NORTH, RANGE 2 EAST, G&SRM, BETWEEN A FOUND 3" BRASS CAP SURVEY MONUMENT IN HAND HOLE AT THE NORTHWEST CORNER AND A FOUND 3" BRASS CAP IN HAND HOLE AT THE NORTH QUARTER CORNER OF SAID SECTION. SAID BEARING IS NORTH 88°58'23" EAST.

BASIS OF ELEVATIONS
THE BASIS OF ELEVATIONS FOR THIS PROJECT IS NAVD 88. THE PROJECT BENCHMARK IS A 3" BRASS CAP IN HAND HOLE AT THE NORTH QUARTER CORNER OF SECTION 31, TOWNSHIP 3 NORTH, RANGE 2 EAST, G&SRM, WITH AN ELEVATION OF 1163.92 NAVD 88.

BETHANY HOME ROAD

BASIS OF BEARINGS
THE BASIS OF BEARINGS FOR THIS PROJECT IS THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 18, TOWNSHIP 2 NORTH, RANGE 2 EAST, G&SRM, BETWEEN A FOUND 3" BRASS CAP SURVEY MONUMENT IN HAND HOLE AT THE NORTHWEST CORNER AND A FOUND 2" ALUMINUM CAP IN HAND HOLE AT THE NORTH QUARTER CORNER OF SAID SECTION. SAID BEARING IS NORTH 88°12'51" EAST.

BASIS OF ELEVATIONS
THE BASIS OF ELEVATIONS FOR THIS PROJECT IS NAVD 88. THE PROJECT BENCHMARK IS A 2" ALUMINUM CAP IN HAND HOLE AT THE NORTH QUARTER CORNER OF SECTION 18, TOWNSHIP 2 NORTH, RANGE 2 EAST, G&SRM, WITH AN ELEVATION OF 1130.89 NAVD 88.

CITY OF GLENDALE
ENGINEERING DEPARTMENT
5850 W. GLENDALE AVE
GLENDALE, ARIZONA 85301 (623) 930-3590

PRELIMINARY NOT FOR CONSTRUCTION

Waterline Improvements
Various Locations
Project # 131424
Glendale, Arizona
KEY MAP & INDEX SHEET

Stantec

DWG G002
Sheet 2 of 73

EXHIBIT B

THE WORK

KEY PERSONNEL

(See Attached)

EXHIBIT B.1 – PROPOSAL LIST OF DOCUMENTS

GMP 1 PROPOSAL (04/24/16)

City of Glendale Waterline Improvements Var. Locations, Construction Manager at Risk
COG Project Number 131424 / Achen-Gardner No. 3493100

GMP 1 is based on the following documents:

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- Achen-Gardner's GMP 1 Proposal including Exhibits dated April 24, 2016

- Achen-Gardner's GMP 1 Subcontractor/Supplier Recommendation dated April 18, 2016.

EXHIBIT B.2 – PROJECT CONSTRUCTION PHASE KEY PERSONNEL

GMP 1 PROPOSAL (04/24/16)

City of Glendale Waterline Improvements Var. Locations, Construction Manager at Risk
COG Project Number 131424 / Achen-Gardner No. 3493100

Achen-Gardner's Project key personnel for the construction phase are as follows:

Dan Broderick – Project Manager
Mark Gierszewski – Project Superintendent

Project Construction Phase Support Team Members:

Mike Gewecke – General Wet Utility Superintendent
Dan Spitza – Design Phase Services Manager/Principal
Andy Mortensen – Lead Estimator

EXHIBIT C

GMP PROPOSAL SCHEDULE

(See Attached)

EXHIBIT C.1 – GMP PROPOSAL SCHEDULE SUMMARY

GMP 1 PROPOSAL (04/24/16)

City of Glendale Waterline Improvements Var. Locations, Construction Manager at Risk
COG Project Number 131424 / Achen-Gardner No. 3493100

CONTRACTOR will complete the Work in accordance with the Construction Documents and accept in full payment for the Work items listed below the following GMP Approved Prices, as applicable:

Item	Percent	Not-to-Exceed Price ($)
Cost of the Work	74.5%	3,524,925.91
General Conditions	4.3%	203,707.50
Bonds	0.87%	40,642.10
Insurance	1.3%	60,963.16
Sales Tax	4.67%	219,315.78
Contractors Fee	7.15%	355,577.01
OWNER Contingency *	4.26%	200,000.00
CONTRACTOR Contingency *	2.34%	109,628.29
GMP	100%	4,694,759.75
NOTE: Percentages are calculated based on the GMP Total.		

* Owner Contingency and Contractor Contingency include standard mark-up and fee structure.

Guaranteed Not-To-Exceed Maximum Price or GMP (The sum of the computed totals listed in the GMP Proposal Schedule and detailed in CONTRACTOR's GMP Proposal dated April 24, 2016 and referenced in the GMP Exhibits in the Construction Contract):

$ 4,694,759.75

Four million, six hundred ninety-four thousand, seven hundred fifty-nine dollars and seventy-five cents.

THE GMP PROPOSAL IS BASED UPON ESTIMATED QUANTITIES, UNIT PRICES, AND ALLOWANCES. IF THERE IS AN ERROR IN THE GMP PROPOSAL OR COMPUTED TOTALS BY THE CONTRACTOR IT SHALL BE CHANGED AND THE UNIT PRICES SHALL GOVERN.

OWNER shall pay CONTRACTOR for completion of the Work based on actual Measured Quantities and agreed to unit prices in accordance with the approved Schedule of Values (re: Proposal Exhibit C2). It is understood that these individual negotiated unit prices may include the cost associated with the risk of delivering the work in accordance with Section 5 (Construction Manager At Risk Agreement – Construction Contract) – Guaranteed Maximum Price and associated GMP Proposal Clarifications (re: Proposal Exhibit C3). CONTRACTOR is not responsible for the adequacy of OWNER Contingency Allowance amount.

EXHIBIT C.2 – GMP SCHEDULE OF VALUES

GMP 1 PROPOSAL (04/24/16)

City of Glendale Waterline Improvements Var. Locations, Construction Manager at Risk
COG Project Number 131424 / Achen-Gardner No. 3493100

See following Schedule of Values Spreadsheet dated 4-21-16 (3 pages).

04/21/2016 13:26
3493204 GLENDALE VARIOUS WL IMPROVE (90%) REV 4
*** Andy Mortensen

BID TOTALS

Biditem	Description	Status - Rnd	Quantity	Units	Unit Price	Bid Total
1010	MOBILIZATION		1.000	LS	10,145.74	10,145.74
1015	GENERAL CONDITIONS		2.000	MO	33,951.25	67,902.50
1020	SURVEY AREA 1		1.000	LS	1,562.00	1,562.00
1030	MATERIAL TESTING QA/QC (ALLOWANCE)		1.000	LS	25,894.00	25,894.00
1040	SWPPP		1.000	LS	8,735.90	8,735.90
1045	DUST CONTROL/CONSTRCUTION WATER		1.000	LS	7,695.00	7,695.00
1050	TRAFFIC CONTROL		1.000	LS	18,133.08	18,133.08
1060	OFF DUTY POLICE OFFICERS (ALLOWANCE)		1.000	LS	14,448.00	14,448.00
1065	TRENCH SAFETY/TRAFFIC PLATES		1.000	LS	18,423.25	18,423.25
1067	LOCATE/EXPOSE UTILITIES		1.000	LS	20,417.12	20,417.12
1070	12" DIP WATERLINE		1,290.000	LF	159.97	206,361.30
1080	12" DIP WATERLINE FITTINGS (BENDS, TEES, CROSSES)		24.000	EA	1,308.93	31,414.32
1090	8" DIP WATERLINE		543.000	LF	182.77	99,244.11
1100	8" DIP WATERLINE FITTINGS (BENDS, TEES, CROSSES)		23.000	EA	1,140.93	26,241.39
1110	12" GATE VALVE W/ BOX & COVER		4.000	EA	3,291.39	13,165.56
1120	8" GATE VALVE W/ BOX & COVER		5.000	EA	2,550.39	12,751.95
1130	FIRE HYDRANT ASSEMBLY (INCLUDING VALVE & TEE)		2.000	EA	9,515.65	19,031.30
1140	CONNECT TO EXISTING WATERLINE		6.000	EA	4,063.18	24,379.08
1150	1" WATER SERVICE		40.000	LF	127.67	5,106.80
1160	1" AIR RELEASE VALVE		2.000	EA	7,087.66	14,175.32
1170	WATER/SEWER CROSSING		3.000	EA	3,711.70	11,135.10
1180	R/R EXISTING ASPHALT PAVEMENT (6" THICK)		1,098.000	SY	55.85	61,323.30
1190	R/R CURB & GUTTER		25.000	LF	26.61	665.25
1200	R/R SIDEWALK		125.000	SF	14.00	1,750.00
1210	REMOVE FIRE HYDRANT		2.000	EA	797.80	1,595.60
1220	ABANDON WATER VALVE		13.000	EA	245.54	3,192.02
1125	R/R PAVEMENT MARKINGS (ALLOWANCE)		1.000	LS	4,703.80	4,703.80
1130	ABANDON EXISTING 6" WL (ALLOWANCE)		1.000	LS	31,659.56	31,659.56
	CONSTRCUTION SERVICES COST AREA 1					$761,252.35
3010	MOBILIZATION		1.000	LS	20,993.41	20,993.41
3015	GENERAL CONDITIONS		4.000	MO	33,951.25	135,805.00
3020	SURVEY AREA 3		1.000	LS	8,712.00	8,712.00
3030	MATERIAL TESTING QA/QC (ALLOWANCE)		1.000	LS	56,840.00	56,840.00
3040	SWPPP		1.000	LS	7,937.50	7,937.50
3045	DUST CONTROL/CONSTRCUTION WATER		1.000	LS	14,295.00	14,295.00

BID TOTALS

Biditem	Description	Status - Rnd	Quantity	Units	Unit Price	Bid Total
3050	TRAFFIC CONTROL		1.000	LS	67,705.00	67,705.00
3060	OFF DUTY POLICE OFFICERS (ALLOWANCE)		1.000	LS	36,120.00	36,120.00
3065	TRENCH SAFETY/TRAFFIC PLATES		1.000	LS	69,696.74	69,696.74
3067	LOCATE/EXPOSE UTILITIES		1.000	LS	104,405.76	104,405.76
3070	12" DIP WATERLINE		5,825.000	LF	120.49	701,854.25
3080	12" DIP WATERLINE FITTINGS (BENDS, TEES, CROSSES)		86.000	EA	1,236.93	106,375.98
3090	8" DIP WATERLINE		3,086.000	LF	123.10	379,886.60
3100	8" DIP WATERLINE FITTINGS (BENDS, TEES, CROSSES)		79.000	EA	1,052.93	83,181.47
3110	6" DIP WATERLINE		121.000	LF	125.09	15,135.89
3120	6" DIP WATERLINE FITTINGS (BENDS, TEES, CROSSES)		6.000	EA	498.90	2,993.40
3130	4" DIP WATERLINE		90.000	LF	147.09	13,238.10
3140	4" DIP WATERLINE FITTINGS (BENDS, TEES, CROSSES)		3.000	EA	455.90	1,367.70
3150	12" GATE VALVE W/ BOX & COVER		24.000	EA	3,237.39	77,697.36
3160	8" GATE VALVE W/ BOX & COVER		28.000	EA	2,442.39	68,386.92
3170	6" GATE VALVE W/ BOX & COVER		6.000	EA	1,672.35	10,034.10
3180	4" GATE VALVE W/ BOX & COVER		1.000	EA	1,471.36	1,471.36
3190	FIRE HYDRANT ASSEMBLY (INCLUDING VALVE & TEE)		17.000	EA	7,221.00	122,757.00
3200	CONNECT TO EXISTING WATERLINE		35.000	EA	2,385.22	83,482.70
3210	1" WATER SERVICE		1,987.000	LF	112.10	222,742.70
3220	1-1/2" WATER SERVICE		225.000	LF	168.20	37,845.00
3230	2" WATER SERVICE		220.000	LF	141.20	31,064.00
3240	1" AIR RELEASE VALVE		3.000	EA	5,611.98	16,835.94
3250	WATER/SEWER CROSSING		43.000	EA	2,161.59	92,948.37
3260	30" STAINLESS REPAIR COUPLING		10.000	EA		
3270	R/R EXISTING ASPHALT PAVEMENT (6" THICK)		4,200.000	SY	56.48	237,216.00
3275	R/R EXISTING ASPHALT PAVEMENT (4" THICK)		827.000	SY	52.52	43,434.04
3280	R/R CURB & GUTTER		435.000	LF	25.42	11,057.70
3290	R/R SIDEWALK		1,485.000	SF	14.76	21,918.60
3300	R/R VALLEY GUTTER		30.000	SF	33.64	1,009.20
3310	R/R DRIVEWAY		245.000	SF	17.87	4,378.15
3320	REMOVE WATER VALVE		3.000	EA	1,013.94	3,041.82
3330	REMOVE FIRE HYDRANT		17.000	EA	788.80	13,409.60
3340	ABANDON WATER VALVE		54.000	EA	245.55	13,259.70
3345	MEDIAN REPIAR (ALLOWANCE)		1.000	AL	5,000.00	5,000.00
3350	R/R PAVEMENT MARKINGS (ALLOWANCE)		1.000	LS	21,847.00	21,847.00

CONSTRUCTION SERVICES COST AREA 3 $2,967,381.06

04/21/2016 13:26
3493204 GLENDALE VARIOUS WL IMPROVE (90%) REV 4
*** Andy Mortensen

BID TOTALS

Biditem	Description	Status - Rnd	Quantity	Units	Unit Price	Bid Total
	CONSTRCUTION SERVICES COST AREA 1 & 3					$3,728,633.41
5005	FEE 9%	U	1.000	LS	335,577.01	335,577.01
	RUNNING SUBTOTAL 1					$4,064,210.42
5007	INSURANCE 1.5%	U	1.000	LS	60,963.16	60,963.16
5010	BOND 1%	U	1.000	LS	40,642.10	40,642.10
	RUNNING SUBTOTAL 2					$4,165,815.68
5020	SALES TAX 5.98%	U	1.000	LS	249,115.78	249,115.78
5030	SALES TAX CREDIT	U	1.000	LS	-29,800.00	-29,800.00
	RUNNING SUBTOTAL 3					$4,385,131.46
5040	CONTRACTOR CONTIGENCY 2.5%	U	1.000	LS	109,628.29	109,628.29
5050	OWNER CONTIGENCY	U	1.000	LS	200,000.00	200,000.00
	Bid Total ==========>					$4,694,759.75

EXHIBIT B.1 – PROPOSAL LIST OF DOCUMENTS

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COG Project Number 131424 / Achen-Gardner No. 3493100

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City of Glendale Waterline Improvements Var. Locations, Construction Manager at Risk
COG Project Number 131424 / Achen-Gardner No. 3493100

Achen-Gardner's Project key personnel for the construction phase are as follows:

Dan Broderick – Project Manager
Mark Gierszewski – Project Superintendent

Project Construction Phase Support Team Members:

Mike Gewecke – General Wet Utility Superintendent
Dan Spitza – Design Phase Services Manager/Principal
Andy Mortensen – Lead Estimator

EXHIBIT C.1 – GMP PROPOSAL SCHEDULE SUMMARY

GMP 1 PROPOSAL (04/24/16)

City of Glendale Waterline Improvements Var. Locations, Construction Manager at Risk
COG Project Number 131424 / Achen-Gardner No. 3493100

CONTRACTOR will complete the Work in accordance with the Construction Documents and accept in full payment for the Work items listed below the following GMP Approved Prices, as applicable:

Item	Percent	Not-to-Exceed Price ($)
Cost of the Work	74.5%	3,524,925.91
General Conditions	4.3%	203,707.50
Bonds	0.87%	40,642.10
Insurance	1.3%	60,963.16
Sales Tax	4.67%	219,315.78
Contractors Fee	7.15%	355,577.01
OWNER Contingency *	4.26%	200,000.00
CONTRACTOR Contingency *	2.34%	109,628.29
GMP	100%	4,694,759.75
NOTE: Percentages are calculated based on the GMP Total.		

* Owner Contingency and Contractor Contingency include standard mark-up and fee structure.

Guaranteed Not-To-Exceed Maximum Price or GMP (The sum of the computed totals listed in the GMP Proposal Schedule and detailed in CONTRACTOR's GMP Proposal dated April 24, 2016 and referenced in the GMP Exhibits in the Construction Contract):

$ 4,694,759.75

Four million, six hundred ninety-four thousand, seven hundred fifty-nine dollars and seventy-five cents.

THE GMP PROPOSAL IS BASED UPON ESTIMATED QUANTITIES, UNIT PRICES, AND ALLOWANCES. IF THERE IS AN ERROR IN THE GMP PROPOSAL OR COMPUTED TOTALS BY THE CONTRACTOR IT SHALL BE CHANGED AND THE UNIT PRICES SHALL GOVERN.

OWNER shall pay CONTRACTOR for completion of the Work based on actual Measured Quantities and agreed to unit prices in accordance with the approved Schedule of Values (re: Proposal Exhibit C2). It is understood that these individual negotiated unit prices may include the cost associated with the risk of delivering the work in accordance with Section 5 (Construction Manager At Risk Agreement – Construction Contract) – Guaranteed Maximum Price and associated GMP Proposal Clarifications (re: Proposal Exhibit C3). CONTRACTOR is not responsible for the adequacy of OWNER Contingency Allowance amount.

EXHIBIT C.2 – GMP SCHEDULE OF VALUES

GMP 1 PROPOSAL (04/24/16)

City of Glendale Waterline Improvements Var. Locations, Construction Manager at Risk
COG Project Number 131424 / Achen-Gardner No. 3493100

See following Schedule of Values Spreadsheet dated 4-21-16 (3 pages).

04/21/2016 13:26
3493204 GLENDALE VARIOUS WL IMPROVE (90%) REV 4
*** Andy Mortensen

BID TOTALS

Biditem	Description	Status - Rnd	Quantity	Units	Unit Price	Bid Total
1010	MOBILIZATION		1.000	LS	10,145.74	10,145.74
1015	GENERAL CONDITIONS		2.000	MO	33,951.25	67,902.50
1020	SURVEY AREA 1		1.000	LS	1,562.00	1,562.00
1030	MATERIAL TESTING QA/QC (ALLOWANCE)		1.000	LS	25,894.00	25,894.00
1040	SWPPP		1.000	LS	8,735.90	8,735.90
1045	DUST CONTROL/CONSTRCUTION WATER		1.000	LS	7,695.00	7,695.00
1050	TRAFFIC CONTROL		1.000	LS	18,133.08	18,133.08
1060	OFF DUTY POLICE OFFICERS (ALLOWANCE)		1.000	LS	14,448.00	14,448.00
1065	TRENCH SAFETY/TRAFFIC PLATES		1.000	LS	18,423.25	18,423.25
1067	LOCATE/EXPOSE UTILITIES		1.000	LS	20,417.12	20,417.12
1070	12" DIP WATERLINE		1,290.000	LF	159.97	206,361.30
1080	12" DIP WATERLINE FITTINGS (BENDS, TEES, CROSSES)		24.000	EA	1,308.93	31,414.32
1090	8" DIP WATERLINE		543.000	LF	182.77	99,244.11
1100	8" DIP WATERLINE FITTINGS (BENDS, TEES, CROSSES)		23.000	EA	1,140.93	26,241.39
1110	12" GATE VALVE W/ BOX & COVER		4.000	EA	3,291.39	13,165.56
1120	8" GATE VALVE W/ BOX & COVER		5.000	EA	2,550.39	12,751.95
1130	FIRE HYDRANT ASSEMBLY (INCLUDING VALVE & TEE)		2.000	EA	9,515.65	19,031.30
1140	CONNECT TO EXISTING WATERLINE		6.000	EA	4,063.18	24,379.08
1150	1" WATER SERVICE		40.000	LF	127.67	5,106.80
1160	1" AIR RELEASE VALVE		2.000	EA	7,087.66	14,175.32
1170	WATER/SEWER CROSSING		3.000	EA	3,711.70	11,135.10
1180	R/R EXISTING ASPHALT PAVEMENT (6" THICK)		1,098.000	SY	55.85	61,323.30
1190	R/R CURB & GUTTER		25.000	LF	26.61	665.25
1200	R/R SIDEWALK		125.000	SF	14.00	1,750.00
1210	REMOVE FIRE HYDRANT		2.000	EA	797.80	1,595.60
1220	ABANDON WATER VALVE		13.000	EA	245.54	3,192.02
1125	R/R PAVEMENT MARKINGS (ALLOWANCE)		1.000	LS	4,703.80	4,703.80
1130	ABANDON EXISTING 6" WL (ALLOWANCE)		1.000	LS	31,659.56	31,659.56
	CONSTRCUTION SERVICES COST AREA 1					$761,252.35
3010	MOBILIZATION		1.000	LS	20,993.41	20,993.41
3015	GENERAL CONDITIONS		4.000	MO	33,951.25	135,805.00
3020	SURVEY AREA 3		1.000	LS	8,712.00	8,712.00
3030	MATERIAL TESTING QA/QC (ALLOWANCE)		1.000	LS	56,840.00	56,840.00
3040	SWPPP		1.000	LS	7,937.50	7,937.50
3045	DUST CONTROL/CONSTRCUTION WATER		1.000	LS	14,295.00	14,295.00

BID TOTALS

Biditem	Description	Status - Rnd	Quantity	Units	Unit Price	Bid Total
3050	TRAFFIC CONTROL		1.000	LS	67,705.00	67,705.00
3060	OFF DUTY POLICE OFFICERS (ALLOWANCE)		1.000	LS	36,120.00	36,120.00
3065	TRENCH SAFETY/TRAFFIC PLATES		1.000	LS	69,696.74	69,696.74
3067	LOCATE/EXPOSE UTILITIES		1.000	LS	104,405.76	104,405.76
3070	12" DIP WATERLINE		5,825.000	LF	120.49	701,854.25
3080	12" DIP WATERLINE FITTINGS (BENDS, TEES, CROSSES)		86.000	EA	1,236.93	106,375.98
3090	8" DIP WATERLINE		3,086.000	LF	123.10	379,886.60
3100	8" DIP WATERLINE FITTINGS (BENDS, TEES, CROSSES)		79.000	EA	1,052.93	83,181.47
3110	6" DIP WATERLINE		121.000	LF	125.09	15,135.89
3120	6" DIP WATERLINE FITTINGS (BENDS, TEES, CROSSES)		6.000	EA	498.90	2,993.40
3130	4" DIP WATERLINE		90.000	LF	147.09	13,238.10
3140	4" DIP WATERLINE FITTINGS (BENDS, TEES, CROSSES)		3.000	EA	455.90	1,367.70
3150	12" GATE VALVE W/ BOX & COVER		24.000	EA	3,237.39	77,697.36
3160	8" GATE VALVE W/ BOX & COVER		28.000	EA	2,442.39	68,386.92
3170	6" GATE VALVE W/ BOX & COVER		6.000	EA	1,672.35	10,034.10
3180	4" GATE VALVE W/ BOX & COVER		1.000	EA	1,471.36	1,471.36
3190	FIRE HYDRANT ASSEMBLY (INCLUDING VALVE & TEE)		17.000	EA	7,221.00	122,757.00
3200	CONNECT TO EXISTING WATERLINE		35.000	EA	2,385.22	83,482.70
3210	1" WATER SERVICE		1,987.000	LF	112.10	222,742.70
3220	1-1/2" WATER SERVICE		225.000	LF	168.20	37,845.00
3230	2" WATER SERVICE		220.000	LF	141.20	31,064.00
3240	1" AIR RELEASE VALVE		3.000	EA	5,611.98	16,835.94
3250	WATER/SEWER CROSSING		43.000	EA	2,161.59	92,948.37
3260	30" STAINLESS REPAIR COUPLING		10.000	EA		
3270	R/R EXISTING ASPHALT PAVEMENT (6" THICK)		4,200.000	SY	56.48	237,216.00
3275	R/R EXISTING ASPHALT PAVEMENT (4" THICK)		827.000	SY	52.52	43,434.04
3280	R/R CURB & GUTTER		435.000	LF	25.42	11,057.70
3290	R/R SIDEWALK		1,485.000	SF	14.76	21,918.60
3300	R/R VALLEY GUTTER		30.000	SF	33.64	1,009.20
3310	R/R DRIVEWAY		245.000	SF	17.87	4,378.15
3320	REMOVE WATER VALVE		3.000	EA	1,013.94	3,041.82
3330	REMOVE FIRE HYDRANT		17.000	EA	788.80	13,409.60
3340	ABANDON WATER VALVE		54.000	EA	245.55	13,259.70
3345	MEDIAN REPIAR (ALLOWANCE)		1.000	AL	5,000.00	5,000.00
3350	R/R PAVEMENT MARKINGS (ALLOWANCE)		1.000	LS	21,847.00	21,847.00

CONSTRUCTION SERVICES COST AREA 3 $2,967,381.06

04/21/2016 13:26
3493204 GLENDALE VARIOUS WI, IMPROVE (90%) REV 4
*** Andy Mortensen

BID TOTALS

Biditem	Description	Status - Rnd	Quantity	Units	Unit Price	Bid Total
	CONSTRCUTION SERVICES COST AREA 1 & 3					$3,728,633.41
5005	FEE 9%	U	1.000	LS	335,577.01	335,577.01
	RUNNING SUBTOTAL 1					$4,064,210.42
5007	INSURANCE 1.5%	U	1.000	LS	60,963.16	60,963.16
5010	BOND 1%	U	1.000	LS	40,642.10	40,642.10
	RUNNING SUBTOTAL 2					$4,165,815.68
5020	SALES TAX 5.98%	U	1.000	LS	249,115.78	249,115.78
5030	SALES TAX CREDIT	U	1.000	LS	-29,800.00	-29,800.00
	RUNNING SUBTOTAL 3					$4,385,131.46
5040	CONTRACTOR CONTIGENCY 2.5%	U	1.000	LS	109,628.29	109,628.29
5050	OWNER CONTIGENCY	U	1.000	LS	200,000.00	200,000.00
	Bid Total ⟹					$4,694,759.75

EXHIBIT C.3 – BID ITEM CLARIFICATIONS, ASSUMPTIONS, INCLUSIONS/EXCLUSIONS

GMP 1 PROPOSAL (04/24/16)

City of Glendale Waterline Improvements Var. Locations, Construction Manager at Risk
COG Project Number 131424 / Achen-Gardner No. 3493100

General Exclusions & Clarifications

1) List of Clarifications and/or Assumptions included in this Exhibit and/or any of the other GMP Proposal Exhibits shall take precedence over all Contract Agreements, Plans and Specifications, and General Conditions articles and/or provisions.

2) Re: CMAR's Professional Liability Coverage – CM@R excludes Professional Liability Coverage as it relates to this Construction Phase Contract.

3) Re: Subcontractor Bonds –Achen-Gardner considers all Subcontractors as minor and will not require these Bonds regardless of their contract amount. See last page of this GMP Exhibit C.3 for associated Subcontractor and Supplier Recommendations.

4) Re: Existing Utilities - GMP excludes all costs associated with removing, replacing, and/or relocating any existing buried and/or overhead utilities not detailed to be in the plans (re: Exhibit C) or specifically defined on Exhibit B. Achen-Gardner does accept responsibility for protecting any existing utilities detailed on the project plans and those that are properly located (i.e. Bluestake) (re: GMP Exhibit B.1). Achen-Gardner reserves the right to utilize Contractor Contingency for those detailed on the plans and be compensated for those not shown on the plans but properly located through Owner Contingency or Owner change order.

5) Re: GMP Schedule and Weather Delays - For the purpose of this contract, adverse weather conditions such as average days of rain per month, is assumed to be 1 each per month. A weather-related delay may be claimed on days where rainfall did not actually occur, but follows a day of heavy rain that has impacted the schedule. That is, the first six (6) days of weather-related delays will not result in delays to the project schedule. If the project experiences additional weather-related delays beyond this amount, the Contractor shall be entitled to a commensurate extension of time associated with the delays and/or a GMP Price adjustment for additional costs associated with but not limited to General Conditions, accelerations, etc.

6) Re: Other Contractor Coordination –CMAR agrees to make a good faith effort in coordinating its work with that of "other" Contractors working w/i the project limits. Achen-Gardner reserves the right to request Owner change order compensation for any additional work not anticipated that results from any of the above conditions.

EXHIBIT C.3 – BID ITEM CLARIFICATIONS, ASSUMPTIONS, INCLUSIONS/EXCLUSIONS

GMP 1 PROPOSAL (04/24/16)

City of Glendale Waterline Improvements Var. Locations, Construction Manager at Risk
COG Project Number 131424 / Achen-Gardner No. 3493100

General Exclusions & Clarifications

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5) Re: GMP Schedule and Weather Delays - For the purpose of this contract, adverse weather conditions such as average days of rain per month, is assumed to be 1 each per month. A weather-related delay may be claimed on days where rainfall did not actually occur, but follows a day of heavy rain that has impacted the schedule. That is, the first six (6) days of weather-related delays will not result in delays to the project schedule. If the project experiences additional weather-related delays beyond this amount, the Contractor shall be entitled to a commensurate extension of time associated with the delays and/or a GMP Price adjustment for additional costs associated with but not limited to General Conditions, accelerations, etc.

6) Re: Other Contractor Coordination –CMAR agrees to make a good faith effort in coordinating its work with that of "other" Contractors working w/i the project limits. Achen-Gardner reserves the right to request Owner change order compensation for any additional work not anticipated that results from any of the above conditions.

7) Re: GMP Exhibit D, Schedule - Proposed Project Schedule, excludes logic associated with acquiring temporary construction easements or permanent right-of-way of any kind. This GMP Proposal assumes ALL right-of-way and easements required to construct the Project have been or will be acquired by Owner in time to maintain the Project Schedule as presented herein.

8) GMP excludes all costs associated with City of Glendale and/or other public agency permit & plan review fees, QA (i.e. inspection) costs, impact fees, utility company fees and/or any other permit or fee not detailed in Exhibit C and related Exhibits.

9) Re: Schedule of Values – This Proposal's GMP will be administered as a Measured Quantity/Unit Price Guaranteed Not-to-Exceed Contract. This Not-to-Exceed amount is defined by the individual work items and their associated negotiated and approved unit prices plus negotiated fee and markup structure (Items 5005 – 5030). Final contract price/payout will be based on field measured final completed quantities, approved unit prices, applied fee structure, and approved change orders. It is understood that these individual negotiated and approved unit prices include the cost associated with the risk of delivering the work.

10) Re: Allowance Items – Work Items that have been designated "Allowance" are a best estimate of the cost of work for which a scope has yet to be confirmed/determined or a Unit Price finalized. The Allowance Quantity and Unit Price values are not guaranteed, and are subject to adjustment by mutual agreement between the City and CMAR as the scope and/or price is confirmed. Associated increases/decreases in cost will be funded/credited from/to the Contractor Contingency Item 5040.

11) Re: Contractor Contingency – Estimate of Contractor Contingency has been set at $109,628.29. Achen-Gardner reserves the right to utilize Contractor Contingency funds (re: Item 5040) for increased costs associated with, but not limited to, material cost escalations and delays and/or decreased efficiencies. Reimbursement under this Item will be based on documented time and material costs unless fixed unit prices are mutually agreed to. Use of these funds is subject to mutual agreement between the City and Achen-Gardner.

12) Re: Scope of Work - It is understood that the documents listed (i.e. plans, specifications, etc.) have been used to prepare this GMP. Item "descriptions" and "unit measures" included in Exhibit C and related Exhibits shall serve to assist in the clarification of and definition of the scope of work included under each Item of Work (i.e. Item). The cost associated with any changes, revisions, additions and/or deletions directed by the City will be compensated for and funded through an Owner Contingency or Owner Change Order as mutually agreed to by all parties.

13) Re: Hazardous Materials – GMP proposal excludes any and all costs associated with handling and/or disposing of hazardous wastes not introduced by Achen-Gardner.

14) Re: Hard Dig – GMP proposal excludes any rock excavation requiring blasting and/or hydraulic breakers of any kind.

15) Re: Subcontractor and Supplier pricing - GMP based on Awarded Subcontractor and Supplier resource values and associated proposal/quote clarifications/inclusions/exclusions/qualifications included in Subcontractor and Supplier Selection Recommendation document dated 4-18-16.

16) Re: Work Hours – This GMP is based on working 8 hour per shift (work day) Monday – Friday during daylight hours. Work hours will be scheduled weekly with the City and its representatives. To minimize disruption of water service it may be necessary to make the new connections at night. Achen-Gardner's price includes this work and will coordinate with City staff.

Bid Item Scope Exclusions & Clarifications

1) All waterline tie-ins to be disinfected by swab method. Even if the swab method is used, all testing will still be per COG and MAG requirements. Achen-Gardner understands all tests must be completed and passed.

2) All waterline tie-ins to be pressure tested by visual inspection.

3) Pricing is based on the 2015 City of Glendale Standard Details and Specifications.

4) Price excludes asphalt fog seal/primecoat/seal coat.

5) Price excluded slurry seal and micro seal.

6) Asphalt pavement replacement shall be paid by the square yard and measured quantity of asphalt installed. MAG pay width does not apply.

7) Price excludes any temporary water or sewer service of any kind. If temporary water or sewer service is required due to the fault of AG it should be provided at no additional cost to the City.

8) Price excludes any rubberized asphalt.

9) Price for off-duty officers is for all officers needed on the project. No other time for off-duty officers has been included in any of the other pay items.

10) Price assumes traffic can be restricted to one-lane north and south-bound or east and westbound. Street closures and left turn lane closures at signalized intersections may be required. These will be planned and scheduled in cooperation with City staff. Temporary traffic signals are not anticipated and will be paid for under Owner's Contingency if required.

11) Price assumes traffic control can be left up 24 hours per day.

12) All ductile iron fitting joints are restrained by mega-lug type restraint. All ductile iron pipe joints are restrained by either Field-Lok© or Fastite© type gaskets.

13) Price excludes the furnishing of any water meters or water meter boxes. New water meters and/or meter boxes, if required, will be furnished by City or acquisition funded through Owner Contingency. CMAR price includes installation/connection of meters and boxes.

14) Price includes quality assurance and quality control testing (re: Allowance Items 1030 and 3030). This scope will be co-managed by CMAR and City Construction Administration and Inspection Team. Selection of firm will be mutually agreed to.

15) Price includes the removal and replacement of any existing decomposed granite required for the installation of the waterline, hydrants, or services. Price excludes furnishing or installing any other landscaping.

16) Productions are based on a minimum of 8-hour work days excluding the time to set and remove barricades. It is assumed that the barricades can be set up and left in place to allow for 8-hours of continuous work before beginning the removal of the barricades.

17) Price excludes the cost of any specialty signs required.

18) Price excludes any removal of any existing concrete pavement.

19) Price excludes furnishing and installing all 30-inch stainless repair couplings indicated on the drawings. Please see Water Construction Note 62 on Drawing C203. The exiting services are believed to be connected to the existing 12-inch waterline South of the Existing 30-inch water transmission main.

20) Price assumes that tracked equipment can be left on the street overnight.

21) Price excludes public outreach and communication services. Price includes communication and cooperation with Stantec and its sub-consultant (MakPro Services) in the execution of this scope of work.

22) Pavement replacement will be Type A and at the thicknesses detailed in Ninyo & Moore's Geotechnical Report. T-top detail is excluded.

Subcontractor/Supplier Recommendation Clarification, Inclusions, and Exclusions

Unless otherwise noted or defined in GMP 1 Exhibits, GMP 1 Proposal is subject to all inclusions, exclusions, clarifications, and qualifications included on quotations/proposals included in our Recommendation document dated 4-18-16. GMP 1 is based on the following recommended Subcontractors and Suppliers:

Waterline Materials Supplier ($537,486.00)	Ferguson
Asphalt Paving Subcontractor ($82,000.53)	C&L Asphalt
Adjustment Subcontractor ($15,000.00)	Specialty Contracting
Aggregate Materials Supplier ($149,310,66)	Cemex, Inc.
Asphalt Materials Supplier ($126,925.74)	Vulcan Materials
Pipe Disinfection Service ($4,698.50)	Statewide
Off-Duty Officer Flaggers Service ($50,568.00)	Right Choice
Quality Control Testing Allowance ($82,734.00)	(To be determined)
Redi Mix Concrete and Slurry Material Supplier ($184,224.14)	Arizona Metro Mix
Saw Cut Servce ($62,082.12)	Blade Runner
Striping Subcontractor ($26,626.80)	Pavement Marking, Inc.
Construction Survey and As-Built Service ($10,274.00)	EPS Group
SWPPP Service ($13,837.50)	Off Site Sweeping
Traffic Control Rental and Services ($85,838.08)	Trafficade Services

EXHIBIT D

PROJECT SCHEDULE

SCHEDULE UPDATES

(See Attached)

EXHIBIT D – PROJECT SCHEDULE

GMP 1 PROPOSAL (04/24/16)

City of Glendale Waterline Improvements Var. Locations, Construction Manager at Risk
COG Project Number 131424 / Achen-Gardner No. 3493100

NOTE: This GMP is based on the following schedule assumptions and clarifications –

1) Assumes Design Phase Contract and Construction GMP 1 will be awarded mid May 2016 and Construction NTP will be received mid June 2016.

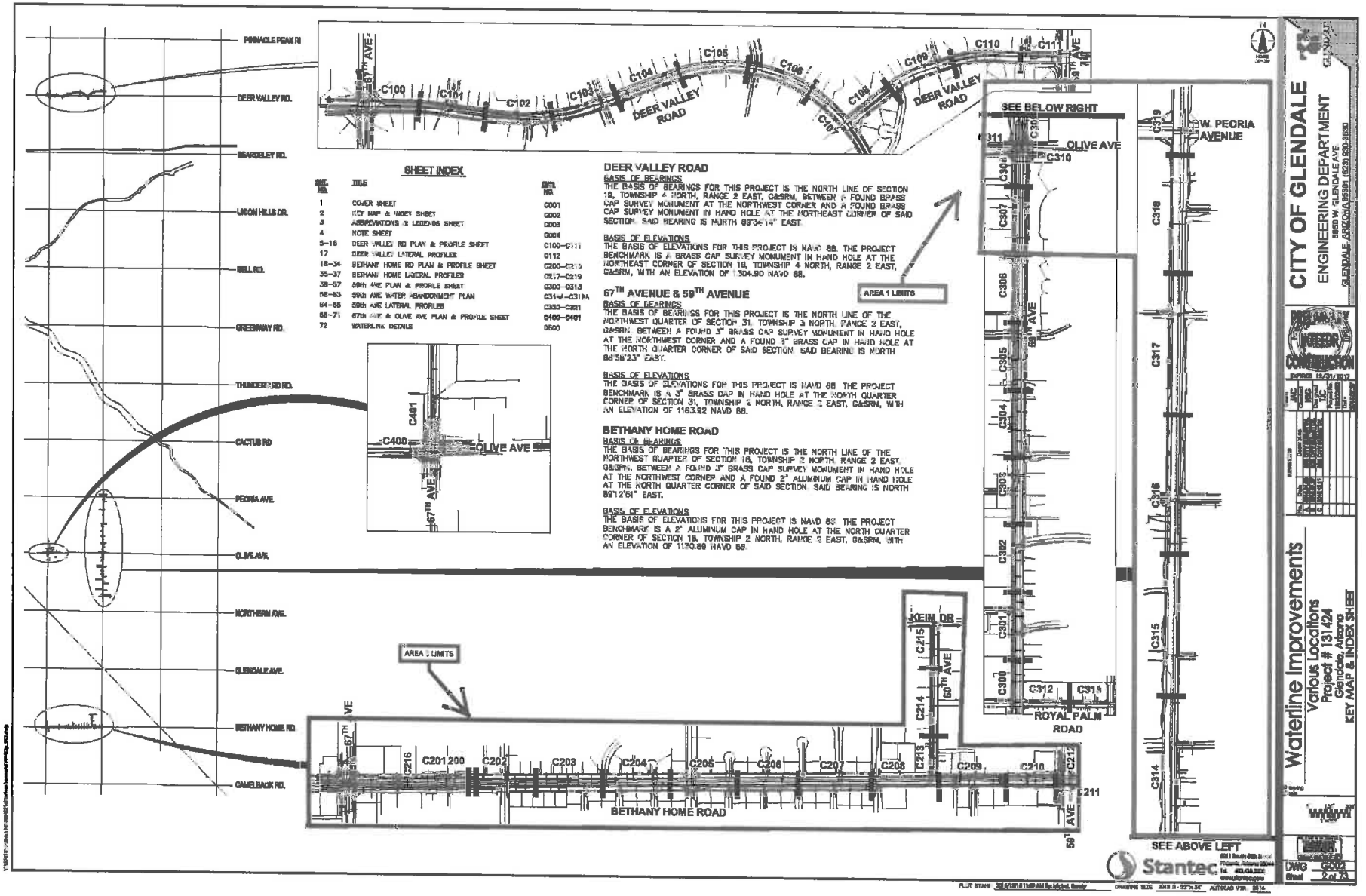
2) Work will begin in both Area 1 and area 2 simultaneously in June 2016.

3) Area 1 work shall be completed during GCC summer break and expedited to mitigate impacts to start of FY 16/17 school sessions.

4) Area 3 will be substantially completed before Thanksgiving 2016 unless agreed to otherwise.

5) A detailed CPM schedule will be submitted in accordance with City standard CMAR Construction Contract.

6) Dates included herein are subject to adjustment based on final agreed to sequence and/or delays experienced by Contractor.



SHEET INDEX

SHT. NO.	TITLE	DWG. NO.
1	COVER SHEET	C001
2	KEY MAP & INDEX SHEET	C002
3	ABBREVIATIONS & LEGENDS SHEET	C003
4	NOTE SHEET	C004
5–16	DEER VALLEY RD PLAN & PROFILE SHEET	C100–C111
17	DEER VALLEY LATERAL PROFILES	C112
18–34	BETHANY HOME RD PLAN & PROFILE SHEET	C200–C216
35–37	BETHANY HOME LATERAL PROFILES	C217–C219
38–57	59th AVE PLAN & PROFILE SHEET	C300–C319
58–63	59th AVE WATER ABANDONMENT PLAN	C314A–C319A
64–65	59th AVE LATERAL PROFILES	C320–C321
66–71	67th AVE & OLIVE AVE PLAN & PROFILE SHEET	C400–C401
72	WATERLINE DETAILS	D500

DEER VALLEY ROAD

BASIS OF BEARINGS
THE BASIS OF BEARINGS FOR THIS PROJECT IS THE NORTH LINE OF SECTION 18, TOWNSHIP 4 NORTH, RANGE 2 EAST, G&SRM, BETWEEN A FOUND BRASS CAP SURVEY MONUMENT AT THE NORTHWEST CORNER AND A FOUND BRASS CAP SURVEY MONUMENT IN HAND HOLE AT THE NORTHEAST CORNER OF SAID SECTION. SAID BEARING IS NORTH 88°36'14" EAST.

BASIS OF ELEVATIONS
THE BASIS OF ELEVATIONS FOR THIS PROJECT IS NAVD 88. THE PROJECT BENCHMARK IS A BRASS CAP SURVEY MONUMENT IN HAND HOLE AT THE NORTHEAST CORNER OF SECTION 18, TOWNSHIP 4 NORTH, RANGE 2 EAST, G&SRM, WITH AN ELEVATION OF 1304.80 NAVD 88.

67TH AVENUE & 59TH AVENUE

BASIS OF BEARINGS
THE BASIS OF BEARINGS FOR THIS PROJECT IS THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 3 NORTH, RANGE 2 EAST, G&SRM, BETWEEN A FOUND 3" BRASS CAP SURVEY MONUMENT IN HAND HOLE AT THE NORTHWEST CORNER AND A FOUND 3" BRASS CAP IN HAND HOLE AT THE NORTH QUARTER CORNER OF SAID SECTION. SAID BEARING IS NORTH 88°56'23" EAST.

BASIS OF ELEVATIONS
THE BASIS OF ELEVATIONS FOR THIS PROJECT IS NAVD 88. THE PROJECT BENCHMARK IS A 3" BRASS CAP IN HAND HOLE AT THE NORTH QUARTER CORNER OF SECTION 31, TOWNSHIP 3 NORTH, RANGE 2 EAST, G&SRM, WITH AN ELEVATION OF 1163.82 NAVD 88.

BETHANY HOME ROAD

BASIS OF BEARINGS
THE BASIS OF BEARINGS FOR THIS PROJECT IS THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 18, TOWNSHIP 2 NORTH, RANGE 2 EAST, G&SRM, BETWEEN A FOUND 3" BRASS CAP SURVEY MONUMENT IN HAND HOLE AT THE NORTHWEST CORNER AND A FOUND 2" ALUMINUM CAP IN HAND HOLE AT THE NORTH QUARTER CORNER OF SAID SECTION. SAID BEARING IS NORTH 89°12'51" EAST.

BASIS OF ELEVATIONS
THE BASIS OF ELEVATIONS FOR THIS PROJECT IS NAVD 88. THE PROJECT BENCHMARK IS A 2" ALUMINUM CAP IN HAND HOLE AT THE NORTH QUARTER CORNER OF SECTION 18, TOWNSHIP 2 NORTH, RANGE 2 EAST, G&SRM, WITH AN ELEVATION OF 1170.89 NAVD 88.

CITY OF GLENDALE
ENGINEERING DEPARTMENT
5850 W. GLENDALE AVE.
GLENDALE, ARIZONA 85301 (623) 930-3550

Waterline Improvements
Various Locations
Project # 131424
Glendale, Arizona
KEY MAP & INDEX SHEET

Stantec
DWG C002
Sheet 2 of 72

EXHIBIT E

CMAR'S INSURANCE REQUIREMENTS

CMAR must, as a material obligation to City and a condition precedent to any payment otherwise due to CMAR, furnish and maintain, and cause its Subcontractors and Suppliers to furnish and maintain, insurance in accordance with the provisions of this Exhibit.

CMAR must secure and maintain without interruption, from the date of commencement of the Work until the later of the date of Final Completion, the date of final payment, or the date until which this Agreement requires any coverage to be maintained after final payment, policies of commercial general liability, commercial auto, umbrella/excess, workers compensation and employers liability insurance, providing the following coverage, limits and endorsements:

1. Commercial General Liability Insurance.

1.1 The CGL policy must be written on an occurrence basis, on ISO form CG 001 or its equivalent, providing coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), contractual liability, incidental professional liability, the hazards commonly referred to as XCU, and products and completed operations, with a combined single limit of liability of not less than $5,000,000 for each occurrence applicable to the Work, and an annual aggregate limit of liability of not less than $5,000,000 applicable solely to the Work, and meeting all other requirements of this Exhibit.

1.2 The general liability insurance may be accomplished with a combination of a general liability and an excess/umbrella liability policy.

1.3 Each general liability policy must be endorsed or written to:

(A) Include the per project aggregate endorsement;

(B) Name as additional insureds the following: City of Glendale and its employees, representatives and agents (collectively, the "Additional Insureds");

(C) Stipulate that the insurance afforded by the policies furnished by CMAR will be primary insurance and that any insurance, self-insured retention, deductibles, or risk retention programs maintained or participated in by the Additional Insureds, or their agents, officials or employees will be excess and not contributory to the liability insurance furnished by CMAR and by its Subcontractors;

(D) Includes a severability of interest clause; and

(E) Waive all rights of recovery against the Additional Insureds.

2. Workers' Compensation Insurance.

2.1 The Workers' Compensation policy must meet all Arizona statutory requirements, and Employers' Liability Insurance, with limits of at least $500,000 per accident or disease per employee, both policies endorsed to waive subrogation against the Additional Insureds.

2.2 CMAR must provide, at CMAR's expense, Voluntary Compensation insurance for the protection of employees engaged in the Work who are exempt from the coverage provided under the Workers' Compensation statutes with coverage equivalent or better than the coverage required in the preceding sentence, for the duration of the project.

3. **Auto Liability Insurance**

3.1 Auto Liability must be carried with minimum combined single limits of $1,000,000 per occurrence for bodily injury and property damage.

3.2 This policy must include a duty to defend and cover all owned, non-owned, leased, hired, assigned or borrowed vehicles.

3.3 This policy must be endorsed to name the Additional Insureds as such, stipulate that any insurance carried by the Additional Insureds must be excess and not contributory, and to waive subrogation against the Additional Insureds.

4. **Equipment Property Insurance.**

4.1 CMAR must secure, pay for, and maintain all-risk insurance as necessary to protect 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 CMAR, its Subcontractors or Supplier and any construction material in transit or stored in any location other than the Site.

4.2 This policy must have a waiver of subrogation in favor of the Additional Insureds.

5. **Commercial Crime Insurance.** This policy must cover employees responsible to disburse funds to pay project costs against employee dishonesty, forgery or alteration, or computer fraud.

6. **Waiver of Subrogation.** CMAR hereby waives, and will require each of its Subcontractors and Suppliers to waive, all rights of subrogation against the Additional Insureds to the extent of all losses or damages covered by any policy of insurance.

7. **Term of Coverage.**

7.1 The products and completed operations liability coverage required by this Agreement must extend for a period of not less than five years after the earlier of Final Payment for the Work, or the termination of the Agreement (the "Completed Operations Term").

7.2 If at any time prior to the conclusion of time limit described in Section 7.1 above, CMAR cannot obtain equivalent coverage by replacement or renewal, CMAR must acquire a tail policy prior to expiration of the existing policy not less than five years after the earlier of Final Payment for the Work, or the termination of the Agreement (the "Completed Operations Term").

7.3 CMAR will furnish certificates of insurance and other evidence that City may reasonably require during the Completed Operations Term to establish compliance with the requirements of this paragraph.

7.4 All other policies of insurance must be maintained continuously in force from commencement of the Work until the date of Final Payment.

8. **Subcontractor and Supplier Insurance Requirements.**

8.1 CMAR must require all of CMAR's Subcontractors and Suppliers, as a condition of working on the Project, and of receiving payment, to:

(A) Purchase and maintain Commercial General Liability, Workers' Compensation and Employer's Liability, and Automotive insurance policies, with the same coverage, endorsements, terms of coverage and other provisions as are required of CMAR under by this Exhibit, **EXCEPT**

THAT the combined coverage limits of the general liability insurance to be furnished by Supplier must be $1,000,000 per occurrence, and $1,000,000 as the annual aggregate limit); and

(B) Timely furnish to City proper certificates, endorsements, copies of declarations pages, and other documents necessary to establish the Subcontractor's compliance with this Exhibit.

(C) The Supplier's general liability policy must also be endorsed to provide the same coverage as the primary insurance, the general liability insurance furnished by CMAR must be the secondary and non-contributory, and any insurance carried by the Additional Insureds must be excess, tertiary and non-contributory to the insurance furnished by CMAR and Subcontractor.

(D) City has the right to inspect and copy all such certificates, endorsements, or other proof at any reasonable time.

9. **Other Policy Provisions.** Each policy to be furnished by CMAR, each Subcontractor and Supplier must:

9.1 Be issued by an insurance carrier having a rating from A.M. Best Company of at least A-VII or better;

9.2 Have a deductible not exceeding $10,000 unless otherwise agreed upon by City;

9.3 Provide that attorneys' fees shall be outside of the policy's limits and shall be unlimited;

9.4 Include the Facility per aggregate endorsement;

9.5 Waive all rights of subrogation against City;

9.6 Contain a provision that coverage afforded under the policies will not be canceled, allowed to expire, or reduced in amount until at least thirty (30) days prior written notice has been given to City; and

9.7 Be otherwise satisfactory to City. City agrees to consider alternatives to the requirements imposed by this Exhibit but only to the extent that City is satisfied the insurance is not commercially available to the insured. In such event, City shall have the right to set conditions for such waiver, including, but not limited to, additional indemnities, and the request that City shall be a loss-payee under the policy.

10. **Certificates and Endorsements.**

10.1 Within ten (10) days after the execution of this Agreement, CMAR must provide City with all certificates and endorsements evidencing that all insurance requirements have been met;

10.2 Within ten (10) days after execution of each subcontract (but in all events prior to such Subcontractor or Supplier commencing Services), CMAR must provide City with certificates and endorsements from each of its Subcontractors and Suppliers, in all cases evidencing compliance by CMAR, and each Subcontractor and Supplier, with the requirements of this Exhibit. CMAR must also submit letters from the respective carriers (including, but not limited to, the Errors and Omissions insurance carriers) that there are no known or pending claims or incidents which have resulted in the establishment of a reserve or otherwise have reduced the amount of coverage potentially available to City under the policy and that available coverage has not been reduced because of revised limits or

payments made. In the event such representations cannot be given, CMAR, its Subcontractors and Suppliers must furnish the particulars thereof to City.

10.3 If any of the foregoing insurance coverage is required to remain in force after Final Payment, CMAR must submit an additional certificate evidencing continuation of such coverage with the Application for Final Payment.

11. **Reduction in Coverage.** CMAR, each of its Subcontractors and Suppliers must promptly inform City of any reduction of coverage resulting from revised limits, claims paid, or both. City shall have the right to require CMAR or the applicable Subcontractor or Supplier to obtain supplemental or replacement coverage to offset such reduced coverage, at the sole cost or expense of CMAR or the applicable Subcontractor or Supplier.

12. **Suppliers and Materialmen Coverages.**

12.1 CMAR will endeavor to cause all suppliers and materialmen to deliver any equipment, machinery or other goods FOB Site.

12.2 With respect to any equipment, machinery or other goods for which City or CMAR has paid a deposit, CMAR will cause the respective suppliers and materialmen to maintain personal property insurance in an amount equal to the value of such equipment, machinery or other goods (but in no event less than the amount of the applicable deposit) during fabrication, storage and transit, naming City and CMAR as loss payee as their interests appear.

13. **Condition Precedent to Starting Work.**

13.1 Prior to, and as a condition of its right to begin performing any Work on the Site, CMAR and each Subcontractor and Supplier must deliver to City certificates of insurance representing that the required insurance is in force, together with the additional insured endorsements and waivers of subrogation required above, and such other proof satisfactory to City that the required insurance is in place; together with the original of each bond required under this Agreement. CMAR and each Subcontractor and Supplier hereby authorize City to communicate directly with the respective insurance agents, brokers and/or carriers and sureties to verify their insurance and bond coverage;

13.2 City shall be under no obligation or duty to make any such inquiry and City shall be entitled to rely on any proofs of insurance tendered by CMAR and its Subcontractors and Suppliers. City's acceptance of any proof of insurance and bonds offered by CMAR or any Subcontractor or Supplier will not be deemed a waiver of the obligations of CMAR and Subcontractors and Suppliers to furnish the insurance and bonds required by this Exhibit.

14. **Additional Proofs of Insurance.** CMAR must, within ten (10) days after request, provide City with certified copies of all policies and endorsements obtained in compliance with this Agreement.

15. **Indemnity**. The fact that CMAR and its Subcontractors and Suppliers are required by this Agreement to purchase and maintain insurance in no way limits or restricts any other obligations or duties CMAR and its Subcontractors and Suppliers may have to indemnify, defend or hold harmless City and the other Additional Insureds from and against any and all Demands, Liabilities, Losses or Expenses of whatever kind or nature.

16. **Interpretation**. In the event of any inconsistency between the provisions of this Exhibit and those of the other provisions of the Agreement, the terms of this Exhibit will govern.

EXHIBIT F

FORMS OF PAYMENT AND PERFORMANCE BONDS

(See Attached)

PAYMENT BOND

A.R.S. § 34-608

Penal Sum: $_____

KNOW ALL MEN BY THESE PRESENTS:

That _____ as Principal, hereinafter called Contractor, and _____, as Surety, hereinafter called Surety, jointly and severally, bind themselves to the City of Glendale, a municipal corporation of the State of Arizona ("Obligee") and its assigns, solely for the protections of claimants supplying labor or materials to CMAR or to CMAR's Subcontractors in the prosecution of construction and not for the protection of persons providing any design services, preconstruction or other non-construction services as provided in A.R.S. § 34-608(A)(2).

WHEREAS Principal has by written agreement dated _____entered into that certain "CMAR Agreement" ("Contract") with Obligee (referred to therein as "City") for the design and construction of that certain _____, as provided therein. In accordance with A.R.S. § 34-608(A)(2)(C), the Obligee estimates the price of the Construction Services the Obligee believes is likely to be furnished as of the date hereof $_____ (the "Penal Sum").

NOW, THEREFORE, the condition of this obligation is that if the Principal promptly pays all monies due to all persons supplying labor or materials to the Principal or the Principal's Subcontractors in the prosecution of the construction provided for in the Contract, this obligation is void. Otherwise it remains in full force and effect. Provided, however, that this bond is executed pursuant to Title 34, Chapter 6, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of Title 34, Chapter 6, Arizona Revised Statutes, to the same extent as if they were copied at length in this Agreement. The Surety hereby consents in advance to, and waives notice of any change directive or change order, extension of time or any other material alteration or modification of the Contract, or of the Work to be performed thereunder. The prevailing party in a suit on this bond shall recover as a part of the judgment reasonable attorney fees that may be fixed by the court.

Witness our hands this _____ day of _____, 200____.

_____	_____
PRINCIPAL SEAL	SURETY SEAL
By: _____	By: _____
	(Attorney-in-Fact)
Title: _____	_____
	Agency of Record
	_____
	Agency Address
	_____
	Arizona Resident Agent Countersignature
	Bond Number _____

PERFORMANCE BOND

A.R.S. § 34-608

Penal Sum: $_____

KNOW ALL MEN BY THESE PRESENTS:

That _____ as Principal, hereinafter called Contractor, and _____, as Surety, hereinafter called Surety, jointly and severally bind themselves to the City of Glendale, a municipal corporation of the State of Arizona ("Obligee") and its assigns solely for the protection of Obligee as provided in A.R.S.§ 34-608(A)(1).

WHEREAS Principal has entered into that certain "CMAR Agreement" ("Contract") with Obligee (referred to therein as "City"), dated _____, for the design and construction of that certain _____, as described therein, which Contract, together with all Change Orders and amendments thereto, is by reference made a part hereof, providing for a cumulative amount to be paid to Contractor for all design services, construction and other work (collectively, "Work" as described in the Contract) not to exceed guaranteed maximum price of $_____ dollars. In accordance with A.R.S. § 34-608(A)(1)(A), the Obligee estimates the price of the Construction Services the Obligee believes is likely to be furnished as of the date hereof $_____ (the "Penal Sum").

NOW, THEREFORE, the condition of this obligation is that, if the Principal faithfully performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of the Contract during the original term of the Contract and any change, extension, alteration or modification of the Contract, with or without notice to the Surety, and during the life of any guaranty required under the Contract, and also performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of all duly authorized changes, extensions, alterations or modifications of the Contract that may hereafter be made, notice of which changes, extensions, alterations or modifications to the Surety being hereby waived, the above obligation is void. Otherwise it remains in full force and effect. Provided, however, that this bond is executed pursuant to Title 34, Chapter 6, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with Title 34, Chapter 6, Arizona Revised Statutes, to the extent as if it were copied at length in this Agreement. The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by the court.

The performance under this bond is limited to the construction to be performed under the Contract and does not include any design services, preconstruction services, finance services, maintenance services, operations services or any other related services included in the Contract.

Signed and sealed this _____ day of _____, 200____.

_____	_____
PRINCIPAL SEAL	SURETY SEAL
By: _____	By: _____
	(Attorney-in-Fact)
Title: _____	_____
	Agency of Record
	_____
	Agency Address
	_____
	Arizona Resident Agent Countersignature

Bond Number _____

EXHIBIT G

DISPUTE RESOLUTION PROCEDURES

1. **Disputes.**

1.1 Each Dispute arising out of or related to this Agreement (including Disputes regarding any alleged breaches of this Agreement) shall be initiated and decided under the provisions of this Exhibit.

1.2 CMAR and City shall each designate in writing to the other party, from time to time, a member of senior management who shall be authorized to attempt to expeditiously resolve any Dispute relating to the subject matter of this Agreement in an equitable manner.

1.3 A party shall initiate a Dispute by delivery of written notice to the members of management designated by the respective parties under Section 1.2 of this Exhibit.

1.4 The parties must:

(A) Attempt to resolve all Disputes promptly, equitably and in a good faith manner; and

(B) Provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any such Dispute.

1.5 With respect to matters concerning modification of the GMP or any schedule, CMAR must first follow the provisions of any Claim procedure established by the Design-Build Agreement before seeking relief under these Procedures.

2. **Emergency Arbitration.**

2.1 If the parties are unable to accomplish resolution of a Dispute, the expedited resolution of which either party considers necessary to prevent or mitigate a material delay to the critical path of the Services (a "Time Sensitive Dispute") within two days after the Time Sensitive Dispute has been initiated by a party, either party may thereafter seek emergency relief before an emergency arbitrator (the "Emergency Arbitrator") appointed as follows:

(A) The parties will exercise best efforts to pre-select an Emergency Arbitrator within 20 days after entering into this Agreement;

(B) If the Emergency Arbitrator has not been selected at the time a party delivers Notice of a Time Sensitive Dispute, the parties will each select a representative within one day after the Notice is delivered and the two representatives will then select the Emergency Arbitrator by the third day following delivery of the Notice.

(C) The Emergency Arbitrator shall be an attorney with at least ten (10) 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 ten (10) years.

2.2 The Emergency Arbitrator will conduct a hearing and render a written determination on the Dispute to both parties within five business days of the matter being referred to him or her, all in accordance with Rules O-1 to O-8 of the

American Arbitration Association ("AAA") Commercial Rules-Optional Rules for Emergency Protection Commercial Rules ("AAA Emergency Rules").

2.3 Although the hearing will be conducted using AAA rules, unless both parties agree otherwise, this dispute process will not be administered by the AAA but will be conducted by the parties in accordance with these procedures.

2.4 If, however, an Emergency Arbitrator has not selected within three days after delivery of the Notice, either party may upon three days additional notice, thereafter seek emergency relief before the AAA, in accordance with the AAA Emergency Rules, provided that the Emergency Arbitrator meets the qualifications set forth above.

2.5 All proceedings to arbitrate Time Sensitive Disputes shall be conducted in Glendale, Arizona.

2.6 Presentation, request for determination (*i.e.*, a party's prayer), and the Emergency Arbitrators decision will adhere to the procedures required in Section 3.6 of this Exhibit.

2.7 The finding of the Emergency Arbitrator with respect to any Time Sensitive Dispute will be binding upon the parties on an interim basis during progress of the Services, subject to review *de novo* by arbitration after the Project Substantial Completion Date.

2.8 The time and extent of discovery will be as determined by the Emergency Arbitrator.

(A) Discovery orders of the Emergency Arbitrator will consider the time sensitivity of the matter and the parties desire to resolve the issue in the most time and costs efficient manner;

(B) The parties are obligated to cooperate fully and completely in the provision of documents and other information, including joint interviews of individuals with knowledge such that the matter moves toward resolution in the most time and costs efficient manner and the Emergency Arbitrator is empowered to fashion any equitable penalty against a party that fail to meet this obligation.

3. Non-Emergency Arbitration.

3.1 Except as provided in Section 5 of this Exhibit, any Dispute that is either a non-emergency Dispute that has not been resolved by negotiation, or a *de novo* review of an AAA emergency arbitration will be decided by binding arbitration by a panel of three arbitrators in accordance with, but not necessarily administered by, the Construction Industry Rules of the AAA.

(A) The parties shall each select an arbitrator within 15 days after notice that a party desires to resolve a dispute by arbitration.

(B) The two arbitrators shall then each select a third arbitrator. If an arbitrator is not selected within any such 15 day period, then the arbitrator shall be appointed by the AAA.

3.2 The arbitrator(s) shall meet the qualifications of Emergency Arbitrators as provided in Section 2 of this Exhibit.

3.3 The arbitrators do not have the authority to consider or award punitive damages as part of the arbitrators' award.

3.4 In connection with such arbitration, each party shall be entitled to conduct up to five depositions, and, no less than 90 days prior to the date of the arbitration hearing, each party shall deliver to the other party copies of all documents in the delivering party's possession that are relevant to the dispute.

3.5 The arbitration hearing shall be held within 150 days of the appointment of the arbitrators.

3.6 At the arbitration hearing, each party will argue its position to the arbitrators in support of one proposed resolution to the dispute (a "Proposed Resolution").

(A) Each party's Proposed Resolution must be fully dispositive of the dispute.

(B) The arbitrators must select one Proposed Resolution by majority consent and are not free to fashion any alternative resolutions.

(C) The parties must submit their proposed resolution of the matter to the arbitrators and the other party 15 days prior to the date set for commencement of the arbitration proceeding.

(D) The decision of the arbitrators will be forwarded to the parties within 15 days after the conclusion of the arbitration hearing.

(E) The decision of the arbitration panel is final and binding on the parties and may be entered in any court of competent jurisdiction for the purpose of securing an enforceable judgment.

(F) All costs and expenses associated with the arbitration, including the reasonable legal fees and costs incurred by the prevailing party, must be paid by the party whose position was not selected by the arbitrators.

4. **Continuing Work.** Unless otherwise agreed to in writing, CMAR must continue to perform and maintain progress of the Work during any Dispute Resolution or arbitration proceedings, and City will continue to make payment to CMAR in accordance with the Agreement.

5. **Exceptions.**

5.1 Neither City nor CMAR are required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defenses in any action that is commenced by a third-party who is not obligated by contract to arbitrate disputes with City and CMAR.

5.2 City or CMAR 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.

5.3 This Exhibit does not apply to, and may not be construed to require arbitration of, any claims, actions or other process undertaken, filed, or issued by the City of Glendale Building Safety Department, Code Compliance Department, Police Department, Fire Department, or any other agency of City acting in its governmental permitting, for the benefit of public health, safety, and welfare, or other regulatory capacity.

5.4 In connection with any arbitration, the arbitrators do not have the authority to, and may not enforce, any provision of the Federal or Arizona Rules of Civil Procedure.

File #: 16-304, **Version:** 1

AUTHORIZATION TO RENEW FY 2016/17 PROPERTY, LIABILITY AND WORKERS' COMPENSATION INSURANCE
Staff Contact: Jim Brown, Director, Human Resources and Risk Management

Purpose and Recommended Action

This is a request for City Council to authorize staff to purchase property, liability and workers' compensation insurance and/or self-insurance for FY 2016-17 in an amount not to exceed $1,415,607.

Background

City of Glendale Ordinance, Chapter 2, Administration, Article 5. Financial Affairs, Division 5. Risk Management Trust Fund, Section 2-207 Insurance provides that "The city risk manager, acting for the city manager, is authorized to enter into, on behalf of the city, any appropriate commercial insurance, alternative risk financing and surety bonding contracts to provide such risk insurance as determined to be in the best interests of the city". Our Risk Manager has been working with Alliant Insurance, our broker, who has been placing insurance for cities for over 25 years. Their insurance placements include all lines of coverage placed through a proprietary group purchase program for public entities across the United States. Placement is underwritten and priced on a group basis without sharing the risks of the entire group.

Analysis

Alliant obtained quotations for property including auto physical damage, cyber/privacy coverage, pollution coverage, crime, excess liability, airport liability, fiduciary liability and a special liability policy for Glendale Regional Public Safety Training Center (GRPSTC). The quotes are based upon the same terms and conditions but with some deductible changes and some enhanced coverage. The not-to-exceed cost to purchase the insurance for FY 2016-17 is **$1,415,607**. The expiring premium was $1,277,995. Attached is the Renewal Projections spreadsheet that lists each type of coverage, the expiring costs and the estimated renewal costs. Also included is the renewal marketing report detailing the marketing completed on this renewal.

Property Insurance

The policy provides coverage for all buildings and contents including boiler and machinery, city automobiles, cyber/privacy and pollution with varying deductibles. Our "all risk" deductible on property is $100,000, except for flood which is $500,000, automobile physical damage is $25,000 and unscheduled property (tunnels, bridges, dam's roads, streets, sidewalks, traffic signals, etc.) is $500,000. A summary of the limits and coverage's is attached.

The property coverage also provides limited coverage for pollution liability for all above and underground storage tanks, seepage and contamination, cost of clean-up for pollution and mold for NEW conditions found.

Our current coverage for underground storage tanks is self-insured up to $750,000 and is excess any other insurance. This coverage does not meet the financial assurance requirements of ADEQ since we self-insure the first $750,000. Our current policy does not provide coverage for *existing* asbestos and lead based paint.

We have had some significant property losses in the past five years. The final quote for property insurance for FY 2016/17 is **$373,105** compared to $363,408 for the prior FY. The city's total insured property **values** are $767,428,311 which is a 2.66%% increase from the prior year due to a slight increase in property values. The property insurance program provides $1,000,000,000 in property damage limits. The rate per each $100 in property values slightly increased to 0.0486175 (from 0.0474157) or 2.53%. The property market has been soft this year with underwriters willing to provide decreases based on the lack of catastrophe losses. For insureds, like us, who have had a number of large property losses in the past couple of years, we are seeing a slight increase in our rate. These losses are:

- 10/19/09 fire residential housing $248,748
- 10/5/10 hail loss $1,054,903
- 7/13/14 vehicle fire $28,196
- 7/13/14 fire in Old Station 151 (Resource Center) $511,000
- 9/8/14 flood/storm $1,350,000

Attached is the property premium year over year history for comparison. The rate had started to decrease but we were hit with three losses in one year. The increase in rate last year was just over 11% while this year the increase is slightly over 2%. The rate is still very competitive.

The carrier did provide some coverage enhancements. The automatic acquisition time limit to report new property purchased in excess of $100,000,000 went up from 90 days to 120 days, the increased cost of construction sub-limit increased from $25,000,000 to $50,000,000, excess terrorism limit increased to $600,000,000 from $400,000,000, removed the exclusion for contamination when caused or resulting from a loss, added coverage for damage to artificial turf and some other minor changes.

The property coverage includes coverage for cyber liability as part of the property policy with no additional cost to the insured. There is coverage for $2 million in limits that include all services related to a data breach with a sublimit up to $1 million for privacy notification costs with a $100,000 deductible. The cyber program has an aggregate of $25,000,000 for all claims made against the policy. One large loss or multiple losses in one year by the pooling group could use up the total aggregate limit of insurance.

We asked Alliant to provide an option to purchase enhanced cyber liability that would provide broader coverage including an option that offers dedicated coverage for notification costs not subject to the $25,000,000 program aggregate and a lower deductible. In the last few years, there has been a noted increase in the number of cyber-attacks. The increased coverages and services available include:

- Separating breach notification costs from the dollar limit and specifying the number of covered notifications - notifications do not erode the aggregate limit of the primary policy.
- Dedicated Breach Response Team
- Lower deductibles for privacy notification services. We have determined we have approximately

250,000 individuals that would need to be notified in the event of a breach.
- Separate, standalone limits for legal, forensics, crisis management or public relations firms
- No monetary cap for credit monitoring and call center services
- Extensive risk management resources available for your organizations' stakeholders (legal, IT, risk, compliance, etc.)
- The deductible for notification/breach resolution and mitigation services is 100 notified individuals (Individual cost approximately $295 or $29,500)

The cost of the enhanced coverage is based upon the City's total operating budget proposed for FY 2016/17 estimate at $388.9M. The estimated cost of the enhanced coverage is **$24,000**. The majority of the cost of claims for cyber-attacks involves the cost to notify the individuals affected and monitoring their credit. The deductible is reduced from $100,000 per occurrence to kick in after 100 individuals have been notified. The average cost of notification is $295. The deductible would be reduced to approximately $29,500. We would recommend purchasing the enhanced coverage due to the increased coverage enhancements and reduction in coverage. A summary of the enhanced cyber coverage is attached.

The city purchases crime insurance which provides protection for the city's money and securities up to $10,000,000 in limits. The quote for FY 2016-17 remained flat and is the same as the expiring premium at **$28,523**. The city purchases a fiduciary liability policy which covers the Deferred Compensation Plan/Deferred Compensation Committee with $5,000,000 limits with a $5,000 deductible. The quote for fiduciary liability is also flat and remained the same as expiring at **$12,221**. The city purchases a public employees blanket bond (required by ordinance) which covers the Risk Management and Workers' Compensation Trust Fund board with limits to $10,000. The policy cost **$180**, same as the expiring policy.

We are recommending renewing with Alliant's Property Insurance Program as detailed above, including the extended excess cyber liability not to exceed **$437,849**.

Excess Liability

The city's excess liability insurance provides coverage on an occurrence basis including bodily injury, property damage liability, errors and omissions liability, employment practices liability, employee benefit liability, wrongful act or employee benefits wrongful act and products and completed operations hazard. The city purchases a total of $50,000,000 in limits. The city has a $1,000,000 self-insured retention (large deductible). The FY 2016-17 quote is **$746,471** compared to $656,917 last FY. The expiring policy provided coverage for terrorism up to a $50M limit. All coverage's expected to remain the same. Alliant is marketing this program.

The coverage is currently insured in three layers, $10M by Alliant's Municipal Liability program (ANML) (underwritten by Technology Insurance Co.), $15M (excess the first $10M) by Navigators and $25M (excess the first $10M and second $15M) by Arch Insurance Co. The quotes provided are not to exceed numbers. We expect final, firm quotes in mid-June. All increases are actuarial driven. The excess underwriters hired a new actuarial firm this year and they are being very conservative. Alliant went to the markets to obtain alternative quotes. Out of the nine carriers marketed, eight declined to quote and one, Lloyds of London was not willing to provide coverage as broad as we currently have under ANML. The not to exceed quote to renew the excess liability coverage is **$746,471**.

The city purchases a separate airport owners and operators general liability policy with $20,000,000 in limits on an occurrence basis including bodily injury and property damage liability, products and completed operations, personal injury and advertising injury, hangar keepers, non-owned aircraft liability, and fire damage liability. This policy is needed to provide coverage for the airport operations hazards which are not covered in the excess liability policy. There is no self-insured retention and no deductible. The carrier held the premium at **$7,800**, which is the same as last year.

The city also purchases a small liability insurance policy to protect the Glendale Regional Public Safety Training Center (GRPSTC) with $2,000,000 in limits and a $5,000 deductible. This policy is required to meet our financing obligations. We are currently marketing this coverage and expect a small increase. The not to exceed quote is **$5,210** and the expiring is $4,962. This coverage does not renew until 9/29/2016.

We are recommending renewal of the liability program, as detailed above not to exceed $759,481.

The property and liability insurance premiums are paid from the Risk Management Trust Fund. For all the coverage's described above, the total not to exceed premium is **$1,192,330** and the amount is included in the budget being proposed to City Council. Last FY total premium was $1,277,995, an estimated increase of $123,499 over last year.

Excess Workers' Compensation

The city purchases statutory excess workers' compensation with an $800,000 SIR and employer's liability insurance with $2,000,000 limits. There are only a handful of carriers that will underwrite public entity workers' compensation programs. The current carrier, Safety National has provided a rate of 0.188 per $100 of payroll and will guarantee that rate for two years, billed annually, with some caveats as follows:

- The SIR, limits and coverage will remain as expiring.
- No significant change in exposure (meaning a 15% change)
- No significant change in business development or non-core business
- No material adverse change in financial condition
- No new individual loss that will exceed 50% of the SIR ($400,000)
- No development of existing claims greater than 50% of the SIR ($400,000)
- If any of the above occurs, then they will re-rate the policy and it will be subject to a rate increase

Services included in the current rate are: Safety Essentials on-line training, Best Doctors Catcare, Ask Best Doctors program which provide in-depth case review by world renowned doctors and $5,000 worth of loss control safety inspections. We are still working with Safety National on finalizing the proposed premiums and to see what additional reductions or enhanced coverage can be provided.

Risk Management recommends placing the coverage with Safety National including the two year rate guarantee. The workers' compensation insurance premiums are paid from the Workers' Compensation Trust Fund. The total cost of renewing the excess workers' compensation and employer's liability insurance shall not exceed **$218,277.** This amount is included in the current FY 2016/17 budget being proposed to City Council.

On June 8, 2016, the Risk Management and Workers' Compensation Trust Fund Boards met. The Board is recommending that City Council approve the property, liability and workers' compensation coverage's and limits not to exceed **$1,415,607.**

Previous Related Council Action

The City Council approved renewal of the property, liability and workers' compensation insurance renewal for FY 2015/14 at the May 26, 2015.

Budget and Financial Impacts

The FY 2016/17 budgeted amount for all insurance/self-insurance as described above is included in the budget proposed to Council. Risk Management recommends purchasing property, liability and workers' compensation insurance and/or self-insurance for FY 2016/17 not to exceed $1,415,607.

Cost	Fund-Department-Account
$1,192,330	Risk Management Trust Fund, HR - 2540-18010-518200
$218,277	Workers' Compensation Trust Fund, HR - 2560-18110-518200

Capital Expense? No

Budgeted? Yes

City of Glendale, AZ
2016-2017 Renewal Projections

Lines of Coverage	Renewal Date	Carrier	2015/2016 Program Cost (Annual)	Estimated % Change	2016/2017 Estimated Cost	Actual	Actual % of Change	Notes
Property	7/1/2016	APIP	$363,407.73	2.66%	$373,105	$373,104.86	2.66%	TIV Increase of .13% - Renewal TIV $767,428,311 Rate Increase of 2.53% Final Renewal Premium
Excess Workers' Compensation	7/1/2016	Safety National	$204,164	6.91%	$218,277	$218,277	0.00%	Payroll Increase of 5.11% Rate Increase of 1.72% Final Renewal Premium
Excess Liability	7/1/2016	ANML Endurance Starr Indemnity & Liability-3 layers	$656,917	13.63%	$746,471			Payroll Increase of .940% Rate Increase of 12.681% Not to Exceed Premiums
Liability Regional Public Safety Training Center	9/29/2016	SLIP	$4,962	5.00%	$5,210			Projection, renewal is on 9-29-16
Aiport Liability (3 Year)	1/26/2017	ACE Property and Casualty Insurance Company	$7,800	0.00%	$7,800	$7,800	0.00%	Three year policy paid annually 2017 will be second year
Crime	7/1/2016	National Union Fire Insurance Company	$28,523	0.00%	$28,523	$28,523	0.00%	Employee Count is flat year over year 2016/17 Employee Count 2,457 Final Renewal Premium
Fiduciary Liability	7/1/2016	RLI Insurance Company	$12,221	0.00%	$12,221	$12,221	0.00%	Final Renewal Premium
Excess Cyber	7/1/2016	Beazley	$0	100.00%	$24,000			Excess Cyber Indication - Subject to Underwriting Based on 2015 Gross Revenues of $418,533,000 250,000 Notified Individuals
		Total:	**$1,277,995**	**10.77%**	**$1,415,607**	**$639,926**		

Disclaimer

This not to exceed renewal premium sheet is provided as a matter of convenience and information only. All inofrmation included in this sheet, including but not limited to persaonl and real property values, locations, operations, products, data, automotbile schedules, financial data and loss experience, is based on facts and representations supplied to Alliant Insurance Services, Inc., by you. This proposal does not reflect any independent study or investigation by Alliant Insurance Services, Inc., or it's agents or employees.

Alliant

City of Glendale, AZ
2016-2017 Renewal Projections

City of Glendale, AZ
2016/17 Renewal Marketing Report

Marketing to Program Underwriters

Alliant is dedicated to providing the most viable insurance coverage to City of Glendale, AZ. Below is an outline of our marketing efforts for the 2016-17 policy period

Expiring Coverage – Property

APIP

A.M. Best Rating:
A (Excellent)/Financial Size Category XV ($2 Billion or greater)

Increase account rate by 2.53% due to loss history. Renewal account rate of .0486. Estimated annual premium is $373,104.86.

Marketed Carriers

Liberty Mutual

A.M. Best Rating:
A (Excellent)/Financial Size Category XV ($2 Billion or greater)

Declined to quote, not competitive

Travelers Insurance Company

A.M. Best Rating:
A++ (Superior)/Financial Size Category XV ($2 Billion or greater)

Rate indication of .05 with an estimate premium of $383,714.15. Terms and conditions not as broad as APIP. Does not include pollution or cyber within the premium estimate. Premium would be higher to include pollution and cyber.

Expiring Coverage – Excess Workers' Compensation

Safety National

A.M. Best Rating:
A+ (Excellent)/Financial Size Category XIII ($1.25 Billion to $1.5 Billion)

The exposure is 5.11% higher, the rate is 1.72% higher and the premium is 6.19% higher than last year. Estimated annual premium is $218,277.

Safety has provide an option for a two year term with a rate guarantee and no SIR change. Premium is payable for this option annually. Safety has also provided $5,000 in loss control fund, which can be rolled over into the second year.

Marketed Carriers

Midwest

A.M. Best Rating:
A+ (Excellent)/Financial Size Category XV ($2 Billion or greater)

Declined to quote, not competitive, can only do $1M SIR or higher.

NY Magic

A.M. Best Rating:
A (Excellent)/Financial Size Category IX (250 Million to $500 Million)

Declined to quote, not competitive - minimum SIR would be $1,000,000 except for $1,500,000 for presumptive claims and pricing is more than double the expiring.

Arch

A.M. Best Rating:
A+ (Excellent)/Financial Size Category XV ($2 Billion or greater)

Declined to quote, not competitive – can't get close to the renewal premium and rate.

US Specialty Underwriters

A.M. Best Rating:
A+ (Excellent)/Financial Size Category XIV ($1.50 Billion to $2 Billion)

Declined to quote, not competitive

Expiring Coverage – Excess Liability

ANML

A.M. Best Rating:
A (Excellent)/Financial Size Category IX (250 Million to $500 Million)

Increase premium by 10% for the first layer and a 3.75% decrease for the second and third layers. Program renewal premium is $691,217.01 for a total increase of 5.22% from last year.

Marketed Carriers

CV Starr Indemnity & Liability Company

A.M. Best Rating:
A (Excellent)/Financial Size Category XIV ($1.50 Billion to $2 Billion)

Current Player on the OEL and non renewing, Layer will need to be replaced.

ARCH

A.M. Best Rating:
A+ (Superior)/Financial Size Category XV ($2 Billion or Greator)

Current Player on the OEL and pending quotes for 2nd and 3rd layers. Not to exceed of 15% on either layer – working to negotiate this down to 12% similar to primary layer. Only can provide capacity for one layer.

Responses from other carriers:

AIG – Risk Specialists	Waiting response
AXIS	Waiting response
Berkley National Insurance Company	Waiting response
Britt Insurance	Declined, Cannot compete with current pricing – Primary Layer
Berkeley Custom Ins. Managers	Waiting response
American Public Risk – AWAC Paper	Quoted third layer - $121,000 – plus taxes and fees
Catlin	Declined, Risk does not fit within the carrier's appetite
Chubb – ACE Public Entity	Waiting response
Civic Risk – National Casualty	Declined, Cannot compete on pricing or terms
Euclid	Waiting response
Genesis	Declined, Cannot compete with current pricing
General Star	Declined, Risk does not fit within the carrier's appetite
Midlands – Markel Paper	Declined, Carrier in not approved in AZ as of today
Munich Reinsurance American Risk	Waiting response
Old Republic Specialty	Declined, Cannot compete with current pricing
One Beacon	Declined, Cannot compete with current pricing
Protected Self-Insurance (AIX Specialty)	Declined, Cannot compete with current pricing
Trident Risk Solutions (Argonaut)	Waiting response
Travelers	Waiting response

Expiring Coverage – Crime

ACIP Crime

A.M. Best Rating:
A (Excellent)/Financial Size Category 15, greater than $2 Billion

Flat – Renewal Premium $28,523.

Marketed Carriers

Great American

A.M. Best Rating:
A (Superior)/Financial Size Category XIII ($1.25 Billion to $1.5 Billion)

Declined, cannot compete with terms or conditions. Faithful Performance maximum limit is $1M and the minimum SIR is $100k.

Zurich

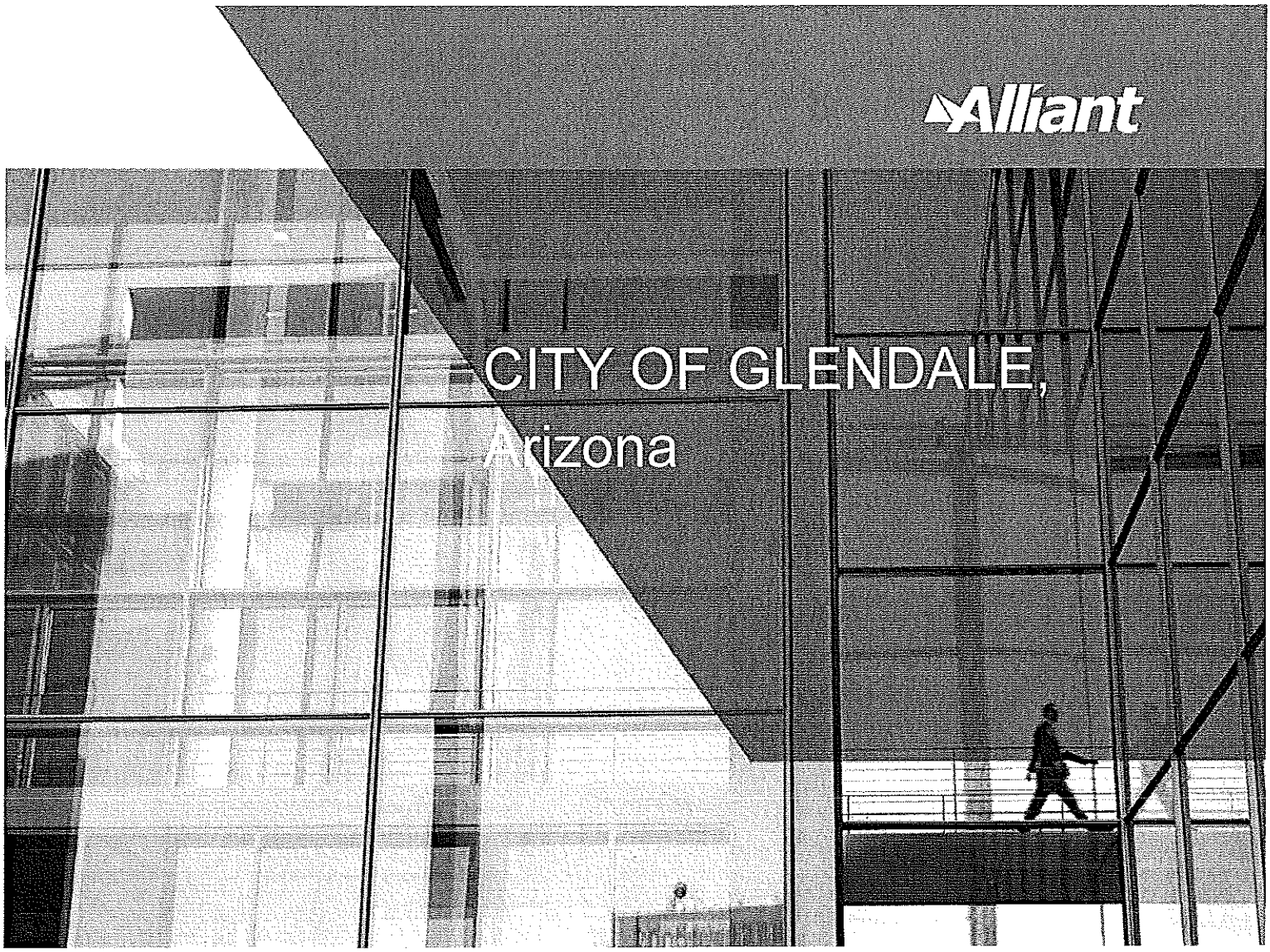
A.M. Best Rating:
A (Superior) A (Excellent)/Financial Size Category XIV ($1.50 Billion to $2 Billion)

Declined, cannot compete on pricing, terms or conditions.

Hartford

A.M. Best Rating:
A (Excellent)/Financial Size Category XIV ($2 Billion or greater)

Declined - Not a market for large public entities. Pricing is aggressive with current program.



2016 – 2017

Alliant Property Insurance Programs (APIP)

Presented on May 26, 2016 by:

Chris M. Tobin, ARM-P
Senior Vice President

Pamela Dominguez
Vice President

Banesa Laird,
Account Executive

Patricia Guisler
Account Manager

ALLIANT PROPERTY INSURANCE PROGRAM (APIP)
July 1, 2016 – July 1, 2017
EXECUTIVE SUMMARY

We are pleased to provide the 2016-2017 Alliant Property Insurance Program (APIP) renewal material, attached.

The property market has been in a soft cycle for the last few years with underwriters willing to provide decreases based on the lack of catastrophe losses worldwide and record capacity available in the marketplace. While physical and human catastrophes abound, in recent years most of these have occurred in regions of the world that are not significantly insured. Therefore, for the 2016-2017 renewal, most insureds will see rate decreases over expiring rates. However, for those insureds that have either experienced significant losses or consistent attritional losses, rates may increase. In keeping with the programs' general history, we expect rates to remain below what can be achieved in the market for similar coverage.

The primary $2,500,000 layer will continue to be placed with our long-term partner, Lexington Insurance Company, A.M. Best Rated A XV. Lexington will also continue to provide the majority of capacity in the $22,500,000 x/s $2,500,000 layer, sharing that with Lloyd's of London, A.M. Best Rated A XV. Excess limits up to $1,000,000,000 will be placed with London, Bermudian, European, and U.S domestic markets, all A.M. Best Rated at least of A- VII. Members should note several key highlights for this year's renewal:

- Boiler & Machinery cover for participating members of the APIP Boiler Program will be maintained with Hartford Steam Boiler (HSB), who will also continue to perform jurisdictionals and inspections
- Cyber (Privacy Liability) Coverage for both 1st and 3rd parties from the Beazley Syndicate at Lloyd's, A.M. Best Rated A XV, (for those eligible insureds) with coverage as outlined on the following proposal will be maintained.
- Pollution Coverage for both 1st and 3rd parties from Illinois Union Insurance Company, A.M. Best Rated A++ XV, (for those eligible insureds) with coverage as outlined on the following proposal will be maintained.

Alliant Business Services (ABS) will continue to play a significant role not only in providing various types of loss control services, but also in providing appraisal services. For the 2016-2017 policy year, property valuations will continue to be a key focus. As a reminder, it is underwriters' intent to have all buildings with a scheduled value of $5,000,000 or more appraised once every five years. This service is included in the total annual cost. Insureds may also choose to have lower valued buildings appraised. The cost to have all or specific buildings appraised between $25,000 and $5,000,000 will be quoted at the time the request is made.

Our Disclosures and Loss Notification information are now combined into one section of the renewal materials. Your review and acknowledgement of these documents are required with your signature once you authorize a request to bind coverage with your Alliant representative.

The following table depicts key statistics relative to last year:

Year-over-Year Rate and Premium Comparison

CITY OF GLENDALE, Arizona	2015-2016 (at 11/15/2015)	2016-2017	Variance
Total Insured Values:	$ 766,428,811	$ 767,428,811	0.13%
Account Rate (per hundred dollars):	0.0474157	0.0486175	2.53%
Earthquake TIV:	$ 766,428,811	$ 767,428,811	0.13%
Earthquake Limit:	$ 100,000,000	$ 100,000,000	0.00%
*Total Annual Cost:	$ 363,407.73	$ 373,104.86	2.66%

* TOTAL COST includes: all premiums (except Cyber Enhancement option, if purchased), underwriting fees, commissions, loss control expenses, program administration charges, and applicable taxes

Thank you for your continued support of APIP. We look forward to working with you this next year. Please let us know if you have any questions about your renewal.

Below are coverage items currently being negotiated with the APIP markets to be effective on 7/1/2016.

Coverage	2015-2016	Proposed 2016-2017 Changes	Status
Automatic Acquisition Sub-limit	$25,000,000 Automatic Acquisition up to $100,000,000 or a Named Insured's Policy Limit of Liability if less than $100,000,000 for 90 days excluding licensed vehicles for which a sub-limit of $10,000,000 applies per policy Automatic Acquisition and Reporting Condition. Additionally a sub-limit of $2,500,000 applies for Tier 1 Wind Counties, Parishes and Independent Cities for 60 days for the states of Virginia, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Louisiana, Texas and/or situated anywhere within the states of Florida and Hawaii. The peril of EQ is excluded for the states of Alaska and California. If Flood coverage is purchased for all scheduled locations, this extension will extend to include Flood coverage for any location not situated in Flood Zones A or V.	$25,000,000 Automatic Acquisition up to $100,000,000 or a Named Insured's Policy Limit of Liability if less than $100,000,000 for 120 days excluding licensed vehicles for which a sub-limit of $10,000,000 applies per policy Automatic Acquisition and Reporting Condition. Additionally a sub-limit of $2,500,000 applies for Tier 1 Wind Counties, Parishes and Independent Cities for 60 days for the states of Virginia, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Louisiana, Texas and/or situated anywhere within the states of Florida and Hawaii. The peril of EQ is excluded for the states of Alaska and California. If Flood coverage is purchased for all scheduled locations, this extension will extend to include Flood coverage for any location not situated in Flood Zones A or V.	Enhancement Pending Marketing Approval
Increase Cost of Construction Sub-limit	$25,000,000	$50,000,000	Enhancement Pending Marketing Approval
Earthquake Deductible description	Earthquake Shock: If the stated deductible is a flat dollar amount, the deductible will apply on a Per Occurrence basis, unless otherwise stated. If the stated deductible is on a percentage basis, the deductible will apply Per Occurrence on a Per Unit basis, as defined in the policy form, subject to the stated minimum.	Earthquake Shock: If the stated deductible is a flat dollar amount, the deductible will apply on a Per Occurrence basis, unless otherwise stated. If the stated deductible is on a percentage basis, the deductible will apply Per Occurrence on a Per Unit basis, as defined in the policy form; subject to the ~~stated~~ minimum deductible per occurrence.	Clarification Pending Market Approval
Cyber Claims Reporting by:	Telephone: (646) 943-5900 Email: tmbclaims@beazley.com	Telephone number is active, but the preferred method to report a claim is via Email: tmbclaims@beazley.com	Clarification Pending Market Approval

Coverage	2015-2016	Proposed 2016-2017 Changes	Status
JPA/Pool per Occurrence Deductible:	Per Occurrence for each and every loss before exhaustion of the Annual Aggregate Pool Deductible amount unless a more specific deductible is applicable to a loss as noted in the Deductibles for Specific Perils and Coverages or Special Terms section below.	Incorporated wording from Master Policy Form into description: JPA/Pool Basic Deductible – when applicable will be in excess of a JPA or Pool member's deductible amount unless a more specific deductible is applicable to a loss as noted in the Deductibles for Specific Perils and Coverages or Special Terms section below. The Named Insured(s) deductible amount will be agreed upon between the JPA or Pool and its members. The "JPA/Pool Basic Deductible" shown here, shall apply per occurrence. The company will not pay for loss or damage in any one occurrence until the amount of the loss or damage exceeds the applicable constituent members' deductible and the "JPA/Pool Basic Deductible", until the "JPA/Pool Annual Aggregate Amount" is exhausted.	Clarification Pending Market Approval
JPA/Pool Annual Aggregate Deductible:	Annual Aggregate Pool Deductible	Incorporated wording from Master Policy Form into description: The "JPA/Pool Annual Aggregate Amount" - when applicable is the accumulation of payments made by the JPA or Pool that are categorized as "JPA/Pool Basic Deductibles" above. Once the annual aggregate amount is reached, all subsequent losses in chronological order are subject to the "JPA/Pool Maintenance Deductible" indicated below.	Clarification Pending Market Approval
JPA/Pool Maintenance Deductible	Pool Maintenance Deductible applicable to each occurrence after the Annual Aggregate Deductible is reached. The specific deductibles for Flood, Earthquake and Wind will always apply to losses caused by those perils regardless if it is greater or less than the Pool Maintenance Deductible. The maintenance deductible does not apply to those items listed in the Deductibles for Specific Perils and Coverages or Special Terms & Conditions section below if those perils do not erode the annual aggregate deductible.	Pool Maintenance Deductible applicable to each occurrence after the Annual Aggregate Deductible is reached. As with the "JPA/Pool Basic Deductible" this maintenance deductible will be applicable in excess of the applicable JPA or Pool constituent member's deductible. The specific deductibles for Flood, Earthquake and Wind will always apply to losses caused by those perils regardless if it is greater or less than the Pool Maintenance Deductible. The maintenance deductible does not apply to those items listed in the Deductibles for Specific Perils and Coverages or Special Terms & Conditions section below if those perils do not erode the annual aggregate deductible.	Clarification Pending Market Approval
Pollution Liability Coverage	Not Applicable	Addition of Lead Contaminated Water Exclusion: "Loss" arising out of or related to "pollution conditions" involving, in whole or in part, lead within potable water, regardless of whether any such "pollution conditions" have otherwise been affirmatively disclosed to the Insurer in an Application for coverage pursuant to this Policy.	Update

Coverage	2015-2016	Proposed 2016-2017 Changes	Status
Excess Terrorism	$400,000,000 Per Member/Entity for Terrorism (Excess Layer) subject to: $900,000,000 Per Occurrence, All Named Insureds combined in Declarations 1-9, 11-14, 18-22, 25-30 and 32-34 for Terrorism (Excess Layer) subject to; $1,500,000,000 Annual Aggregate shared by all Named Insureds combined in Declarations 1-9, 11-14, 18-22, 25-30 and 32-34, as respects Property Damage, Business Interruption, Rental Income and Extra Expense combined for Terrorism (Excess Layer)	$**600,000,000** Per Member/Entity for Terrorism (Excess Layer) subject to: $**1,100,000,000** Per Occurrence, All Named Insureds combined in Declarations 1-9, 11-14, 18-22, 25-30 and 32-34 for Terrorism (Excess Layer) subject to; $1,500,000,000 Annual Aggregate shared by all Named Insureds combined in Declarations 1-9, 11-14, 18-22, 25-30 and 32-34, as respects Property Damage, Business Interruption, Rental Income and Extra Expense combined for Terrorism ~~(Excess Layer)~~	Enhancement Pending Marketing Approval

Master Policy Form Wording

Policy Term	July 1, 2015 to July 1, 2016	July 1, 2016 to July 1,2017	Renewal item
Section I, G. 6.	Library Book table	Updated library book values per U.S. inflation calculator	Update
Section II, B., 1. Ingress / Egress	This Policy is extended to insure the actual loss sustained during the period of time not exceeding 30 days when, as a direct result of physical loss or damage caused by a covered peril(s) specified by this Policy and occurring at property located within a 10 mile radius of covered property, ingress to or egress from the covered property covered by this Policy is prevented. Coverage under this extension is subject to a 24-hour waiting period.	This Policy is extended to insure the actual loss sustained during the period of time not exceeding 30 days when, as a direct result of physical loss or damage caused by a covered peril(s) specified by this Policy and occurring at property located within a **20 mile radius** of covered property, ingress to or egress from the covered property covered by this Policy is prevented. Coverage under this extension is subject to a 24-hour waiting period.	Enhancement Pending Marketing Approval
Section II. B. 2. Interruption by Civil Authority	This Policy is extended to include the actual loss sustained by the Named Insured, as covered hereunder during the length of time, not exceeding 30 days, when as a direct result of damage to or destruction of property by a covered peril(s) occurring at property located within a 10 mile radius of covered property, access to the covered property is specifically prohibited by order of a civil authority. Coverage under this extension is subject to a 24-hour waiting period.	This Policy is extended to include the actual loss sustained by the Named Insured, as covered hereunder during the length of time, not exceeding 30 days, when as a direct result of damage to or destruction of property by a covered peril(s) occurring at property located within a **20 mile radius** of covered property, access to the covered property is specifically prohibited by order of a civil authority. Coverage under this extension is subject to a 24-hour waiting period.	Enhancement Pending Marketing Approval
Section II, Item D. 7. Vehicle Replacement Valuation	Second paragraph: If the values, provided by the Named Insured, provides a valuation based on replacement cost, then recovery will be on the same basis, if replaced. If not replaced, the basis of recovery shall be actual cash value.	Second paragraph change only: If the values, provided by the Named Insured, provides a valuation based on Replacement Cost **(New),** then recovery will be on the same basis, if replaced. If not replaced, the basis of recovery shall be Actual Cash Value.	Clarification Pending Market Approval

Coverage	2015-2016	Proposed 2016-2017 Changes	Status
Section III, Item B. 4. Contingent Time Element Coverage	Business interruption, rental income, tuition income and extra expense coverage provided by this Policy is extended to cover loss directly resulting from physical damage to property of the type not otherwise excluded by this Policy at direct supplier or direct customer locations (whether such location is owned by the Named Insured or not) that prevents a supplier of goods and/or services to the Named Insured from supplying such goods and/or services, or that prevents a recipient of goods and/or services from the Named Insured from accepting such goods and/or services. The coverage provided by this clause separately as respects each of these coverage's is sub-limited to USD as per Declaration Page.	Deleted wording in parenthesis Business interruption, rental income, tuition income and extra expense coverage provided by this Policy is extended to cover loss directly resulting from physical damage to property of the type not otherwise excluded by this Policy at direct supplier or direct customer locations ~~(whether such location is owned by the Named Insured or not)~~ that prevents a supplier of goods and/or services to the Named Insured from supplying such goods and/or services, or that prevents a recipient of goods and/or services from the Named Insured from accepting such goods and/or services. The coverage provided by this clause separately as respects each of these coverage's is sub-limited to USD as per Declaration Page.	Clarification Pending Market Approval
Section IV, Exclusions 1.	Loss or damage caused by or resulting from moths, vermin, termites, or other insects, inherent vice, latent defect, faulty materials, error in design, faulty workmanship, wear, tear or gradual deterioration, contamination, rust, corrosion, wet or dry rot, unless physical loss or damage not otherwise excluded herein ensues and then only for such ensuing loss or damage.	Deleted "contamination" Loss or damage caused by or resulting from moths, vermin, termites, or other insects, inherent vice, latent defect, faulty materials, error in design, faulty workmanship, wear, tear or gradual deterioration, ~~contamination,~~ rust, corrosion, wet or dry rot, unless physical loss or damage not otherwise excluded herein ensues and then only for such ensuing loss or damage.	Clarification Pending Market Approval
Section IV, Exclusions 18.	Loss, damage, costs or expenses in connection with any kind or description of seepage and/or pollution and/or contamination, direct or indirect, arising from any cause whatsoever.	Loss, damage, costs or expenses in connection with any kind or description of seepage and/or pollution and/or contamination, direct or indirect, arising from any cause whatsoever. **Except as provided in Section II Property Damage, B. Extension of Coverage, 21. Accidental Contamination.**	Clarification Pending Market Approval
Section I, E., 2. Sub-limits g.	Unscheduled Landscaping, tees, sand traps, greens and athletic fields if specific values for such items have not been reported as part of the Named Insured(s) schedule of values held on file with Alliant Insurance Services, Inc.;	Unscheduled Landscaping, tees, sand traps, greens, athletic fields, **and artificial turf** if specific values for such items have not been reported as part of the Named Insured(s) schedule of values held on file with Alliant Insurance Services, Inc.;	Clarification Pending Market Approval
Section I, E., 2. Sub-limits h.	Scheduled Landscaping, tees, sand traps, greens, and athletic fields if specific values for such items have been reported as part of the Named Insured(s) schedule of values held on file with Alliant Insurance Services, Inc.;	Scheduled Landscaping, tees, sand traps, greens, athletic fields, **and artificial turf** if specific values for such items have been reported as part of the Named Insured(s) schedule of values held on file with Alliant Insurance Services, Inc.;	Clarification Pending Market Approval

Coverage	2015-2016	Proposed 2016-2017 Changes	Status
Section II, C. 3. Land	Land (including land on which covered property is located), and land values (except athletic fields, landscaping, sand traps, tees and greens).	Land (including land on which covered property is located), and land values (except athletic fields, landscaping, **artificial turf**, sand traps, tees and greens).	Clarification Pending Market Approval
Section II, D. 9. Landscaping	Landscaping, sand traps, tees, putting greens and athletic fields; the actual replacement cost of sod, shrubs, sand, plants and trees; however the Company's liability for replacement of trees, plants and shrubs will be limited to the actual size of the destroyed plant, tree or shrub at the time of the loss up to a maximum size of 25 gallons per item but not to exceed USD25,000 per item.	Landscaping, **artificial turf**, sand traps, tees, putting greens and athletic fields; the actual replacement cost of sod, shrubs, sand, plants and trees; however the Company's liability for replacement of trees, plants and shrubs will be limited to the actual size of the destroyed plant, tree or shrub at the time of the loss up to a maximum size of 25 gallons per item but not to exceed USD25,000 per item.	Clarification Pending Market Approval

ALLIANT INSURANCE SERVICES, INC.
ALLIANT PROPERTY INSURANCE PROGRAM (APIP)
PROPERTY PROPOSAL

TYPE OF INSURANCE: ☒ Insurance ☐ Reinsurance

NAMED INSURED: CITY OF GLENDALE, Arizona

DECLARATION: 2-Cities 2

POLICY PERIOD: July 1, 2016 to July 1, 2017

COMPANIES: See Attached List of Companies

TOTAL INSURED VALUES: $ 767,428,811 as of May 19, 2016

ALL RISK COVERAGES & LIMITS:

$ 1,000,000,000	Per Occurrence: all Perils, Coverages (subject to policy exclusions) and all Named Insureds (as defined in the policy) combined, per Declaration, regardless of the number of Named Insureds, coverages, extensions of coverage, or perils insured, subject to the following per occurrence and/or aggregate sub-limits as noted below.
$ 75,000,000	Flood Limit - Per Occurrence and in the Annual Aggregate (for those Named Insured(s) that purchase this optional dedicated coverage)
$ 7,500,000	Per Occurrence and in the Annual Aggregate for all locations in Flood Zones A & V (inclusive of all 100 year exposures). This Sub-limit does not increase the specific flood limit of liability for those Named Insured(s) that purchase this optional dedicated coverage.
$ 100,000,000	Earthquake Shock - Per Occurrence and in the Annual Aggregate (for those Named Insured(s) that purchase this optional dedicated coverage)
$ 100,000,000	Combined Business Interruption, Rental Income and Tax Revenue Interruption and Tuition Income (and related fees). However, if specific values for such coverage have not been reported as part of the Named Insured's schedule of values held on file with Alliant Insurance Services, Inc., this sub-limit amount is limited to $500,000 per Named Insured subject to maximum of $2,500,000 Per Occurrence for Business Interruption, Rental Income and Tuition Income combined, and $5,000,000 per occurrence for Tax Revenue Interruption. Coverage for power generating plants is excluded, unless otherwise specified.
$ 50,000,000	Extra Expense

ALL RISK COVERAGES & LIMITS: (continued)	$	25,000,000	Miscellaneous Unnamed Locations for existing Named Insured's Excluding Earthquake coverage for Alaska and California Named Insureds. If Flood coverage is purchased for all scheduled locations, this extension will extend to include Flood coverage for any location not situated in Flood Zones A or V.
		180 Days	Extended Period of Indemnity
		See Policy Provisions	$25,000,000 Automatic Acquisition up to $100,000,000 or a Named Insured's Policy Limit of Liability if less than $100,000,000 for 90 days excluding licensed vehicles for which a sub-limit of $10,000,000 applies per policy Automatic Acquisition and Reporting Condition. Additionally a sub-limit of $2,500,000 applies for Tier 1 Wind Counties, Parishes and Independent Cities for 60 days for the states of Virginia, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Louisiana, Texas and/or situated anywhere within the states of Florida and Hawaii. The peril of EQ is excluded for the states of Alaska and California. If Flood coverage is purchased for all scheduled locations, this extension will extend to include Flood coverage for any location not situated in Flood Zones A or V.
	$	1,000,000	Unscheduled Landscaping, tees, sand traps, greens and athletic fields and further subject to $25,000 / 25 gallon maximum per item
	$	5,000,000	or 110% of the scheduled values, whichever is greater, for Scheduled Landscaping, tees, sand traps, greens and athletic fields and further subject to $25,000 / 25 gallon maximum per item.
	$	50,000,000	Errors & Omissions - This extension does not increase any more specific limit stated elsewhere in this policy or Declarations.
	$	25,000,000	Course of Construction and Additions (including new) for projects with completed values not exceeding the sub-limit shown. Projects valued between $25,000,001 and $50,000,000 can be added for an additional premium with underwriting approval
	$	2,500,000	Money & Securities for named perils only as referenced within the policy
	$	2,500,000	Unscheduled Fine Arts
	$	250,000	Accidental Contamination per occurrence and annual aggregate per Named Insured with $500,000 annual aggregate for all Named Insureds per Declaration
ALL RISK COVERAGES & LIMITS: (continued)	$	2,000,000	Unscheduled Tunnels, Bridges, Dams, Catwalks (except those not for public use), Roadways, Highways, Streets, Sidewalks, Culverts, Street Lights and Traffic Signals unless a specific value has been declared (excluding coverage for the peril of Earthquake Shock, and excluding Federal Emergency Management Agency (FEMA) and/or Office of Emergency Services (OES) declared disasters, providing said declaration provides funding for repairs)

	$	25,000,000	Increased Cost of Construction due to the enforcement of building codes/ ordinance or law (includes All Risk and Boiler & Machinery)
	$	25,000,000	Transit
	$	2,500,000	Unscheduled Animals; not to exceed $50,000 per Animal, per Occurrence
	$	2,500,000	Unscheduled Watercraft up to 27 feet
		Included	Per Occurrence for Off Premises Vehicle Physical Damage
	$	25,000,000	Off Premises Services Interruption including Extra Expense resulting from a covered peril at non-owned/operated locations
	$	5,000,000	Per Occurrence Per Named Insured subject to an Annual Aggregate of $10,000,000 for Earthquake Shock on Licensed Vehicles, Unlicensed Vehicles, Contractor's Equipment and Fine Arts combined for all Named Insured(s) in this Declaration combined that do not purchase optional dedicated Earthquake Shock coverage, and/or where specific values for such items are not covered for optional dedicated Earthquake Shock coverage as part of the Named Insured's schedule of values held on file with Alliant Insurance Services, Inc.
	$	5,000,000	Per Occurrence Per Named Insured subject to an Annual Aggregate of $10,000,000 for Flood on Licensed Vehicles, Unlicensed Vehicles, Contractor's Equipment and Fine Arts combined for all Named Insured(s) in this Declaration combined that do not purchase optional dedicated Flood coverage, and/or where specific values for such items are not covered for optional dedicated Flood coverage as part of the Named Insured's schedule of values held on file with Alliant Insurance Services, Inc.
	$	3,000,000	Contingent Business Interruption, Contingent Extra Expense, Contingent Rental Values and Contingent Tuition Income separately
	$	500,000	Jewelry, Furs, Precious Metals and Precious Stones Separately
	$	1,000,000	Claims Preparation Expenses
	$	50,000,000	Expediting Expenses
	$	1,000,000	Personal Property Outside of the USA
ALL RISK COVERAGES & LIMITS: (continued)	$	100,000,000	Per Named Insured Per Occurrence subject to $200,000,000 Annual Aggregate of Declarations 1-14, 18-22, 25-30 and 32-34 combined as respects Property Damage, Business Interruption, Rental Income and Extra Expense Combined for Terrorism (Primary Layer)

	Not Covered		Per Named Insured for Terrorism (Excess Layer) subject to;
	Not Covered		Per Occurrence, All Named Insureds combined in Declarations 1-9, 11-14, 18-22, 25-30 and 32-34 for Terrorism (Excess Layer) subject to;
	Not Covered		Annual Aggregate shared by all Named Insureds combined in Declarations 1-9, 11-14, 18-22, 25-30 and 32-34, as respects Property Damage, Business Interruption, Rental Income and Extra Expense combined for Terrorism (Excess Layer)
	Not Covered		Per Occurrence Per Declaration Upgrade to Green Coverage subject to the lesser of, the cost of upgrade, an additional 25% of the applicable limit of liability shown in the schedule of values or this sub limit.
	Included		Information Security & Privacy Insurance with Electronic Media Liability Coverage. See Cyber Coverage Document for details of coverage terms, limits and deductibles
	Included		See Alliant Property Insurance Program (APIP) Pollution Liability Insurance Summary for applicable limits and deductibles

VALUATION:

- Repair or Replacement Cost
- Actual Loss Sustained for Time Element Coverages
- Contractor's Equipment / either Replacement Cost or Actual Cash Value (ACV) as declared by each member. If not declared, valuation will default to Actual Cash Value (ACV)

EXCLUSIONS (Including but not limited to):

- Seepage & Contamination
- Cost of Clean-up for Pollution
- Mold

Deductibles: If two or more deductible amounts provided in the Declaration Page apply for a single occurrence the total to be deducted shall not exceed the largest per occurrence deductible amount applicable. (The Deductible amounts set forth below apply Per Occurrence unless indicated otherwise).

"ALL RISK" DEDUCTIBLE:	$	100,000	Per Occurrence, which to apply in the event a more specific deductible is not applicable to a loss
DEDUCTIBLES FOR SPECIFIC PERILS AND COVERAGES:	$	250,000	All Flood Zones Per Occurrence excluding Flood Zones A & V
	$	500,000	Per Occurrence for Flood Zones A & V (inclusive of all 100 year exposures)

	$	100,000	Earthquake Shock: If the stated deductible is a flat dollar amount, the deductible will apply on a Per Occurrence basis, unless otherwise stated. If the stated deductible is on a percentage basis, the deductible will apply Per Occurrence on a Per Unit basis, as defined in the policy form, subject to the stated minimum.
DEDUCTIBLES FOR SPECIFIC PERILS AND COVERAGES: (continued)	$	1,000	Per Occurrence for Specially Trained Animals
	$	500,000	Per Occurrence for Unscheduled Tunnels, Bridges, Dams, Catwalks (except those not for public use), Roadways, Highways, Streets, Sidewalks, Culverts, Street Lights and Traffic Signals unless a specific value has been declared (excluding coverage for the peril of Earthquake Shock, and excluding Federal Emergency Management Agency (FEMA) and/or Office of Emergency Services (OES) declared disasters)
	$	10,000	Per Vehicle or Item for Licensed Vehicles, Unlicensed Vehicles and Contractor's Equipment subject to $100,000 Maximum Per Occurrence, Per Named Insured for the peril of Earthquake for Named Insured(s) who do not purchase dedicated Earthquake limits
	$	50,000	Per Occurrence Per Named Insured for this Declaration for Fine Arts for the peril of Earthquake for Named Insured(s) who do not purchase dedicated Earthquake limits
	$	10,000	Per Vehicle or Item for Licensed Vehicles, Unlicensed Vehicles and Contractor's Equipment subject to $100,000 Maximum Per Occurrence, Per Named Insured for the peril of Flood for Named Insured(s) who do not purchase dedicated Flood limits
	$	50,000	Per Occurrence Per Named Insured for this Declaration for Fine Arts for the peril of Flood for Named Insured(s) who do not purchase dedicated Flood limits
		24 Hour	Waiting Period for Service Interruption for All Perils and Coverages
		2.5%	of Annual Tax Revenue Value per Location for Tax Interruption
	$	25,000	Per Occurrence for Off Premises Vehicle Physical Damage. If Off-Premises coverage is included/purchased, the stated deductible will apply to vehicle physical damage both on and off-premises on a Per Occurrence basis, unless otherwise stated. If Off-Premises coverage is not included, On-Premises/In-Yard coverage is subject to the All Risk (Basic) deductible.
		Actual Cash Value	Vehicle Valuation Basis
	$	50,000	Per Occurrence for Contractor's Equipment
	$	100,000	Per Occurrence for Primary Terrorism

	Not Covered	Per Occurrence for Excess Terrorism (Applies only if the Primary Terrorism Limit is exhausted)
$	250,000	Per Occurrence for ISO CAT Losses (Excluding Flood and Earthquake) as defined by meeting the following trigger: ISO's Property Claims Service (PCS) declaration of a numbered catastrophic event
	Included	Information Security & Privacy Insurance with Electronic Media Liability Coverage. See Cyber Coverage Summary for details of coverage terms, limits and deductibles. (Cyber Liability)

SPECIAL TERMS 1: 'ISO CAT (as defined by meeting the following trigger: "ISO's Property Claims Service (PCS) declaration of a numbered catastrophic event.")

ISO CAT (excluding flood & earthquake) Losses	Special Terms Limit
$ 250,000	Special Terms Deductible

TERMS & CONDITIONS: 25% Minimum Earned Premium and cancellations subject to 10% penalty

Except Cyber Liability Premium is 30% Earned at Inception

Except Pollution Liability Premium is 100% Earned at Inception

NOTICE OF CANCELLATION: 90 Days except 10 Days for non-payment of premium

	Annual Cost*
Total Property Premium:	$ 344,107.00
Excess Boiler:	$ 8,920.00
ABS Fee:	$ 8,781.00
SLT&F's (Estimate)	$ 11,296.86
Broker Fee:	$ 0.00
TOTAL COST †: (Including Taxes and Fees)	$ 373,104.86

*Premiums are based on valid selectable options and the TIV's above. Changes in TIV's will require a premium adjustment.

† TOTAL COST includes: premiums, underwriting fees, commissions, loss control expenses, program administration charges, and applicable taxes (excluding the Cyber Enhancement premium - should you have elected to purchase this coverage)

PRINT DATE:	May 19, 2016
PROPOSAL VALID UNTIL:	July 1, 2016
BROKER:	**ALLIANT INSURANCE SERVICES, INC.** **License No.** 0C36861 Chris M. Tobin, ARM-P Senior Vice President Pamela Dominguez Vice President Banesa Laird Account Executive Patricia K. Guisler Account Manager

NOTES:

- ***Major pending and approved changes to the APIP Program are described in the Executive Summary.***
- ***Change in Total Insurable Values will result in adjustment in premium***
- ***Some coverage, sub-limits, terms and conditions could change until negotiations with the insurance carriers have been finalized***
- ***Coverage outlined in this Proposal is subject to the terms and conditions set forth in the policy. Please refer to Policy for specific terms, conditions and exclusions***

ALLIANT INSURANCE SERVICES, INC.
ALLIANT PROPERTY INSURANCE PROGRAM (APIP)
BOILER & MACHINERY PROPOSAL

NAMED INSURED:	CITY OF GLENDALE, Arizona
POLICY PERIOD:	July 1, 2016 to July 1, 2017
COMPANIES:	See Attached List of Companies
TOTAL INSURED VALUES:	$ 767,428,811 as of May 19, 2016
STATUS/RATING:	See Attached List of Companies

COVERAGES & LIMITS:

$	100,000,000	Boiler Explosion and Machinery Breakdown, (for those Named Insureds that purchase this optional dedicated coverage) as respects Combined Property Damage and Business Interruption/Extra Expense (Including Bond Revenue Interest Payments where Values Reported and excluding Business Interruption for power generating facilities unless otherwise specified). Limit includes loss adjustment agreement and electronic computer or electronic data processing equipment with the following sub-limits:
	Included	Jurisdictional and Inspections
$	10,000,000	Per Occurrence for Service/Utility/Off Premises Power Interruption
	Included	Per Occurrence for Consequential Damage/Perishable Goods/Spoilage
$	10,000,000	Per Occurrence for Electronic Data Processing Media and Data Restoration
$	2,000,000	Per Occurrence, Per Named Insured and in the Annual Aggregate per Declaration for Earthquake Resultant Damage for Members who purchase Dedicated Earthquake Coverage
$	10,000,000	Per Occurrence for Hazardous Substances/ Pollutants/Decontamination
	Included	Per Occurrence for Machine or Apparatus used for Research, Diagnosis, Medication, Surgical, Therapeutic, Dental or Pathological Purposes

NEWLY ACQUIRED LOCATIONS:	$ 25,000,000	Automatic Acquisition for Boiler & Machinery values at newly acquired locations. Values greater than $25,000,000 or Power Generating Facilities must be reported within 90 days and must have prior underwriting approval prior to binding	
VALUATION:	Repair or Replacement except Actual Loss sustained for all Time Element coverages		
EXCLUSIONS (Including but not limited to):	• Testing • Explosion, except for steam or centrifugal explosion • Explosion of gas or unconsumed fuel from furnace of the boiler		
OBJECTS EXCLUDED: (Including but not limited to):	• Insulating or refractory material • Buried Vessels or Piping • Furnace, Oven, Stove, Incinerator, Pot Kiln		
NOTICE OF CANCELLATION:	90 days except 10 days for non-payment of premium		
DEDUCTIBLES:	$ 100,000	Except as shown for Specific Objects or Perils	
	$ 100,000	Electronic Data Processing Media	
	$ 100,000	Consequential Damage	
	$ 100,000	Objects over 200 hp, 1,000 KW/KVA/Amps or Boilers over 5,000 square feet of heating surface	
	$ 100,000	Objects over 350 hp, 2,500 KW/KVA/Amps or Boilers over 10,000 square feet of heating surface	
	$ 100,000	Objects over 500 hp, 5,000 KW/KVA/Amps or Boilers over 25,000 square feet of heating surface	
	$ 350,000	Objects over 25,000 hp, 25,000 KW/KVA/Amps or Boilers over 250,000 square feet of heating surface	
	10 per foot / $2,500 Minimum	Deep Water Wells	
	24 Hour Waiting Period	Utility Interruption	
	24 Hours	Business Interruption/Extra Expense Except as noted below	
	30 Days	Business Interruption - Revenue Bond	
	5 x 100% of Daily Value	Business Interruption - All objects over 750 hp or 10,000 KW/KVA/Amps or 10,000 square feet heating surface	
	5 x 100% of Daily Value	Business interruption - All Objects at Waste Water Treatment Facilities and All Utilities	

	Annual Cost
COST:	Cost is included on Property Proposal
PRINT DATE:	May 19, 2016
PROPOSAL VALID UNTIL:	July 1, 2016
BROKER:	**ALLIANT INSURANCE SERVICES, INC.** **License No.** 0C36861 Chris M. Tobin, ARM-P Senior Vice President Pamela Dominguez Vice President Banesa Laird Account Executive Patricia K. Guisler Account Manager

NOTES:

- ***Major pending and approved changes to the APIP Program are described in the Executive Summary.***
- ***Change in Total Insurable Values will result in adjustment in premium***
- ***Some coverage, sublimits, terms and conditions could change until negotiations with the insurance carriers have been finalized***
- ***Coverage outlined in this Proposal is subject to the terms and conditions s et forth in the policy. Please refer to Policy for specific terms, conditions and exclusions***

ALLIANT INSURANCE SERVICES, INC.
ALLIANT PROPERTY INSURANCE PROGRAM (APIP)
CYBER LIABILITY PROPOSAL

TYPE OF COVERAGE: Information Security & Privacy Insurance with Electronic Media Liability Coverage

PROGRAM: **Alliant Property Insurance Program (APIP) inclusive of Public Entity Property Insurance Program (PEPIP), and Hospital All Risk Property Program (HARPP)**

NAMED INSURED: Any member(s), entity(ies), agency(ies), organizations(s), enterprise(s) and/or individuals(s) attached to each Declaration insured as per schedule on file with Insurer.

DECLARATION: Various Declarations as on file with Insurer

POLICY PERIOD: July 1, 2016 to July 1, 2017

TERRITORY: WORLD-WIDE

RETROACTIVE DATE:

APIP/PEPIP

For new members – the retro active date will be the date of addition
July 1, 2015 For existing members included on the July 1, 2015/16 policy
July 1, 2014 For existing members included on the July 1, 2014/15 policy
July 1, 2013 For existing members included on the July 1, 2013/14 policy
July 1, 2012 For existing members included on the July 1, 2012/13 policy
July 1, 2011 For existing members included on the July 1, 2011/12 policy
July 1, 2010 For existing members included on the July 1, 2010/11 policy

HARPP

For new members – the retro active date will be the date of addition
July 1, 2009 For members endorsed onto the July 1, 2009/10 policy at a $500,000 limit except for those members who did not provide a "No Known Losses Letter" then the retro date is the date that the member was added
July 1, 2010 For $1,500,000 excess $500,000

CSU

July 1, 2008 California State University and CSU Auxiliary Organizations

INSURER: Lloyd's of London - Beazley Syndicate:
Syndicates 2623 - 623 - 100%

COVERAGES & LIMITS:

THIRD PARTY LIABILITY	**Ai.**	$	25,000,000	**Annual Policy and Program Aggregate Limit of Liability** (subject to policy exclusions) for all Insured's/Members combined (Aggregate for all coverage's combined, including Claims Expenses), subject to the following sub-limits as noted.

THIRD PARTY LIABILITY (continued)	**Aii.**	$	2,000,000	**Annual Aggregate Limit of Liability for** each Insured/Member for **Information Security & Privacy Liability. Each Member of a JPA will have a $2,000,000 Limit Each** (Aggregate for all coverages combined, including Claim Expenses) but sublimited to:
	B.	$	500,000	**Annual Policy Aggregate Limit of Liability** for each Insured/Member **Privacy Notification Costs** coverage. Limit is $1,000,000 if Beazley vendor services are used.
	C.	$	2,000,000	**Annual Policy Aggregate Limit of Liability** for each Insured/Member for all Claims Expenses and **Penalties for Regulatory Defense and Penalties** **PCI Fines and Penalties** coverage added with sub-limit of $100,000.
	D.	$	2,000,000	**Annual Policy Aggregate Limit of Liability** for each Insured/Member for all Damages and Claims Expenses for **Website Media Content Liability** (Occurrence Based)
FIRST PARTY COMPUTER SECURITY	**E.**	$	2,000,000	**Policy Aggregate Sublimit of Liability** for each Insured/Member for **Cyber Extortion Loss**
	F.	$	2,000,000	**Policy Aggregate Sublimit of Liability** for each Insured/Member for **Data Protection Loss** and **Business Interruption Loss**
	G.			**First Party Business Interruption Sub-Limits of Liability** for each Insured/Member
		$	50,000	1) Hourly Sublimit
		$	50,000	2) Forensic Expense Sublimit
		$	150,000	3) Dependent Business Interruption Sublimit.

The sub-limits of liability displayed above in Items B, C and D are part of, and not in addition to, the overall Annual Aggregate Limit of Liability for each Insured/Member (Item Aii)

RETENTION:	$	25,000	CSU Auxiliary Organizations only
	$	50,000	Per Occurrence for each Insured/Member with TIV up to $500,000,000 at the time of loss
		8	Hour waiting period for first party claims
	$	100,000	Per Occurrence for each Insured/Member with TIV greater than $500,000,000 at time of loss
		8	Hour waiting period for first party claims

NOTICE: **Policy coverage sections I.A - Information Security & Privacy Liability, I.B.-Privacy Notification Costs and I.C.-Regulatory Defense & Penalties of this policy provide coverage on a claims made and reported basis; except as otherwise provided, coverage under these insuring agreements applies only to claims first made against the insured and reported to underwriters during the policy period.** Claims expenses shall reduce the applicable limit of liability and are subject to the applicable retention.

EXTENDED REPORTING PERIOD: For First Named Insured - To be determined at the time of election (additional premium will apply)

SPECIFIC COVERAGE PROVISIONS:

A. **Information Security and Privacy Liability** pays on behalf of the Insured/Member damages and claims expenses excess of the retention which the Insured/Member shall become legally obligated to pay because of any claim, including a claim for violation of a privacy law first made against the Insured/Member and reported to underwriters during the policy period for

- theft, loss or unauthorized disclosure of personally identifiable non-public information or third party corporate information that is in the care, custody or control of the Insured/Member, or an independent contractor that is holding, processing or transferring such information on behalf of the Insured/Member.
- Acts or incidents that directly result from the failure of computer security to prevent a security breach including
  - Alteration, corruption, destruction, deletion, or damage to a data asset stored on computer systems
  - Failure to prevent transmission of malicious code from computer systems to third party computer systems
  - Participation in a denial of service attack directed against a third party computer system
- The failure to timely disclose any of the above in violation of any breach notice law
- The failure to comply with a privacy policy involving the disclosure, sharing or selling of personally identifiable non-public information
- The failure to administer an identity theft prevention program

B. **Privacy Notification Costs** pay the Insured/Member for reasonable and necessary costs to comply with a breach notice law because of an incident that first takes place on or after the retroactive date and before the end of the policy period. Privacy Notification Costs means costs incurred within one year of the reporting of the incident or suspected incident to the Underwriters:

- To hire security experts;
- Notification provisions,
- Public relations mitigation up to $50,000 subject to Nil coinsurance
- Credit monitoring for the purpose of mitigating potential damages and are subject to Nil coinsurance
  - Credit file monitoring,
  - Mailing and third party administrative costs

To provide notification to:

(a) Individuals who are required to be notified by the **Insured Organization** under the applicable **Breach Notice Law**; and

(a) In the Underwriters' discretion, to individuals affected by an incident in which their **Personally Identifiable Non-Public Information** has been subject to theft, loss, or Unauthorized Disclosure in a manner which compromises the security or privacy of such individual by posing a significant risk of financial, reputational or other harm to the individual.

SPECIFIC COVERAGE PROVISIONS: (Continued)

C. **Regulatory Defense and Penalties** pays on behalf of the Insured/Member claims expenses and penalties which the Insured/Member shall become legally obligated to pay because of any claim in the form of a regulatory proceeding resulting from a violation of a privacy law and caused by an incident described under certain sections of the information security and privacy liability section of the policy.

D. **Website Media Content Liability** (occurrence based) days on behalf of the insured damages and claims expenses resulting from any claim made against the Insured/Member for one or more of the following acts committed in the course of covered media activities:

- Defamation, libel, slander, trade libel
- Privacy violation
- Invasion or interference with publicity
- Plagiarism, piracy, misappropriation of ideas under implied contract
- Infringement of copyright
- Infringement of domain name, trademark
- Improper deep-linking or framing within electronic content

E. **Cyber Extortion** indemnifies the Insured/Member for costs incurred as a result of an extortion threat by a person other than employees, directors, officers, principals, trustees, governors, managers, members, etc.

F. **First Party Data Protection** indemnifies the Insured/Member for data protection loss as a result of alteration, corruption, destruction, deletion, damage or inability to access data assets.

G. **First Party Network Business Interruption** indemnifies the Insured/Member for business interruption loss as a direct result of the actual and necessary interruption or suspension of computer systems and is directly caused by a failure of computer security to prevent a security breach.

EXCLUSIONS: (Including but not limited to)

Coverage does not apply to any claim or loss from

- Bodily Injury or Property Damage
- Any employer-employee relations, policies, practices
- Contractual Liability or Obligation
- Any actual or alleged act, error or omission or breach of duty by any director, officer, manager if claim is brought by principals, officers, directors, stockholders and the like
- Anti-Trust violations
- Unfair trade practices
- Unlawful collection or acquisition of Personally Identifiable Non-Public Information
- Distribution of unsolicited e-mails, facsimile, audio or video recording
- Prior knowledge or previously reported incidents
- Incidents occurring prior to retroactive date/continuity date
- Any act, error, omission, of computer security if occurred prior to policy inception
- Collusion
- Securities Act Violations
- Fair Labor Act Violations
- Discrimination
- Intentional Acts with regard to Privacy and Security Breach
- Infringement - Patent and Copyright
- Federal Trade Commission and related state, federal, local and foreign governmental activities
- Insured vs. Insured
- Money/Securities/Funds Transfer
- Broadcasting, Publications and Advertising
- War and Terrorism
- Pollution
- Nuclear Incident
- Radioactive Contamination

NOTICE OF CLAIM:

- IMMEDIATE NOTICE must be made to Beazley NY of all potential claims and circumstances (assistance, and cooperation clause applies)
- Claim notification under this policy is to:

  Beazley Group
  Attn: Beth Diamond
  1270 Avenue of the Americas
  New York, NY 10020
  tmbclaims@beazley.com

NOTICE OF CANCELLATION:

10 days for non-payment of premium

REINSTATEMENT PROVISIONS:

Optional reinstatement at 125% of the annual premium

Exhaustion of $2,000,000 Annual Aggregate Limit of Liability for Each Insured/Member for Information Security & Privacy Liability:
Reinstatement of Aggregate Limits for each Insured/Member will be automatic and subject to additional premium

CYBER COST:	Cost is included in Total Property Premium 30% Earned Premium at Inception
OTHER SERVICES	Unlimited Access to Beazley Breach Solutions as per attached brochure.
PROPOSAL VALID UNTIL:	July 1, 2016
BROKER:	ALLIANT INSURANCE SERVICES, INC. License No. 0C36861

NOTES: Coverage outlined in this Proposal is subject to the terms and conditions set forth in the policy. Please refer to Policy for specific terms, conditions and exclusions.

ALLIANT INSURANCE SERVICES, INC.
ALLIANT PROPERTY INSURANCE PROGRAM (APIP)

POLLUTION LIABILITY COVERAGE PROPOSAL

TYPE OF INSURANCE:	☒ Insurance ☐ Reinsurance
TYPE OF COVERAGE:	Claims Made and Reported Pollution Liability
PROGRAM:	**Alliant Property Insurance Program (APIP)**
NAMED INSURED:	Any member(s), entity(ies), agency(ies), organization(s), enterprise(s), pool(s), Joint Powers Authority(ies) and/or individual(s) attached to each Declaration insured as per Named Insured Schedule on file with Insurer, listed below.
POLICY PERIOD:	July 1, 2016 to July 1, 2017
RETROACTIVE DATE:	July 1, 2011 for existing insureds included on the 2011-2012 policy at inception; For all other insureds the retroactive date is the date of addition to the Program.
COMPANY:	Illinois Union Insurance Company
A.M. BEST INSURANCE RATING:	A++u, Superior, Financial Category XV ($2 Billion or greater) Effective July 2, 2015
STANDARD & POORS RATING:	AA (Very Strong) *as of March 23, 2016*
ADMITTED STATUS:	Non-Admitted in all states except Illinois
COVERAGE LOCATIONS:	Per the following SOVs submitted on 3/16/2016: 1. PEPIP DEC 1 – SOVs 2. PEPIP DEC 2 – SOVs 3. PEPIP DEC 3 – SOVs 4. PEPIP DEC 4 – SOVs 5. PEPIP DEC 5 – SOVs 6. PEPIP DEC 8 – SOVs (Excludes SPIP, except as endorsed) 7. PEPIP DEC 11 – SOVs 8. PEPIP DEC 12 – SOVs 9. PEPIP DEC 19 – SOVs 10. PEPIP DEC 20 – SOVs 11. PEPIP DEC 21 – SOVs 12. PEPIP DEC 25 – SOVs 13. PEPIP DEC 26 – SOVs 14. PEPIP DEC 27 – SOVs 15. PEPIP DEC 28 – SOVs 16. PEPIP DEC 30 – SOVs 17. PEPIP DEC 33 – SOVs 18. PEPIP DEC 34 – SOVs

COVERAGE LOCATIONS: CONTINUED	Covered locations include any location owned, operated, managed, leased or maintained by the Insured at policy inception. Covered locations also include any subsurface potable water, wastewater or storm water pipes to or from a covered location, that is not a pipe, provided that such pipes are located within a one thousand (1,000) foot radius of such covered location.
COVERAGES & LIMITS:	**$25,000,000 Policy Program Aggregate (all insureds combined)** **$ 2,000,000 Per Pollution Condition or Indoor Environmental Condition** **$ 2,000,000 Per Named Insured Aggregate** **SUBLIMITS:** $ 500,000 Per Bacteria / Virus Indoor Environmental Condition Insured Aggregate Sublimit* $ 250,000 Catastrophe Management Costs Sublimit* *Note: the above sub-limits payable under this coverage do not increase and are not in addition to the applicable limit of liability.
EXTENDED REPORTING PERIOD:	For First Named Insured - To be determined at the time of election (additional premium can apply); Ninety (90) day basic extended reporting period available without additional premium
SPECIFIC COVERAGE PROVISIONS:	**CLAIMS MADE AND REPORTED** Coverage A – New Pollution Conditions or Indoor Environmental Conditions Coverage: First-party and third-party coverage for claims arising out of a pollution condition on, at, under or migrating from a covered location, or an indoor environmental condition at a covered location, provided the claim is first made or the Insured first discovers such pollution condition or indoor environmental condition during the policy period. Coverage B – Transportation Coverage: First–party and third-party coverage for claims arising out of a pollution condition resulting from transportation, provided the claim is first made or the Insured first discovers such pollution condition during the policy period. Coverage C – Non-Owned Disposal Site Coverage: Third-party coverage for claims arising out of a pollution condition on, at, under or migrating from a non-owned disposal site, provided the claim is first made during the policy period. Supplemental coverage for First-party and Third-party claims arising out of pollution conditions and indoor environmental conditions resulting from covered operations is included. Covered operations are defined as any operations within the capacity of a public entity which are performed by or on behalf of a "named insured" outside the physical boundaries of a "covered location".

SPECIFIC COVERAGE PROVISIONS (cont.):

Coverage for catastrophe management costs and emergency response costs (first-party remediation costs incurred within seven (7) days following the discovery of a pollution condition) included, provided that the costs are reported to the insurer within fourteen (14) days.

Supplemental coverage for Products Pollution is included for potable, reclaimed and recycled water processed at any covered location that is also a potable water or wastewater treatment plant. This coverage covers Third-party claims arising out of product pollution, provided the claim is first made during the policy period. Coverage of lead contamination of potable water is excluded.

All Named Insureds scheduled on this policy have the same rights as the First Named Insured; this includes any member of a pool or Joint Powers Authority specifically scheduled onto this policy.

Coverage for mid-term transactions for values that are less than $25,000,000 shall automatically be added as a covered location, upon the closing date of such acquisition, or the effective date of such lease, management, operation or maintenance right or obligation, respectively.

Automatic Acquisition and Due Diligence – Property purchased in the amount of or in excess of $25,000,000 need to be reported within 90 days, along with a Phase I Environmental Site Assessment, or two (2) years of property insurance loss runs or a completed, signed application.

Illicit Abandonment is included in the definition of pollution condition.

Mold, fungi and legionella pneumophila are included in the definition of a indoor environmental condition.

Defense Costs and Expenses are within Limits of Liability.

The insurance afforded by this Policy shall apply in excess of any other valid, collectible insurance, with the exception of policies specifically written to be in excess of this policy.

Underground Storage Tanks coverage included, with a self-insured retention of $750,000. **Note: Does not meet financial assurance requirements.**

Loss covered pursuant to a Federal, State, County or Municipality administered underground storage tank fund, or any functional equivalent to such fund, shall be considered primary insurance, to which the coverage afforded pursuant to this Policy shall only apply in excess. Under such primary insurance policy shall erode the $750,000 per pollution condition self-insured retention. *This includes storage tank pollution liability insurance.*

Blanket Coverage included for Non-Owned Disposal Sites. Includes Any properly permitted and licensed non-owned disposal sites that has not been identified by the United States EPA National Priorities List, CERCLIS list or any functional equivalent of those listings, and is not undergoing voluntary or regulatory required remediation at the time the waste was received for disposal.

EXCLUSIONS (including but not limited to):

Coverage does not apply to any claim or loss from:

- Asbestos and Lead Based Paint. *This exclusion does not apply to Third-party claims for Bodily Injury, Property Damage or any associated legal defense expenses, nor to First-party Remediation Costs arising out of asbestos, asbestos-containing material, or lead-based paint discovered in soil or groundwater. Also does not apply to first-party remediation costs that first commenced during the policy period, do not arise out of or relate to any pollution conditions which existed prior to policy inception, are sudden, unintended and unexpected by the Insured and discovered within seven (7) days of commencement, as long as they are reported to the Insurer within twenty-one (21) days of discovery. This does not include coverage for asbestos or lead-based paint abatement, removal, or disposal resulting from the maintenance, renovation or physical improvement of a covered location.*
- Contractual Liability – *Does not apply to environmental indemnity obligations, or to liability of others that would have attached to the Insured in the absence of a contract or agreement.*
- Divested Property
- Employers Liability
- Criminal Fines and Criminal Penalties
- Fraud or Misrepresentation
- Sewage Backup – *based upon or arising out of the reverse flow of sewage through a sanitary lateral into any structure, including, but not limited to, 3rd party residences and commercial buildings. This exclusion does not apply to your insured locations.*
- First Party Property Damage – *Does not apply to remediation costs, emergency response costs, business interruption costs or catastrophe management costs.*
- Insured's Internal Expenses - *Does not apply to emergency response costs, along with any associated catastrophe management costs.*
- Insured vs. Insured
- Intentional Non-Compliance
- Known Conditions
- Landfills, Recycling Facilities, or Oil and/or Gas Producing or Refining Facilities
- Ports – *Defined as a location on the coast or any other body of water where ships or watercraft can dock and transfer cargo to or from land and engages in the business of importing/exporting of goods.*
- Airports – *Defined as a location whereby enplanement occurs and/or cargo is moved for a fee and the following operations are conducted: storage, transportation and dispensing of fuel and/or de-icing solutions.*
- Material Change in Risk – *Does not apply to covered operations that are performed with respect to uses and operations that are within the capacity of a Public Entity.*
- Professional Liability
- Regulatory Compliance – *Does not apply to any such non-compliance that occurs subsequent to release from a covered underground storage tank.*

EXCLUSIONS (including but not limited to, cont.):

- Work Product
- Workers' Compensation
- Products Liability. *Does not apply to a pollution condition that first commences during transportation, or to pollution conditions resulting from the use of potable, reclaimed or recycled water processed at any covered location that is also a potable water or wastewater treatment plant, if applicable. Also does not apply to coverage afforded for product pollution pursuant to the Products Pollution Coverage Endorsement attached to this policy. Lead contamination of potable water is not covered and is excluded.*
- Lead Contaminated Water
- Property damage to any automobile, aircraft, watercraft, railcar or other conveyance utilized for transportation.
- War or Terrorism
- Any subsurface potable water, wastewater or storm water pipes leading to or exiting from a covered location, which is not a pipe, provided that such pipe sections are located beyond a one thousand (1,000) foot radius of such covered location.

RETENTION:

$ 75,000	Per Pollution Condition or Indoor Environmental Condition
$375,000	Per Named Insured Aggregate retention applicable to all Pollution Conditions or Indoor Environmental Conditions
$ 37,500	Per Named Insured maintenance retention applicable to all Pollution Conditions or Indoor Environmental Conditions
$750,000	Underground Storage Tanks Specific
10 Days	Waiting Period for Business Income and Extra Expense

CLAIMS REPORTING NOTICE

PLEASE NOTE THAT POLLUTION LIABILITY POLICIES CONTAIN EXTREMELY STRICT CLAIM REPORTING PROCEDURES. Below please find your policy specific claim reporting requirements - Please make sure you understand these obligations. Contact your Alliant Service Team with any questions.

THIS IS A CLAIMS MADE POLICY

This claims-made policy contains a requirement stating that this policy applies only to any claim first made against the Insured and reported to the insurer during the policy period or applicable extended reporting period. Claims must be submitted to the insurer during the policy period, or applicable extended reporting period, as required pursuant to the Claims/Loss Notification Clause within the policy in order for coverage to apply. Late reporting or failure to report pursuant to the policy's requirements could result in a disclaimer of coverage by the insurer.

LOSS REPORTING REQUIREMENTS:

Written notice of any claim or pollution condition, within seven (7) days of discovery for pollution conditions requiring immediate emergency response. Concurrently, please send to:

1) ACE Environmental Risk Claims Manager
ACE USA Claims
P.O. Box 5103
Scranton, PA 18505-0510
(888) 310-9553 24 Hour Environmental Emergency Hotline
(800) 951-4119 (Fax – First Notices Only)
(866) 635-5687 (Fax – All Other Items)
CasualtyRiskEnvironmentalFirstNotice@chubb.com

2) ACE Alert Program
Sign up for ACE Alert at https://ace.spillcenter.net/
24/7 incident reporting via phone, web or mobile device
App Available on Apple App Store, Google Play and Blackberry App World

3) Martin Fox-Foster
Alliant Insurance Services, Inc.
100 Pine Street, 11th Floor
San Francisco, CA 94111-5101
415-403-1417
415-403-1466 – fax
Martin.Fox-Foster@alliant.com

NOTICE OF CANCELLATION:

90 days except 15 days for non-payment of premium

REINSTATEMENT PROVISIONS:

Not Provided.

POLLUTION LIABILITY COST:

Cost is included in Total Property Premium
100% Earned Premium at Inception

OTHER SERVICES:

Value-Added Engineering Package:

- Mold Awareness Training
  - ACE will offer a single Mold Awareness Training Presentation, provided by ACE ESIS personnel, for little or no additional cost. Must be held at one central location or online.
- Due Diligence Program Overview
  - ACE will provide up to 50 First Search Reports of government environmental databases for no additional charge
- Asbestos-Containing Materials (ACM)/Lead Based Paint (LBP) Plan
  - ACE will assist the insured in the creation of a single ACM/LBP plan for a minimal additional cost
- Mold Operations & Maintenance (O&M) Plan
  - ACE will assist the insured in the creation of a single Mold O&M plan for a minimal additional cost

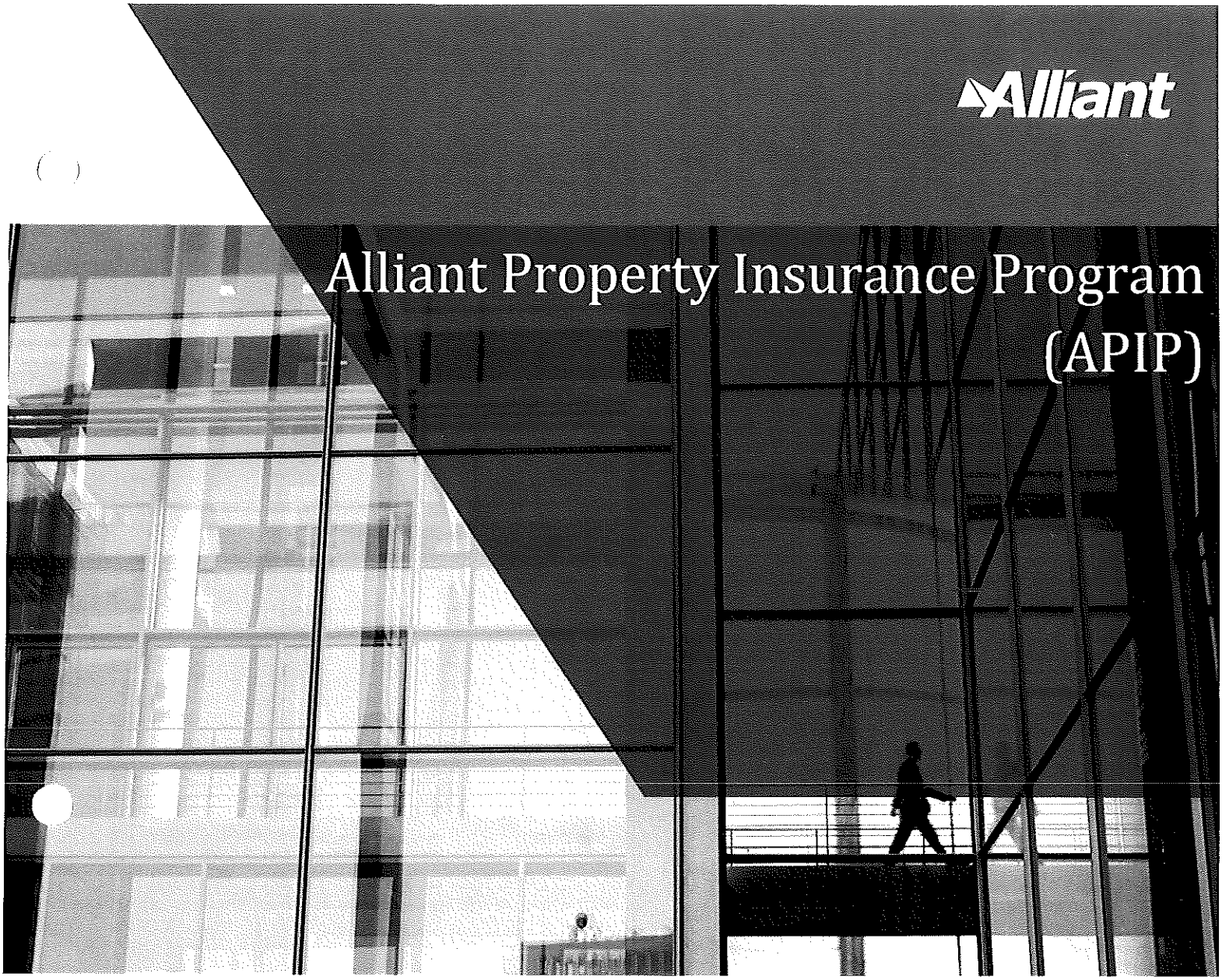
QUOTE VALID UNTIL: July 1, 2016

BROKER: **ALLIANT INSURANCE SERVICES, INC.**
License No. 0C36861

CITY OF GLENDALE, AZ
PROPERTY YEAR OVER YEAR HISTORY

	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017 Projected
Total Insured Values	$ 540,096,201	$ 573,723,545	$ 581,853,217	$ 586,761,872	$ 608,048,106	673,683,921	$ 752,876,668	766,428,811	767,428,811
All Risk Deductible per occurrence	$ 50,000	$ 50,000	$ 50,000	$ 50,000	$ 50,000	$ 50,000	$ 50,000	$ 100,000	$ 100,000
Auto Physical Damage (Vehicles)	$25,000	$25,000	$25,000	$25,000	$25,000	$25,000	$25,000	$25,000, except vehicles over $250k in value deductible is $100,000	$25,000, except vehicles over $250k in value deductible is $100,000
except Weather Losses per occurrence	$50,000	$50,000	$50,000	$100,000	$ 250,000	$ 250,000	$ 250,000	$ 250,000	$ 250,000
Flood	$100,000 excluding A&V Zones $500,000 A&V Zones	$100,000 excluding A&V Zones $500,000 A&V Zones	$100,000 excluding A&V Zones $500,000 A&V Zones	$100,000 excluding A&V Zones $500,000 A&V Zones	$100,000 excluding A&V Zones $500,000 A&V Zones	$100,000 excluding A&V Zones $500,000 A&V Zones	$100,000 excluding A&V Zones $500,000 A&V Zones	$250,000 excluding A&V Zones $500,000 A&V Zones	$250,000 excluding A&V Zones $500,000 A&V Zones
Premiums									
Primary All Risk	$ 51,540	$ 66,707	$ 82,152	$ 109,343	$ 135,080	$ 167,063	$ 201,262	$ 242,202	$ 242,435
Cyber Liab/Pollution Liab from 2010-2013	$ -	$ -	$ 5,045	$ 6,639	$ 5,398	$ 8,257	$ 7,273	$ 8,258	$ 8,014
Vehicles	$ 42,505	$ 10,586	$ 12,090	$ 12,090	$ 1,033	$ 12,031	$ 3,425	$ 3,425	$ 3,425
Primary Sub-Total:	**$ 94,045**	**$ 77,293**	**$ 99,287**	**$ 128,072**	**$ 141,511**	**$ 187,351**	**$ 211,960**	**$ 253,885**	**$ 253,874**
Excess All Risk	$ 45,685	$ 58,544	$ 50,406	$ 52,563	$ 69,874	$ 85,142	$ 77,864	$ 81,774	$ 90,233
Excess B&M	$ 5,202	$ 6,142	$ 5,908	$ 5,960	$ 6,966	$ 8,786	$ 9,209	$ 9,192	$ 8,920
ABS	$ 4,228	$ 2,319	$ 3,781	$ 3,574	$ 5,020	$ 6,323	$ 6,769	$ 8,473	$ 8,781
Taxes	$ 4,651	$ 4,435	$ 4,866	$ 5,859	$ 6,794	$ 9,038	$ 9,606	$ 10,084	$ 11,297
Total:	**$ 153,811**	**$ 148,733**	**$ 164,248**	**$ 196,028**	**$ 230,165**	**$ 296,640**	**$ 315,408**	**$ 363,408**	**$ 373,105**
Total Average Account Rate	0.02847845	0.02592416	0.02822843	0.03340844	0.03785309	0.04403252	0.04189371	0.04741575	0.04861752
Account Rate Change over Prior Year	**N/A**	**-8.97%**	**8.89%**	**18.35%**	**13.30%**	**16.32%**	**-4.86%**	**13.18%**	**2.53%**
TIV Change over Prior Year	**N/A**	**6.23%**	**1.42%**	**0.84%**	**3.63%**	**11.28%**	**11.76%**	**1.80%**	**0.13%**
****Please note that the 2011-2012 policy premium was credited $31,780 on the broker fee invoice to offset the increase**									
Losses by Year	$ 972.90	$ 246,161.65	$1,084,698.88	$ 2,575.00	$ 62,012.43	$ 3,449.88	$1,336,000.00	$ -	
Loss Ratio - Total Premium	0.63%	165.51%	660.40%	1.31%	26.94%	1.16%	423.58%	0.00%	
Average Loss Ratio - Total Premium	183%								
Loss Ratio - Primary Layer	1.89%	369.02%	1320.36%	2.35%	45.91%	2.07%	663.81%	0.00%	
Average Loss Ratio - Primary Layer	343.63%								

Alliant Insurance Services, Inc. □ 1301 Dove Street, Suite 200, Newport Beach, CA 92660
PHONE (949) 756-0271 FAX (619) 699-0906 □ www.alliantinsurance.com □ License No. 0C36861



Alliant Property Insurance Program (APIP)

2016 – 2017

Cyber Enhancement Option Indication

City of Glendale, AZ

Presented by:

Chris Tobin, Senior Vice President
Pamela Dominguez, Vice President
Banesa Laird, Account Executive
Patricia Guisler, Account Manager

Alliant Insurance Services, Inc.
1301 Dove Street, Suite 200
Newport, CA 92660
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CA License No. 0C36861

Cyber Enhancement Option Indication

INSURANCE COMPANY:	Lloyd's of London – Beazley - Syndicates: 2623/623
A.M. BEST GUIDE RATING: (VERIFIED MARCH, 2016)	A (Positive), Financial Size Category XV ($2 Billion or greater)
STANDARD & POOR'S RATING: (VERIFIED MARCH, 2015)	A+ (Stable)
ADMITTANCE STATUS:	Non-Admitted
POLICY TERM:	July 01, 2016 – July 01, 2017
COVERAGE FORM:	APIP Cyber Enhancement Option Endorsement (Attaching to and forming part of Policy No. **TBD**)
LIMITS OF COVERAGE:	**Privacy Breach Response Services in the Aggregate Limit:**
	Notified Individuals – *includes any notification services, call center services, credit & identity monitoring, and Beazley Breach Response Services.*
Option 1:	50,000 Notified Individuals in the aggregate; including up to 10% of such amount to be available for Notified Individuals residing outside of the United States
Option 2:	100,000 Notified Individuals in the aggregate; including up to 10% of such amount to be available for Notified Individuals residing outside of the United States
Option 3:	250,000 Notified Individuals in the aggregate; including up to 10% of such amount to be available for Notified Individuals residing outside of the United States
Option 4:	500,000 Notified Individuals in the aggregate; including up to 10% of such amount to be available for Notified Individuals residing outside of the United States

Cyber Enhancement Option Indication - continued

LIMITS OF COVERAGE (Continued):	
Option 5:	1,000,000 Notified Individuals in the aggregate; including up to 10% of such amount to be available for Notified Individuals residing outside of the United States
Option 6:	2,000,000 Notified Individuals in the aggregate; including up to 10% of such amount to be available for Notified Individuals residing outside of the United States
Legal Services/Computer Expert Services/Public Relations and Crisis Management Expenses Aggregate Sublimit:	**$ 500,000**
NOTE:	Limits for Breach Response Services are separate from the $2,000,000 aggregate limit of liability. *See side-by-side comparison for more information.*
RETENTIONS:	Privacy Breach Response Services Threshold / Retention (Each Incident)
Notification Services/Call Center Services/Breach Resolution and Mitigation Services Threshold:	100 Notified Individuals
Legal Services/Computer Expert Services/Public Relations and Crisis Management Expenses Retention:	$10,000 combined, but only $5,000 for Legal Services (Legal is part of, not in addition to combined)
ENDORSEMENT & EXCLUSIONS: (including but not limited to)	Privacy Breach Response Services Endorsement

Cyber Enhancement Option Indication - continued

	Annual Premium:
Option 1: 50,000 Individuals	**$ 9,677** (plus applicable taxes and fees)
Option 2: 100,000 Individuals	**$14,516** (plus applicable taxes and fees)
Option 3: 250,000 Individuals	**$ 23,226** (plus applicable taxes and fees)
Option 4: 500,000 Individuals	**$ 34,839** (plus applicable taxes and fees)
Option 5: 1,000,000 Individuals	**$48,387** (plus applicable taxes and fees)
Option 6: 2,000,000 Individuals	**$70,968** (plus applicable taxes and fees)

SUBJECTIVITIES

- *Currently signed and dated Beazley Breach Response Application*

CONDITIONS:

- Security is 100% Lloyds of London, Beazley Syndicate 2623/623
- No Flat Cancellations are allowed
- All Surplus Lines Taxes/Fees are Fully Earned
- 45 Day Premium Payment Warranty (Premium must be paid to Alliant within 20 days of binding to meet the Warranty Requirements)

BINDING CONDITIONS:

Written request to bind coverage
Re-signed / Dated Application; 30 days from inception upon binding

Indication VALID UNTIL: **7/1/2016**

NRRA Statement: **The Non-Admitted and Reinsurance Reform Act (NRRA) went into effect on July 21, 2011. Accordingly, surplus lines tax rates and regulations are subject to change which could result in an increase or decrease of the total surplus lines taxes and/or fees owed on this placement. If a change is required, we will promptly notify you. Any additional taxes and/or fees must be promptly remitted to Alliant Insurance Services, Inc.**

IMPORTANT NOTICE

The Foreign Account Tax Compliance Act (FATCA) requires the notification of certain financial accounts to the United States Internal Revenue Service. Alliant does not provide tax advice so please contact your tax consultant for your obligation regarding FATCA.

CLAIMS REPORTING NOTICE

Your policy will come with specific claim reporting requirements. Please make sure you understand these obligations. Contact your Alliant Service Team with any questions.

CHANGES AND DEVELOPMENTS

It is important that we be advised of any changes in your operations, which may have a bearing on the validity and/or adequacy of your insurance. **Please keep your Alliant representative(s) informed so they can assist you in making the right decisions regarding your insurance needs.**

Request to Bind Coverage

Glendale, AZ

We have reviewed the proposal and agree to the terms and conditions of the coverages presented. We are requesting coverage to be bound as outlined by coverage line below:

Coverage	Premium	Effective Date
APIP CEO – Option # 1 (Breach Response)		**07/01/2016**
Option 1 _____	**$9,677** Applicable Tax & Fee Incl. *Tax (3%) – $44.04 / Fee (.175%) – $2.57*	
Option 2 _____	**$14,516** Applicable Tax & Fee Incl. *Tax (3%) – $66.06/ Fee (.175%) – $3.85* **$**	
Option 3 _____	**$23,226** Applicable Tax & Fee Incl. *Tax (3%) – $105.69/ Fee (.175%) – $6.17* **$**	
Option 4 _____	**$34,839** Applicable Tax & Fee Incl. *Tax (3%) – $158.52/ Fee (.175%) – $9.25*	
Option 5 _____	**$48,387** Applicable Tax & Fee Incl. *Tax (3%) – $237.78 / Fee (.175%) – $13.87* **$**	
Option 6 _____	**$70,968** Applicable Tax & Fee Incl. *Tax (3%) – $774.18/ Fee (.175%) – $45.16*	

_____

Signature of Authorized Insurance Representative

_____

Date

Please note: Recently Signed / Dated Application; 30 days from inception shall be required upon binding

This proposal does not constitute a binder of insurance. Binding is subject to final carrier approval. ***The actual terms and conditions of the policy will prevail.***

Alliant

CITY OF GLENDALE
EXCESS LIABILITY POLICY
2016-2017 NOT TO EXCEED RENEWAL

COVERAGE TERM:		July 1, 2016 to July 1, 2017	
COVERAGE LOCATION:		5850 W. Glendale Ave. B56 Glendale, AZ 85301	
COVERAGE:		Special Excess Liability on an Occurrence Basis including Bodily Injury, Property Damage Liability, Errors and Omissions Liability, Employment Practices Liability, Employee Benefit Liability, Wrongful Act or Employee Benefits Wrongful Act; Products and Completed Operations Hazard	
LIMITS:			
	Layer 1:	$10,000,000	"Completed Operations Hazard" Aggregate
		$10,000,000	"Any One Occurrence for "Bodily Injury", "Property Damage", "Public Officials Errors And Omissions", "Employment Practices Liability", or "Personal Injury" or any combination Thereof
	Layer 2:	$15,000,000	Each Occurrence
		N/A	Other Aggregate(s), where applicable
		$15,000,000	Completed Operations Aggregate
	Layer 3:	$25,000,000	Each Occurrence
		$25,000,000	Aggregate Limit (where applicable)
RETAINED LIMIT:		$1,000,000	"Any One Occurrence for "Bodily Injury", "Property Damage", "Public Officials Errors And Omissions", "Employment Practices Liability", or "Personal Injury" or any combination Thereof
PREMIUM:			
		$853,992	**Not to Exceed Premium**
DATE PREPARED:		**May 26, 2016**	
BROKER:		**Alliant Insurance Services, Inc.** 1301 Dove Street, Suite 200 Newport Beach, CA 92660 Chris Tobin Senior Vice President Pamela Dominguez Vice President Banesa Laird Account Executive Patricia Guisler Account Manager	

CITY OF GLENDALE
EXCESS LIABILITY POLICY
2016-2017 NOT TO EXCEED RENEWAL

This Indication of insurance is provided as a matter of convenience and information only. All information included in this Summary, including but not limited to personal and real property values, locations, operations, products, data, automobile schedules, financial data and loss experience, is based on facts and representations supplied to Alliant Insurance Services, Inc. by you. This summary does not reflect any independent study or investigation by Alliant Insurance Services, Inc. or its agents and employees.

Please be advised that this indication is also expressly conditioned on there being no material change in the risk between the date of this summary and the inception date of the proposed policy (including the occurrence of any claim or notice of circumstances that may give rise to a claim under any policy which the policy being proposed is a renewal or replacement). In the event of such change of risk, the insurer may, at its sole discretion, modify, or withdraw this summary whether or not this offer has already been accepted.

This indication is not confirmation of insurance and does not add to, extend, amend, change, or alter any coverage in any actual policy of insurance you may have. All existing policy terms, conditions, exclusions, and limitations apply. For specific information regarding your insurance coverage, please refer to the policy itself. Alliant Insurance Services, Inc. will not be liable for any claims arising from or related to information included in or omitted from this summary of insurance

Alliant embraces a policy of transparency with respect to its compensation from insurance transactions. Details on our compensation policy, including the types of income that Alliant may earn on a placement, are available on our website at www.alliant.com. For a copy of our policy or for any inquiries regarding compensation issues pertaining to your account you may also contact us at: Alliant Insurance Services, Inc., Attention: General Counsel, 701 B Street, 6th Floor, San Diego, CA 92101.

Analyzing insurers' over-all performance and financial strength is a task that requires specialized skills and in-depth technical understanding of all aspects of insurance company finances and operations. Insurance brokerages such as Alliant Insurance typically rely upon rating agencies for this type of market analysis. Both A.M. Best and Standard and Poor's have been industry leaders in this area for many decades, utilizing a combination of quantitative and qualitative analysis of the information available in formulating their ratings.

A.M. Best has an extensive database of nearly 6,000 Life/Health, Property Casualty and International companies. You can visit them at www.ambest.com. For additional information regarding insurer financial strength ratings visit Standard and Poor's website at www.standardandpoors.com.

Our goal is to procure insurance for you with underwriters possessing the financial strength to perform. Alliant does not, however, guarantee the solvency of any underwriters with which insurance or reinsurance is placed and maintains no responsibility for any loss or damage arising from the financial failure or insolvency of any insurer. We encourage you to review the publicly available information collected to enable you to make an informed decision to accept or reject a particular underwriter. To learn more about companies doing business in your state, visit the Department of Insurance website for that state.

NY Regulation 194 Disclosure
Alliant Insurance Services, Inc. is an insurance producer licensed by the State of New York. Insurance producers are authorized by their license to confer with insurance purchasers about the benefits, terms and conditions of insurance contracts; to offer advice concerning the substantive benefits of particular insurance contracts; to sell insurance; and to obtain insurance for purchasers. The role of the producer in any particular transaction typically involves one or more of these activities.

Compensation will be paid to the producer, based on the insurance contract the producer sells. Depending on the insurer(s) and insurance contract(s) the purchaser selects, compensation will be paid by the insurer(s) selling the insurance contract or by another third party. Such compensation may vary depending on a number of factors, including the insurance contract(s) and the insurer(s) the purchaser selects. In some cases, other factors such as the volume of business a producer provides to an insurer or the profitability of insurance contracts a producer provides to an insurer also may affect compensation.

The insurance purchaser may obtain information about compensation expected to be received by the producer based in whole or in part on the sale of insurance to the purchaser, and (if applicable) compensation expected to be received based in whole or in part on any alternative quotes presented to the purchaser by the producer, by requesting such information from the producer.

Alliant

CITY OF GLENDALE
EXCESS LIABILITY POLICY
2015-2016 INSURANCE SUMMARY

INSURANCE COMPANY:

1. Technology Insurance Co. (ANML)*
2. Starr Indemnity & Liability Insurance Co.
3. Arch Insurance Company

A.M. BEST GUIDE RATING:*
(Pulled as of December 16, 2014)

1. A(Excellent);
   Financial Size Category XIII ($1.25 Billion to $1.5 Billion)
   As of May 29, 2015
2. A(Excellent);
   Financial Size Category X ($1.5 Billion to $2 Billion)
   As of October 20, 2015
3. A(Excellent);
   Financial Size Category XV ($2 Billion or greater)
   As of March 20, 2014

STANDARD & POOR'S RATING:*
(Pulled as of December 16, 2014)

1. Not Rated
2. Not Rated
3. A+, Stable

ARIZONA STATUS:

1. Admitted
2. Admitted
3. Admitted

COVERAGE TERM: July 1, 2015 to July 1, 2016

POLICY NUMBER:

1. TPP1014257 04
2. SISCPEA00000226
3. UXP0058726-00

COVERAGE LOCATION:
5850 W. Glendale Ave. B56
Glendale, AZ 85301

COVERAGE: Special Excess Liability on an Occurrence Basis including Bodily Injury, Property Damage Liability, Errors and Omissions Liability, Employment Practices Liability, Employee Benefit Liability, Wrongful Act or Employee Benefits Wrongful Act; Products and Completed Operations Hazard

LIMITS:

Layer 1:	$10,000,000	"Completed Operations Hazard" Aggregate
	$10,000,000	"Any One Occurrence for "Bodily Injury", "Property Damage", "Public Officials Errors And Omissions", "Employment Practices Liability", or "Personal Injury" or any combination Thereof
Layer 2:	$15,000,000	Each Occurrence
	N/A	Other Aggregate(s), where applicable
	$15,000,000	Completed Operations Aggregate
Layer 3:	$25,000,000	Each Occurrence
	$25,000,000	Aggregate Limit (where applicable)

CITY OF GLENDALE
EXCESS LIABILITY POLICY
2015-2016 INSURANCE SUMMARY

ENDORSEMENTS AND EXCLUSIONS (Including but not limited to):

Layer 1:

- Schedule Of Insureds And SIR(s)
- Cap On Losses From Certified Acts Of Terrorism
- Blanket Additional Insured Endorsement
- Blanket Waiver Of Subrogation Endorsement
- Defense Of Employment Practices Liability Claims Endorsement
- War Exclusion
- Dam Extension Endorsement
- Transit Extension Endorsement

Layer 2:

- Schedule of Underlying Insurance
- Arizona Changes – Cancellation and Nonrenewal
- Policy Changes
- Auto Coverage – Exclusion of Terrorism
- Earlier Notice of Cancellation Provided by US
- Starr Excess Casualty Program Claim Reporting Guidelines

Layer 3:

- Claim Handling Procedures
- US Treasury Department's Office of Foreign Assets Control ("OFAC")
- Excess/Umbrella Policy Underlying Insurance Notice
- Exclusion- Access or Disclosure of Confidential Information and Data-related Liability
- Lead Hazard Exclusion
- Silica Exclusion
- Fungi and Bacteria Hazard Exclusion
- Amendment of Limits of Insurance (Public Entities)
- Pollution Follow Form Endorsement
- Cancellation- Amendment of Notice (90 days)
- Exclusion of Terrorism other than a Certified Act of Terrorism
- Terrorism Coverage Disclosure Notice

RETAINED LIMIT: $1,000,000 "Any One Occurrence for "Bodily Injury", "Property Damage", "Public Officials Errors And Omissions", "Employment Practices Liability", or "Personal Injury" or any combination Thereof

PREMIUM:

Layer 1:	$412,196	Annual Premium
	$16,487	Wholesale Broker Fee
Layer 2:	$129,234	Annual Premium
Layer 3:	$99,000	Annual Premium
	$665,917	**Total Premium with TRIA All Layers**

MINIMUM EARNED PREMIUM: 25% of the policy premium

CITY OF GLENDALE
EXCESS LIABILITY POLICY
2015-2016 INSURANCE SUMMARY

CLAIMS REPORTING:

Layer 1:
Name: AmTrust Group
Address: 135 S. LaSalle St., Suite 1925
Chicago, IL 60603
Phone: 312.781.0401

Layer 2:
York Risk Services Group, Inc.
Attn: OSC
PO Box 183188
Columbus, OH 43218-3188
Email: 4869excessclaims@yorkrsg.com
Fax: (866) 695-3651

Layer 3:
Arch Insurance Company
E&S Casualty Claims
1299 Farnam Street, Suite 500
Omaha, NE 68102
PO Box 542033
Omaha, NE 68154
Phone: 877-688-ARCH (2724)
Fax: 866 -266-3630
E-Mail: Claims@ArchInsurance.com

DATE PREPARED: **August 11, 2015**

BROKER:

Alliant Insurance Services, Inc.
1301 Dove Street, Suite 200
Newport Beach, CA 92660

Chris Tobin
Senior Vice President

Pamela Dominguez
Assistant Vice President

Patricia Guisler
Account Manager

This Summary of insurance is provided as a matter of convenience and information only. All information included in this Summary, including but not limited to personal and real property values, locations, operations, products, data, automobile schedules, financial data and loss experience, is based on facts and representations supplied to Alliant Insurance Services, Inc. by you. This summary does not reflect any independent study or investigation by Alliant Insurance Services, Inc. or its agents and employees.

Please be advised that this summary is also expressly conditioned on there being no material change in the risk between the date of this summary and the inception date of the proposed policy (including the occurrence of any claim or notice of circumstances that may give rise to a claim under any policy which the policy being proposed is a renewal or

replacement). In the event of such change of risk, the insurer may, at its sole discretion, modify, or withdraw this summary whether or not this offer has already been accepted.

This summary is not confirmation of insurance and does not add to, extend, amend, change, or alter any coverage in any actual policy of insurance you may have. All existing policy terms, conditions, exclusions, and limitations apply. For specific information regarding your insurance coverage, please refer to the policy itself. Alliant Insurance Services, Inc. will not be liable for any claims arising from or related to information included in or omitted from this summary of insurance

Alliant embraces a policy of transparency with respect to its compensation from insurance transactions. Details on our compensation policy, including the types of income that Alliant may earn on a placement, are available on our website at www.alliant.com. For a copy of our policy or for any inquiries regarding compensation issues pertaining to your account you may also contact us at: Alliant Insurance Services, Inc., Attention: General Counsel, 701 B Street, 6th Floor, San Diego, CA 92101.

Analyzing insurers' over-all performance and financial strength is a task that requires specialized skills and in-depth technical understanding of all aspects of insurance company finances and operations. Insurance brokerages such as Alliant Insurance typically rely upon rating agencies for this type of market analysis. Both A.M. Best and Standard and Poor's have been industry leaders in this area for many decades, utilizing a combination of quantitative and qualitative analysis of the information available in formulating their ratings.

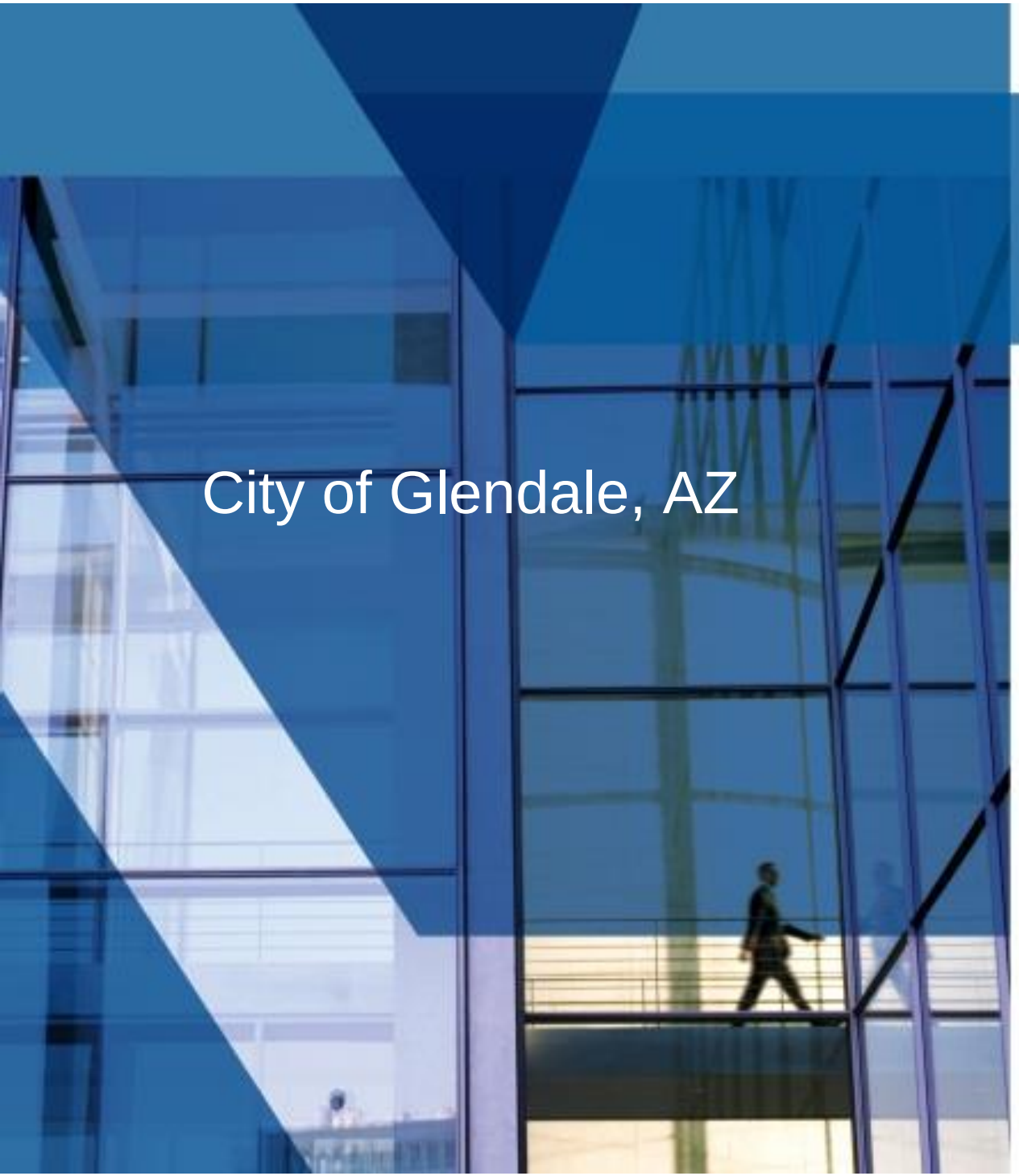
A.M. Best has an extensive database of nearly 6,000 Life/Health, Property Casualty and International companies. You can visit them at www.ambest.com. For additional information regarding insurer financial strength ratings visit Standard and Poor's website at www.standardandpoors.com.

Our goal is to procure insurance for you with underwriters possessing the financial strength to perform. Alliant does not, however, guarantee the solvency of any underwriters with which insurance or reinsurance is placed and maintains no responsibility for any loss or damage arising from the financial failure or insolvency of any insurer. We encourage you to review the publicly available information collected to enable you to make an informed decision to accept or reject a particular underwriter. To learn more about companies doing business in your state, visit the Department of Insurance website for that state.

NY Regulation 194 Disclosure
Alliant Insurance Services, Inc. is an insurance producer licensed by the State of New York. Insurance producers are authorized by their license to confer with insurance purchasers about the benefits, terms and conditions of insurance contracts; to offer advice concerning the substantive benefits of particular insurance contracts; to sell insurance; and to obtain insurance for purchasers. The role of the producer in any particular transaction typically involves one or more of these activities.

Compensation will be paid to the producer, based on the insurance contract the producer sells. Depending on the insurer(s) and insurance contract(s) the purchaser selects, compensation will be paid by the insurer(s) selling the insurance contract or by another third party. Such compensation may vary depending on a number of factors, including the insurance contract(s) and the insurer(s) the purchaser selects. In some cases, other factors such as the volume of business a producer provides to an insurer or the profitability of insurance contracts a producer provides to an insurer also may affect compensation.

The insurance purchaser may obtain information about compensation expected to be received by the producer based in whole or in part on the sale of insurance to the purchaser, and (if applicable) compensation expected to be received based in whole or in part on any alternative quotes presented to the purchaser by the producer, by requesting such information from the producer.



City of Glendale, AZ

Excess Workers' Compensation Insurance Proposal
2016-2017

Presented on June 7, 2016 by:

Chris Tobin
Senior Vice President

Pamela Dominguez
Vice President

Banesa Laird
Account Executive

Patricia Guisler
Account Manager

Alliant Insurance Services, Inc.
1301 Dove Street, Suite 200
Newport Beach, CA 92660
O 949 756 0271
F 619-699-0906

CA License No. 0C36861

www.alliant.com

City of Glendale, AZ

2016-2017 Excess Workers' Compensation Insurance Proposal

Line of Coverage

Excess Workers' Compensation Coverage

	PRESENT	PROPOSED
INSURANCE COMPANY:	Safety National Casualty Corporation	Safety National Casualty Corporation
A.M. BEST RATING:	A+ (Superior), Financial Size Category: XII ($1.00 Billion to $1.25 Billion)	A+ (Superior), Financial Size Category: XIV ($1.5 Billion to $2 Billion)
STANDARD & POOR'S RATING:	A, Strong Financial Security	A+ Strong Financial Security
ARIZONA STATUS:	Admitted	Admitted
COVERAGE TERM:	July 01, 2015 to July 01, 2016	July 01, 2016 to July 01, 2017
COVERAGE:	Excess Workers' Compensation	Excess Workers' Compensation
LIMITS:	Workers' Compensation: Statutory Employer's Liability: $2,000,000 per Occurrence	Workers' Compensation: Statutory Employer's Liability: $2,000,000 per Occurrence
SELF-INSURED RETENTION:	$800,000 Per Occurrence	$800,000 Per Occurrence
ESTIMATED ANNUAL PAYROLL:	$116,273,826	$122,215,233
RATE PER $100 OF PAYROLL:	0.18483	0.188

Line of Coverage

Excess Workers' Compensation Coverage – Continued

	PRESENT	PROPOSED
ENDORSEMENT & EXCLUSIONS: (INCLUDING BUT NOT LIMITED TO)	• Arizona Cancellation Endorsement • Waiver of Subrogation – Negligence Excluded • Broad Form All States For Employee Travel • Voluntary Compensation Endorsement – Premium Delineation • Foreign Voluntary Workers' Compensation and Employers' Liability • Same Communicable Disease-Specific Excess • Policyholder Disclosure Notice of Terrorism Insurance Coverage	Same as present except: • The quote includes 28.5 hours of risk control services at a rate of $175 per hour, up to a threshold of $5,000. Risk control services may include general risk control consulting services, training materials, online training, live training, industrial hygiene and ergonomics analysis.
DEPOSIT PREMIUM:	$214,909	$229,765
MINIMUM PREMIUM:	$204,164	$218,277
PAY PLAN:	Annual Payment	Annual Payment
TERRORISM:	The portion of the Employer's annual premium attributable to coverage for losses caused by a certified act of terrorism is 0.5%	The portion of the Employer's annual premium attributable to coverage for losses caused by a certified act of terrorism is 0.5%

Line of Coverage

Excess Workers' Compensation Coverage – Continued

	PRESENT	PROPOSED
OPTIONAL QUOTE:	No longer available	Optional Quote: 2 year policy period July 1, 2016 to July 1, 2018 • $800,000 Self Insured Retention • Limits: Statutory • Estimated Payroll: $122,215,233 • Rate per $100 of Payroll: 0.188 • $229,765 Deposit Premium • $436,554 Minimum Premium • Pay Plan: Annual Payment • Audit: Yes If the below conditions are all met, Safety National agrees that there will be no change in the premium rate per exposure for the 2017 Policy Period over the rates that have been applied to the 2016 Policy Period: 1. The SIR and Limits will remain as expiring per the 2016-2017 policy period. 2. No certified "acts of terrorism" occurs during the 2016 Policy Period. 3. No significant change in exposure, with "significant" being understood to mean a 15% change in exposure.

Line of Coverage

Excess Workers' Compensation Coverage – Continued

	PRESENT	PROPOSED
OPTIONAL QUOTE CONTINUED:	No Longer Applicable	4. No significant change in underwriting exposure of non-core business with a change that is in excess of 5%. *Safety National does not consider any change in aircraft to be considered significant. 5. No material adverse change in financial condition of the Insured. 6a. No new incurred loss to exceed 50% of that Policy's applicable SIR/Retention amount with such losses to be valued as of 04/01/2017 or within 90 days prior to 07/01/2017. 6b. No development of existing claims (DOI prior to 07/01/2016) to exceed 50% applicable SIR/Retention amount with such losses to be valued as of 04/01/2017 within 90 days prior to 07/01/2017. The parties understand and agree that, if all of the above stated conditions are not met, the Premium Rate per payroll/exposure for the 2017 Policy Period shall not be subject to any limitation nor guarantee with respect to rate increases.

Line of Coverage

Excess Workers' Compensation Coverage – Continued

	PRESENT	PROPOSED
OPTIONAL QUOTE CONTINUED:	No Longer Applicable	The second year payroll period they will require only the following underwriting information: • updated payroll by class code • updated loss information as outlined above • updated aircraft information (must have each year for reinsurance purposes) • updated Employee Concentration (EC) information • insured's agreement to work with Safety National to complete the premium audit (whether voluntary or physical) in a timely manner. They do a premium audit at the end of each 12 month policy period. The quote includes 28.5 hours of risk control at a rate of $175 per hour, up to a threshold of $5,000. Risk control services may include general risk control consulting services, training materials, online training, live training, industrial hygiene and ergonomics analysis.

Line of Coverage

Excess Workers' Compensation Coverage – Continued

	PRESENT	PROPOSED
CONTINGENCIES:	No Longer Applicable	This Agreement will include coverage for Workers' Compensation loss caused by acts of terrorism as defined in the Agreement. Coverage for such losses will still be subject to all terms, definitions, exclusions, and conditions in the Agreement, & any applicable federal and/or state laws, rules, or regulations. Be advised that, under the Terrorism Risk Insurance Act of 2002 as amended, terrorism losses would be partially reimbursed by the U.S. Government under a formula established by the Act. Under this formula, the U.S. Government would generally reimburse 85% of covered terrorism losses exceeding a deductible paid by us. The Act contains $100 billion cap that limits the reimbursement from the U.S. Government as well as from all insurers. If aggregate insured losses for all insurers exceed $100 billion, your coverage may be reduced. The portion of the EMPLOYER's annual premium attributable to coverage for losses caused by a certified act of terrorism is: 0.5%.
SUBJECTIVITIES:	No Longer Applicable	Written Request to Bind Coverage

2016-2017 Excess Workers' Compensation Insurance Proposal

COMMENTS:	No Longer Applicable	1. Endorsements mandated by the coverage state(s) will automatically be added to your policy regardless of whether they are shown in the above schedule. In addition, a change in an endorsement form number may occur as a result of state filing requirements/updates arising subsequent to this quote. 2. Included in the quote are MAP Client Services. Those resources consist of both risk control and claims services including: Safety Essentials On-line; Workers' Comp Kit: Safety Training Source; and Best Doctors Catcare and Ask Best Doctors program – which provide in-depth case review by world renowned doctors
QUOTE VALID UNTIL:	No Longer Applicable	July 1, 2016
DATE PREPARED:	No Longer Applicable	June 2, 2016

City of Glendale, AZ

2016-2017 Excess Workers' Compensation Insurance Proposal

BROKER:

ALLIANT INSURANCE SERVICES, INC.
Newport Beach, CA 92660

Chris Tobin, Senior Vice President
Pamela Dominguez, Vice President
Banesa Laird, Account Executive
Patricia Guisler, Account Manager

IMPORTANT NOTICE

The Foreign Account Tax Compliance Act (FATCA) requires the notification of certain financial accounts to the United States Internal Revenue Service. Aliant does not provide tax advice so please contact your tax consultant for your obligation regarding FATCA.

CLAIMS REPORTING NOTICE

Your policy will come with specific claim reporting requirements. Please make sure you understand these obligations. Contact your Alliant Service Team with any questions.

Disclosures

This proposal of insurance is provided as a matter of convenience and information only. All information included in this proposal, including but not limited to personal and real property values, locations, operations, products, data, automobile schedules, financial data and loss experience, is based on facts and representations supplied to Alliant Insurance Services, Inc. by you. This proposal does not reflect any independent study or investigation by Alliant Insurance Services, Inc. or its agents and employees.

Please be advised that this proposal is also expressly conditioned on there being no material change in the risk between the date of this proposal and the inception date of the proposed policy (including the occurrence of any claim or notice of circumstances that may give rise to a claim under any policy which the policy being proposed is a renewal or replacement). In the event of such change of risk, the insurer may, at its sole discretion, modify, or withdraw this proposal whether or not this offer has already been accepted.

This proposal is not confirmation of insurance and does not add to, extend, amend, change, or alter any coverage in any actual policy of insurance you may have. All existing policy terms, conditions, exclusions, and limitations apply. For specific information regarding your insurance coverage, please refer to the policy itself. Alliant Insurance Services, Inc. will not be liable for any claims arising from or related to information included in or omitted from this proposal of insurance

Alliant embraces a policy of transparency with respect to its compensation from insurance transactions. Details on our compensation policy, including the types of income that Alliant may earn on a placement, are available on our website at www.alliant.com. For a copy of our policy or for any inquiries regarding compensation issues pertaining to your account you may also contact us at: Alliant Insurance Services, Inc., Attention: General Counsel, 701 B Street, 6th Floor, San Diego, CA 92101.

Analyzing insurers' over-all performance and financial strength is a task that requires specialized skills and in-depth technical understanding of all aspects of insurance company finances and operations. Insurance brokerages such as Alliant Insurance typically rely upon rating agencies for this type of market analysis. Both A.M. Best and Standard and Poor's have been industry leaders in this area for many decades, utilizing a combination of quantitative and qualitative analysis of the information available in formulating their ratings.

A.M. Best has an extensive database of nearly 6,000 Life/Health, Property Casualty and International companies. You can visit them at www.ambest.com. For additional information regarding insurer financial strength ratings visit Standard and Poor's website at www.standardandpoors.com.

Disclosures - Continued

Our goal is to procure insurance for you with underwriters possessing the financial strength to perform. Alliant does not, however, guarantee the solvency of any underwriters with which insurance or reinsurance is placed and maintains no responsibility for any loss or damage arising from the financial failure or insolvency of any insurer. We encourage you to review the publicly available information collected to enable you to make an informed decision to accept or reject a particular underwriter. To learn more about companies doing business in your state, visit the Department of Insurance website for that state.

NY REGULATION 194 DISCLOSURE

Alliant Insurance Services, Inc. is an insurance producer licensed by the State of New York. Insurance producers are authorized by their license to confer with insurance purchasers about the benefits, terms and conditions of insurance contracts; to offer advice concerning the substantive benefits of particular insurance contracts; to sell insurance; and to obtain insurance for purchasers. The role of the producer in any particular transaction typically involves one or more of these activities.

Compensation will be paid to the producer, based on the insurance contract the producer sells. Depending on the insurer(s) and insurance contract(s) the purchaser selects, compensation will be paid by the insurer(s) selling the insurance contract or by another third party. Such compensation may vary depending on a number of factors, including the insurance contract(s) and the insurer(s) the purchaser selects. In some cases, other factors such as the volume of business a producer provides to an insurer or the profitability of insurance contracts a producer provides to an insurer also may affect compensation.

The insurance purchaser may obtain information about compensation expected to be received by the producer based in whole or in part on the sale of insurance to the purchaser, and (if applicable) compensation expected to be received based in whole or in part on any alternative quotes presented to the purchaser by the producer, by requesting such information from the producer.

Certificates / Evidence of Insurance

A certificate is issued as a matter of information only and confers no rights upon the certificate holder. The certificate does not affirmatively or negatively amend, extend or alter the coverage afforded by a policy. Nor does it constitute a contract between the issuing insurer(s), authorized representative, producer or certificate holder.

You may have signed contracts, leases or other agreements requiring you to provide this evidence. In those agreements, you may assume obligations and/or liability for others (Indemnification, Hold Harmless) and some of the obligations that are not covered by insurance. We recommend that you and your legal counsel review these documents.

In addition to providing a certificate of insurance, you may be required to name your client or customer on your policy as an additional insured. This is only possible with permission of the insurance company, added by endorsement and, in some cases, an additional premium.

By naming the certificate holder as additional insured, there are consequences to your risks and insurance policy including:

- Your policy limits are now shared with other entities; their claims involvement may reduce or exhaust your aggregate limit.
- Your policy may provide higher limits than required by contract; your full limits can be exposed to the additional insured.
- There may be conflicts in defense when your insurer has to defend both you and the additional insured.

Changes and Developments

It is important that we be advised of any changes in your operations, which may have a bearing on the validity and/or adequacy of your insurance. The types of changes that concern us include, but are not limited to, those listed below:

- Changes in any operations such as expansion to another states, new products, or new applications of existing products.
- Travel to any state not previously disclosed.
- Mergers and/or acquisition of new companies and any change in business ownership, including percentages.
- Any newly assumed contractual liability, granting of indemnities or hold harmless agreements.
- Any changes in existing premises including vacancy, whether temporary or permanent, alterations, demolition, etc. Also, any new premises either purchased, constructed or occupied
- Circumstances which may require an increased liability insurance limit.
- Any changes in fire or theft protection such as the installation of or disconnection of sprinkler systems, burglar alarms, etc. This includes any alterations to the system.
- Immediate notification of any changes to a scheduled of equipment, property, vehicles, electronic data processing, etc.
- Property of yours that is in transit, unless previously discussed and/or currently insured.

Please keep your Alliant representative(s) informed so they can assist you in making the right decisions regarding your insurance needs.

City of Glendale, AZ

2016-2017 Excess Workers' Compensation Insurance Proposal

Request to Bind Coverage

City of Glendale, AZ

We have reviewed the proposal and agree to the terms and conditions of the coverages presented. We are requesting coverage to be bound as outlined by coverage line below:

Coverage	Effective Date
Excess Workers' Compensation	07/01/2016

Option 1: $229,765 One year 2016-2017 ☐

Option 2: $436,554 Two Year 2016-2018 ☐

_____
Signature of Authorized Insurance Representative

_____
Date

This proposal does not constitute a binder of insurance. Binding is subject to final carrier approval. ***The actual terms and conditions of the policy will prevail.***

File #: 16-306, **Version:** 1

APPROVAL OF THE FISCAL YEAR 2016-17 CAMELBACK RANCH - GLENDALE CAPITAL REPAIRS/REPLACEMENT PROGRAM; AUTHORIZATION FOR THE CITY MANAGER TO EXPEND FUNDS TO REIMBURSE CAMELBACK SPRING TRAINING, LLC, FOR CAPITAL REPAIRS MADE AT CAMELBACK RANCH - GLENDALE IN FISCAL YEAR 2016-17

Staff Contact: Jack Friedline, Director, Public Works

Purpose and Recommended Action

This is a request for City Council to approve the Fiscal Year (FY) 2016-17 Camelback Ranch - Glendale spring training facility Capital Repairs/ Replacement (CRR) Program, and to authorize the City Manager to expend funds to reimburse Camelback Spring Training, LLC, to pay for the identified capital repairs as they are completed throughout the fiscal year, in an amount not to exceed $836,752 in FY 2016-17. The attached CRR Program represents the best efforts of the City of Glendale and Camelback Spring Training, LLC, to predict the highest priority of items to be addressed in FY 2016-17. There may be on occasion unscheduled repairs that could arise that would take priority over, or change the priorities of the attached list.

Background

The City of Glendale is the owner of the Camelback Ranch - Glendale spring training facility located at 10710 West Camelback Road. This state-of-the-art baseball facility is the spring training home of the Los Angeles Dodgers and the Chicago White Sox. It is located on 125 acres at 111th Avenue west of the loop 101 between Camelback Road and Glendale Avenue. The facility opened in 2009.

The Management and Lease Agreement calls for the city to fund a CRR Program for the city-owned spring training facility. The costs for implementing a CRR Program is the responsibility of the City of Glendale and the costs for operating and basic maintenance of the facility is the responsibility of Camelback Spring Training, LLC.

Some of the projects in the FY 2016-17 CRR Program include: replacement of Chicago White Sox fields 1 & 2 for approximately $350,000; new netting and padding on 7 sets of minor field equipment for approximately $49,000; re-vinyl facility vehicular signage for approximately $30,000; and various HVAC repair and replacement for approximately $64,000.

Analysis

As with any type of facility, capital reinvestment is necessary to ensure the safety and enjoyment of those who use it. Additionally, as this facility is owned by the city, it is important to maintain the value of the asset with an appropriate CRR Program in place.

Under the terms of the agreement with Camelback Spring Training, LLC, the city is required to establish a

Capital Repairs Account for the purpose of accumulating funds for the payment of the cost of Capital Repairs and Facility Upgrades. To this end, funds in the amount of $836,752 are programmed in FY 2016-17 to be used for payment to Camelback Spring training, LLC for approved capital repairs/ replacements.

In the past, payments for capital repairs to the facility were approved administratively by the City Manager. Starting last fiscal year, city staff developed an enhanced relationship with Camelback Spring Training, LLC in an effort to better oversee the facility and understand its needs to ensure this asset's value in the future.

Staff worked with Camelback Spring Training, LLC to agree upon the necessity of the projects outlined in this fiscal year's CRR Program and presents a total CRR Program for Council to approve before projects have been started and any funds are expended. Additionally, staff will ensure that all capital repairs/ replacement projects follow city purchasing guidelines.

Previous Related Council Action

On June 23, 2015, Council approved the FY 2015-16 CRR Program and authorized the Acting City Manager to expend funds to reimburse Camelback Spring Training, LLC for capital repairs made by the facility in an amount not to exceed $836,752.

On November 24, 2014, Council approved the FY 2014-15 CRR Program and authorized the City Manager to expend funds to reimburse Camelback Spring Training, LLC for capital repairs made to the facility in an amount not to exceed $836,752 in FY 2014-15.

On June 24, 2014, Council ratified the expenditure of funds to Camelback Spring Training; LLC in the amount of $400,253 for capital repairs completed in FY 2013-14 to the facility, and authorized the expenditure of funds in the amount of $26,014 to cover the remaining anticipated capital repairs for FY 2013-14.

On February 4, 2014, Council was updated on the life-cycle cost information for Camelback Ranch - Glendale spring training facility.

Community Benefit/Public Involvement

Proper maintenance and capital repairs to the Camelback Ranch - Glendale spring training facility are necessary for the safety and enjoyment of all individuals who work and attend events at this city-owned facility. In addition, it is necessary to invest capital dollars in this facility to maintain its value as an asset to the city.

Budget and Financial Impacts

Funding is available in the FY 2016-17 Capital Improvement Plan budget. Reimbursements to Camelback Spring Training, LLC for approved capital repairs/ replacements are not to exceed $836,752.

Cost	Fund-Department-Account
$836,752	**2070-70801, Camelback Ranch Maintenance Reserve**

Capital Expense? Yes

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from?

Fiscal Year 2016-17 Camelback Spring Training, LLC Capital Repairs/Replacement Program
(Program not to exceed amount for Fiscal Year 2016-17: $836,000)

Capital Item	**Description**	**Cost**
Stadium Bowl	Replace various sections of concrete	Estimated $10,000
Stadium Bowl seating	Replace various padded seats	Estimated $5,000
Stadium Bowl seating	Replace various seating shells	Estimated $5,000
Building C – Reznor HVAC unit	Replace HVAC unit	Estimated $11,878
Building N3 AC Unit #4	Replace AC unit	Estimated $52,000
ECR's – as the occur	Emergency capital repairs	Estimated $96,722
(2) Field Replacements CWS Fields 1 & 2	Replace 2 fields	Estimated $350,000
Stadium – Full field tarp w/cover	Replace full field tarp w/cover	Estimated $8,000
Stadium – Bullpens Mesh Covering	Replace mesh covering at bullpens	Estimated $3,000
Landscape/shrubbery replacement	Replace trees, shrubs, etc…	Estimated $5,000
New net and padding on (7) sets of minor league field equipment	Replace nets and padding on 7 sets of minor league field equipment	Estimated $49,000
Practice outfield mesh	Replace outfield mesh at 4 fields	Estimated $21,600
Practice field batter's eye	Replace batter's eye at 4 fields	Estimated $12,800
Stadium Dugouts – helmet and bat racks	Replace helmet and bat racks at stadium dugouts	Estimated $5,000
Re-vinyl facility vehicle signage	Re-vinyl faded vehicle signage	Estimated $30,000
CATV/In-house Production	Convert analog to digital	Estimated $25,000
Security System	Replace 2 cameras	Estimated $65,000
Security System	Replace access control CPU/Server	Estimated $25,000
Security System	Repair security camera	Estimated $2,000
Phone system	Replace 8-10 phones	Estimated $4,000
Scoreboard Equipment	Repairs to scoreboard	Estimated $50,000
TOTAL FY 2016-17 Expenditures		**Estimated $836,000**

File #: 16-307, **Version:** 1

AUTHORIZATION TO ENTER INTO A CONSTRUCTION AGREEMENT WITH NESBITT CONTRACTING CO., INC., FOR THE PAVEMENT MANAGEMENT PROGRAM - MILL AND OVERLAY

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 Construction Agreement with Nesbitt Contracting Co., Inc., in an amount not to exceed $7,333,006.50 and authorize a term expenditure limit of $7,699,656.83 (base contract + 5% contingency $366,650.33) for the Mill and Overlay project associated with the Pavement Management Program. This request also authorizes the City Manager, at the City Manager's discretion, to renew the agreement for an additional four terms, in an amount not to exceed $38,498,284.12 over the duration of the Agreement, contingent upon Council Budget approval.

Background

The city has over 748 miles of paved arterial, collector and residential roadways, which represents an investment of over $1 billion in the street network based on replacement costs in today's economy. With the exception of minor street and concrete repairs (potholes, curb, and sidewalk) the city contracts for all other preventative maintenance and reconstructive roadway projects.

The Mill and Overlay project for the Pavement Management Program provides for approximately 14 miles of mill and overlay improvements per term on various arterial, collector, and residential streets throughout the city. Specifically this project includes: mill and overlay treatment of existing roadway sections, American with Disability (ADA) sidewalk ramp improvements, utility adjustments and miscellaneous concrete repairs, repainting of pavement markings, and thermoplastic restriping.

Analysis

The Engineering division published a Notice to Contractors requesting bids for the Pavement Management Program - Reconstruction and Mill & Overlay project (project number 151623) on March 24, and 31, 2016. Nine contractors obtained the bid documents. On April 21, 2016, four bids were received, with Nesbitt Contracting submitting the lowest responsive and responsible bid in the amount of $7,330,006.50, which was below the engineer's estimate. Staff anticipates issuing a Notice to Proceed mid to late July, with completion of the initial term construction project before the end of March 2017.

The initial term of the Agreement is focused primarily on streets south of Peoria Avenue. The first renewal will focus primarily north of Peoria Avenue; subsequent renewals will alternate south and north of Peoria Avenue.

Previous Related Council Action

On April 5, 2016, staff presented the 5 year Pavement Management Program to Council.

Community Benefit/Public Involvement

Well maintained infrastructure is an important element of strong neighborhoods and business corridors and is critical for the attraction of quality economic development.

Budget and Financial Impacts

Funding is available in the Fiscal Year 2015-16 Capital Improvement Plan budget. Expenditures with Nesbitt Contracting Co., Inc. are not to exceed $7,699,656.83 per term, or $38,498,284.13 over the full five-year term of the agreement based on annual budget approval from Council.

Cost	Fund-Department-Account
$5,699,656.83	2000-68917-550800, Pavement Management-HURF
$2,000,000.00	2210-65089-550800, Pavement Management

Capital Expense? Yes

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from?

CONSTRUCTION AGREEMENT

This Construction Agreement ("Agreement") is entered into and effective between the CITY OF GLENDALE, an Arizona municipal corporation ("City"), and Nesbitt Contracting Co., Inc, an Arizona corporation ("Contractor") as of the _____ day of _____, 20__.

RECITALS

A. City intends to undertake a project for the benefit of the public and with public funds that is more fully set forth in the Notice to Contractors and the attached Exhibit A ("Project");

B. City desires to retain the services of Contractor to perform those specific duties and produce the specific work as set forth in the Project, the plans and specifications, the Information for Bidders, and the Maricopa Association of Governments ("MAG") General and Supplemental Conditions and Provisions;

C. City and Contractor desire to memorialize their agreement with this document.

AGREEMENT

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

1. Project.

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

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

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

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

1.3 Project Team.

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

(B) Project Team.

(1) The Project manager and all other employees assigned to the project by Contractor will comprise the "Project Team."

(2) Project Manager will have responsibility for and will supervise all other employees assigned to the project by Contractor.

(C) Sub-contractors.

(1) Contractor may engage specific technical contractor (each a "Sub-contractor") to furnish certain service functions.

(2) Contractor will remain fully responsible for Sub-contractor's services.

(3) Sub-contractors must be approved by the City, unless the Sub-contractor was previously mentioned in the response to the solicitation.

(4) Contractor shall certify by letter that contracts with Sub-contractors have been executed incorporating requirements and standards as set forth in this Agreement.

2. **Schedule.** The Project will be undertaken in a manner that ensures it is completed in a timely and efficient manner. The Project shall be completed within the term detailed in Section 14 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 $7,330,006.50 per term, or $36,665,032.50 total, as specifically detailed in the Contractor's bid and set forth in Exhibit B ("Compensation").

4.2 **Change in Scope of Project.** The Compensation may be equitably adjusted if the originally contemplated scope of services as outlined in the Project is significantly modified by the City.

(A) Adjustments to the Scope or Compensation require a written amendment to this Agreement and may require City Council approval.

(B) Additional services which are outside the scope of the Project and not contained in this Agreement may not be performed by the Contractor without prior written authorization from the City.

5. Billings and Payment.

5.1 Applications.

(A) The Contractor will submit monthly invoices (each, a "Payment Application") to City's Project Manager and City will remit payments based upon the Payment Application as stated below.

(B) The period covered by each Payment Application will be one calendar month ending on the last day of the month.

5.2 Payment.

(A) After a full and complete Payment Application is received, City will process and remit payment within thirty (30) days.

(B) Payment may be subject to or conditioned upon City's receipt of:

(1) Completed work generated by Contractor and its Sub-contractors; and

(2) Unconditional waivers and releases on final payment from Sub-contractors as City may reasonably request to assure the Project will be free of claims arising from required performances under this Agreement.

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

(A) If the Payment Application is rejected, the Project Manager will issue a written listing of the items not approved for payment.

(B) City may withhold an amount sufficient to pay expenses that City reasonably expects to incur in correcting the deficiency or deficiencies rejected for payment.

(C) Contractor will provide, by separate cover, and concurrent with the execution of this Agreement, all required financial information to the City, including City of Glendale Transaction Privilege License and Federal Taxpayer identification numbers.

(D) City will temporarily withhold Compensation amounts as required by A.R.S. 34-221(C).

6. Termination.

6.1 For Convenience. City may terminate this Agreement for convenience, without cause, by delivering a written termination notice stating the effective termination date, which may not be less than fifteen (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 (7) 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 ten (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. E-verify, Records and Audits. To the extent applicable under A.R.S. § 41-4401, the Contractor warrant their compliance and that of its subcontractors with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). The Contractor or subcontractor's breach of this warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the City under the terms of this Agreement. The City retains the legal right to randomly inspect the papers and records of the other party to ensure that the other party is complying with the above-mentioned warranty. The Contractor and subcontractor warrant to keep their respective papers and records open for random inspection during normal business hours by the other party. The parties shall cooperate with the City's random inspections, including granting the inspecting party entry rights onto their respective properties to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

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:

Nesbitt Contracting Co., Inc.
Attn: James Nesbitt
100 South Price Road
Tempe, Arizona 85281

(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: Wade Ansell
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 Exhibit A. Any inconsistency between Exhibit A and this Agreement will be resolved by the terms and conditions stated in this Agreement.

13.2 Interpretation.

(A) The parties fairly negotiated the Agreement's provisions to the extent they believed necessary and with the legal representation they deemed appropriate.

(B) The parties are of equal bargaining position and this Agreement must be construed equally between the parties without consideration of which of the parties may have drafted this Agreement.

(C) The Agreement will be interpreted in accordance with the laws of the State of Arizona.

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

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

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

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

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

14. Term. The term of this Agreement commences upon the Effective Date which is the date last signed by both parties and continues for a one (1)-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 four (4) years, renewable on an annual basis. Contractor will be notified in writing by the City of its intent to extend the Agreement period at least (30) calendar days prior to the expiration of the original or any renewal Agreement period. The City has no obligation to extend or renew this Agreement, and any decision to do so is at the sole discretion of the City. 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.

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

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

Exhibit A	Project
Exhibit B	Compensation
Exhibit C	Dispute Resolution

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

Nesbitt Contracting Co., Inc.
an Arizona corporation

By: James L. Nesbitt
Its: President/CEO

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

EXHIBIT A
CONSTRUCTION AGREEMENT

PROJECT

MILL & OVERLAY shall include arterial, collector and residential streets, upgrading ramps and sidewalks to the current ADA standards, new striping, adjustment of affected manholes and valve boxes, miscellaneous concrete replacements, traffic control and additional ancillary items at various locations within the City.

RECONSTRUCTION shall include removal of asphalt surface, modification or rehabilitation of the existing base course, subgrade repairs, asphalt resurfacing, upgrading ramps and sidewalks to the current ADA standards, adjustment of manholes and valve boxes, miscellaneous concrete replacements, traffic control, and additional ancillary items at various locations within the City.

EXHIBIT B
CONSTRUCTION AGREEMENT

COMPENSATION

METHOD AND AMOUNT OF COMPENSATION

By bid, including all services, materials and costs.

NOT-TO-EXCEED AMOUNT

The total amount of compensation paid to Contractor for full completion of all work required by the Project during each term of the Project must not exceed $7,330,006.50, renewable for up to four (4) additional terms, for a grand total of $36,665,032.50.

DETAILED PROJECT COMPENSATION

As shown on the Bid Schedule.

EXHIBIT C
CONSTRUCTION AGREEMENT

DISPUTE RESOLUTION

1. Disputes.

1.1 Commitment. The parties commit to resolving all disputes promptly, equitably, and in a good-faith, cost-effective manner.

1.2 Application. The provisions of this Exhibit will be used by the parties to resolve all controversies, claims, or disputes ("Dispute") arising out of or related to this Agreement-including Disputes regarding any alleged breaches of this Agreement.

1.3 Initiation. A party may initiate a Dispute by delivery of written notice of the Dispute, including the specifics of the Dispute, to the Representative of the other party as required in this Agreement.

1.4 Informal Resolution. When a Dispute notice is given, the parties will designate a member of their senior management who will be authorized to expeditiously resolve the Dispute.

(A) The parties will provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any Dispute in order to assist in resolving the Dispute as expeditiously and cost effectively as possible;

(B) The parties' senior managers will meet within 10 business days to discuss and attempt to resolve the Dispute promptly, equitably, and in a good faith manner, and

(C) The Senior Managers will agree to subsequent meetings if both parties agree that further meetings are necessary to reach a resolution of the Dispute.

2. Arbitration.

2.1 Rules. If the parties are unable to resolve the Dispute by negotiation within thirty (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 (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 fifteen (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 ten (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 ninety (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 (fifteen) 15 days after the arbitration hearing is concluded. This decision will be final and binding on the Parties.

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

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

4. Exceptions.

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

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

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

BID TABULATION

PROJECT 151623-MILL AND OVERLAY (SOUTH OF PEORIA)

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

DATE: April 21, 2016 at 10 am

	CONTRACTOR	BID BOND/ CHECK	ACKNOWLEDGE ADDENDA 1-3	TOTAL BASE BID
1	NESBITT CONTRACTING COMPANY, INC.	BID BOND	YES	$ 7,330,006.50
2	SUNLAND INC. ASPHALT & SEALCOATING	BID BOND	YES	$ 7,396,470.50
3	COMBS CONSTRUCTION COMPANY INC	BID BOND	YES	$ 7,590,485.00
4	M.R. TANNER CONSTRUCTION	BID BOND	YES	$ 7,770,000.00

File #: 16-314, **Version:** 1

AUTHORIZATION TO ENTER INTO AMENDMENT NO. 2 TO THE PROFESSIONAL SERVICES AGREEMENT FOR GENERAL LANDFILL ENGINEERING CONSULTING SERVICES WITH TETRA TECH BAS, INC.
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. 2 to the Professional Services Agreement, Contract No. C-9326-1, with Tetra Tech BAS, Inc., for general engineering landfill consulting services, to increase the spending authority for the remaining term of the Agreement to an amount not to exceed $250,000 annually.

Background

The Glendale Municipal Landfill (landfill) uses professional engineering services to provide routine and special project support on an on-call basis for landfill development and operations. These services include general engineering support, design services, mapping and survey services, environmental compliance support, construction administration services, landfill development planning and permit preparation, and regulatory agency interaction.

Contract No. C-9326 with Tetra Tech BAS, Inc., was awarded by Council on October 28, 2014, for an initial one -year term with the option to extend for an additional four years, in one-year increments. In October 2015 Amendment No. 1 was approved extending the term of the Agreement from October 30, 2015 through October 29, 2016.

Analysis

The landfill recently requested and received a revision to the Solid Waste Facility Plan from the Arizona Department of Environmental Quality (ADEQ) which allows the height of the south cell to be increased by an additional twenty feet. This permit revision will require consulting and engineering services to meet operational changes including a required update of the master plan.

Previous Related Council Action

On October 28, 2014, Council authorized entering into a Professional Services Agreement with Tetra Tech BAS, Inc., for general engineering landfill consulting services in an amount not to exceed $150,000 annually; and authorized the City Manager to renew the Agreement, at his discretion for an additional four years, in one year increments, in an amount not to exceed $750,000 over the full term of the Agreement.

Community Benefit/Public Involvement

The landfill is a responsible, progressive, and environmentally sound long-term solution to solid waste management essential to the future health, welfare, and prosperity of Glendale residents.

Budget and Financial Impacts

Funding is available in the FY 2016-17 Landfill Enterprise fund operating and maintenance budget and Capital Improvement Plan (CIP) budget. Expenditures with Tetra Tech BAS, Inc. are not to exceed $250,000 annually.

Cost	Fund-Department-Account
$150,000	**2440-17710-515000, Landfill Enterprise Fund**
$100,000	**2440-78505-518200 Landfill CIP - North Cell Construction 2440-78503-518200 Landfill CIP - South Cell Closure**

Capital Expense? Yes

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from?

AMENDMENT NO. 2
PROFESSIONAL SERVICES AGREEMENT GENERAL LANDFILL ENGINEERING CONSULTING SERVICES
(City of Glendale Solicitation RFP Project No. 131426, Contract No. C-9326)

This Amendment No. 2 ("Amendment") to the Professional Services Agreement for General Landfill Engineering Consulting Services ("Agreement") is made this _____ day of _____, 2016, ("Effective Date"), by and between the City of Glendale, an Arizona municipal corporation ("City") and Tetra Tech BAS, Inc., a California corporation authorized to do business in Arizona ("Contractor").

RECITALS

A. City and Tetra Tech BAS, Inc. ("Contractor") previously entered into an Agreement for Landfill Engineering Consulting Services, Contract No. C-9326, dated October 28, 2014 ("Agreement"); and

B. City and Contractor previously entered into Agreement Amendment No. 1, extending the term of the Agreement from October 30, 2015 through October 29, 2016; and

C. City and Contractor wish to modify and amend the Agreement subject to and strictly in accordance with the terms of this Amendment to expand the Scope of Word to be performed by the Contractor under this Agreement.

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. **Scope of Work.** The Scope of Work is being expanded, in accordance with Exhibit B to this Amendment, for Contractor to provide the following additional tasks not previously required in the original Scope of Work. The new Scope of Work is specifically incorporated into and shall become an enforceable part of the Agreement.

4. **Compensation.** The Agreement originally provided for compensation in the amount of $150,000. The compensation of the Agreement is amended and increased and shall not exceed $250,000 annually for the current term. The compensation also shall not exceed $250,000 for each renewal year that may be exercised at the City's option. Any remaining option to extend the term exercised by the City. The unit prices are provided in Exhibits B and C.

5. **Insurance Certificate.** Current certificate will expire on October 1, 2016. A new certificate applying to the extended term must be provided prior to this policy expiration 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. If any provision of this Amendment conflicts with the Agreement, then the provisions of this Amendment shall prevail.

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

Tetra Tech BAS, Inc., a California corporation

_____

By: Jeff Williams

Its: Controller

Professional Services Agreement - Exhibit A

PROJECT DESCRIPTION

The Consultant shall provide general engineering services including design services, engineering support, environmental compliance support and construction administration services. Activities under this contract are specific to the City of Glendale Landfill, and will be identified within separate task orders of varying size and complexity. Task orders will be individually managed, with independent schedules, budgets, objectives and deliverables.

EXHIBIT B
Professional Services Agreement

SCOPE OF WORK

(Cover Page)

PROFESSIONAL SERVICES AGREEMENT - EXHIBIT B

SCOPE OF WORK

Consulting Services Description:

The following is a list of landfill engineering task categories that may be requested by the city. This list is not comprehensive and the city reserves the right to add related engineering services as necessary.

1. Planning and evaluation related to master plan development, cost analysis, waste modeling and statistical evaluations, landfill operation, closure / post-closure and financial assurance, facility management, equipment optimization and utilization techniques, and environmental regulatory compliance.
2. Standard calculations for landfill operation and optimization such as waste quantity estimates (e.g. tonnage, volume, air space), soil to waste ratios, waste densities, and environmental/air quality emissions.
3. Routine design activities including geotechnical and hydrological studies, construction cost projections and management oversight on designed projects such as waste cell sequencing, leachate collection and pumping, storm water management and landfill gas.
4. Document preparation including permit applications and modifications, construction plans, design reports, cost estimates, feasibility studies, facility plans and environmental plans, demonstrations and bid documents and specifications.
5. Meetings and presentations including attendance and/or representation of the client at various public and governmental agency meetings.
6. Regulatory agency interaction and liaison requiring robust knowledge of federal, state and local agency policies, guidelines and regulations.

Scope of Work

The following information is a general description of the scope of work that the Consultant will be required to perform. The services listed in this scope of work may include, but are not limited to, the following:

A. Planning, study, design, GIS/mapping/survey services:
   1. Attend project meetings as necessary to maintain the project budget and schedule. Meetings may include;
      a. Meetings with Field Operations and/or City Engineering Department's Project Team to determine scope of work, and deliverables.
      b. Meetings required for obtaining permits.
      c. Meetings with utility companies.
      d. Meetings with general public, property and business owners, etc.
   2. Assist with the coordination of private, public and City utilities (i.e., APS, SRP, Qwest, Southwest Gas, Cox Communications, City Information Technology Department, Water and Sewer Services Department, etc.) regarding standard utility issues;
   3. Prepare and maintain a design plan and schedule;
   4. Assist in the permitting processes;
   5. Preparation of Design Concept Reports or Project Studies;
   6. Field work as necessary to support reports, studies, designs or regulated environmental compliance programs;
   7. Prepare bid documents for construction;
   8. Advise the City regarding use of construction materials;
   9. Coordinate the review of plans or studies with appropriate local, State, and Federal authorities, including adjoining municipalities and other authorities having jurisdiction.

B. Post-Design and Pre-Construction Services:
   1. Perform as lead to acquire necessary construction permits from authorities having jurisdiction;
   2. Provide support for pre-bid and bidding phases including attendance at pre-bid and preconstruction conference(s) with the City and other interested parties;
   3. Review, research and comment on bidder's responses including recommendation of award;

4. Attend project meetings as necessary to maintain the project budget and schedule. Meetings may include;
    a. Meetings with Field Operations and/or City Engineering Department's Project Team to review schedule and deliverables.
    b. Meetings required for obtaining permits.

C. Construction Administrative Services:
1. Provide Resident Engineer, project management and appropriate project controls for construction oversight;
2. Provide on-site personnel using customary methods for observation and reporting of daily contractor activities;
3. Submit all questions regarding the plans and specifications to the City of Glendale Engineering Department. If appropriate, make recommendations regarding requests for substitutions;
4. Coordinate with various City departments and other agencies, including Arizona Department of Environmental Quality, Maricopa County Department of Environmental Services and utility companies;
5. Coordinate the installation of any materials/items provided or not provided under the construction contract;
6. Schedule and manage contractor operations (special permits will be required for work during non-standard work hours);
7. Provide all quality assurance controls and testing for both on-site and off-site work;
8. Ensure that all federal, state and local permits required for construction (i.e., AZPDES, etc.) are obtained;
9. Address all construction deficiencies in the work or materials as directed by the City Engineering Department;
10. Attend all periodic (e.g. weekly) construction project meetings;
11. Provide value engineering proposals that may accelerate the construction schedule or reduce construction costs;
12. Maintain a running deficiency list during the course of the project. Address all deficiencies before requesting a final inspection;
13. Maintain the record as-built drawings. The record as-built drawings may be reviewed each month by the City Engineering Department. The monthly progress payment will not be approved until the City Engineering Department approves or waives review in writing of the current record as-built drawings;
14. Submit the required number of project closeout documents for the City Engineering Department's review. The project will not be closed out until the City receives the required record as-built drawings, warranty and guarantee documents, lien waivers, product manuals, maintenance and operation manuals, and any spare parts and training required. The City Engineering Department will review the final project closeout documents.

EXHIBIT C
Professional Services Agreement

SCHEDULE

(Cover Page)

PROFESSIONAL SERVICES AGREEMENT - EXHIBIT C

SCHEDULE

The Consultant shall provide services by task order as described in Exhibit A. Each task order will have a separate schedule of completion, to be determined prior to commencing work on the task order.

TETRA TECH BAS, INC.
1422 N 44th Street, Suite 208
Phoenix, Arizona 85008
(602) 257-0336

SCHEDULE OF CHARGES

PERSONNEL	HOURLY RATE
Principal (P)	$180
Principal Engineer (PRE)	$170
Division Engineer (DE)	$166
Chief Engineer (CE)	$157
Senior Project Manager (SM)	$157
Project Manager (PM)	$138
Senior Regulatory Compliance Specialist (SRS)	$128
Senior Project Engineer (SPE)	$138
Project Engineer (PE)	$114
Engineer I (E-I)	$93
Project Geologist (G)	$73
Sr. Electrical Engineer (SEE)	$138
Electrical Engineer (EE)	$111
Senior LFG Designer (SLD)	$147
LFG Designer (LD)	$104
Construction Manager (CM)	$119
Environmental Specialist Supervisor (ESS)	$116
Environmental Specialist II (ES-II)	$98
Environmental Specialist I (ES-I)	$93
Engineering Technician V (ET-V)	$73
Engineering Technician II (ET-II)	$54
Engineering Technician I (ET-I)	$52
Project Coordinator (PC)	$86
Administrative Assistant (ADA)	$61
Office Services Clerk (OS)	$55
Chief of Survey Parties (CSP)	$123
2-Man Survey Party (SP-2M)	$224
1-Man Survey Party with GPS (1M-GPS)	$172
Court Appearance (Expert Witness, Deposition, etc)	1.5 x hourly rate

Overtime Premium is 50% of Personnel Hourly Rate
Effective July 1, 2014 to June 30, 2015

TETRA TECH BAS, INC.
1422 N. 44th Street, Suite 208
Phoenix, Arizona 85008
(602) 257-0336

REIMBURSABLE CHARGES

(Effective July 1, 2014 - June 30, 2015)

In addition to the above charges for professional services (including routine expenses), we require reimbursement for the following items:

A. IN-HOUSE EXPENSES

Reproduction/Plotting:	Xerox Copies	$0.10/page
	Color Copies	$0.50/page
	Wide Format Copies	$0.30/sq. ft.
	Blueprints	$0.50/sq. ft.
	Bond Plotting – Black &	$2.00/sq. ft.
	Bond Plotting – Color	$4.00/sq. ft.
	Vellum Plotting	$4.00/sq. ft.
	Mylar Plotting	$5.00/sq. ft.
Telefax (Outgoing only):		$2.00/page
Mileage:	Personal Vehicle	$0.60/mile
	Company Vehicle	$0.70/mile

OR

5% OF TOTAL PERSONNEL FEES

B. OTHER EXPENSES

Company Vehicles	$15.00/hour
Survey Vehicles	$15.00/hour
Other Out-of-Pocket Expenses/Supplies/Travel	Cost + 15%
Equipment Usage	See Attached Schedule
Consultants/Outside Services	Cost + 15%
Construction Services	Cost + 15%
Per Diem for Living Expenses	Federal Rates
CADD Computer Usage	$10.00/hour
Field Computer Services	$40.00/week

TETRA TECH BAS, INC.
1422 N 44th Street, Suite 109
Phoenix, Arizona 85008
(602) 257-0336

EQUIPMENT RENTAL RATES
(Effective July 1, 2014 - June 30, 2015)

TYPE OF EQUIPMENT	DAY	WEEK	MONTH
4 Gas Range Meter CH4, H2S, CO, O2 (Sentinel 44)	$75	$200	$500
Alpha - 1 Personal Sampling Pump	$75	$200	$500
Disposable Bailer	$20/each	n/a	n/a
CO2 Calorimetric Analysis Tubes	$40	$125	$250
Downhole Camera	$75/hr	n/a	n/a
Dupont Dosimeter Mark-3 (Personal Sample Pump)	$50	$150	$300
Flow Calibrator (Gilian)	$50	$150	$300
Gas Extraction Monitor (GEM 500 / 2000 / 2000 Plus)	$125	$350	$900
Lung Sampler (Nutech 218)	$100	$300	$800
Mini-Ram Data Logger	$40	$125	$250
Mini-Ram Dust Meter	$50	$150	$300
Organic Vapor Analyzer (OVA128)	$125	$400	$1,800
Photo Ionization Detector (OVM580B)	$125	$400	$1,900
Sample Train (Gas Extraction Pump)	$50	$150	$300
Soil Auger/Sampler	$30	$90	$180
Sounder (Liquid Level Indicator)	$40	$125	$250
Horiba Meter	$50	$200	$400
MiniRae 2000	$75	$200	$500
GT Surveyor	$75	$200	$500
Groundwater Sampling Equipment	$30/hour	n/a	n/a
Company Vehicle	$120	$480	$1,250
Field Sampling Supplies:	100/day	n/a	n/a
LEVEL C (Per Person) Respirator with Cartridge (full or half faced) Tyvek Coveralls Outer Gloves Glove Liners Neoprene Boots	$150	n/a	n/a

File #: 16-315, **Version:** 1

AUTHORIZATION TO ENTER INTO AMENDMENT NO. 1 TO THE COMMUNICATIONS FACILITIES LICENSE AGREEMENT WITH COX COMMUNICATIONS ARIZONA, LLC, FOR COMMUNICATION SERVICES AT THE GLENDALE MUNICIPAL AIRPORT

Staff Contact: Jack Friedline, Director, Public Works

Purpose and Recommended Action

This is a request for the City Council to authorize the City Manager to enter into Amendment No. 1 to the Communications Facilities License Agreement with Cox Communications Arizona, LLC (Cox) for a capital contribution of $60,000 for the installation of fiber cable at the Glendale Municipal Airport (Airport).

Background

The Airport does not have wired internet access. As a result, the Airport staff and tenants rely on internet access through a satellite service provider, which is expensive and data restrictive when compared to wired internet access. The lack of reliable and cost effective internet access at the airport is a major complaint of our existing and potential tenants. City employees also experience inconsistent network access and find the current arrangement unreliable. Airport staff has identified reliable, wired internet service as an ongoing goal for airport operations.

In 2015, some tenants of the airport contacted Cox to obtain wired internet services, compelling the service provider to explore the feasibility of expanding their infrastructure to accommodate these requests. As part of that effort Cox contacted several other airport tenants outside of the terminal to obtain signed contracts for future service, exhibiting their commitment to using Cox services if available.

Analysis

Cox initially established a budget of $150,000 for the installation of fiber along Glen Harbor Boulevard, starting at the Glendale Avenue intersection and terminating south of the South Box Hangars. However, the low bid for this project came in at $221,421, and Cox decided to cancel the project due to the higher cost. The City opened negotiations with Cox to identify terms to retain the project, and Cox sent an agreement where the City would provide a capital contribution of $60,000 towards the budget to continue the project. Under this agreement, Cox will pay the remainder of the project costs.

The proposed fiber installation will allow for internet, video, and phone services. Each tenant will be responsible to contract directly with Cox for each of their desired services.

The Aviation Advisory Commission has been kept apprised of the progress of this project on a monthly basis. The Aviation Advisory Commission passed a recommendation to approve the amendment and expenditure of

funds ($60,000) to the City Council at their May 11, 2016 meeting.

Community Benefit/Public Involvement

The benefit to the airport will be reliable wired internet service to the city staff and tenants. It will also allow us an opportunity to provide a valued public service of free wireless internet service to our customers in the terminal only. Pilots will be able to check weather, conduct preflight activities, get flight information, etc. Many airports offer free wireless internet access including several in the valley such as Phoenix Sky Harbor, Deer Valley, Goodyear, Chandler, and Buckeye Airports.

The availability of wired internet access and other services should increase customer satisfaction. The availability of these services will be a major selling point to potential tenants and for the rental of the airport conference room. Additional tenants and conference room rentals will increase revenues and increase the potential self-sustainability of the Airport, enabling staff to better maintain and operate the public facility.

Budget and Financial Impacts

Funding for the installation of fiber cable is available in the Fiscal Year 2015-16 Airport Capital Improvement budget. Expenditures with Cox are not to exceed $60,000.

Monthly services fees for internet access are estimated at less than $2,400 per year and are available in the Airport's Operating budget, contingent upon Council Budget approval.

Cost	Fund-Department-Account
$60,000	2210-65078-550800, Airport Matching Funds - Improve Other than Bldgs
$2,400	1760-16410-518200, Professional and Contractual

Capital Expense? Yes

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from?

AMENDMENT NO. 1 to
Communications Facilities License Agreement

This Amendment No. 1 (the "Amendment") to the Communications Facilities License Agreement (the "Agreement") is made this _____ day of _____, 2016, ("Effective Date"), by and between the City of Glendale, an Arizona municipal corporation ("City") and Cox Communications Arizona, LLC, an Arizona limited liability company ("Cox").

RECITALS

A. City and Cox previously entered into the Agreement on or about June 2015 in order to facilitate the installation of fiber at the Glendale Municipal Airport, which facilitates Internet access for airport users (the "Project"); and

B. The parties came to understand that there was a financial expense associated with the Project; and all material associated with the extension will remain the property of Cox Communications; and

C. The City wishes to pay a portion of the cost of the Project in order to make the Glendale Municipal Airport more attractive to tenants and users of the airport.

City and Cox 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 in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the City and Contractor agree as follows:

1. **Recitals.** The recitals set forth above are not merely recitals, but form an integral part of this Amendment.

2. **City Financial Contribution.** City will pay Sixty Thousand Dollars ($60,000) to Cox as the City's share of the Project (the total cost of the Project is described in the attached Exhibit A).

3. **Ratification of Agreement.** City and Contractor agree that except as expressly provided in this Amendment, the provisions of the Agreement remain in full force and effect, and if any provision of this Amendment conflicts with the Agreement, then the provisions of this Amendment prevail.

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

Cox Communications Arizona, LLC

_____

By: Nelson Eisbank

Its: Director of Finance

Exhibit A
[Capital Contribution details]

Project Name: Glendale Airport

RE: Agreement for City of Glendale to provide a capital contribution for services to Glendale Airport in the amount of $60,000.

Dear Mr. Mark Gibson:

The following is a breakdown of the costs associated to bring services to the Glendale Airport and passing potential customers.

Labor:	$157,221
Material:	$ 64,200
Total project cost:	**$** 221,421

This cost amount is fixed for 120 days from the date of this letter. Once agreement is reached, Cox and Glendale will agree on a commitment date to bring services. Please note time is needed or engineering, materials, building and access agreements, and any permits required.

All payments shall be made to Cox Communications.

The mailing address is as follows:
Cox Communications
Accounting - DV3-10
1550 Deer Valley Rd,
Phoenix AZ, 85027
Attn: Linda Facio
Glendale Airport

If you have any questions with regard to these costs, please do not hesitate to call me.

Thank you.

Please sign and date below and return as acknowledgement of the costs.

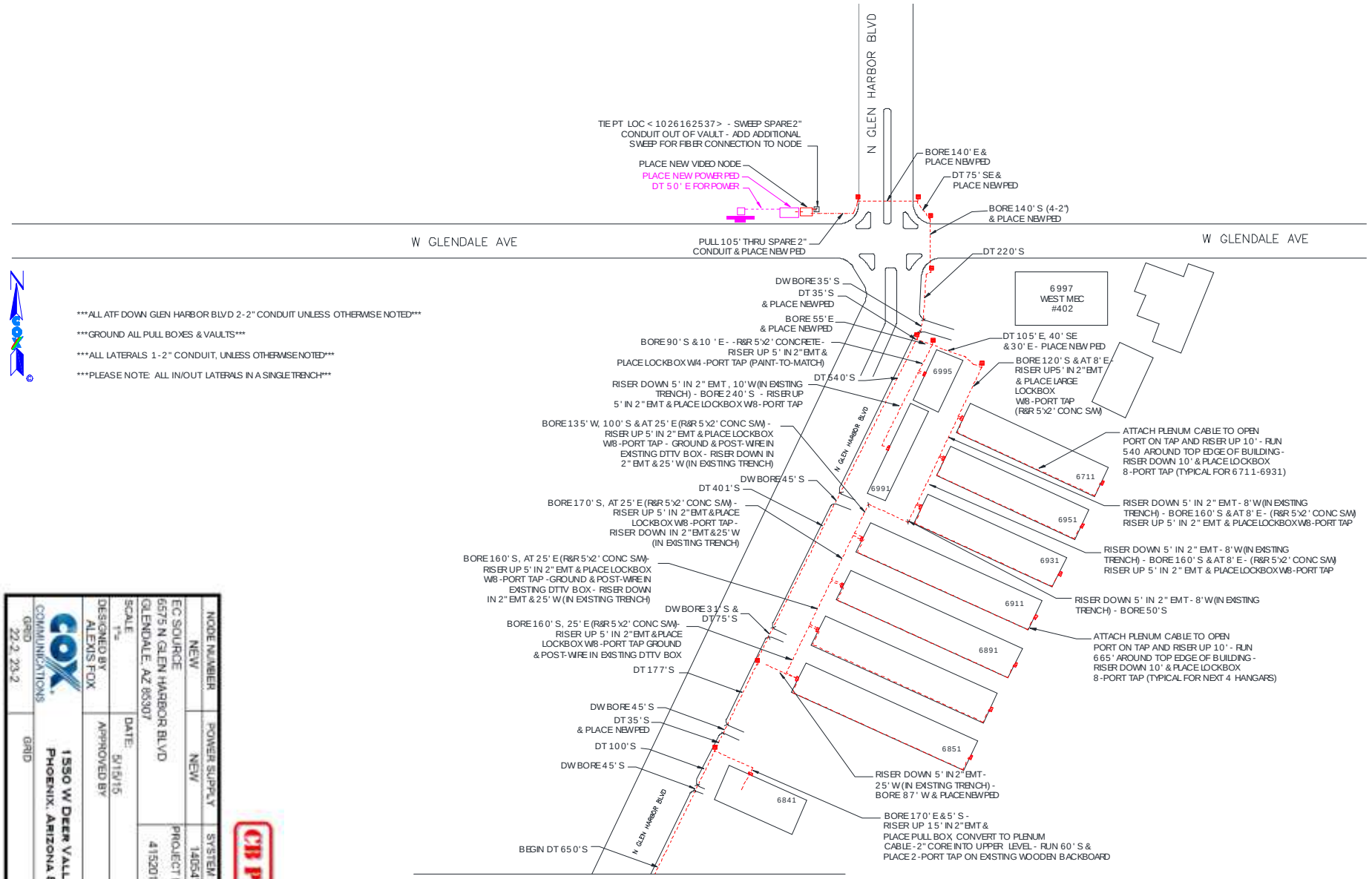
_____

Sincerely,

Linda Facio l Construction Services, Supervisor Cox Communications
1550 W. Deer Valley Rd., Phoenix, AZ 85027
623.328.3500 office l 602.694.1553 cell l 623.322.7500 fax


TIE PT LOC < 1026162537> -
EXPRESS ENTRY
105
340' -
ROW
W GLENDALE AVE
ADD NEW VIDEO
NODE & POWER
SUPPLY
N GLEN HAR
W Glenn Dr
N Glen Harbor Blvd
6459'
4280'
TO PAGE 2
-N-
BLACK
RED


FROM PAGE 1
N Glen Harbor Blvd
4033'
N Glen Harbor Blvd
END POINT
N
Blue Existing Conduit
Green Trench/ Bore
Red New Aerial
Red Overlash Aerial
Black Rectangle Trench
BLACK
Red Rectangle Bore
RED



ALL ATF DOWN GLEN HARBOR BLVD 2-2" CONDUIT UNLESS OTHERWISE NOTED

GROUND ALL PULL BOXES & VAULTS

ALL LATERALS 1-2" CONDUIT, UNLESS OTHERWISE NOTED

PLEASE NOTE: ALL IN/OUT LATERALS IN A SINGLE TRENCH

TO PAGE 2

NODE NUMBER	POWER SUPPLY	SYSTEM FT.	CONDUIT FT.
NEW	NEW	14054'	105'

EG SOURCE
6575 N GLEN HARBOR BLVD
GLENDALE, AZ 85307

PROJECT NUMBER:
415201500008M300035

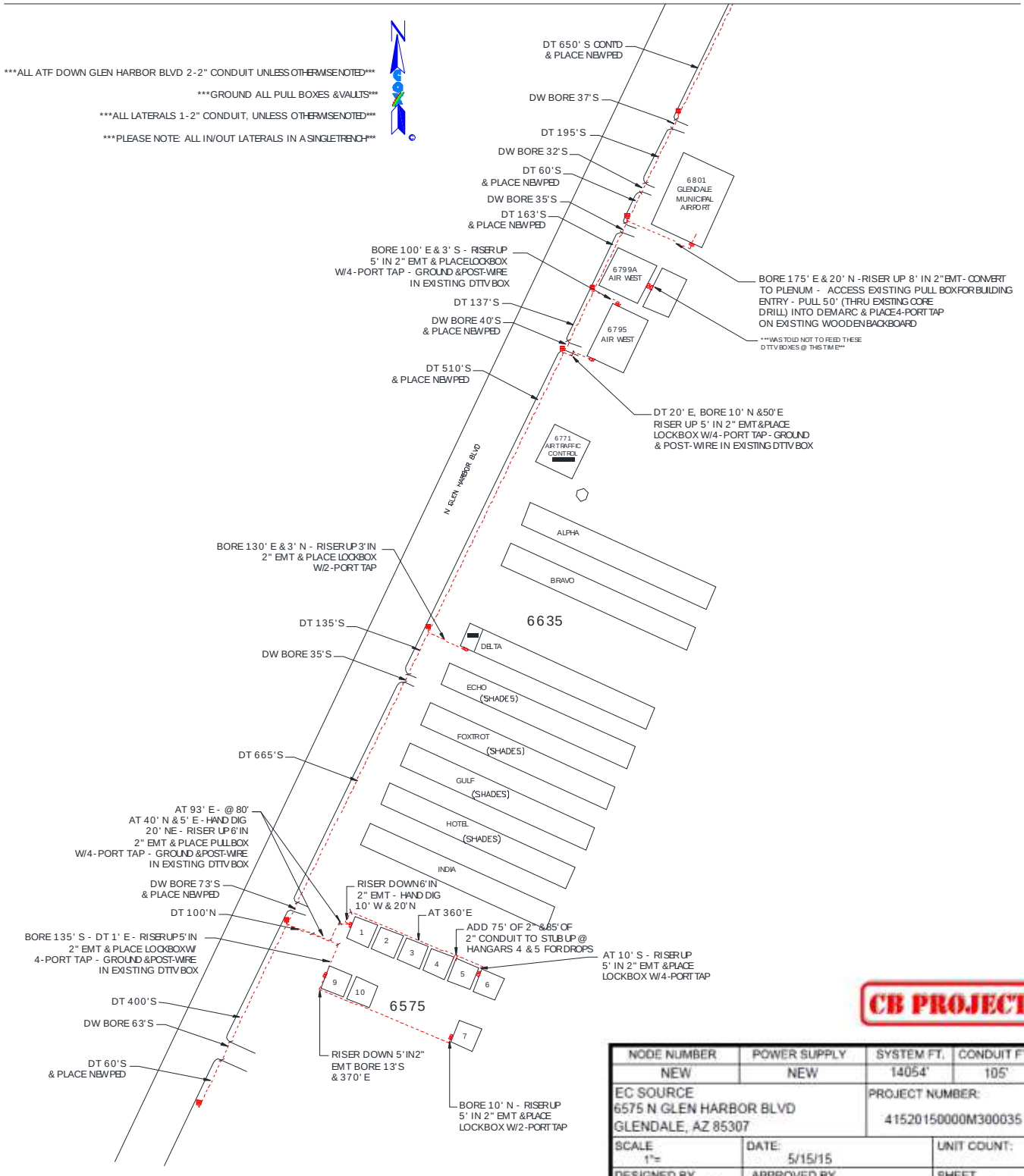
SCALE: 1"=
DATE: 5/15/15
UNIT COUNT:
DESIGNED BY: ALEXIS FOX
APPROVED BY:
SHEET: 1 OF 2

COX COMMUNICATIONS
1550 W DEER VALLEY ROAD
PHOENIX, ARIZONA 85027

GRID: 22-2 23-2
GRID
FILE NUMBER

CR PROJECT

FROM PAGE 1



CB PROJECT

NODE NUMBER	POWER SUPPLY	SYSTEM FT.	CONDUIT FT.
NEW	NEW	14054'	105'
EC SOURCE 6575 N GLEN HARBOR BLVD GLENDALE, AZ 85307		PROJECT NUMBER: 41520150000M300035	
SCALE 1"=	DATE: 5/15/15		UNIT COUNT:
DESIGNED BY ALEXIS FOX	APPROVED BY		SHEET 2 OF 2
COX COMMUNICATIONS	1550 W DEER VALLEY ROAD PHOENIX, ARIZONA 85027		
GRID 22-2	GRID		FILE NUMBER

File #: 16-317, **Version:** 1

AUTHORIZATION TO ENTER INTO AN AGREEMENT WITH TRIANGLE SERVICES, INC., FOR BUS STOP TRASH SERVICE

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 an Agreement with Triangle Services, Inc., for bus stop trash service in an amount not to exceed $100,000 annually, and to authorize the City Manager to extend the Agreement, at his discretion, an additional four terms, in one-year increments, in an amount not to exceed $500,000 over the entire term of the Agreement, contingent upon Council Budget approval.

Background

Glendale contracts for trash collection services to maintain a clean area in and around bus stops. Currently, there are 256 bus stops with trash receptacles throughout the city. This Agreement will provide trash collection services for these stops as well as any future stops that are equipped with a trash receptacle. Also included in this agreement is trash collection for the park and ride facility at 99th Avenue and Glendale Avenue, the transit center at Arrowhead Towne Centre, and the new park and ride facility once constructed and operational. Bus stops are serviced at varying frequencies up to three times weekly, depending on passenger use.

Request for Proposals (RFP) 16-43, Bus Stop Trash Pickup Services, was advertised on April 21, 2016. Five proposals were received. An evaluation panel consisting of staff from Glendale's Transit Division evaluated the five proposals and determined that Triangle Services, Inc. was the most responsive and responsible proposal and was determined to be the most advantageous to the city.

Analysis

The current agreement, also with Triangle Services, Inc., expires in October 2016. This agreement will be terminated 3 months early in order to get the agreement on a Fiscal Year cycle with the new agreement taking effect July 1, 2016.

Currently, the annual cost for trash pickup services is approximately $90,000. This agreement's not-to-exceed amount of $100,000 per year will allow for future expansion and deployment of additional trash receptacles. Fixed Route service on 83rd Ave is planned for implementation in October of 2017 which will require new stops and amenities. Additionally, the new park and ride will also increase the number of trash receptacles needing servicing. Additional receptacles are also deployed to bus stops throughout the year as requested by passengers and residents.

Previous Related Council Action

On October 25, 2011, Council authorized entering into an Agreement for bus shelter trash pickup services with ShelterCLEAN of Arizona, Contract No. 7783, for an amount not to exceed $90,000 annually. ShelterCLEAN was acquired by Triangle Services, Inc. in 2011.

Community Benefit/Public Involvement

By providing trash collection services at bus stops, citizens will benefit from clean facilities that will encourage continued usage of the city's transit services. Keeping bus stops clean and free of debris also helps reduce the risk of bees and insects, especially during the summer months.

Budget and Financial Impacts

Funding in the amount of $90,000 is available in the FY 2016-2017 GO Transportation Program operating budget. Transportation will increase the operating budget for this service in FY2017-2018 to accommodate the new 83rd Avenue service as well as the new park and ride facility once completed, pending Council Budget approval.

Cost	Fund-Department-Account
$90,000	**1660-16540-518200, Fixed Route**

Capital Expense? No

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from?

AGREEMENT FOR

Bus Stop Trash Service

City of Glendale Solicitation No. RFP 16-43

This Agreement for Bus Stop Trash Service ("Agreement") is effective and entered into between CITY OF GLENDALE, an Arizona municipal corporation ("City"), and Triangle Services Inc., a Arizona Company, authorized to do business in Arizona, (the "Contractor"), as of the _____ day of _____, 20

RECITALS

A. City intends to undertake a project for the benefit of the public and with public funds that is more fully set forth in **Exhibit A**, pursuant to Solicitation No. 16-43 (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. 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.

(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 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.

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.

3.4 Coordination; Interaction.

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

b. Subject to any limitations expressly stated in the Project Budget, Contractor will meet to review the Project, Schedule, Project Budget, and in-progress work with Coordinating Project Professionals and City as often and for durations as City reasonably considers necessary in order to ensure the timely work delivery and Project completion.

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

3.5 Work Product.

a. Ownership. Upon receipt of payment for services furnished, Contractor grants to City, and will cause its Sub-contractors to grant to the City, the exclusive ownership of and all copyrights, if any, to evaluations, reports, drawings, specifications, project manuals, surveys, estimates, reviews, minutes, all "architectural work" as defined in the United States Copyright Act, 17 U.S.C § 101, *et seq.*, and other intellectual work product as may be applicable ("Work Product").

(1) This grant is effective whether the Work Product is on paper (e.g., a "hard copy"), in electronic format, or in some other form.

(2) Contractor warrants, and agrees to indemnify, hold harmless and defend City for, from and against any claim that any Work Product infringes on third-party proprietary interests.

b. Delivery. Contractor will deliver to City copies of the preliminary and completed Work Product promptly as they are prepared.

c. City Use.

(1) City may reuse the Work Product at its sole discretion.

(2) In the event the Work Product is used for another project without further consultations with Contractor, the City agrees to indemnify and hold Contractor harmless from any claim arising out of the Work Product.

(3) In such case, City shall also remove any seal and title block from the Work Product.

4. Compensation for the Project.

4.1 Compensation. Contractor's compensation for the Project, including those furnished by its Sub-contractors will not exceed $100,000 per year, not to exceed $500,000 over the entire term of the agreement, 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. Billings and Payment.

5.1 Applications.

a. Contractor will submit monthly invoices (each, a "Payment Application") to City's Project Manager and City will remit payments based upon the Payment Application as stated below.

b. The period covered by each Payment Application will be one calendar month ending on the last day of the month or as specified in the solicitation.

5.2 Payment.

a. After a full and complete Payment Application is received, City will process and remit payment within 30 days.

b. Payment may be subject to or conditioned upon City's receipt of:

(1) Completed work generated by Contractor and its Sub-contractors; and

(2) Unconditional waivers and releases on final payment from Sub-contractors as City may reasonably request to assure the Project will be free of claims arising from required performances under this Agreement.

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

a. If the Payment Application is rejected, the Project Manager will issue a written listing of the items not approved for payment.

b. City may withhold an amount sufficient to pay expenses that City reasonably expects to incur in correcting the deficiency or deficiencies rejected for payment.

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-contactors 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.

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 the Required Insurance whenever requested.

8.3 Indemnification.

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

Frank M. Saccente
c/o Triangle Services, Inc.
3702 E. Roeser Rd. Ste. 27
Phoenix, AZ 85040

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

City of Glendale
c/o Jeff Henry
Transit Manager
6210 W. Myrtle Ave Bldg "S"
Glendale, Arizona 85301
623-930-3516

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 one (1)-year initial period. The City may, at its option and with the approval of the Contractor, extend the term of this Agreement an additional four (4) years, renewable on an annual basis. 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 any such price adjustment 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

Triangle Services Inc.,
an Arizona corporation

By: Frank M. Saccante
Its: General Manager

1_29_16

EXHIBIT A

Solicitation 16-43 Bus Stop Trash Service

The City of Glendale Transit Division currently maintains approximately 544 bus stop in which 256 of those bus stops have a trash receptacle. Several of the City's bus stops have shelters, benches, trash receptacles and/or other amenities. These bus stops have varying degrees of maintenance needs and require more frequent trash collection. Some sites are high-volume locations. This agreement is to address the litter removal from all of the bus stops throughout the City. Depending on need, the containers shall be serviced: once a month (M), once every two weeks (B), weekly (1), twice weekly (2) or three times a week (3). A schedule of locations and service frequency is included in solicitation # 16-43. These quantities are subject to change during the term of the contract. Contract cost will change accordingly, based on the unit cost proposed. These numbers do not include the Park and Ride Lot located at 99th and Glendale Avenues, which requires servicing twice per month or the bus stop @ Arrowhead Mall requiring trash service three (3) times a week.

Call backs: Contractor shall assign top priority to callouts for trash cans that are overflowing, servicing them on the same day that the contractor receives the complaint. Required response time shall be no greater than four (4) hours after the City has contacted the Contractor unless the contract administrator has agreed to other terms. Contractor must give an estimated time of arrival (ETA) at the time the City contacts the Contractor. All hazards must be eliminated from the site in order to protect the public from hazardous/dangerous conditions. Contractor Supervisory personnel shall be available to receive a phone call from the City between the hours of 6:00 a.m. and 6:00 p.m., seven days a week, 365 days a year. The contractor shall notify the contract administrator immediately after the site has been secured. Failure to do so may result in the Contractor paying liquidated damages in the sum of $50 per consecutive calendar day that work remains to be completed.

Contractor shall empty all trash containers; disinfect trash receptacles inside, outside and underneath; and replace with new trash container liners (black or green, non-clear). All trash and litter shall be picked up within a 10-foot radius of the bus stop. If the stop contains a concrete slab, the 10-foot radius begins at the outside of each side of the slab, excluding the street but to include the sidewalk and gutter area. All trash must also be cleaned within the slab.

Trash pickup shall include, but not be limited to:

- Keeping the bus stop free from all debris (cigarette butts, cups, newspapers, gum, food, trash, etc.) weeds, brush, bushes, overhanging trees, etc.

- Keeping the bus stop free from insects and animals (i.e., ants, bees, bugs, birds, etc.).

- Notifying the contract administrator of any bus stop damage, including missing signs and damage to furniture.

- Keeping the bus stop free from graffiti.

- Calling the appropriate party for shopping cart removal (you will need to locate a company that removes or picks-up shopping carts). It is your responsibilities to make sure the shopping carts are removed from the bus stop. You will also need to identify the location of the shopping cart on the monthly invoice.

- Notifying the contract administrator of any type of hazard or safety issue.

- Keeping all non-city property off shelter/bench slabs (including magazine stands, flyers, all foreign object, etc.).

Contractor shall have the highest consideration for the safety, comfort, cleanliness and convenience of transit passengers and adjacent property owners. From time to time the contractor will need to clean debris along the area adjacent to property owners. Contractor shall conduct visual checks of each stop and

immediately report items needing special repair or attention to assure the bus stop meets City standards, as outlined in solicitation # 16-43, for cleanliness and safety.

There is a Park and Ride lot located at 99th and Glendale Avenues that also requires trash pickup services. This location has approximately eight (8) trash containers. There is also a bus stop at the Arrowhead Mall in front of the AMC Theater. This stop is to be serviced 3 times a week; the area shall include the passenger waiting area and the area between the passenger waiting area and the curb/gutter of the bus boarding location. All trash/debris inside this area including the curb & gutter shall be cleaned at each service.

Contractor shall be required to perform the following additional services at the Park and Ride and the Arrowhead Mall facilities:

- Empty and change the trash bags in all trash cans.

- Wipe off and disinfect all trash cans and trash can lids.

- Wipe down and disinfect all benches.

- Wipe down bike racks, rails, information panels and light poles.

- Remove all graffiti on premises; sweep sidewalks, waiting area, gutters and curbs; remove gum, food and clean spills on sidewalks, waiting area, gutters and curbs; pick up all debris, cigarette butts and loose trash in landscaping; remove all debris, litter and trash including the parking areas at the Park and Ride.

- Keep the bus stop free from insects and animals (i.e., ants, bees, bugs, birds, etc.).

- Notifying the contract administrator of any bus stop damage, including missing signs and damage to furniture.

- Bus stops are to be serviced Monday through Friday. Please see information of service days in RFP 16-43 for the service days and frequencies.

Contractor shall comply with all terms and conditions listed in solicitation # 16-43 Bus Stop Trash Pickup Services.

PROJECT

[See attached]

EXHIBIT B

Solicitation 16-43 Bus Stop Trash Service

COMPENSATION

METHOD AND AMOUNT OF COMPENSATION

Contractor shall submit invoices for work done monthly after work is completed. Each invoice shall contain a report indicating completed and incomplete work. .

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 $500,000 and $100,000 per year.

DETAILED PROJECT COMPENSATION

The report shall include:

A scale for each location indicating the level of trash in each can when it is collected. The scale shall be from 1 to 4 and "N", with "1" indicating no or very little trash, "4" indicating full of trash and "N" indicating not serviced.

A comment section for each location for comments. Examples include but not limitted to "missing bus stop sign," "trash can lid missing," "construction - did not service", ect.

Cost shall be:

Trash Can Service	$6.40 each
Arrowhead Mall Service	$6.40 per service
Park & Ride Service	$76.80 per service

Contract Renewal Terms:

This contract is for 1 year with an additional four one year renewable options.

EXHIBIT C

Solicitation 16-43 Bus Stop Trash Service

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.

File #: 16-318, **Version:** 1

AUTHORIZATION TO ENTER INTO A LINKING AGREEMENT WITH TITAN MACHINERY, INC., FOR COOPERATIVE PURCHASE OF ONE COMPACT WHEEL LOADER

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 Titan Machinery, Inc., (Titan) for the cooperative purchase of one compact wheel loader in an amount not to exceed $95,728.49, contingent upon Council budget approval.

Background

The Right of Way Division in Public Works is responsible for landscape maintenance in the right of way and on undeveloped city-owned property. The division's current wheel loader is over 17 years old, well beyond the operational life expectancy of 11 years.

Titan was awarded a bid for Earth Moving and Construction Equipment by the Houston-Galveston Area Council of Governments (H-GAC). Staff is requesting to utilize the H-GAC government to government Cooperative Purchasing Program, of which Glendale is a member. Contract No. EM06-15 was awarded by H-GAC on June 1, 2015 and expires on May 31, 2017.

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

Replacement of the existing wheel loader is expected to reduce maintenance cost and downtime for the Right of Way division. When the truck is not operational, staff is forced to re-direct their operations, and productivity is lessened.

Previous Related Council Action

On February 23, 2016, Council authorized entering into Amendment No. 1 to the Linking Agreement with Titan Machinery, Inc., Contract No. C-10265, for the cooperative purchase of heavy duty truck and equipment

repair, in an amount not to exceed $400,000.

On December 8, 2015, Council authorized entering into a Linking Agreement with Titan Machinery, Contract C -10524, for the cooperative purchase of a wheel loader for bulk trash collection in an amount not to exceed $88,813.12. This authority has been expended.

On February 23, 2016, Council authorized entering into a Linking Agreement with Titan Machinery, Inc., Contract No. C-10265, for the cooperative purchase of heavy duty truck and equipment repair, in an amount not to exceed $225,000.

Community Benefit/Public Involvement

Well maintained public right of way aids in creating civic and community pride. If the efforts to maintain the appearance of the landscaping are diminished, the high standards that Glendale citizens have come to expect will be lessened, which could result in sight visibility issues, impede predestination traffic, and contribute to City liability. Completing regularly scheduled tree trimming and landscape maintenance to the city's roadways upholds a positive public image to residents, businesses, and visitors.

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

Funds for this purchase are available in FY 2016-17 Public Works Department Capital Improvement Plan budget. Expenditures with Titan Machinery, Inc. (Titan), are not to exceed $95,728.49, contingent upon Council budget approval.

Cost	Fund-Department-Account
$95,728.49	**2000-68917-551400, Pavement Management - HURF**

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
TITAN MACHINERY, INC.

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 Titan Machinery, Inc., a Delaware corporation authorized to do business in Arizona ("Contractor"), collectively, the "Parties."

RECITALS

A. On June 1, 2015, under the H-GAG Cooperative Purchasing Agreement Program, Houston-Gaveston Area Council (H-GAC) entered into a contract with Contractor to purchase the goods and services described in the Earth Moving & Construction Equipment Contract, Contract No. EM06-15 ("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 purchases can be made by governmental entities from the date of award, which was June 1, 2015, until the date the contract expires on May 31, 2017, 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 May 31, 2017. The period of this Agreement is the period from the Effective Date of this Agreement until May 31, 2017.

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 B.

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 provided in the Cooperative Purchasing Agreement, which is attached hereto as Exhibit C.

B. The total purchase price for the supplies and/or services purchased under this Agreement shall not exceed ninty-five thousand seven hundred twenty eight dollars and forty nine cents dollars ($95,728.49) for the entire term of the Agreement (initial term plus any renewals).

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
c/o Roger Boyer
6210 W. Myrtle Avenue, Suite 111
Glendale, Arizona 85301
623-930-2656

and

Titan Machinery, Inc.
c/o Mark Davis
1411 North 27th Avenue
Phoenix, AZ 85009

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

"City"

City of Glendale, an Arizona
municipal corporation

By: _____
Kevin R. Phelps
City Manager

"Contractor"

Titan Machinery, Inc.,
a Delaware corporation

By: _____
Name: Kevin Smith
Title: Phoenix Store Manager

ATTEST:

_____
Pamela Hanna (SEAL)
City Clerk

APPROVED AS TO FORM:

_____
Michael D. Bailey
City Attorney

LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
TITAN MACHINERY, INC.

EXHIBIT A
EARTH MOVING & CONSTRUCTION EQUIPMENT, CONTRACT NO. EM06-15

A CONTRACT BETWEEN
HOUSTON-GALVESTON AREA COUNCIL
Houston, Texas
AND
TITAN MACHINERY, INC.
Shakopee, Minnesota

This Contract is made and entered into by the **Houston-Galveston Area Council of Governments**, hereinafter referred to as **H-GAC**, having its principal place of business at 3555 Timmons Lane, Suite 120, Houston, Texas 77027, AND, **Titan Machinery, Inc.**, hereinafter referred to as the **CONTRACTOR**, having its principal place of business at 6340 County Road 101 East, Shakopee, Minnesota 55379.

ARTICLE 1: SCOPE OF SERVICES

The parties have entered into a **Earth Moving & Construction Equipment** Contract to become effective as of June 1, 2015, and to continue through May 31, 2017 (the "Contract"), subject to extension upon mutual agreement of the **CONTRACTOR** and **H-GAC**. **H-GAC** enters into the Contract as Agent for participating governmental agencies, each hereinafter referred to as **END USER**, for the purchase of **Earth Moving & Construction Equipment** offered by the **CONTRACTOR**. The **CONTRACTOR** agrees to sell **Earth Moving & Construction Equipment** through the **H-GAC** Contract to **END USERS**.

ARTICLE 2: THE COMPLETE AGREEMENT

The Contract shall consist of the documents identified below in order of precedence:

1. The text of this Contract form, including but not limited to, Attachment A
2. General Terms and Conditions
3. Bid Specifications No:**EM06-15**, including any relevant suffixes
4. **CONTRACTOR**'s Response to Bid No:**EM06-15**, including but not limited to, prices and options offered

All of which are either attached hereto or incorporated by reference and hereby made a part of this Contract, and shall constitute the complete agreement between the parties hereto. This Contract supersedes any and all oral or written agreements between the parties relating to matters herein. Except as otherwise provided herein, this Contract cannot be modified without the written consent of both parties.

ARTICLE 3: LEGAL AUTHORITY

CONTRACTOR and **H-GAC** warrant and represent to each other that they have adequate legal counsel and authority to enter into this Contract. The governing bodies, where applicable, have authorized the signatory officials to enter into this Contract and bind the parties to the terms of this Contract and any subsequent amendments thereto.

ARTICLE 4: APPLICABLE LAWS

The parties agree to conduct all activities under this Contract in accordance with all applicable rules, regulations, directives, issuances, ordinances, and laws in effect or promulgated during the term of this Contract.

ARTICLE 5: INDEPENDENT CONTRACTOR

The execution of this Contract and the rendering of services prescribed by this Contract do not change the independent status of **H-GAC** or **CONTRACTOR**. No provision of this Contract or act of **H-GAC** in performance of this Contract shall be construed as making **CONTRACTOR** the agent, servant or employee of **H-GAC**, the State of Texas or the United States Government. Employees of **CONTRACTOR** are subject to the exclusive control and supervision of **CONTRACTOR**. **CONTRACTOR** is solely responsible for employee payrolls and claims arising therefrom.

ARTICLE 6: END USER AGREEMENTS

H-GAC acknowledges that the **END USER** may choose to enter into an End User Agreement with the **CONTRACTOR** through this Contract and that the term of said Agreement may exceed the term of the **H-GAC** Contract. However this acknowledgement is not to be construed as **H-GAC**'s endorsement or approval of the End User Agreement terms and conditions. **CONTRACTOR** agrees not to offer, agree to or accept from **END USER** any terms or conditions that conflict with or contravene those in **CONTRACTOR**'s **H-GAC** contract. Further, termination of this Contract for any reason shall not result in the termination of the underlying End User Agreements entered into between **CONTRACTOR** and any **END USER** which shall, in each instance, continue pursuant to their stated terms and duration. The only effect of termination of this Contract is that **CONTRACTOR** will no longer be able to enter into any new End User Agreements with **END USERS** pursuant to this Contract. Applicable **H-GAC** order processing charges will be due and payable to **H-GAC** on any End User Agreements surviving termination of this Contract between **H-GAC** and **CONTRACTOR**.

ARTICLE 7: SUBCONTRACTS & ASSIGNMENTS

CONTRACTOR agrees not to subcontract, assign, transfer, convey, sublet or otherwise dispose of this Contract or any right, title, obligation or interest it may have therein to any third party without prior written notice to H-GAC. H-GAC reserves the right to accept or reject any such change. CONTRACTOR shall continue to remain responsible for all performance under this Contract regardless of any subcontract or assignment. H-GAC shall be liable solely to CONTRACTOR and not to any of its Subcontractors or Assignees.

ARTICLE 8: EXAMINATION AND RETENTION OF CONTRACTOR'S RECORDS

CONTRACTOR shall maintain during the course of its work, complete and accurate records of items that are chargeable to END USER under this Contract. H-GAC, through its staff or its designated public accounting firm, the State of Texas, or the United States Government shall have the right at any reasonable time to inspect copy and audit those records on or off the premises of CONTRACTOR. Failure to provide access to records may be cause for termination of this Contract. CONTRACTOR shall maintain all records pertinent to this Contract for a period of not less than five (5) calendar years from the date of acceptance of the final contract closeout and until any outstanding litigation, audit or claim has been resolved. The right of access to records is not limited to the required retention period, but shall last as long as the records are retained. CONTRACTOR further agrees to include in all subcontracts under this Contract, a provision to the effect that the subcontractor agrees that H-GAC'S duly authorized representatives, shall, until the expiration of five (5) calendar years after final payment under the subcontract or until all audit findings have been resolved, have access to, and the right to examine and copy any directly pertinent books, documents, papers, invoices and records of such subcontractor involving any transaction relating to the subcontract.

ARTICLE 9: REPORTING REQUIREMENTS

CONTRACTOR agrees to submit reports or other documentation in accordance with the General Terms and Conditions of the Bid Specifications. If CONTRACTOR fails to submit to H-GAC in a timely and satisfactory manner any such report or documentation, or otherwise fails to satisfactorily render performance hereunder, such failure may be considered cause for termination of this Contract.

ARTICLE 10: MOST FAVORED CUSTOMER CLAUSE

If CONTRACTOR, at any time during this Contract , routinely enters into agreements with other governmental customers within the State of Texas, and offers the same or substantially the same products/services offered to H-GAC on a basis that provides prices, warranties, benefits, and or terms more favorable than those provided to H-GAC, CONTRACTOR shall notify H-GAC within ten (10) business days thereafter of that offering and this Contract shall be deemed to be automatically amended effective retroactively to the effective date of the most favorable contract, wherein CONTRACTOR shall provide the same prices, warranties, benefits, or terms to H-GAC and its END USER. H-GAC shall have the right and option at any time to decline to accept any such change, in which case the amendment shall be deemed null and void. If CONTRACTOR is of the opinion that any apparently more favorable price, warranty, benefit, or term charged and/or offered a customer during the term of this Contract is not in fact most favored treatment, CONTRACTOR shall within ten (10) business days notify H-GAC in writing, setting forth the detailed reasons CONTRACTOR believes aforesaid offer which has been deemed to be a most favored treatment, is not in fact most favored treatment. H-GAC, after due consideration of such written explanation, may decline to accept such explanation and thereupon this Contract between H-GAC and CONTRACTOR shall be automatically amended, effective retroactively, to the effective date of the most favored agreement, to provide the same prices, warranties, benefits, or terms to H-GAC.

The Parties accept the following definition of routine: A prescribed, detailed course of action to be followed regularly; a standard procedure. *EXCEPTION: This clause shall not be applicable to prices and price adjustments offered by a bidder, proposer or contractor, which are not within bidder's/ proposer's control [example; a manufacturer's bid concession], or to any prices offered to the Federal Government and its agencies.*

ARTICLE 11: SEVERABILITY

All parties agree that should any provision of this Contract be determined to be invalid or unenforceable, such determination shall not affect any other term of this Contract, which shall continue in full force and effect.

ARTICLE 12: DISPUTES

Any and all disputes concerning questions of fact or of law arising under this Contract, which are not disposed of by agreement, shall be decided by the Executive Director of H-GAC or his designee, who shall reduce his decision to writing and provide notice thereof to CONTRACTOR. The decision of the Executive Director or his designee shall be final and conclusive unless, within thirty (30) days from the date of receipt of such notice, CONTRACTOR requests a rehearing from the Executive Director of H-GAC. In connection with any rehearing under this Article, CONTRACTOR shall be afforded an opportunity to be heard and offer evidence in support of its position. The decision of the Executive Director after any such rehearing shall be final and conclusive. CONTRACTOR may, if it elects to do so, appeal the final and conclusive decision of the Executive Director to a court of competent jurisdiction. Pending final decision of a dispute hereunder, CONTRACTOR shall proceed diligently with the performance of this Contract and in accordance with H-GAC'S final decision.

ARTICLE 13: LIMITATION OF CONTRACTOR'S LIABILITY

Except as specified in any separate writing between the CONTRACTOR and an END USER, CONTRACTOR's total liability under this Contract, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, but excluding its obligation to indemnify H-GAC described in Article 14, is limited to the price of the particular products/services sold hereunder, and CONTRACTOR agrees either to refund the purchase price or to repair or replace product(s) that are not as warranted. In no event will CONTRACTOR be liable for any loss of use, loss of time, inconvenience, commercial loss, lost profits or savings or other incidental, special or consequential damages to the full extent such use may be disclaimed by law. CONTRACTOR understands and agrees that it shall be liable to repay and shall repay upon demand to END USER any amounts determined by H-GAC, its independent auditors, or any agency of State or Federal government to have been paid in violation of the terms of this Contract.

ARTICLE 14: LIMIT OF H-GAC'S LIABILITY AND INDEMNIFICATION OF H-GAC

H-GAC's liability under this Contract, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, is limited to its order processing charge. In no event will H-GAC be liable for any loss of use, loss of time, inconvenience, commercial loss, lost profits or savings or other incidental, special or consequential damages to the full extent such use may be disclaimed by law. Contractor agrees, to the extent permitted by law, to defend and hold harmless H-GAC, its board members, officers, agents, officials, employees, and indemnities from any and all claims, costs, expenses (including reasonable attorney fees), actions, causes of action, judgments, and liens arising as a result of CONTRACTOR's negligent act or omission under this Contract. CONTRACTOR shall notify H-GAC of the threat of lawsuit or of any actual suit filed against CONTRACTOR relating to this Contract.

ARTICLE 15: TERMINATION FOR CAUSE

H-GAC may terminate this Contract for cause based upon the failure of CONTRACTOR to comply with the terms and/or conditions of the Contract; provided that H-GAC shall give CONTRACTOR written notice specifying CONTRACTOR'S failure. If within thirty (30) days after receipt of such notice, CONTRACTOR shall not have either corrected such failure, or thereafter proceeded diligently to complete such correction, then H-GAC may, at its option, place CONTRACTOR in default and the Contract shall terminate on the date specified in such notice. CONTRACTOR shall pay to H-GAC any order processing charges due from CONTRACTOR on that portion of the Contract actually performed by CONTRACTOR and for which compensation was received by CONTRACTOR.

ARTICLE 16: TERMINATION FOR CONVENIENCE

Either H-GAC or CONTRACTOR may cancel or terminate this Contract at any time by giving thirty (30) days written notice to the other. CONTRACTOR may be entitled to payment from END USER for services actually performed; to the extent said services are satisfactory to END USER. CONTRACTOR shall pay to H-GAC any order processing charges due from CONTRACTOR on that portion of the Contract actually performed by CONTRACTOR and for which compensation is received by CONTRACTOR.

ARTICLE 17: CIVIL AND CRIMINAL PROVISIONS AND SANCTIONS

CONTRACTOR agrees that it will perform under this Contract in conformance with safeguards against fraud and abuse as set forth by H-GAC, the State of Texas and the acts and regulations of any funding entity. CONTRACTOR agrees to notify H-GAC of any suspected fraud, abuse or other criminal activity related to this Contract through filing of a written report promptly after it becomes aware of such activity.

ARTICLE 18: GOVERNING LAW & VENUE

This Contract shall be governed by the laws of the State of Texas. Venue and jurisdiction of any suit or cause of action arising under or in connection with this Contract shall lie exclusively in Harris County, Texas. Disputes between END USER and CONTRACTOR are to be resolved in accord with the law and venue rules of the state of purchase. CONTRACTOR shall immediately notify H-GAC of such disputes.

ARTICLE 19: PAYMENT OF H-GAC ORDER PROCESSING CHARGE

CONTRACTOR agrees to sell its products to END USERS based on the pricing and other terms of this Contract, including, but not limited to, the payment of the applicable H-GAC order processing charge. On notification from an END USER that an order has been placed with CONTRACTOR, H-GAC will invoice CONTRACTOR for the applicable order processing charge. Upon delivery of any product/service by CONTRACTOR and acceptance by END USER, CONTRACTOR shall, within thirty (30) calendar days or ten (10) business days after receipt of payment, whichever is less, pay H-GAC the full amount of the applicable order processing charge, whether or not CONTRACTOR has received an invoice from H-GAC. For sales made by CONTRACTOR based on this contract, including sales to entities without Interlocal Contracts, CONTRACTOR shall pay the applicable order processing charges to H-GAC. Further, CONTRACTOR agrees to encourage entities who are not members of H-GAC's Cooperative Purchasing Program to execute an H-GAC Interlocal Contract. H-GAC reserves the right to take appropriate actions including, but not limited to, contract termination if CONTRACTOR fails to promptly remit H-GAC's order processing charge. In no event shall H-GAC have any liability to CONTRACTOR for any goods or services an END USER procures from CONTRACTOR.

ARTICLE 20: LIQUIDATED DAMAGES

Any liquidated damages terms will be determined between CONTRACTOR and END USER at the time END USER's purchase order is placed.

ARTICLE 21: PERFORMANCE AND PAYMENT BOND FOR INDIVIDUAL ORDERS

H-GAC's contractual requirements DO NOT include a Performance & Payment Bond (PPB), and offered pricing should reflect this cost saving. However, CONTRACTOR must be prepared to offer a PPB to cover any specific order if so requested by END USER. CONTRACTOR shall quote a price to END USER for provision of any requested PPB, and agrees to furnish the PPB within ten business (10) days of receipt of END USER's purchase order.

ARTICLE 22: CHANGE OF CONTRACTOR STATUS

CONTRACTOR shall immediately notify H-GAC, in writing, of ANY change in ownership, control, dealership/franchisee status, Motor Vehicle license status, or name, and shall also advise whether or not this Contract shall be affected in any way by such change. H-GAC shall have the right to determine whether or not such change is acceptable, and to determine what action shall be warranted, up to and including cancellation of Contract.

ARTICLE 23: LICENSING REQUIRED BY TEXAS MOTOR VEHICLE BOARD *(IF APPLICABLE)*

CONTRACTOR will, for the duration of this Contract, maintain current licenses that are required by the Texas Motor Vehicle Commission Code. If at any time during this Contract period, any CONTRACTOR'S license is not renewed, or is denied or revoked, CONTRACTOR shall be deemed to be in default of this Contract unless the Motor Vehicle Board issues a stay or waiver. Contractor shall promptly provide copies of all current applicable Texas Motor Vehicle Board documentation to H-GAC upon request.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed by their duly authorized representatives.

Signed for Houston-Galveston Area Council, Houston, Texas: _____
Jack Steele, Executive Director

Attest for Houston-Galveston Area Council, Houston, Texas: Mike Taylor for
Deidre Vick, Director of Public Services
Date: 4/24, 2015

Signed for Titan Machinery, Inc. Shakopee, Minnesota: Thomas A. Bethel

Printed Name & Title: THOMAS A. BETHEL
SENIOR MGR. - CE GOV'T SALES
Date: April 22, 2015

Attest for Titan Machinery, Inc. Shakopee, Minnesota: _____

Printed Name & Title: Andrew T. Bethel
Government Account Manager
Date: 4-22, 2015

Attachment A
Titan Machinery, Inc.
Earth Moving & Construction Equipment
Contract No. EM06-15

H-GAC Product Code	Item Description	Percentage Discount off Retail/List Price
01A	Arrow Master Mobile Hydraulic Hammer Price List Catalog/Price Sheet effective 2/12/2015	5%
07A	Case Pricing Catalog: Excavators - PL-200 CX - Catalog/Price Sheet effective 2/12/2015	32%-36%
07B	Case Pricing Catalog: Compact Excavators - PL-200 MX - Catalog/Price Sheet effective 2/12/2015	22%-27%
07C	Case Pricing Catalog: Crawlers - PL-200 CE - Catalog/Price Sheet effective 2/12/2015	29%-40%
07D	Case Pricing Catalog: Crawlers - PL-200 UT - Catalog/Price Sheet effective 2/12/2015	33%
07E	Case Pricing Catalog: Motor Graders - PL-200 GR - Catalog/Price Sheet effective 2/12/2015	42%
07F	Case Pricing Catalog: Wheel Loaders - PL-200 CE - Catalog/Price Sheet effective 2/12/2015	36%-45%
07G	Case Pricing Catalog: Compact Wheel Loaders - PL-200 CW - Catalog/Price Sheet effective 2/12/2015	36%
07H	Case Pricing Catalog: Compact Track Loaders - PL-200 SL - Catalog/Price Sheet effective 2/12/2015	28%-30%
07I	Case Pricing Catalog: Skid Steers - PL-200 SL - Catalog/Price Sheet effective 2/12/2015	24%-32%
07J	Case Pricing Catalog: Tractor Loader Backhoe - PL-200 TLB - Catalog/Price Sheet effective 2/12/2015	38%-41%
07K	Case Pricing Catalog: Rough Terrain Forklifts - PL-200 RTFL - Catalog/Price Sheet effective 2/12/2015	34%
07L	Case Pricing Catalog: Tractor Loaders - PL-200 TLL - Catalog/Price Sheet effective 2/12/2015	34%
31A	LeeBoy Motor Grader Pricing Catalog/Price Sheet effective 2/12/2015	5%
70A	Sweepers Pricing Catalog/Price Sheet effective 2/12/2015	5%

H-GAC Contract EM06-15

Case Selling Price Discounts/Price Books

(Selling Price = Discount off List)

NOTE: You must ADD factory freight & delivery to your quote

Excavators (07A)

PL-200 CX SAP Rev. 16 (1.1.15)

CX130C T4	33%
CX145C T4	33%
CX160C T4	33%
CX210C T4	36%
CX235C T4	36%
CX250D T4 Final	33%
CX300D T4 Final	33%
CX350D T4 Final	34%
CX470C T4	33%
CX700B T3	33%
CX75 T4 Final	32%
CX80C T4 Final	32%
CX800B T3	33%

Compact Excavators (07B)

PL-200 MX SAP Rev. 11 (7.1.14)

CX17B T4	25%
CX27B T4	27%
CX31B T4 Final	24%
CX36B T4 Final	22%
CX55B T4 Final	27%

Crawler Dozers (07C)

PL-200 CE SAP Rev. 12 (1.1.15)

750M T4	40%
850M T4	41%
1150M T4	38%
1650M T4	33%
2050M T4	29%

Small Crawler Dozers (07D)

PL-200 UT SAP Rev. 9 (1.1.15)

650L T3	33%

Motor Graders (07E)

PL-200 GR SAP Rev. 11 (1.1.15)

845B T3	42%
865B T3	42%
885B T3	42%

Wheel Loaders (07F)

PL-200 CE SAP Rev. 16 (11.10.14)

521F T4	46%
621F T4 Final	45%
721F T4 Final	43%
821F T4 Final	44%
921F T4 Final	44%
1021F T4	36%
1121F T4	36%
1221E T4	36%

Compact Wheel Loaders (07G)

PL-200 CW SAP Rev. 9 (5.30.14)

21F T4 Final	36%
121F T4 Final	36%
221F T4 Final	36%
321F T4 Final	36%

Case Price Catalog Discounts (EM06-15)

(Selling Price = Discount off List)

Compact Track Loaders (07H)

PL-200 SL SAP Rev. 15b (1.1.15)

- TR270 T4 Final 28%
- TR310 T4 Final 30%
- TR320 T4 Final 30%
- TR340 T4 Final 28%
- TV380 T4 Final 30%

Skid Steers (07I)

PL-200 SL SAP Rev. 15b (1.1.15)

- SR130 T4 Final 24%
- SR160 T4 Final 24%
- SR175 T4 Final 26%
- SV185T4 Final. 29%
- SR210 T4 Final 26%
- SR220 T4 . . . . . 29%
- SR 240 T4 Final 29%
- SR250 T4 . . . . . 32%
- SV 250 T4 . . . . . 30%
- SR270 T4 Final 32%
- SV280 T4 Final 30%
- SV300 T4 Final 34%

Loader/Backhoe (07J)

PL-200 TLB SAP Rev. 15 (11.10.14)

- 580N EP 2WD T4 Final 38%
- 580N EP 4WD T4 Final 40%
- 580N 2WD T4 Final 38%
- 580N 4WD T4 Final 40%
- 580SN 2WD T4 Final 39%
- 580SN 4WD T4 Final 41%
- 580SN WT 4WD T4 Final . . 41%
- 590SN 2WD T4 Final 39%
- 590SN 4WD T4 Final 41%

Forklifts (07K)

PL-200 RTFL SAP Rev. 15 (8.11.14)

- 580H T4 Final 34%

Loader/Boxblade (07L)

PL-200 TLL SAP Rev. 14a (9.26.14)

- 570N EP Final 34%

Attachments

NOTE: The following price books are for attachments that are part of the H-GAC contract.

CASE CE Attachments #PM-17103
(Price List dated 9.24.14)

Paladin (Light) Attachments (1.1.2015)

Paladin (Heavy) Attachments (1.1.2015)

Note: All attachments are sell priced at 5% off List.

LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
TITAN MACHINERY, INC.

EXHIBIT B
Scope of Work

PROJECT

Purchase of one (1) Case 321F Wheel Loader W/High Speed Axles as specified on the attached HGACBuy Contract Pricing Worksheet for the Right of Way Division of the Public Works Department.

LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
TITAN MACHINERY, INC.

EXHIBIT C

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 $95,728.49 for the entire term of the Agreement.

DETAILED PROJECT COMPENSATION

Purchase of one (1) Case 321F Wheel Loader W/High Speed Axles as specified on the attached HGACBuy Contract Pricing Worksheet for the Right of Way Division of the Public Works Department.

HGACBuy	CONTRACT PRICING WORKSHEET For Standard Equipment Purchases	Contract No.:	EM06-15	Date Prepared:	4/20/2016

This Worksheet is prepared by Contractor and given to End User. If a PO is issued, both documents MUST be faxed to H-GAC @ 713-993-4548. Therefore please type or print legibly.

Buying Agency:	City of Glendale Right of Way	Contractor:	Titan Machinery
Contact Person:	Roger Boyer	Prepared By:	Mark Davis
Phone:	623-930-2656	Phone:	602-540-9321
Fax:		Fax:	602-233-9371
Email:	rboyer@glendaleaz.com	Email:	mark.davis@titanmachinery.com

Product Code:	07G	Description:	Case 321F Wheel Loader w/High Speed Axles

A. Product Item Base Unit Price Per Contractor's H-GAC Contract:	$68,450.00

B. Published Options - Itemize below - Attach additional sheet if necessary - Include Option Code in description if applicable
(Note: Published Options are options which were submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
734513 Limited Slip Differential	$2,240.00	782108 Rotating beacon	$96.00
734632 Deluxe cab	$1,600.00	734523 Extra 330lb counterweight	$768.00
734506 A/C and heat	$2,240.00	734524 Fire extinguisher mount	$48.00
734504 Radio with speakers	$256.00	734595 Tool box	$64.00
734590 Air seat	$544.00	734625 1.44 cu yd bkt	$2,560.00
734586 Front auxiliary hydraulics	$0.00	734571 Bucket cutting edge	$960.00
734612 Remote hydrualic oil drain	$96.00		
782734 Return to dig	$480.00		
734520 Auto ride control	$1,120.00		
		Subtotal From Additional Sheet(s):	
		Subtotal B:	$13,072.00

C. Unpublished Options - Itemize below - Attach additional sheet if necessary
(Note: Unpublished options are items which were not submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
Grapple bucket	$3,200.00		
Window tint	$550.00		
Pre-delivery	$850.00		
		Subtotal From Additional Sheet(s):	
		Subtotal C:	$4,600.00

Check: Total cost of Unpublished Options (C) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B).	For this transaction the percentage is:	6%

D. Total Cost before any other applicable Charges, Trade-Ins, Allowances, Discounts, Etc. (A+B+C)

Quantity Ordered:	1	X Subtotal of A + B + C:	$86,122.00	=	Subtotal D:	$86,122.00

E. Trade-Ins / Special Discounts / Other Allowances / Freight / Installation / Miscellaneous Charges

Description	Cost	Description	Cost
		Factory Freight	$2,100.00
		Delivery to City	$100.00
		Subtotal E:	$2,200.00

Delivery Date:	90-120 Days	F. Total Purchase Price (D+E):	$88,322.00
		Tax(8.6%)	$7,406.49
		TOTAL:	$95,728.49

File #: 16-319, **Version:** 1

AUTHORIZATION TO ENTER INTO AMENDMENT NO. 4 TO THE AGREEMENT FOR STREETLIGHT MAINTENANCE SERVICES WITH FLUORESCO SERVICES, LLC
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. 4 to the Agreement for Streetlight Maintenance Services with Fluoresco Services, LLC, Contract C-8180, to increase the compensation by an additional $100,000 to an amount not to exceed $733,702 over the full term of the agreement, contingent upon Council Budget approval.

Background

In September 2012, the City entered into an Agreement for Streetlight Maintenance Service with Fluoresco Lighting - Sign Maintenance Corp., per Invitation for Bid 12-41. The Agreement was for a one-year term with the option to renew for an additional four years.

This agreement provides for the repair and/or replacement of streetlight lamps, wiring, monitoring photocells, capacitors, ballasts, starters, and poles as well as similar repairs at city parks and parking lots.

On February 14, 2014, Everbrite LLC acquired the assets of Fluoresco Lighting - Sign Maintenance Corp. On an interim basis during 2014 and 2015, Fluoresco Lighting - Sign Maintenance Corp. continued to operate as the company transitioned to the newly established Fluoresco Services, LLC.

Analysis

Fluoresco Services, LLC has been performing streetlight, pool lighting, and parking lot lighting repair services for the city over the past three years through the September 25, 2012 Council approved contract.

The original Agreement, C-8180, was approved by Council on September 25, 2012 in an amount not to exceed $306,851. Amendment No. 1 was awarded administratively to extend the term of the agreement through September 24, 2014. Amendment No. 2 extended the term through September 24, 2015. Amendment No. 3 extended the term through September 24, 2016 in an amount not to exceed $633,702. Of this amount, only $10,000 was allotted to the repair and/or replacement of lamps, wiring, monitoring photocells, capacitors, ballasts, starters, and poles at city parks and parking lots. The facilities division is requesting an increase of $100,000 to provide these services.

This is an as-needed, if-needed contract. No specific funds are committed under this contract. Funding for services performed under this amendment will come from a variety of sources including Facilities

Management operating, building reserve, and customer funds. Funding will be identified for specific projects in the fiscal year the project is scheduled.

Previous Related Council Action

On November 10, 2015, City Council authorized entering into Amendment No. 3, to renew the agreement for an additional year in an amount not to exceed $633,702.

On September 25, 2012, City Council authorized entering into an Agreement, Contract C-8180, for Streetlight Maintenance Services in an amount not to exceed $306,851.

Community Benefit/Public Involvement

Residents take great interest in the performance of neighborhood streetlights. Street lighting is critical to traffic and pedestrian safety and neighborhood visibility. Continued maintenance and repair of city streetlights will meet residents' expectations and provide for a safe transportation environment for travelers and visibility for neighborhood residents. Timely maintenance of lights in parks and parking lots will also improve safety and visibility in these areas.

Budget and Financial Impacts

Funding for the increase in compensation is available in the Fiscal Year 2016-17 Facilities Management operating budget. Expenditures with Fluoresco Services, LLC are not to increase by more than $100,000 over the remaining term of the agreement, contingent upon Council Budget approval.

Cost	Fund-Department-Account
$100,000	**1000-13450-518200, Facilities Management**

Capital Expense? No

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from?

AMENDMENT NO. 4

AGREEMENT FOR STREETLIGHT MAINTENANCE SERVICES
(City of Glendale IFB No. 12-41, Contract No. C-8180)

This Amendment No. 4 ("Amendment") to the Professional Services Agreement with Fluoresco Services, LLC is made this _____ day of _____, 2016, ("Effective Date"), by and between the City of Glendale, an Arizona municipal corporation ("City") and Fluoresco Services, LLC, an Arizona corporation authorized to do business in Arizona ("Contractor").

RECITALS

A. City and Fluoresco Services, LLC ("Contractor") previously entered into a Professional Service Agreement, Contract No. C-8180, dated September 25, 2012 ("Agreement"); and

B. The Agreement had an initial one-year term beginning September 25, 2012 through September 24, 2013 and provided the option to extend for an additional four (4) years in one-year increments; and

C. City and Contractor previously entered in Amendment No. 1, extending the term of the Agreement from September 25, 2013 through September 24, 2014; and

D. City and Contractor previously entered into Amendment No. 2, extending the term of the Agreement from September 25, 2014 through September 24, 2015; and

E. City and Contractor previously entered into Amendment No. 3, extending the term of the Agreement from September 25, 2015 through September 24, 2016; and

F. 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. **Compensation.** Section 4.1 of the Agreement is hereby modified and amended to read as follows:
   4.1 Compensation. Contractor's compensation for the Project, including those furnished by its Subcontractors will not exceed $733,702 over the entire term of the Agreement (initial plus any extensions).

3. **Insurance Certificate.** Current certificate will expire on March 31, 2017 and a new certificate applying to the extended term must be provided prior to this date to Materials Management and the Contract Administrator.

4. **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.

5. **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.

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

Fluoresco Services, LLC, an Arizona corporation

_____

By: Gary Gryder

Its: Vice-President

File #: 16-320, **Version:** 1

AUTHORIZATION TO ENTER INTO A LINKING AGREEMENT WITH FREIGHTLINER OF ARIZONA, LLC, FOR COOPERATIVE PURCHASE OF ONE REARLOAD TRUCK

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 Freightliner of Arizona, LLC, for the cooperative purchase of one rearload truck in an amount not to exceed $252,308.35.

Background

The Right of Way Division in Public Works is responsible for landscape maintenance in the right of way and on undeveloped city-owned property. The division's current rearload truck is over 14 years old, well beyond the operational life expectancy of eight years.

Freightliner of Arizona, LLC was awarded a bid by the State of Arizona for Medium and Heavy Duty Cab and Chassis. Staff is requesting to utilize the Arizona Procurement Cooperative Purchasing Agreement. Contract No. ADSPO15-093361 was awarded on January 9, 2014 and expires on January 14, 2017.

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

Replacement of the existing rearload truck is expected to reduce maintenance cost and downtime for the Right of Way division. When the truck is not operational, staff utilizes a dump truck which cannot compact materials, requiring four times the trips to the landfill.

Previous Related Council Action

On December 8, 2015, Council authorized entering into a Linking Agreement with Freightliner of Arizona, LLC, for the cooperative purchase of three rearload trucks in an amount not to exceed $753,525, for the Sanitation Division of Public Works. This authority has been expended.

Community Benefit/Public Involvement

Well maintained public right of way aids in creating civic and community pride. If the efforts to maintain the appearance of the landscaping are diminished, the high standards that Glendale citizens have come to expect will be lessened, which could result in sight visibility issues, uncontrolled weed growth and blight. Completing regularly scheduled landscape maintenance to the city's roadways upholds a positive public image to residents, businesses, and visitors.

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

Funds for this purchase are available in FY 2016-17 Public Works Department Capital Improvement Plan budget. Expenditures with Freightliner of Arizona, LLC, are not to exceed $252,308.35.

Cost	Fund-Department-Account
$252,308.35	2000-68917-551450, Pavement Management - HURF

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
FREIGHTLINER OF ARIZONA, LLC

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 Freightliner of Arizona, LLC, an Arizona limited liability company ("Contractor"), collectively, the "Parties."

RECITALS

A. On January 9, 2014, under the State of Arizona Procurement Cooperative Purchasing Agreement, the State of Arizona entered into a contract with Contractor to purchase the goods and services described in the ADSPO15-093361, Medium and Heavy Duty Cab and Chassis ("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 purchases can be made by governmental entities from the date of award, which was January 9, 2014, until the date the contract expires on January 14, 2017, 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 January 14, 2019. The initial period of this

Agreement, therefore, is the period from the Effective Date of this Agreement until January 14, 2017. The City Manager or designee, however, may renew the term of this Agreement for 2 one-year periods until the Cooperative Purchasing Agreement expires on January 14, 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 B.

   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 provided in the Cooperative Purchasing Agreement, which is attached hereto as Exhibit C.

   B. The total purchase price for the supplies and/or services purchased under this Agreement shall not exceed two hundred fifty two thousand three hundred eight dollars and thirty five cents dollars ($252,308.35) for the entire term of the Agreement (initial term plus any renewals).

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
c/o Roger Boyer
6210 W. Myrtle Ave, Suite 111
Glendale, Arizona 8530
623-930-2656

and

Freightliner of Arizona, LLC
c/o Jim Ross
9899 W. Roosevelt St.
Tolleson, AZ 85353
623-907-9900

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

"City"

City of Glendale, an Arizona municipal corporation

By: _____
Kevin R. Phelps
City Manager

"Contractor"

Freightliner of Arizona, LLC,
an Arizona limited liability company

By: _____
Name: Jim Ross
Title: Truck Sales Manager

ATTEST:

_____
Pamela Hanna (SEAL)
City Clerk

APPROVED AS TO FORM:

_____
Michael D. Bailey
City Attorney

LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
FREIGHTLINER OF ARIZONA, LLC

EXHIBIT A
STATE OF ARIZONA CONTRACT NO. ADSPO15-093361
MEDIUM AND HEAVY DUTY CAB AND CHASSIS

	Contract Change Order Summary		Arizona Department of Administration State Procurement Office 100 N. 15th Avenue, Suite 201 Phoenix, AZ 85007
	Contract No.: ADSPO15-093361		
	Change Order No.: 3	Date: October 23, 2015	

Medium and Heavy Duty Cab and Chassis (Freightliner, Western Star)

Freightliner of Arizona LLC

1. The above mentioned contract is hereby amended as follows:

   a. In accordance with Special Terms and Conditions paragraph 2.6, Contract Extension, the term of the contract shall be extended an additional twelve (12) months through 1/14/2017. *

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 in ProcureAZ by the Procurement Officer or delegate.

Procure.AZ.gov
Arizona's Procurement Solution

Master Blanket Purchase Order ADSPO15-093361

Header Information

Purchase Order Number:	ADSPO15-093361	**Release Number:**	0	**Short Description:**	Medium and Heavy Duty Cab and Chassis (Freightliner, Western Star)
Status:	3PS - Sent	**Purchaser:**	Lori Noyes	**Receipt Method:**	Quantity
Fiscal Year:	2015	**PO Type:**	Blanket	**Minor Status:**	
Organization:	State of Arizona				
Department:	ADSPO - State Procurement Office	**Location:**	STRGC - SPO Strategic	**Type Code:**	Statewide
Alternate ID:	ADSPO14-063242	**Entered Date:**	04/21/2015 02:23:25 PM	**Control Code:**	
Days ARO:	180	**Retainage %:**	0.00%	**Discount %:**	0.00%
Print Dest Detail:	If Different				
Catalog ID:		**Release Type:**	Direct Release	**Pcard Enabled:**	No
Contact Instructions:	Lori.Noyes@azdoa.gov, 602-542-7144	**Tax Rate:**		**Actual Cost:**	$0.00
Master Blanket/Contract End Date (Maximum):	01/14/2019 03:59:59 PM				
Project No.:					
Building Code:					
Cost Code:					
Special Purchase Types:					
PIJ NUMBER:					
Coop Spend To Date:					
Commodity Reference Id:					
PO External Doc Type:					

Agency Attachments: PO Terms & Conditions - OLD Solicitation File ADSPO14-00003602.zip ADSPO14-063242 Contract Document.pdf Submitted Offer - Freightliner.pdf Submitted Offer Supplemental - Freightliner.pdf Awarded Vehicle Specs - Freightliner.zip Medium and Heavy Duty Cab and Chassis Contract Pricing~2.xlsx Certificate of Insurance Freightliner Change Order No. 1 Contract Amendment No. 2 - Price Adjustment.pdf Freightliner Current Certificate of WC Insurance Consent to Assignment.pdf Freightliner Pricing Effective 06.18.2015.xls Autocar ACMD42 Autocar ACX42 Autocar ACX64 Autocar Always Up Contract Amendment No. 3 - Contract Extension~6.pdf Freightliner COI - Expires 3.1.17~1.pdf

Vendor Attachments:

Agency Attachment Forms:

Vendor Attachment Forms:

Primary Vendor Information & PO Terms

Vendor: 000044879 - Freightliner of Arizona LLC
Jim Ross
9899 W Roosevelt St
Tolleson, AZ 85353
US
Email: jross@fswaz.com
Phone: (623)907-9900

Payment Terms: Net 30

Shipping Method: Best Way

Shipping Terms: TBD

Freight Terms: Freight Allowed

Master Blanket/Contract Distributor List

Vendor ID	Alternative ID	Vendor Name	Preferred Delivery Method	Vendor Distributor Status
000044879	PZ000044879	Freightliner of Arizona LLC	Email	Active

Master Blanket/Contract Controls

Master Blanket/Contract Begin Date: 04/21/2015 **Master Blanket/Contract End Date:** 01/14/2017

Cooperative Purchasing Allowed: Yes

Organization	Department	Dollar Limit	Dollars Spent to Date	Minimum Order Amount
ALL ORG - Organization Umbrella Master Control	AGY - Agency Umbrella Master Control	$0.00	$326,808.00	$0.00

Item Information

1-5 of 21
1 2 3 4 5

Print Sequence # 1.0, Item # 1: Medium Duty Cab and Chassis Class 4 (14,001-16,000 lb GVWR). Please refer to pricing listed in file 'Freightliner Pricing - Effective 1.15.14.xlsx' within Attachments. 3PS - Sent

NIGP Code: 072-04
Class 4 Trucks (14,001 - 16,000 lb. GVWR)

Receipt Method	Qty	Unit Cost	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Total Cost
Quantity	0.0	$0.00	EA - Each	0.00	$0.00	7.800%	$0.00	$0.00

Manufacturer: Brand: Model:

Make: Packaging:

Project No.:

Building Code:

Offer and Acceptance

Contract No: ADSP014-063242

Description: Statewide Medium and Heavy Duty Cab and Chassis

State of Arizona
State Procurement Office
100 N. 15th Ave, Suite 201 Phoenix, AZ 85007

OFFER

TO THE STATE OF ARIZONA:

The Undersigned hereby offers and agrees to furnish the material, service or construction in compliance with all terms, conditions, specifications and amendments in the Solicitation and any written exceptions in the offer. Signature also certifies Small Business status.

FREIGHTLINER STERLING
WESTERN STAR OF ARIZONA
Company Name

9899 N. ROOSEVELT ST
Address

TOLLESON AZ 85353
City State Zip

JR
Signature of Person Authorized to Sign Offer

JIM ROSS
Printed Name

TRUCK SALES
Title

Phone: 480-282-4000

Fax: 480-282-4059

JROSS@FSWAZ.COM
Contact Email Address

By signature in the Offer section above, the Offeror certifies:

1. The submission of the Offer did not involve collusion or other anticompetitive practices.
2. The Offeror shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, State Executive Order 2009-09 or A.R.S. §§ 41-1461 through 1465.
3. The Offeror has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer. Failure to provide a valid signature affirming the stipulations required by this clause shall result in rejection of the offer. Signing the offer with a false statement shall void the offer, any resulting contract and may be subject to legal remedies provided by law.
4. The Offeror certifies that the above referenced organization [ ] IS/[X] IS NOT a small business with less than 100 employees or has gross revenues of $4 million or less.

ACCEPTANCE OF OFFER

The Offer is hereby accepted.

The Contractor is now bound to sell the materials or services listed by the attached contract and based upon the solicitation, including all terms, conditions, specifications, amendments, etc., and the Contractor's Offer as accepted by the State.

This Contract shall henceforth be referred to as Contract No. ADSP014-063242

The effective date of the Contract shall be: JANUARY 15, 2014

The Contractor has been cautioned not to commence any billable work or to provide any material or service under this contract until Contractor receives purchase order, contact release document or written notice to proceed.

State of Arizona Awarded this 9 **day of** JANUARY 2014

Procurement Officer

Table of Contents

The following documents are not contained physically in this document, but are included by reference and available online in ProcureAZ:

Special and Uniform Instructions to Offerors ADSPO14-00003602

All Solicitation Attachments

Pricing (all pricing is contained within the line items in ProcureAZ AND in an attached spreadsheet in ProcureAZ Attachments)

Contractor's Final Proposal Documents (Submitted in response to solicitation ADSPO14-00003602 and included by reference, attached in ProcureAZ)

Solicitation ADSPO14-00003602 as amended, including all attachments and exhibits

1. INTRODUCTION/BACKGROUND

1.1. Pursuant to A.R.S. 41-2501, The Arizona Department of Administration, State Procurement Office (The State) is seeking to establish statewide contract(s) for Medium and Heavy Duty Cab and Chassis necessary to support all State Agencies, Boards and Commissions and participating Cooperative Members (collectively hereinafter referred to as Eligible Agencies). The Special Terms and Conditions provide a more detailed definition of Eligible Agencies. A list of all State Agencies and Cooperative Members may be found on the State Procurement Office's Website. The State intends to award a contract(s) to qualified vendors in accordance with the terms, conditions and provisions set forth herein.

1.2. The awarded contract(s) shall replace existing contracts for Medium and Heavy Duty Cab and Chassis. The State desires to enter into a contract(s) with reliable and capable vendors who can; manage multiple agency accounts and delivery points located throughout the State, provide an effective ordering method for contract specific items, has sufficient statewide delivery capabilities, and offers a full, comprehensive line of Medium and Heavy Duty Cab and Chassis. This contract(s) will be used on an as needed basis; the State makes no guarantee as to actual spend under any resultant contract.

2. GENERAL CONDITIONS AND REQUIREMENTS

2.1. All chassis shall be manufacturer's current models in production throughout the term of this contract and shall be services completed by the Contractor before delivery and ready in all respects for use.

2.2. All chassis bid and furnished shall meet requirements of applicable Arizona Motor Vehicle laws and all other Federal Motor Vehicle laws (including the Federal Bridge Formula), whether or not such requirements are specified in detail.

2.3. The Contractor shall supply a quote sheet within seven (7) calendar days after receiving request from the eligible agency. See Exhibit 1 for quote sheet example. The quotation shall include but not be limited to the following information: State contract number, vehicle availability and delivery lead-time, Vehicle Identification Number (VIN), dealer stock number, vehicle base bid price, itemized options (including line item cost), applicable tax, delivery cost, total price, and point of contact. For vehicles requiring upfit/modifications, all applicable cost shall be included in quotation or as a separate quotation.

2.4. Within fourteen (14) calendar days after receipt of a purchase order, Contractor shall provide the eligible agency copies of the manufacturer's factory order numbers, to confirm vehicles have been ordered. If confirmation of manufacturer's factory order numbers is not received with in this timeframe the eligible agency has the option to cancel the order and purchase from another source. The eligible agency may charge the extra cost of procuring the vehicles to the original vendor. This shall be considered a mandatory requirement. Failure to provide this document for each vehicle ordered may be cause for determination of default of contract.

3. CHASSIS MODELS

The Contractor is encouraged to provide a full line of new Medium and Heavy Duty Cab & Chassis. Contractors shall submit a vehicle specification sheet for each cab & chassis offered, please see Attachment V, Price and Specification Spreadsheet. Eligible Agencies throughout the State will have varying needs. Contractors shall provide a full line of manufactured new vehicles and all subsequent variants of each vehicle; including but not limited to, models and manufacturer options to meet the needs of an eligible agency.

4. CHASSIS UPFIT/MODIFICATION

The Eligible Agency may request the awarded Contractor(s) to upfit/modify any cab and chassis for specific organizational needs. For example, a chassis may require a specialized body (i.e.: dump body, landscape body, etc.). Other cab and chassis may require interior and/or exterior modifications per the Eligible Agency's request. The Eligible Agency shall supply all upfit/modification requests to the Contractor. The Contractor shall identify any conditions that apply to the upfit/modification on a quotation to the Eligible Agency for review and acceptance before any work commences.

5. WARRANTY

5.1. At a minimum, all equipment supplies under these specifications shall be fully warranted by the vehicle manufacturer against mechanical and electrical defects for a minimum of the manufacturer's warranty from the date of acceptance. This warranty shall cover such items as actual repair labor, parts, and shipping charges to and from the nearest service facility or other designated repair depot. Any defects of design, workmanship or material, shall be fully corrected by the vendor without cost to the eligible agency. The written warranty shall be included with the delivered vehicles to the eligible agency. The warranty terms shall be stated on Attachment II, where indicated.

5.2. Contractors are encouraged to provide the State additional warranty packages that exceed the minimum requirements. Additional warranty information shall be included on Attachment II.

6. CAB AND CHASSIS EQUIPMENT REQUIREMENTS

6.1. **Decals** – Decals or markings of any type pertaining to advertisement other than those installed by the manufacturer such as name and model shall not be attached to any vehicle.

6.2. **Fluid Requirements** – Contractor shall be responsible for notifying the eligible agency of special fluid requirements that are necessary to maintain standard and extended warranties and service agreements i.e. transmission fluid, anti-freeze, oils and lubricants that must be Original Equipment Manufacturer (OEM) only.

6.3. **Service Requirements** – All vehicles shall be completely assembled, serviced, adjusted and all equipment including standard and optional equipment shall be installed and the units made ready for continuous operation. Servicing requirements shall include, but not limited to, the following:

- Complete lubrication
- Checking of all fluid levels to insure that they are filled to the manufacturer's recommended capacity
- Full tank(s) of fuel, less delivery fuel
- Engine adjustment to proper operation condition
- Tire inflation to correct pressure
- Checking of all mechanical and electrical operations
- Checking for any appearance defects
- Cleaning, removal of all unnecessary tags and stickers, washing if necessary

6.4. **Special Paint Requirement** – Eligible agencies may require special paint for some vehicles, i.e., special highway yellow and special eligible agency fleet colors. An increase of no more than thirty (30) days over the required delivery time shall be allowed for this requirement. Contractors shall indicate on Attachment I if there are any quantity requirements or an additional cost for specialty fleet colors. If no information is entered on Attachment I, it will be understood that there is no quantity requirement or additional cost.

6.5. **Special Title Requirement** – There may be a requirement for the title on some vehicles purchased to be titled to other than the ordering eligible agency. The State has programs that require equipment purchased from special funds be returned to the State's communities. These purchases will be made for authorized political subdivisions.

6.6. **Tires** – Any spare tire supplied, optional or standard, shall match the OEM tires and wheels contained on the vehicle. Spare tires shall be full size tire and wheel identical to factory OEM.

6.7. **Vehicle Equipment Requirements** – All base vehicles offered shall, at a minimum, include the following;

- All standard factory equipment
- Automatic transmission
- Cruise Control
- Four (4) keys and two (2) keyless entry remotes (if applicable), per vehicle
- Air conditioning
- Cloth seats
- Rear view mirrors on driver and passenger doors

- Standard tint glass, if available

7. TRAINING MATERIALS AND DIAGNOSTIC TOOLS

7.1. Training shall be provided by the Contractor for equipment supplied upon request from the eligible agency. Training shall be available for maintenance of engine and other mechanical and electrical functions. Training shall be categorized by Operator Training and Service (or Repair) Training and shall be provided according to the description provided in Attachment I.

7.2. **Shop Manuals** – Shop manuals shall be provided by electronic, web based and/or hard copy to a requesting eligible agency. If hard copy is available, any costs and ordering mechanisms, such as order forms, shall be indicated on Attachment I.

7.3. **Diagnostic Tools/Subscriptions** – The Contractor shall provide a diagnostic scan tool(s), laptop program, and/or yearly subscription for any vehicles offered under this contract for which such device is available, upon request of an Eligible Agency. Cost of initial and any additional diagnostic equipment, yearly subscriptions or programs shall be provided in Attachment I.

8. EXECUTIVE ORDER 2006-13

8.1. Executive Order 2006-13 shall apply to all State agencies, boards and commissions.

8.2. Contractors shall offer all Cab and Chassis that meet the requirements of Executive Order page 3, paragraph E. and/or meet low GHG emission standards. Vehicles that "meet low-GHG emission standards" are vehicles from the EPA Green Vehicle Guide at http://www.epa.gov/greenvehicles/Index.do;jsessionid=8230dfdfdadb59257e15 that have a Greenhouse Gas Score of 8 or higher, or vehicles that operate on propane, liquefied natural gas (LNG), or compressed natural gas (CNG).

9. MANUFACTURER'S CERTIFICATION

The Contractor shall submit a current and complete Manufacturer's Certification form (Attachment IV), stating that the Contractor is the Manufacturer or a Certified Representative of the Manufacturer, for each Manufacturer they represent under a resultant contract. The Manufacturer's Certification form(s) must be executed by the Manufacturer(s) only, and may not be completed by the Contractor. Dealer agreements shall not be accepted in lieu of a Manufacturer's Certification.

1. CONTRACT

1.1 Contract. The contract between the State of Arizona and the Contractor shall consist of the solicitation as amended, any requests for clarifications, the offer submitted by the Contractor including any Final Proposal Revisions, and their responses to any requests for clarifications. In the event of a conflict in language between the documents referenced above, the provisions and requirements set forth and/or referenced in the solicitation as amended shall govern. However, the State reserves the right to clarify any contractual requirement in writing, and such written clarification shall govern in case of conflict with the applicable requirements stated in the solicitation as amended or the Contractor's proposal. In all other matters not affected by the written clarification, if any, the solicitation shall govern.

1.1.1 The State's primary contact for this solicitation and resultant contracts shall be the Procurement Officer assigned to the contract and listed in ProcureAZ.

1.2 Contract Term. The contract term shall commence upon award and will continue for one (1) year unless canceled, terminated or extended as otherwise provided herein.

1.3 Contract Extension. The initial contract term is subject to additional successive one-year periods or portions thereof with a maximum aggregate contract term including all extensions not to exceed five (5) years.

1.4 Contract Type. The contract is a firm fixed-price, Percent (%) discount from MSRP.

1.5 Amendments. Any change in the Contract, including but not limited to the Statement of Work described herein, whether by modification or supplementation, must be accomplished by a formal contract amendment or change order approved by and between the duly authorized representatives of the Contractor and the Arizona State Procurement Office. The Contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment to the contract.

1.6 Contract Changes. The State reserves the right to modify this contract as circumstances may require without penalty to fulfill the needs of the State. The Contractor shall be notified prior to any changes in the contract and shall be accomplished by a contact amendment.

1.7 Eligible Agencies. This contract shall be for the use of all State of Arizona departments, agencies, commissions and boards. In addition, eligible universities, political subdivisions and nonprofit organizations may participate at their discretion. In order to participate in this contract, a university, political subdivision, or nonprofit educational or public health institution shall have entered into a Cooperative Purchasing Agreement with the Department of Administration, State Procurement Office as required by Arizona Revised Statutes § 41-2632. The contractor may not restrict or compel the use of this contract by an eligible agency.

1.8 Estimated Quantities. The State makes no guarantee or commitment of any kind is made concerning the quantity or monetary value of activity actually initiated and completed.

1.9 Non-Exclusive Contract. This contract has been awarded with the understanding and agreement that it is for the sole convenience of the State of Arizona. The State reserves the right to obtain like goods or services from another source when necessary.

1.10 Compliance with Applicable Laws. The Materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.

Contractor represents and warrants to the State that Contractor has the skill and knowledge possessed by members of its trade or profession and Contractor will apply that skill and knowledge with care and diligence so Contactor and Contractor's employees and any authorized subcontractors shall perform the Services described in this Contract in accordance with the Statement of Work.

1.11 Confidentiality of Records. The Contractor shall establish and maintain procedures and controls that are acceptable to the State for the purpose of assuring that no information contained in its records or obtained from the state or from

others in carrying out its functions under the contract shall be used or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Contract. Persons requesting such information should be referred to the State. The Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of the Contractor as needed for the performance of duties under the Contract, unless otherwise agreed to in writing by the State.

1.12 Acceptance. Determination of the acceptability of goods and services shall be made by the sole judgment of the State. Acceptance criteria shall include, but not be limited to conformity to the scope of work, quality of workmanship and successfully performing all required Tasks. Nonconformance to any of the stated acceptance and performance criteria of both services and or products as required shall result in a delay for payment. Payment shall not be made until nonconformance to the criteria is corrected as determined by the State.

1.13 Cancellation. The State reserves the right to cancel the whole or any part of the contract if, at any time during the performance of the Contract, Contractor initiates or is party to actions including, but shall not limited to;

1.13.1 Providing personnel that do not meet the requirements of the contract or attempting to impose on the State, personnel of unacceptable quality,

1.13.2 Failure to provide the State with acceptable proof of compliance with prescribed insurance required

1.13.3 Failure in a material way to correct services not in conformance with the Contract or Purchase Orders;

1.13.4 Repeated failure to comply with the requirements of the Contract;

1.13.5 Material disregard of or failure to comply with any applicable Federal, State or Local law, regulation or ordinance

1.13.6 Failure, neglect, or refusal to proceed with the performance of the Contract in a prompt, safe and diligent manner;

1.13.7 Failure to promptly pay all monies due to subcontractors, vendors, or others for materials and services in connection with the Work; and

1.13.8 Attempting to assign this Contract without obtaining the State's prior consent.

1.14 Contract Personnel.

1.14.1 It is essential that the Contractor provide an adequate staff of experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this contract. The Contractor shall provide mentally alert, physically fit and qualified individuals to ensure contracted services progress in a safe, orderly and timely manner.

1.14.2 During the course of the contract, the State reserves the right to require the contractor to remove from the project contractor employees found unacceptable by the State. The State may require that the Contractor remove from the Contract employees who endanger persons or property or whose continued employment under this Contract is inconsistent with the interests of the State.

1.15 Licenses. The contractor shall maintain in current status, all federal, state and local licenses and permits required for the operation of the business conducted by the contractor in performance under this contract.

1.16 Appropriation of Funds. Every payment obligation of the Eligible Agency under this Contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Contract, this Contract may be terminated by the Agency at the end of the period for which funds are available. No liability shall accrue to the Agency or the State of Arizona in the event this provision is exercised, and neither the Agency nor the State shall be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

2. USAGE REPORTS

2.1 Contractors shall submit a Quarterly Report documenting all contract sales. The proper Usage Report Forms may be found on the State Procurement Office's web site http://spo.az.gov/Contractor_Resources/Admin_Fee/. Any alternate Quarterly Usage Report format shall be approved by the Procurement Officer. If there are no contract sales during a quarter, a Quarterly Usage Report indicating "no contract sales" shall be submitted to satisfy this requirement.

2.2 Contractors shall submit the Quarterly Usage Report to the State Procurement Office no later than the last day of the month following the end of each calendar quarter. Usage Reports shall be submitted to the following address:

Arizona Department of Administration
State Procurement Office
Attention: "Statewide Contract Usage Report"
100 N. 15th Avenue, Suite 201
Phoenix, AZ 85007

2.3 The submission schedule for Usage Reports shall be as follows:

July through September (FY Q1)	Due October 31
October through December (FY Q2)	Due January 31
January through March (FY Q3)	Due April 30
April through June (FY Q4)	Due July 31

2.4 Contractor's failure to remit accurate quarterly usage reports in a timely manner consistent with the contract's requirements may result in the State exercising any recourse available under the contract or as provided for by law.

2.5 Annual Itemized Spend Report. The contractor shall furnish the State an annual report delineating the acquisition activity under the contract. This report shall be submitted electronically and in a format approved by the State. At a minimum, it shall disclose all purchased items, unit cost, and quantity, as well as, individual purchasing Agency, for all sales transacted within the year. The volume sales report shall be submitted annually 30 days before the end of the contract term.

3. CANCELLATION FOR POSSESSION OF WEAPONS ON STATE PROPERTY

This contract may be cancelled if contractor or any subcontractors or others in the employ or under the supervision of the contractor or subcontractors is found to be in possession of weapons. Possession of weapons (firearms, explosive device, knife or blade of more than three inches, or any other instrument designed for lethal or disabling use) is prohibited on State property pursuant to A.R.S. §13-3102. Such property includes State owned or leased office building, yards, parking lots, construction sites or state owned vehicles. Further, if the contractor or any subcontractors or others in the employ or under the supervision of the contractors or subcontractors are asked by an State official to leave the State property and fail to comply with such a request shall result in cancellation of the contract and anyone who refuses, whether armed or not, is subject to prosecution under A.R.S. § 13-1502, 'Criminal trespass in the third degree; classification.'

4. CONTRABAND

4.1 Any person who takes into or out of, or attempts to take into or out of a correctional facility or the grounds belonging to adjacent to a correctional facility, any item not specifically authorized by the correctional facility shall be prosecuted under the provisions of the Arizona Revised Statutes. All persons, including employees and visitors, entering upon these confines are subject to routine searches of their person, vehicles, property of packages.

4.2 DEFINITION - A.R.S. ¦ 13-2501: Contraband means any dangerous drug, narcotic drug, intoxication liquor of any kind, deadly weapon, dangerous instrument, explosive or any other article whose use or possession would endanger the safety, security, or preservation of order in a correctional institution or any person therein. (Any other article includes any substance which could cause abnormal behavior, i.e. marijuana, non-prescription medication, etc.)

4.3 PROMOTING PRISON CONTRABAND - A.R.S. ¦ 13-2505:

4.3.1 A person, not otherwise authorized by law, commits promoting prison contraband:

A. By knowingly taking contraband into a correctional facility or the grounds of such a facility; or

B. By knowingly conveying contraband to any person confined in a correctional facility; or

C. By knowingly making, obtaining or possessing contraband while being confined in a correctional facility.

4.3.2 Promoting prison contraband is a Class 5 felony.

5. CURRENT MODELS

All vehicles shall be the manufacturer's current models in production at the time of delivery. All vehicles shall be new, unused, equivalent in style and quality to those offered to the general public and meet or exceed all specifications and requirements set forth in this solicitation.

6. DEALERSHIP, PARTICIPATING SERVICE AND DELIVERY LOCATIONS

6.1 The Contractor may submit, at any time during the contract period, new dealership, participating service and delivery locations that will be used as subcontractors for both product deliveries and drive in service centers under the contract. Requests are to be submitted electronically and shall contain:

6.1.1 The dealer or outlet name

6.1.2 Location (physical address)

6.1.3 Telephone/fax numbers and email information

6.1.4 Key personnel at that location

6.2 Approval shall be in the form of a bilateral change order in ProcureAZ, and shall become effective on the date the change order is the 'Sent' status.

7. DELIVERY (MINIMUM)

7.1 Delivery location shall be identified on the issuing eligible agency purchase order. Deliveries shall be made within 120 days of receipt of purchase orders, unless factory delays make this impossible. Dealer shall notify the eligible agency of such delays along with revised delivery estimate from factory immediately after it becomes known. If manufacturer has a website available to check order status, this information will be shown in space provided on Attachment I.

7.2 All deliveries shall be made Monday through Friday from 8:00 A.M. to 2:00 P.M., unless a time has been agreed upon between the Contractor and eligible agency. The Contractor shall be required to give the ordering eligible agency a minimum of 24 hour notification prior to delivery with the anticipated time of delivery and number of units to be delivered.

7.3 All vehicles shall be delivered with four (4) keys and if applicable two (2) keyless entry remotes and a full tank(s) of fuel, less delivery.

7.4 The following documents shall be provided upon delivery of the vehicles(s):

7.4.1 M.S.O. (Manufacturer Statement of Origin) that includes the odometer statement

7.4.2 Warranty Document

7.4.3 Manufacturers unaltered invoice

7.4.4 The retail price label must be affixed to the window of all vehicles delivered

7.4.5 Delayed warranty/in-service start request form (if requested by ordering entity)

8. EQUIPMENT INSPECTION

8.1 Contractor shall retain title and control of all goods until they are delivered, inspected and accepted. All risk of transportation and related charges shall be the responsibility of the Contractor. The Contractor shall file all claims for visible and concealed damage. The State shall notify the Contractor promptly of any damaged goods and shall assist the Contractor in arranging for inspection.

8.2 Each vehicle delivered shall be subject to a complete inspection by the eligible agency prior to acceptance. Inspection criteria shall include, but not be limited to, conformity to the specifications, mechanical integrity, quality, workmanship and materials. Thirty (30) calendar days shall be allowed for this process. If delivered equipment is returned to the Contractor prior to acceptance for any reason, additional periods of thirty (30) calendar days shall be allowed for inspection when subsequent deliveries occur. All corrections shall be made within seven (7) calendar days of reported deficiency. All corrections shall be made without any inconvenience to the State.

9. EXCISE TAX EXEMPTION

The State of Arizona and its political subdivisions are exempt from federal excise tax in the case of sales of articles to state agencies or political subdivision for use in the exercise of essential government functions. It is agreed that where articles purchased tax-free under the exemption are used for purposes other than in the exercise of essential functions, or are sold to employees or others, the user shall report such facts to the vendor.

10. FINANCIAL SOUNDNESS

10.1 The State Procurement Office (SPO) must be notified in writing of any substantial change in the Contractor's financial condition during the term of the Contract. Failure to notify SPO of such a substantial change in financial condition will be sufficient grounds for terminating the Contract.

10.2 The State may request the Contractor and any of the Contractor`s Subcontractors to provide a certified Statement of Financial Capability or the company's most current financial Statement which has been audited by their outside auditing firm.

11. IN-SERVICE NOTIFICATION

Vehicles not placed in service immediately upon receipt shall be warranted from the date the vehicle is placed in service. The eligible agency shall notify the Contractor in writing of the actual in-service date, on forms to be provided for such purpose upon request by the eligible agency.

12. INDEMNIFICATION CLAUSE

Contractor shall indemnify, defend, save and hold harmless the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the State of Arizona.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

13. **INSURANCE REQUIREMENTS:**

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The *insurance requirements* herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, its agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance.

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

1. **Commercial General Liability – Occurrence Form**
Policy shall include bodily injury, property damage, personal and advertising injury and broad form contractual liability coverage.

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

a. The policy shall be endorsed to include the following additional insured language: ***"The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor."*** Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract.

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

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

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

a. The policy shall be endorsed to include the following additional insured language: ***"The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor."*** Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract.

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

c. Policy shall contain a severability of interest provision.

3. **Worker's Compensation and Employers' Liability**

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

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

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

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

1. The Contractor's policies shall stipulate that the insurance afforded the Contractor shall be primary insurance and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

2. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

C. NOTICE OF CANCELLATION: With the exception of (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this contract in the insurance policies above shall require (30) days written notice to the State of Arizona. Such notice shall be sent directly to **the Department** and shall be sent by certified mail, return receipt requested.

D. ACCEPTABILITY OF INSURERS: Contractors insurance shall be placed with companies duly licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII or duly authorized to transact Workers' Compensation insurance in the State of Arizona. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

E. VERIFICATION OF COVERAGE: Contractor shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Contract. The certificates for each insurance policy are to be signed by an authorized representative.

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

All certificates required by this Contract shall be sent directly to **the Department**. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

F. SUBCONTRACTORS: Contractors' certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall furnish to the State of Arizona separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

G. **APPROVAL**: Any modification or variation from the *insurance requirements* in this Contract shall be made by the contracting agency in consultation with the Department of Administration, Risk Management Division. Such action will not require a formal Contract amendment, but may be made by administrative action.

H. **EXCEPTIONS**: In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-insurance. If the contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

14. INVOICE – BILLING

14.1 All billing notices or invoices shall be sent to the eligible agency whose address appears on the contract release order/purchase order as the 'bill to address' and should contain, at a minimum, the following information:

14.1.1 Both the contract number and contract release/purchase order number

14.1.2 Name and address of the contractor

14.1.3 The contractor's remittance address

14.1.4 Contractor's representative to contact concerning billing questions

14.1.5 Contractual payment terms

14.1.6 Applicable taxes

15. LOBBYING

The Contractor shall not engage in lobbying activities, as defined in 40 CFR part 34 and ARS §41-1231, et seq., using monies awarded under this Contract. Upon award of this Contract, the Contractor shall disclose all lobbying activities to the State to the extent they are an actual or potential conflict of interest or where such activities would create an appearance of impropriety. The Contractor shall implement and maintain adequate controls to assure that monies awarded under this Contract shall not be used for lobbying. All proposed Subcontractors shall be subject to the same lobbying provisions stated above. The Contractor must include anti-lobbying provisions in all Contracts with Subcontractors.

16. OPTIONAL EQUIPMENT

All optional equipment and accessories shall be original equipment from the manufacturer and installed at the factory unless otherwise specified.

17. ORDERING

17.1 Purchase Order Sufficiency. This contract was awarded in accordance with the Arizona Procurement Code and all transactions and procedures required by the code for competitive source selection have been met. A contract release order/purchase order, initiated in accordance with the requirements contained herein, that cites the correct Arizona contract number is the only document required for an Eligible Agency to order and the contractor to deliver the material and /or service. No additional memberships or agreements shall be permitted to use this contract. The contractor may use application type forms but shall only be used to set up accounts.

17.2 Non Contract Items. Any attempt to knowingly represent any material and/or service not specifically awarded, as being under contract with the State of Arizona is a violation of the contract and the Arizona Procurement Code. Any such action is subject to the legal and contractual remedies available to the state inclusive of, but not limited to, contract cancellation, suspension and/or debarment of the contractor.

17.3 Ordering Support. The Contractor shall provide and maintain applicable toll-free telephone numbers, facsimile numbers, and at least one (1) electronic ordering system (such as e-mail or web based) for Customer usage. Failure to maintain this service may be cause for cancellation of the contract.

17.4 Order Guides. Contractor shall be responsible for furnishing a copy of the manufacturers order guide, at no charge, upon request by an eligible agency.

17.5 Minimum Orders. No minimum dollar or item count shall be allowed on orders from Eligible Agencies.

17.6 Order Acknowledgement. Contractor shall acknowledge receipt of all Orders. See Specifications Section 2.4 of this document for specific contract requirements.

18. OUTRIGHT PURCHASE

The Contractor shall be authorized to sell vehicles on an outright purchase basis only. No financing or installment payments are a port of this agreement. Title shall transfer to the eligible agency at the time of acceptance, or when the vehicle(s) is accepted at the eligible agency's site.

19. PANDEMIC CONTRACTUAL PERFORMANCE

19.1. The Contractor shall have a plan that illustrates how the contractor shall perform up to contractual standards in the event of a pandemic. The state may require a copy of the plan at any time prior or post award of a contract. At a minimum, the pandemic performance plan shall include:

- Key succession and performance planning if there is a sudden significant decrease in contractor's workforce;
- Alternative methods to ensure there are products in the supply chain; and
- An up to date list of company contacts and organizational chart.

19.2. In the event of a pandemic, as declared by the Governor of Arizona, U.S. Government or the World Health Organization, which makes performance of any term under this contract impossible or impracticable, the State shall have the following rights:

- After the official declaration of a pandemic, the State may temporarily void the contract(s) in whole or specific sections if the contractor cannot perform to the standards agreed upon in the initial terms;
- The State shall not incur any liability if a pandemic is declared and emergency procurements are authorized by the director as per § 41-2537 of the Arizona Procurement Code; and
- Once the pandemic is officially declared over and/or the contractor can demonstrate the ability to perform, the State, at its sole discretion may reinstate the temporarily voided contract(s).

19.3. The State, at any time, may request to see a copy of the written plan from the contractor. The contactor shall produce the written plan within 72 hours of the request.

20. PRICING

20.1. For the purpose of this contract, "MSRP" shall be defined as an acronym for the Manufacturer's Suggested Retail Price. It represents the Manufacturer's recommended retail selling Price, list Price, published Price, or other usual and customary Price that would be paid by the purchaser for specific commodities and contractual services. It must be available and verifiable by the State.

20.2. **Medium and Heavy Duty Cab and Chassis and Available Options.** All pricing shall be a percentage off MSRP. Pricing shall include the following: all profit, administrative charges, Dealer preparation charges, environmental fees, title application and registration fees, plate transfer fees, handling charges, shipping charges, and any other charges or fees necessary to deliver the base vehicle according to the specification, exclusive of taxes. Shipping charges shall be defined as the delivery cost for each vehicle within the county in which the Contractor is located.

20.3. **Delivery.** Delivery costs for each county outside the county in which the dealer is located shall be indicated on Attachment I. There shall be no delivery charges for vehicles delivered within the county in which the Contractor is located.

20.4. **Supplemental Pricing – All Inclusive.** Pricing is all-inclusive, including any ancillary fees and costs required to accomplish the Statement of Work and all aspects of the Contractor's offer as accepted by the State. Details of service not explicitly stated in the Statement of Work or in the Contractor's Offer, but necessarily a part of, are deemed to be

understood by the Contractor and included herein. All administrative, reporting or other requirements, all overhead costs and profit and any other costs towards the accomplishment of the requirements in this Contract are included in the pricing provided.

20.5. Pricing for any additional products or services shall be in accordance with the information provided in Attachment I (Supplemental Pricing Information), Attachment V (Pricing and Specifications Spreadsheet) and line items in ProcureAZ.

20.6. **Price Adjustment**. A fully documented request for a price increase shall be based on the annual OEM model year change.

20.6.1. The State reserves the right to review a request for price increase due to model year change at any time during the term of the contract. The written request from the Contractor shall provide justification for the increase. If requested at any other time other than contract renewal, the request shall include written documentation for the manufacturer stating the availability of the new model year vehicles.

20.6.2. All written requests for price adjustments made by the Contractor shall be initiated thirty (30) days in advance of any desired price increase to allow the State sufficient time to make a fair and equitable determination to any such requests. This may be waived upon proper documentation demonstrating the urgency of the request.

20.6.3. All price adjustments will be implemented by a formal contract change order. The State shall determine whether the requested price increase or an alternate option is in the best interest of the State.

20.7. **Price Reductions**. Price reductions may be submitted to the state for consideration at any time during the contract period. The contractor shall offer the state a price reduction on the contract product(s) concurrent with a published price reduction made to other customers. The state at its own discretion may accept a price reduction. The price reduction request shall be in writing and include the following;

- Documentation, i.e., published cost lists, from the manufacturer showing, to the satisfaction of the state, the actual cost reduction.
- Documentation showing that the published cost reductions have been offered to other distributors.
- Sales promotions requests shall include difference in pricing, begin and end date of promotion along with the products covered.

20.8. **Sales Promotions.** In addition to decreasing contract pricing in accordance with the provision entitled Price Reduction, the Contractor may conduct sales promotions involving specific products or groups of products specified herein for specified time periods. If electing to exercise this provision, the Contractor shall submit:

20.8.1. A formal request that identifies the affected contract product or product groups

20.8.2. The promotional price vs. the existing contract price

20.8.3. The start and end date of the sales promotion

Approval shall be in the form of a contract amendment. Pricing shall be available to all eligible agencies through the dates specified in the request. Upon approval the Contractor shall provide conspicuous notice of the promotion.

21. PRODUCTS

21.1. Product Removal. The contractor shall not cancel or remove products without prior approval of the State. The contractor shall provide an equal or acceptable replacement approved by State if available.

21.2. Product Discontinuance. In the event that a product or groups of products are discontinued by a manufacturer, written notice shall be submitted to the State within 5 business days of notification from manufacturer. The State at its sole discretion may allow the Contractor to provide replacements for the discontinued product(s) or allow the deletion of such products from the contract. Approval shall be in the form of a contract amendment or change order and shall become effective upon execution of the amendment or change order, unless otherwise stated. Upon approval by the

State, the Contractor shall make available all electronic and hard catalog/price list updates to all eligible at no additional cost to the State. The request may be submitted at any time during the contract period and shall be supplemented with the following information. Failure to supply any of the following information with the request may result in the State not considering the request.

- A formal announcement or documentation from the manufacturer stating that the product(s) have been discontinued.
- Documentation describing any replacement product providing clear evidence that the replacement product(s) meets or exceeds the specifications of the discontinued product(s) while remaining in the same product group(s) as the discontinued item, and;
- Documentation confirming that the price for the replacement product(s) is equivalent or less than the discontinued item.

21.3. New Products. The State, at its sole discretion, reserves the right to include additional products or product categories that are within the Specifications and in the best interest of the State. The request may be submitted at any time during the contract period and shall be supplemented with the information below. Approval(s) shall be in the form of a contract amendment or change order and shall become effective on the date specified in the amendment or change order. Upon approval by the State, the contractor shall make available all catalog/price list updates to all eligible agencies at no additional cost to the State. Pricing shall be in line with current contract pricing. Contractor's request for new products shall include the following information;

21.3.1. A formal announcement from the manufacturer stating that the product(s) are new and were not available at the time of contract award.

21.3.2. Documentation from the manufacturer that cites the effected products by item number and description.

21.3.3. Documentation that provides clear evidence that the new products are those that are within an established contract group. NO OTHER PRODUCTS SHALL BE ALLOWED.

21.3.4. That States prices at which sales are currently or were last made to a significant number of any categories of buyers or buyers constituting the general buying public for the materials or services involved and that will be sold at the existing discount (percent %) from list price as existing products.

21.4. Warranty. All equipment supplied under these specifications shall be fully warranted by the vehicle manufacturer against mechanical and electrical defects for a minimum period of 36 months from the date of acceptance. This warranty shall cover such items as actual repair labor, parts, and shipping charges to and from the nearest service facility or other designated repair depot. Any defects of design, workmanship or material, shall be fully corrected by the vendor without cost to the Eligible Agency. The written warranty shall be included with the delivered vehicles to the Eligible Agency.

21.5. Forced Substitutions. Forced substitutions shall not be allowed. The contractor shall obtain prior written approval from the Eligible Agency before any substitution may be made for an out of stock item.

21.6. Recall Notices. In the event of any recall notice, technical service bulletin, or other important notification affecting a vehicle purchased from any resultant contract, a notice shall be sent to the eligible agency listed on each applicable purchase order. Each notice shall reference the affected purchase order and vehicle identification number. **The contractor shall provide and retrofit at no cost to the State all vehicles purchased under this contract with vehicle safety enhancements as a result of the recall.**

22. SUBCONTRACTS

22.1. Subcontractor Approval. Supplemental to the Uniform Terms and Conditions, Section 5.2, Subcontracts, Contractor shall not enter into any Subcontract under this Contract, for the performance of services under this Contract, without the advance written approval of the Procurement Officer. The contractor shall submit a formal written request on company

letterhead and including an Attachment III, Proposed Subcontractors, or a document containing the information requested in Attachment III.

22.2. With the request, Contractor shall certify that all Subcontracts incorporate by reference the terms and conditions of this Contract. The issuance of subcontracts shall not relieve Contractor of any of its obligations under the Contract, including, among other things, the obligation to properly supervise and coordinate the work of subcontractors performing for the Contractor under this Contract. Nothing contained in any subcontract shall create a contractual relationship between any subcontractor and the State.

23. TRAINING QUALITY ASSESSMENT

If determined by the eligible agency that training was insufficient and did not meet all requirements of the contract, the Contractor must conduct additional training at the same location and at the Contractor's expense. Scheduling of any repeated classes shall be coordinated through the requesting eligible agency.

24. VEHICLE DOCUMENTATION

The Contractor shall include in each vehicle an owner, operator and maintenance manual. This shall include all standard manufacturer literature normally furnished with the purchase of a new vehicle at the time of delivery.

25. VEHICLE CONTRACTS PHASE I AND PHASE II (INCLUDING PURCHASES FROM STOCK)

25.1. The State of Arizona shall continue to have two-phase contracts for vehicles. The intent of the two-phase contract is to allow eligible agencies vehicle contract coverage for a full 12-month period.

25.2. Phase I shall take effect upon award of this Invitation for Bid and shall expire on the factory cut-off date.

25.2.1. The Contractor shall notify the State of a contracted vehicle's Production Cut-off date in writing and received by the contract administrator no later than thirty (30) calendar days prior to the effective date of the Production Cut-off. In the event the Manufacturer should give less than thirty (30) calendar days' notice of a Production Cut-off to the Contractor, the Contractor shall notify by telephone, email or letter, the Contract Administrator no later than the next business day. When available, the Contractor agrees to immediately provide copies of the Manufacturer's notice of Production Cut-off to the Contract Administrator upon request.

26. VEHICLE PRICING-PHASE II (PURCHASES FROM STOCK)

26.1. Purchases from dealer's stock may occur at any time during the contract, including during Phase II, which shall be effective upon the expiration date of Phase I and shall expire upon the award of the succeeding year vehicle contract.

26.2. Eligible agencies have historically purchased many vehicles during the Phase II portion of the contract. It is imperative that bidders/contractors view this portion of the contract as a Contractual Requirement.

26.3. Vehicles in the Phase II/purchase from stock portion of the contract shall be priced as follows:

26.4. The Phase II, or purchase from stock, contract price for the vehicles shall be the dealers cost as shown on the manufacturer's invoice for the vehicle in question, less the manufacturer's bid assistance available for that model/power-train combination plus dealer margin for the applicable contract item number. Contractor shall provide a copy of manufacturer's invoice to the ordering eligible agency. The manufacturer's invoice shall be unaltered to include original pricing from the manufacturer. Failure to price in this manner may be cause for contract cancellation. **Transportation costs to transfer a vehicle from another dealer for a Phase II or purchase from stock may be added to the cost of the vehicle. The justification for this cost is at the discretion of the ordering eligible agency.**

27. FEDERAL TERMS

THE FOLLOWING SPECIAL TERMS AND CONDITIONS SHALL APPLY TO PURCHASES OF ANY VEHICLES PROCURED WITH FEDERAL FUNDS

27.1. **BUS TESTING** The Contractor (Manufacturer) agrees to comply with 49 U.S.C. §5323 (C) and FTA 's implementing regulation at 49CFR Part 665 and shall perform the following:

Manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which shall be prior to the recipient's final acceptance of the first vehicle.

A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.

If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to the recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such vehicle and the details of that vehicle's configuration and major components.

27.2 **BUY AMERICA**

The Contractor agrees to comply with 49 U.S.C. 5323 (j) and 49 CFR Part 661, which provide that federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7 and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than $100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

An Offeror may be required to submit an appropriate Buy America certification if federal funds are utilized to procure products and/or services under the contract.

27.3 **CARGO PREFEREENCE REQUIREMENTS**

The Contractor agrees:

To use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels.

To furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the Preceding Paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.)

To include these requirements in all subcontracts issued Pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

27.4 **CIVIL RIGHTS**

The Contractor is required to comply with Executive Order 99-4 "Non-Discrimination in Employment by Government Contractors and Subcontractors," which is hereby included in its entirety by reference and considered a part of this Contract.

The Contractor is required to comply with Title VI of the Civil Rights Act of 1964, as amended. Accordingly, Title 49, Code of Federal Regulations, Part 21 through Appendix H and Title 23 CFR 710.405 (b) are made applicable by reference and are hereinafter considered part of this Contract.

The Contractor is required to comply with the provisions of Executive Order 11246, entitled " Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60). Said provisions are made applicable by reference and are hereinafter considered a part of this Contract.

27.5 CLEAN AIR

The Contractor agrees to:

Comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §~ 7401 et.seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

Include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

27.6 CLEAN WATER

The Contractor agrees to:

Comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et ~g.

To report each violation to the Purchaser and understands and agrees that the Purchaser shall, In turn, report each violation as required to assure notification to the FTA and the appropriate EPA Regional Office.

To include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

27.7 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Overtime Requirements: No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

Violation; liability for unpaid wages; liquidated damages: In the event of any violation of the clause set forth in paragraph (a) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.

Withholding for unpaid wages and liquidated damages: The grantee or recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.

Subcontractors: The contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

Payrolls and basic records: Relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or cost anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any cost reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

27.8 ENERGY CONSERVATION

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

27.9 FEDERAL CHANGES

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (2) dated October, 1995) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

27.10 INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1 C, dated May 1, 1995, are hereby incorporated by reference. Anything, to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests, which would cause (name of grantee) to be in violation of the FTA terms and conditions.

27.11 **LOBBYING RESTRICTIONS**

Contractors who apply or bid for an award of $100,000.00 or more shall file the certification required (ATTACHMENT ASSIGN NUMBER) by 49CFR part 20, "New Restrictions of Lobbying". Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contracts on its behalf with non-Federal funds with respect to the Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

27.12 **NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

27.13 **PRE-AWARD AND POST- DELIVERY AUDIT REQUIREMENTS**

The contractor agrees to comply with 49 U.S.C. § 5323 (1) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the offeror certifies compliance with Buy America, it shall submit documentation, which lists:

Component and sub-component parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs.

The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

Solicitation Specification Requirements: The contractor shall submit evidence that it will be capable of meeting the bid specifications.

Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit:

Manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or;

Manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

27.14 **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENT OR RELATED ACTS**

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §~ 3801 et seq. And U.S. DOT regulations, "Program Fraud Civil Remedies, "49 C.F.R. Part 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for

which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under authority of 49 U.S.C. ~ 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. §5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

27.15 **PRIVACY ACT**

The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5U.S.C. § 552a. Among other things, the contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

27.16 **STATE AND LOCAL LAW DISCLAIMER**

The use of many of the suggested clauses are not governed by Federal Law, but are significantly affected by State Law. The language of the suggested clauses may need to be modified depending on state law, and that before the suggested clauses are used in the grantees procurement documents, the grantees should consult with their local attorney.

Version 9 (Revised 7-1-2013)

1. Definition of Terms

As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:

1.1. *"Attachment"* means any item the Solicitation requires the Offeror to submit as part of the Offer.

1.2. *"Contract"* means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.

1.3. *"Contract Amendment"* means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.

1.4. *"Contractor"* means any person who has a Contract with the State.

1.5. *"Days"* means calendar days unless otherwise specified.

1.6. *"Exhibit"* means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.

1.7. *"Gratuity"* means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

1.8. *"Materials"* means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.

1.9. *"Procurement Officer"* means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.

1.10. *"Services"* means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.

1.11. *"Subcontract"* means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.

1.12. *"State"* means the State of Arizona and Department or Agency of the State that executes the Contract.

1.13. *"State Fiscal Year"* means the period beginning with July 1 and ending June 30.

2. Contract Interpretation

2.1. Arizona Law. The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and it's implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.

2.2. Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.

2.3. Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:

2.3.1. Special Terms and Conditions;

2.3.2. Uniform Terms and Conditions;

2.3.3. Statement or Scope of Work;

2.3.4. Specifications;

2.3.5. Attachments;

2.3.6. Exhibits;

2.3.7. Documents referenced or included in the Solicitation.

2.4. Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.

2.5. Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.

2.6. No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

2.7. No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3. Contract Administration and Operation

3.1. Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.

3.2. Non-Discrimination. The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.

3.3. Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.

3.4. Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.

3.5. Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by

the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.

3.6. Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.

3.7. Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.

3.8. Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.

3.9. Federal Immigration and Nationality Act. The contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.

3.10 E-Verify Requirements. In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.

3.11 Offshore Performance of Work Prohibited. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

4. Costs and Payments

4.1. Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.

4.2. Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.

4.3. Applicable Taxes.

4.3.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.

4.3.2. State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.

4.3.3. Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

4.3.4. IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.

4.4. Availability of Funds for the Next State fiscal year. Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.

4.5. Availability of Funds for the current State fiscal year. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:

4.5.1. Accept a decrease in price offered by the contractor;
4.5.2. Cancel the Contract; or
4.5.3. Cancel the contract and re-solicit the requirements.

5. Contract Changes

5.1. Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.

5.2. Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.

5.3. Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

6. Risk and Liability

6.1. Risk of Loss: The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.

6.2. Indemnification

6.2.1. Contractor/Vendor Indemnification (Not Public Agency) The parties to this contract agree that the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.

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

6.3. Indemnification - Patent and Copyright. The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.

6.4. Force Majeure.

6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term *"force majeure"* means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.4.2. Force Majeure shall not include the following occurrences:

6.4.2.1. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

6.4.2.2. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or

6.4.2.3. Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

6.4.3. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.4.4. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

6.5. Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

7. Warranties

7.1. Liens. The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

7.2. Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:

7.2.1. Of a quality to pass without objection in the trade under the Contract description;

7.2.2. Fit for the intended purposes for which the materials are used;

7.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;

7.2.4. Adequately contained, packaged and marked as the Contract may require; and

7.2.5. Conform to the written promises or affirmations of fact made by the Contractor.

7.3. Fitness. The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.

7.4. Inspection/Testing. The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.

7.5. Compliance With Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.

7.6. Survival of Rights and Obligations after Contract Expiration or Termination.

7.6.1. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.

7.6.2. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

8. State's Contractual Remedies

8.1. Right to Assurance. If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

8.2. Stop Work Order.

8.2.1. The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

8.2.2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

8.3. Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.

8.4. Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code,

or pursue any other right or remedy available to it.

8.5. Right of Offset. The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

9. Contract Termination

9.1. Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State 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 this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.

9.2. Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.

9.3. Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.

9.4. Termination for Convenience. The State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

9.5. Termination for Default.

9.5.1. In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

9.5.2. Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.

9.5.3. The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.

9.6. Continuation of Performance Through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

10. Contract Claims

All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and

rules adopted thereunder.

11. **Arbitration**

The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).

12. **Comments Welcome**

The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 201, Phoenix, Arizona, 85007.

Quote Sheet
State of Arizona Contract
Medium and Heavy Duty Cab and Chassis

DATE:	
CUSTOMER:	
State Contract Number:	ProcureAZ Line Item Number:
Vehicle Description: Make, Model, Vehicle Code, And Trim Level	
Base Vehicle Price	$
Manufacturer Options Upgrades or Upfit/Modifications Requirements	

1.	$
2.	$
3.	$
4.	$
5.	$
6.	$
7.	$
8.	$
9.	$
10.	$

$	**Subtotal (Including Destination and Options)**
$	**Upfit/Modification Requirements**
$	**SALES TAX**
$	**TIRE TAX**
$	**DELIVERY FEE**
$	**TOTAL DELIVERED PRICE**

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LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
FREIGHTLINER OF ARIZONA, LLC

EXHIBIT B
Scope of Work

PROJECT

Purchase of one (1) 2017 Autocar/Heil Rearloader for the Right of Way Division in the Public Works Department.

LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
FREIGHTLINER OF ARIZONA, LLC

EXHIBIT C

METHOD AND AMOUNT OF COMPENSATION

Method of compensation 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 $252,308.35 for the entire term of the Agreement.

DETAILED PROJECT COMPENSATION

Compensation is for the purchase of one (1) 2017 Autocar/Heil Rearloader for the Right of Way Division in the Public Works Department.

FREIGHTLINER Of Arizona

SALES AGREEMENT

DATE 3/25/2016

PURCHASER NAME City of Glendale

STREET ADDRESS 6210 W. Myrtle Ave, Ste 111

CITY Glendale STATE AZ ZIP 85301

PHONE 623-903-2656 FAX

9899 W Roosevelt St
Tolleson, AZ 85353
PH 623-907-9900
Fax 623-907-6403

1230 S Akimel Ln
Chandler, AZ 85226
PH 480-282-4000
Fax 480-282-4059

5650 E Travel Plaza Way
Tucson, AZ 85756
PH 520-514-5018
Fax 520-514-5900

NEW or USED	**NEW**			SALESMAN	***Cory Thompson***
YEAR	**2017**	MAKE	**Autocar**	MILEAGE	**0**
MODEL	**ACX64**	COLOR	**White**	SERIAL NO.	

SPECIFICATIONS:		**BODY:**	**Heil 27yd Commercial REL**
ENGINE	**Cummins ISL9**	VIN	**TBD**
ENGINE BRAKE	**N/A**	EQUIPMENT	
TRANSMISSION	**Allison 4500 RDS 5 speed**		**State Contract #ADSPO15-093361**
RATIO	**5.29**		
FRONT AXLE	**18,000#**		**Includes Dual A/C System**
REAR AXLE	**40,000#**		**Heil 5yr Cylinder Warranty**
REAR SUSPENSION	**HMX-40**		**Cummins ISL DC1 5yr/150k**
FRONT WHEEL	**22.5x9.00" Steel**		**Cummins ISL AT3 5yr/150k**
TIRE SIZE	**315/80R22.5**		**Delivery in approximately 120 Days**
REAR WHEEL	**22.5x8.25" Steel**		
TIRE SIZE	**11R22.5**		
WHEEL BASE	**215"**		**See attached Autocar Vehicle Specifications for**
5TH WHEEL	**N/A**		**more details**
FUEL TANKS	**75 Gallon**		
EXHAUST	**Vertical**		
BRAKES	**Air**		**Warranty-5yr Engine and Aftertreatment**
INTERIOR	**Standard**		**5yr Allison/5yr Heil Cylinder**
SLEEPER	**N/A**		
FAIRINGS	**N/A**		
PAINT	**One Color**		

CASH SALE PRICE	$221,679.00	**USED TRUCK TRADE-IN**	
FEDERAL EXCISE TAX		MAKE OF TRADE-IN	
STATE SALES TAX	$18,424.35	YEAR	MODEL / BODY
LICENSE FEE (ESTIMATED)		MVI OR SERIAL NO.	
ARIZONA TIRE TAX		BALANCE OWED TO	
OUT OF STATE DELIVERY	$3,700.00	ADDRESS	
DOCUMENT FEE			
WARRANTIES	$8,505.00		
1. TOTAL PURCHASE PRICE	$252,308.35	USED TRADE-IN ALLOWANCE	
2. DOWN PAYMENT consisting of:		BALANCE OWED ON TRADE-IN	
CASH		DEPOSIT OR CREDIT BALANCE	
TRADE-IN DEPOSIT OR CREDIT BALANCE			
3.UNPAID CASH BALANCE DUE ON DELIVERY	$252,308.35	**REMARKS**	

Customer, please read and sign Page 2 of this Agreement.

This order is for a custom-built truck and is non-cancelable. Deposit is non-refundable. Truck change orders must be received 85 business days prior to scheduled production.

Delivery is anticipated on or about

PURCHASER'S SIGNATURE Date DEALER OR HIS AUTHORIZED REPRESENTATIVE

	Exhibit A	**State of Arizona** **State Procurement Office** 100 N. 15th Ave, Suite 201 Phoenix, AZ 85007
	Solicitation No.: ADSPO14-00003602	
	Description: Statewide Medium and Heavy Duty Cab and Chassis	

Quote Sheet
State of Arizona Contract
Medium and Heavy Duty Cab and Chassis

DATE: 3/25/16	
CUSTOMER: City of Glendale	
State Contract Number: ADSPO15-093361	ProcureAZ Line Item Number: 21-Autocar ACX64-Class 8
Vehicle Description: Make, Model, Vehicle Code, And Trim Level Autocar ACX64 Class 8-Standard	
Base Vehicle Price	$ 137,252.00
Manufacturer Options Upgrades or Upfit/Modifications Requirements Add chassis options to accommodate mounting Heil 27yd PT commercial rearload refuse body-Per c/o Glendale Specifications	
1. Heil 27yd PT REL	$ 75,259.00
2. Chassis options (incl dual a/c) Sub Total-Taxable	$ 9,168.00
3. Sub Total-Taxable	$ 221,679.00
4.	$
5. Freight from Heil	$ 3,700.00
6. Heil 5yr Cylinder Warranty	$ 4,265.00
7. Allison 5yr Cylinder Warranty	$ 890.00
8. Cummins ISL DC1 5yr/150k Warranty	$ 2,650.00
9. Cummins ISL AT3 5yr/15k Warranty	$ 700.00
10.	$

$ 233,884.00	**Subtotal (Including Destination and Options)**
$ Included	**Upfit/Modification Requirements**
$ 18,424.35	**SALES TAX**
$ Included	**TIRE TAX**
$ Included	**DELIVERY FEE**
$ 252,308.35	**TOTAL DELIVERED PRICE**

BALAR EQUIPMENT
11023 N. 22ND AVE.
P.O. BOX 83118
PHOENIX, AZ 85029

Voice: 602-944-1933
Fax: 602-944-9687

QUOTATION

Quote Number: 316189
Quote Date: Mar 21, 2016
Page: 1

Quoted To:

FREIGHTLINER
9899 W. ROOSEVELT
TOLLESON, AZ 85353

Customer ID	Good Thru	Payment Terms	Sales Rep
FREIGHTLINER STERLIN	4/20/16	Net 10 Days	JB

Quantity	Item	Description	Unit Price	Amount
1.00	HEIL-POWERTRAK COMI	HEIL POWERTRAK COMMERCIAL-27 YARD REAR LOAD GARBAGE TRUCK BODY BUILT PER CITY OF GLENDALE SPECIFICATIONS AS DEFINED IN SOLICITATION NUMBER 14-30, INCLUDING FABRICATION AND INSTALLATION OF HOPPER EXTENSION, AS SPECIFIED IN ADDENDUM 1.	75,259.00	75,259.00
1.00		FIVE (5) YEAR (MAXIMUM 12500 HOURS OF OPERATION) CYLINDER WARRANTY FOR HEIL POWERTRAK COMMERCIAL 27 YARD. MUST BE PURCHASED AT TIME OF BODY ORDER.	4,265.00	4,265.00

Subtotal	79,524.00
Sales Tax	
Freight	3,700.00
TOTAL	**83,224.00**

Salesman_____

Owner_____

GAWR, GVWR & Tire Pressure

03/25/2016

GVW Rating – 58,000#			
Front GAWR	**18,000#**	**Rear GAWR**	**40,000#**
Front Suspension	18,800#	Rear Suspension	40,000#
Front Wheels	20,000#	Rear Wheels	59,100#
Front Tire Size And Tread	20,400#	Rear Tire Size And Tread	48,000#
Front Brakes	20,000#	Rear Brakes	46,000#
Front Axle	18,000#	Rear Axle	40,000#
PSI			
Front PSI	125.0	Rear PSI	90.0

Vehicle Specification

03/25/2016

			Description	Front Weight	Rear Weight	Price
AUTOCAR TRUCKS						
O	ENG0001	**ENGINEERING GROUP IDENTIFIER**	AUTOCAR ENGINEERING	0	0	
S	5000001	**CAB SHELL**	SINGLE LEFT HAND DRIVE CAB	0	0	
O	100U001	**CUSTOMER TYPE**	MUNICIPAL	0	0	
SOLUTION						
O	C04001	**BODY COMPANY**	HEIL	0	0	
O	C01003	**APPLICATION**	REFUSE - LANDFILL	0	0	
O	C02003	**BODY TYPE**	REAR END LOADER	0	0	
O	C03002	**TERRITORY**	WEST COAST	0	0	
O	C06103	**BODY STYLE**	HEIL FORMULA 4000 AND PT1000	0	0	
O	C05028	**TOTAL BODY CAPACITY - BODY/HOPPER**	28 YARD	0	0	
O	C070001	**FUEL SYSTEM TYPE**	DIESEL	0	0	
O	C080001	**REAR SUSPENSION TYPE**	STD/BEAM TYPE REAR SUSPENSION	0	0	
O	C090003	**AXLE QUANTITY**	3 AXLE	0	0	
O	D010180	**FRONT GAWR**	18000 LBS	0	0	
O	D020400	**REAR GAWR**	40000 LBS	0	0	
O	D100580	**GVWR**	58000 LBS	0	0	
ENGINE						
S	1010069	**ENGINE ASSY**	ISL9 '13 345HP / 2100RPM / 1150 LB-FT, CUMMINS	0	0	
ENGINE EQUIP						
O	1290004	**ENGINE ELECTRONICS**	CUMMINS 500K COMMUNICATION	0	0	
O	802115	**ALTERNATOR**	DELCO REMY 12V 145AMP 22SI	0	0	
O	P641500	**RPM PTO MODE**	1500 RPM MAX IN PTO	0	0	
TRANSMISSION						
O	2700028	**TRANSMISSION**	ALLISON 4500 SERIES,6-SPEED	384	59	
O	3170007	**PTO-TRANSMISSION MOUNTED**	CHELSEA 890 / 897 PTO CLEARANCE (PREP ONLY)	5	0	
FRONT AXLE						
O	3700003	**FRONT AXLE**	MERITOR MFS-18 STEER AXLE, 18000# RATING	0	0	

O	3690003	**FRONT AXLE POSITION**	53.5 INCHES	79	-79
O	371009	**FRONT SUSPENSION**	8500 LB FLATLEAF 18,800 GROUND CAPACITY	-63	8
O	7510001	**BRAKES-FOUNDATION, FRONT AXLE**	MERITOR 16.5X7" QP REFUSE BRAKE	29	0
O	755998	**DUST SHIELDS - FRT BRAKES**	NO FRONT BRAKE DUST SHIELDS PROVIDED	-1	0

REAR AXLE

S	3300041	**REAR DRIVE AXLE-SINGLE & TANDEM**	MERITOR MT40-14X W/ .5" HOUSING (40000 LBS)	0	0
O	331529	**REAR DRIVE AXLE RATIO**	5.29	0	0
O	7610001	**BRAKES-FOUNDATION, REAR AXLE**	MERITOR 16.5X8.62" QP REFUSE BRAKE	0	42
O	765998	**DUST SHIELDS - REAR BRAKES**	NO REAR AXLE DUST SHIELDS PROVIDED	0	-2

CHASSIS

O	400176	**WHEELBASE**	176 INCHES	-52	-65
O	402074	**FRAME-REAR OVERHANG**	74"	42	-150
O	8160005	**BATTERY BOX SPACERS**	BATTERY BOX SPACED 2", DROPPED 6"	5	1

CAB EXTERIOR

O	661002	**CAB TILT MECHANISM-C.O.E.**	HYDRAULIC TILT WITH AIR ASSIST	20	0

CAB INTERIOR

O	3810002	**STEERING COLUMN**	TILT AND TELESCOPIC STEERING COLUMN	0	0
O	5260001	**SEAT INSERT**	GREY CORDURA	0	0
O	8750003	**ADDITIONAL ELEC. SWITCHES**	6 DASH SWITCHES, WIRE TO ACCESSORY PWR	2	0

CAB CLIMATE CONTROL

O	612001	**AIR CONDITIONER CONDENSER**	STANDARD (RADIATOR MOUNTED)	0	0

GAUGES & INSTRUMENTATION

O	3190001	**PTO CONTROLS**	PTO ELECTRIC CONTROL SWITCH	1	0

RADIO/MISC

O	5900006	**RADIO**	AM/FM RADIO, ROOF MOUNTED	13	-4
O	5910002	**ANTENNA/POWER SUPPLY**	ANTENNA - ROOF MOUNTED	0	0
O	596005	**RADIO SPEAKERS**	2 DUAL CONE SPEAKERS	0	0

ADDITIONAL OPTIONS

O	8992000	**CHASSIS WARRANTY**	BASIC WARRANTY TERM EXT 24 MONTH / 200,000 MILES / 6000 HR	0	0

O	899A006	**TRANSMISSION WARRANTY**	ALLISON 5YR. EDGE WARRANTY	0	0	
X	899B206	**ENGINE WARRANTY**	CUMMINS ISL-D PP1 DC1 5 YEAR / 200,000 MILES 131156	0	0	
X	899K206	**EXHAUST AFTERTREATMENT EXTENDED WARRANTIES**	2016 ISL-D AT3 AFTERTREATMENT 5 YEAR / 200,000 MILES 131445	0	0	

OTHERS

O	9720005	**CERTIFICATION-EMISSIONS**	COMPLIES WITH 2013 U.S. EMISSIONS	0	0	

SUB TOTALS

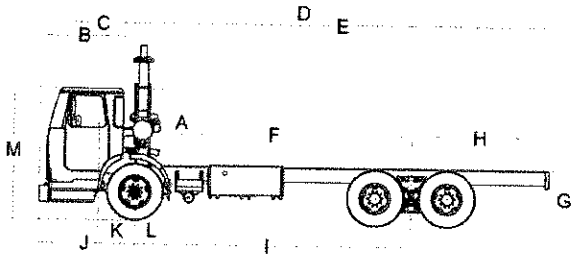
BASE WEIGHT	10,431	6,154
FACTORY OPTION WEIGHT	489	-217
DISTRIBUTOR OPTION WEIGHT	0	0

TOTALS

TOTAL WEIGHT (LB)	10,920	5,937	16,857

Dimensions

03/25/2016



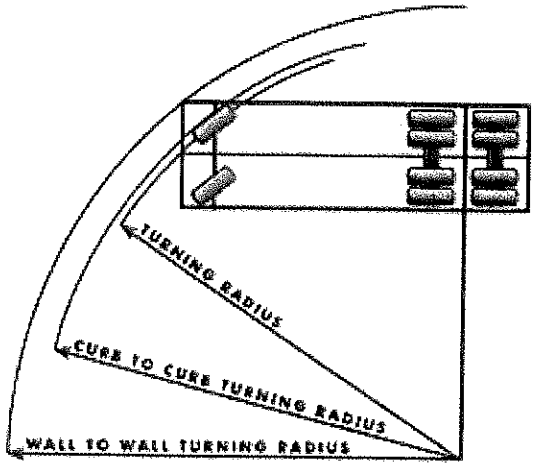
	Dimension(ft)	Description
A	59.00	CAB HEIGHT
B	62.00	BUMPER TO BACK OF CAB
C	94.00	EFFECTIVE BUMPER TO BACK OF CAB
D	321.00	OVERALL LENGTH
E	227.00	EFFECTIVE CAB TO END OF FRAME
F	153.00	EFFECTIVE CAB TO REAR AXLE
G	42.95	UNLADEN FRAME HEIGHT
H	74.00	OVERHANG
I	176.00	WHEELBASE
J	71.00	BUMPER TO FRONT AXLE
K	-24.00	DRIVER CENTER OF GRAVITY
L	23.00	EFFECTIVE FRONT AXLE TO BACK
M	101.95	OVERALL HEIGHT
N	0.00	FRONT FRAME EXTENSION

SPECIFICATION SUMMARY

Model	ACX64 Class 8
Engine	ISL9 '13 345HP / 2100RPM / 1150 LB-FT, CUMMINS
Transmission	ALLISON 4500 SERIES,6-SPEED
Rear Axle	MERITOR MT40-14X W/ .5" HOUSING (40000 LBS)
Rear Axle Ratio	5.29
Rear Tire	11R22.5H

Turning Radius

03/25/2016



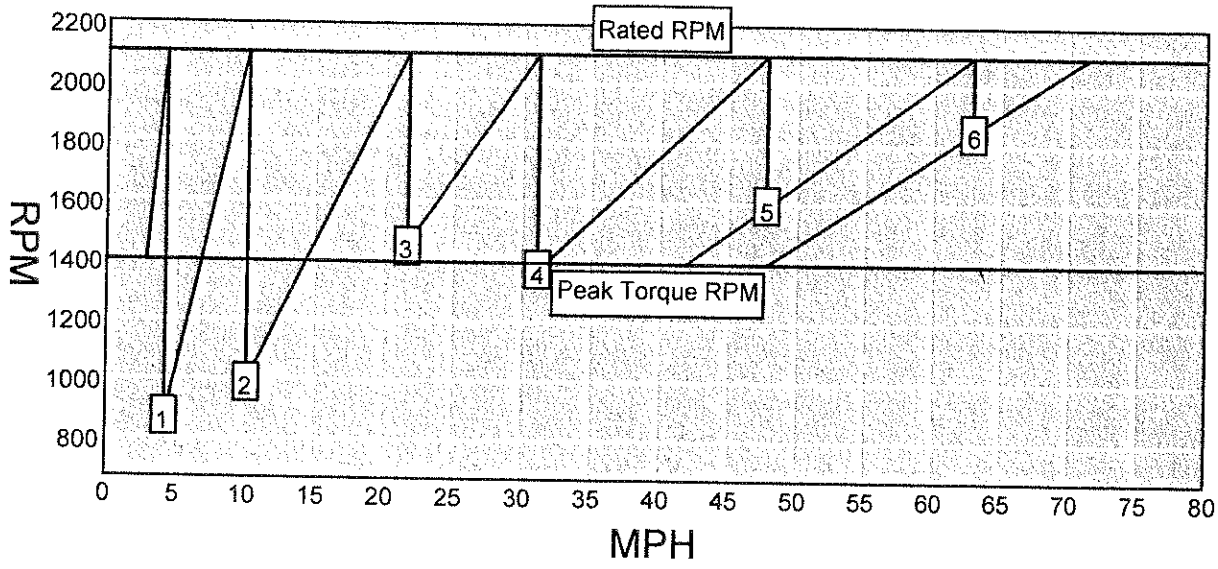
	Dimension(ft)	Description
A	29.66	TURNING RADIUS
B	61.44	CURB TO CURB TURNING DIAMETER
C	67.59	WALL TO WALL TURNING DIAMETER

SPECIFICATION SUMMARY

Model	
Engine	ISL9 '13 345HP / 2100RPM / 1150 LB-FT, CUMMINS
Transmission	ALLISON 4500 SERIES,6-SPEED
Rear Axle	MERITOR MT40-14X W/ .5" HOUSING (40000 LBS)
Rear Axle Ratio	5.29
Rear Tire	11R22.5H

Shift Chart

03/25/2016



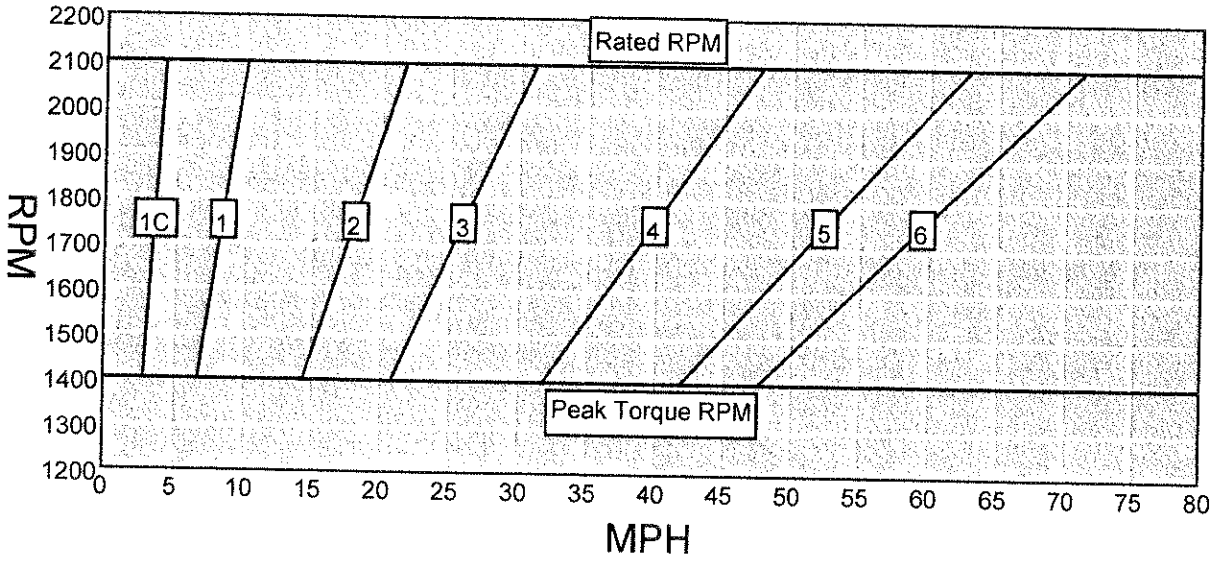
Gear	Trans. Ration	Rear Axle Ration	Overall Reduction	% Split	MPH	RPM After Shift
1C	11.37	5.29	60.1	0.0	4.2	0
1	4.70	5.29	24.9	141.9	10.2	868
2	2.21	5.29	11.7	112.7	21.7	987
3	1.53	5.29	8.1	44.4	31.3	1,453
4	1.00	5.29	5.3	53.0	47.9	1,372
5	0.76	5.29	4.0	31.6	63.1	1,596
6	0.67	5.29	3.5	13.4	71.5	1,851

SPECIFICATION SUMMARY

Model	ACX64 Class 8
Engine	ISL9 '13 345HP / 2100RPM / 1150 LB-FT, CUMMINS
Rated Power	345 HP @ 2100 RPM
Peak Torque	1150 LB-FT @ 1400
Transmission	ALLISON 4500 SERIES,6-SPEED
Rear Axle	MERITOR MT40-14X W/ .5" HOUSING (40000 LBS)
Rear Axle Ratio	5.29
Rear Tire	11R22.5H
Tire Revolution	0

Operating Range

03/25/2016



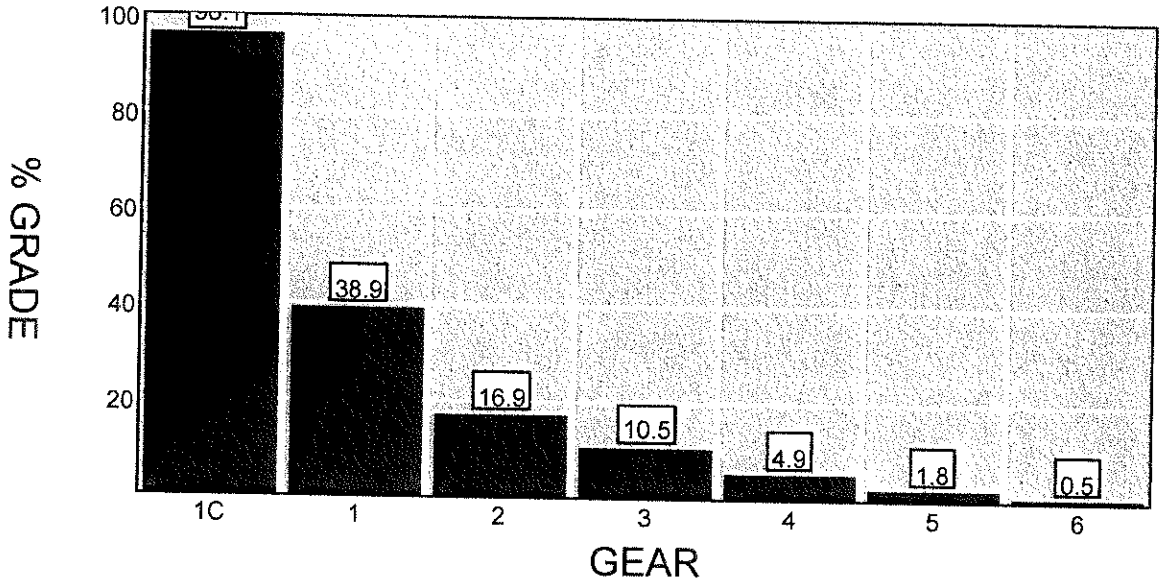
Gear	Trans. Ratio	Rear Axle Ratio	Minimum MPH	Maximum MPH
1C	11.37	5.29	2.8	4.2
1	4.70	5.29	6.8	10.2
2	2.21	5.29	14.5	21.7
3	1.53	5.29	20.9	31.3
4	1.00	5.29	31.9	47.9
5	0.76	5.29	42.0	63.1
6	0.67	5.29	47.7	71.5

SPECIFICATION SUMMARY

Model	ACX64 Class 8
Engine	ISL9 '13 345HP / 2100RPM / 1150 LB-FT, CUMMINS
Rated Power	345 HP @ 2100 RPM
Peak Torque	1150 LB-FT @ 1400
Transmission	ALLISON 4500 SERIES,6-SPEED
Rear Axle	MERITOR MT40-14X W/ .5" HOUSING (40000 LBS)
Rear Axle Ratio	5.29
Rear Tire	11R22.5H
Tire Revolution	0

Gradeability

03/25/2016



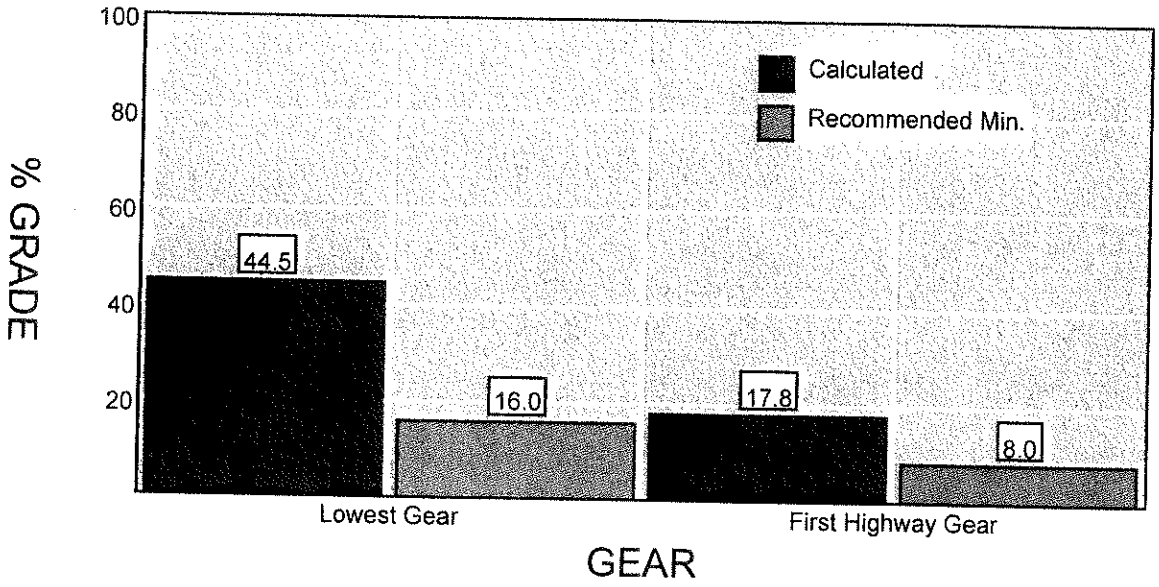
Gear	Trans. Ratio	Rear Axle Ratio	Overall Reduction	Peak Torque	Wheel HP	MPH	Maximum Grade%
1C	11.37	5.29	60.1	1,150.0	275.7	2.8	96.1
1	4.70	5.29	24.9	1,150.0	275.7	6.8	38.9
2	2.21	5.29	11.7	1,150.0	275.7	14.5	16.9
3	1.53	5.29	8.1	1,150.0	275.7	20.9	10.5
4	1.00	5.29	5.3	1,150.0	275.7	31.9	4.9
5	0.76	5.29	4.0	1,150.0	275.7	42.0	1.8
6	0.67	5.29	3.5	1,150.0	275.7	47.7	0.5

SPECIFICATION SUMMARY

Model	ACX64 Class 8
Engine	ISL9 '13 345HP / 2100RPM / 1150 LB-FT, CUMMINS
Peak Torque	1150 LB-FT @ 1400
Transmission	ALLISON 4500 SERIES,6-SPEED
Rear Axle	MERITOR MT40-14X W/ .5" HOUSING (40000 LBS)
Rear Axle Ratio	5.29
Rear Tire	11R22.5H
Tire Revolution	0
GVW/GCV	0
Surface	Concrete

Startability

03/25/2016



Gear	Application	Recommended Minimum Grade %	Calculated Grade %
Lowest Gear	City	12.0	n/a
	On Highway	16.0	44.5
	On-Off Highway	18.0	n/a
	Off Highway	20.0	n/a
First Highway Gear	All Applications	0.0	n/a
		8.0	17.8

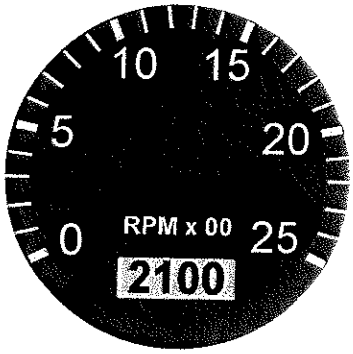
"SPECIFICATION SUMMARY"

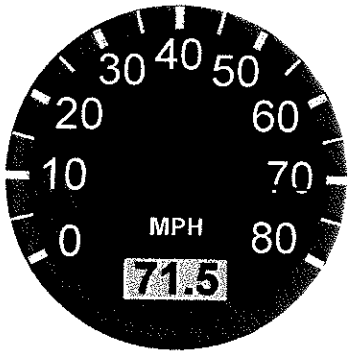
Model	ACX64 Class 8
Engine	ISL9 '13 345HP / 2100RPM / 1150 LB-FT, CUMMINS
Clutch Torque	550 LB-FT 700 RPM
Transmission	ALLISON 4500 SERIES,6-SPEED
Rear Axle	MERITOR MT40-14X W/ .5" HOUSING (40000 LBS)
Rear Axle Ratio	5.29
Rear Tire	11R22.5H
Tire Radius	0
GVW/GCV	0
Surface	Concrete
Terrain	On Highway

Top Speed

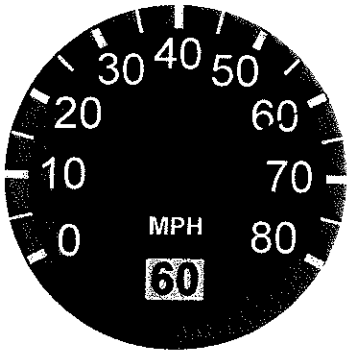
03/25/2016

Speed At Maximum RPM





RPM At 60MPH



	MPH	RPM
Top Speed	71.5	2,100
Cruise Speed	60.0	1,761
Minimum Of Engine Range	40.9	1,200
Maximum Of Engine Range	71.5	2,100
Minimum Of Economy Range	51.1	1,500
Maximum Of Economy Range	61.3	1,800

SPECIFICATION SUMMARY

Model	ACX64 Class 8
Engine	ISL9 '13 345HP / 2100RPM / 1150 LB-FT, CUMMINS
Transmission	ALLISON 4500 SERIES,6-SPEED
Rear Axle	MERITOR MT40-14X W/ .5" HOUSING (40000 LBS)
Rear Axle Ratio	5.29
Rear Tire	11R22.5H
Tire Revolution	0

File #: 16-323, **Version:** 1

AUTHORIZATION TO ENTER INTO AN AGREEMENT FOR DEVELOPED AND UNDEVELOPED RIGHT-OF-WAY LANDSCAPE MAINTENANCE WITH ENVIRONMENTAL EARTHSCAPES, INC., DOING BUSINESS AS THE GROUNDSKEEPER

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 an Agreement for Developed and Undeveloped Right-of-Way (ROW) Landscape Maintenance with Environmental Earthscapes, Inc., dba The Groundskeeper, for landscape services in the City of Glendale north of Olive Avenue for an initial term of two years in an amount not to exceed $246,105 annually, and to authorize the City Manager to renew the agreement, at the City Manager's discretion, for an additional three years, in one year renewals, in an amount not to exceed $1,306,848 over the full five year term of the agreement, contingent upon Council Budget approval.

Background

The City of Glendale is responsible for maintenance of many developed and undeveloped right of way sections in the city. These responsibilities include upkeep of the decomposed granite, shrubs, groundcover, trees, irrigation line repair and water supply, herbicide, insecticide, weed control, and litter.

The existing agreement for landscape services north of Olive Avenue, Contract No. C-7721 with Agave Environmental Contracting, Inc., will expire on July 1, 2016.

A Request for Proposals (RFP) 16-37 for Landscape Maintenance Services was advertised on March 3, 2016. The RFP was for three geographic areas (north of Olive Avenue, south of Olive Avenue, and the Glendale Municipal Airport) and included the following evaluation criteria: Experience and Qualifications, Method of Approach, and Pricing Structure. Six proposals were received, with a team of city staff including Public Works and Materials Management qualifying and scoring the proposals, and The Groundskeeper proposal was determined to be most advantageous to the city for north of Olive Avenue.

Analysis

The city utilizes service options such as contracted landscape maintenance. Entering into this agreement will assure regularly scheduled care, and for needs beyond staff capabilities.

The Agreement will provide landscape maintenance services for approximately 4,928,251 square feet of public ROW areas (approximately 3,565,921 square feet of developed and approximately 1,362,330 square feet of undeveloped areas) from Olive Avenue on the south to Pinnacle Peak Road on the north, and within

city limits to the east and west. Staff included a 5% contingency for years three, four, and five for market adjustments and unforeseen circumstances.

Previous Related Council Action

On June 28, 2011, Council awarded a bid, authorized entering into Agreements for landscape right-of-way maintenance with Agave Environmental Contracting, Inc., Contract No. C-7721, and Basin Tree Service & Pest Control, Inc., Contract No. C-7722, and authorized the City Manager to renew the Agreements through July 1, 2016.

Community Benefit/Public Involvement

Well maintained public right of way aide in creating civic and community pride. If the efforts to maintain the appearance of the landscaping are diminished, the high standards that Glendale citizens have come to expect will be diminished, which could result in sight visibility issues, uncontrolled weed growth and urban blight. Completing regularly scheduled landscape maintenance to the city's roadways and city owned property maintains a positive public image to residents, businesses, and visitors.

Budget and Financial Impacts

Funding is available in the Fiscal Year 2016-17 Public Works Operating budget. Expenditures with The Groundskeeper are not to exceed $246,105 per fiscal year for the first two years, and not to exceed $1,306,848 over the full term of the contract; contingent upon Council Budget approval.

Cost	Fund-Department-Account
$246,105	**1340-16710-518200, Right of Way Maintenance**

Capital Expense? No

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from? N/A

AGREEMENT FOR
DEVELOPED AND UNDEVELOPED RIGHT-OF-WAY
LANDSCAPE MAINTENANCE
City of Glendale Solicitation No. RFP 16-37

This Agreement for Developed and Undeveloped ROW Landscape Maintenance for Olive Avenue North ("Agreement") is effective and entered into between CITY OF GLENDALE, an Arizona municipal corporation ("City"), and Environmental Earthscapes, Inc., dba The Groundskeeper, an Arizona corporation, 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 16-37 (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. 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 landscaping maintenance services for the Olive Avenue North area only, in accordance with the requirements contained in RFP 16-37. Contractor will devote sufficient staff and resources 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.

(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 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.

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.

3.4 Coordination; Interaction.

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

b. Subject to any limitations expressly stated in the Project Budget, Contractor will meet to review the Project, Schedule, Project Budget, and in-progress work with Coordinating Project Professionals and City as often and for durations as City reasonably considers necessary in order to ensure the timely work delivery and Project completion.

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

3.5 Work Product.

a. Ownership. Upon receipt of payment for services furnished, Contractor grants to City, and will cause its Sub-contractors to grant to the City, the exclusive ownership of and all copyrights, if any, to evaluations, reports, drawings, specifications, project manuals, surveys, estimates, reviews, minutes, all "architectural work" as defined in the United States Copyright Act, 17 U.S.C § 101, *et seq.*, and other intellectual work product as may be applicable ("Work Product").

(1) This grant is effective whether the Work Product is on paper (e.g., a "hard copy"), in electronic format, or in some other form.

(2) Contractor warrants, and agrees to indemnify, hold harmless and defend City for, from and against any claim that any Work Product infringes on third-party proprietary interests.

b. Delivery. Contractor will deliver to City copies of the preliminary and completed Work Product promptly as they are prepared.

c. City Use.

(1) City may reuse the Work Product at its sole discretion.

(2) In the event the Work Product is used for another project without further consultations with Contractor, the City agrees to indemnify and hold Contractor harmless from any claim arising out of the Work Product.

(3) In such case, City shall also remove any seal and title block from the Work Product.

4. Compensation for the Project.

4.1 Compensation. Contractor's compensation for the Project, including those furnished by its Sub-contractors will not exceed $1,306,848.00 over five (5) years, 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. Billings and Payment.

5.1 Applications.

a. Contractor will submit monthly invoices (each, a "Payment Application") to City's Project Manager and City will remit payments based upon the Payment Application as stated below.

b. The period covered by each Payment Application will be one calendar month ending on the last day of the month or as specified in the solicitation.

5.2 Payment.

a. After a full and complete Payment Application is received, City will process and remit payment within 30 days.

b. Payment may be subject to or conditioned upon City's receipt of:

(1) Completed work generated by Contractor and its Sub-contractors; and

(2) Unconditional waivers and releases on final payment from Sub-contractors as City may reasonably request to assure the Project will be free of claims arising from required performances under this Agreement.

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

a. If the Payment Application is rejected, the Project Manager will issue a written listing of the items not approved for payment.

b. City may withhold an amount sufficient to pay expenses that City reasonably expects to incur in correcting the deficiency or deficiencies rejected for payment.

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-contactors 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.

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 the Required Insurance whenever requested.

8.3 Indemnification.

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

Environmental Earthscapes, Inc.,
dba The Goundskeeper
c/o Paul Tripp
620 North Golden Key
Gilbert, Arizona 85233

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 Eddie Sandoval
6210 West Myrtle Avenue
Glendale, Arizona 85301
623-930-2639

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 two (2)-year initial period. The City may, at its option and with the approval of the Contractor, extend the term of this Agreement an additional three (3) years, renewable on an annual basis. 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 any such price adjustment 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

Environmental Earthscapes, Inc.,
dba The Groundskeeper,
an Arizona corporation

_____

By: Nick Perez
Its: Regional Branch Manager

EXHIBIT A

DEVELOPED AND UNDEVELOPED RIGHT-OF-WAY

LANDSCAPE MAINTENANCE

RFP 16-73

PROJECT

The Contractor's work shall include: furnishing all materials, tools, supplies, chemicals that include fertilizers, herbicides, post- and pre-emergent, labor, equipment and vehicles necessary to provide landscape maintenance on public ROW areas in accordance with the provisions specified in Section 2.0 Scope of Work and consistent with the contractor's response to the RFP. RFP 16-37 and the Contractor's response are attached and considered as part of this agreement.

EXHIBIT B

DEVELOPED AND UNDEVELOPED RIGHT-OF-WAY

LANDSCAPE MAINTENANCE

RFP 16-73

COMPENSATION

METHOD AND AMOUNT OF COMPENSATION

The method of payment is provided in Section 5, Billings and Payment of the Agreement. The amount of the compensation for landscape services rendered, is provided in the City of Glendale best and final offer document for Solicitation No. RFP 16-37, which is attached for this Project (Olive Avenue North only) to this Exhibit B.

NOT-TO-EXCEED AMOUNT

The total amount of compensation paid to Contractor for full completion of all work required in the Olive Avenue North rights-of-way during the entire term of the Project must not exceed $246,105.00 per year for the initial 2-year term (i.e. a total of $492,210.00), $258,410.00 for year three, $271,331.00 for year four and $284,897.00 for year 5 and must not exceed the total amount of $1,306.848.00 for the entire 5 year period if all renewal term options are exercised.

DETAILED PROJECT COMPENSATION

The Contractor shall provide landscape maintenance services for the OLIVE AVENUE NORTH portion of the solicitation only. This project includes 4,928,251 square feet of public ROW, which is comprised of approximately 3,565,921 sf of developed and approximately 1,362,330 sf of undeveloped areas and some sidewalks, from Olive Avenue on the south to Pinnacle Peak Road on the north, and within city limits to the east and west. Sidewalks will need sweeping and clearing of weeds only. Sidewalk repairs are not part of the scope of work and will not be required unless contractor caused the damage.

EXHIBIT C

DEVELOPED AND UNDEVELOPED RIGHT-OF-WAY

LANDSCAPE MAINTENANCE

RFP 16-73

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.

COUNCIL COMMUNICATION CONSENSUS RFP 16-37 DEVELOPED & UNDEVELOPED ROW LANDSCAPE MAINTENANCE						
	Experience and Qualifications 45%	Method of Approach 30%	Pricing 25%	Maximum Points Awarded		
TOTAL CATEGORY POINTS AWARDED	450	300	250	1000	AOS	RANKING
ARTISTIC LAND MANAGEMENT	322	213	130	665	North	
	322	213	127	662	South	
	322	213	98	633	Airport	
THE GROUNDSKEEPER	418	247	250	915	North	
	418	247	181	846	South	
	418	247	167	832	Airport	
THE GROUNDSKEEPER BAFO	418	247	250	915	NORTH	1
	418	247	191	856	SOUTH	2
	418	247	167	832	AIRPORT	Canceled
ISS GROUNDS CONTROL	317	157	150	624	North	
	317	157	116	590	South	
	317	157	226	700	Airport	
MARIPOSA LANDSCAPE ARIZONA, INC.	358	233	230	821	North	
	358	233	241	832	South	
	358	233	250	841	Airport	
MARIPOSA LANDSCAPE ARIZONA, INC. BAFO	358	233	227	818	NORTH	3
	358	233	250	841	SOUTH	3
	358	233	250	841	AIRPORT	Canceled
SOMERSET LANDSCAPE MAINTNENACE	338	146	209	693	North	
	338	146	250	734	South	
	338	146	145	629	Airport	
UNITED RIGHT-OF WAY	442	285	151	878	North	
	442	285	157	884	South	
	442	285	63	790	Airport	
UNITED RIGHT-OF WAY BAFO	442	285	151	878	NORTH	2
	442	285	165	892	SOUTH	1
	442	285	63	790	AIRPORT	Canceled

Award Recommendations:

THE GROUNDSKEEPER, Olive North and **URW, Olive South** are deemed to be the most responsible and responsive offerors whose proposals are determined in writing to be the most advantageous to the City and best meets the overall needs of the City taking into consideration the evaluation factors set forth in the request for proposals. The Airport solicitation is cancelled at this time.

File #: 16-326, **Version:** 1

AUTHORIZATION TO ENTER INTO AN AGREEMENT FOR DEVELOPED AND UNDEVELOPED RIGHT-OF-WAY LANDSCAPE MAINTENANCE WITH BASIN TREE SERVICE & PEST CONTROL, INC., DOING BUSINESS AS UNITED RIGHT-OF-WAY (URW)

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 an Agreement for Developed and Undeveloped Right-of-Way (ROW) Landscape Maintenance with Basin Tree Service & Pest Control, Inc., dba United Right-of-Way (URW), for landscape services in the City of Glendale south of Olive Avenue for an initial term of two years in an amount not to exceed $374,400 annually, and to authorize the City Manager to renew the agreement, at the City Manager's discretion, for an additional three years, in one year renewals, in an amount not to exceed $1,988,111 over the full five year term of the agreement, contingent upon Council Budget approval.

Background

The City of Glendale is responsible for maintenance of many developed and undeveloped right of way sections in the city. These responsibilities include upkeep of the decomposed granite, shrubs, groundcover, trees, irrigation line repair and water supply, herbicide, insecticide, weed control, and litter.

The existing agreement for landscape services south of Olive Avenue, Contract No. C-7722 with Basin Tree Service & Pest Control, Inc., will expire on July 1, 2016.

A Request for Proposals (RFP) 16-37 for Landscape Maintenance Services was advertised on March 3, 2016. The RFP was for three geographic areas (north of Olive Avenue, south of Olive Avenue, and the Glendale Municipal Airport) and included the following evaluation criteria: Experience and Qualifications, Method of Approach, and Pricing Structure. Six proposals were received, with a team of city staff including Public Works and Materials Management qualifying and scoring the proposals, and United Right-of-Way was deemed to be the most responsible and responsive offeror whose proposal was determined to be most advantageous to the city for south of Olive Avenue.

Analysis

The city utilizes service options such as contracted landscape maintenance. Entering into this Agreement will assure regularly scheduled care, and for needs beyond staff capabilities.

The Agreement will provide landscape maintenance services for approximately 7,658,538 square feet of public ROW areas (approximately 3,001,631 square feet of developed and approximately 4,656,907 square

feet of undeveloped areas) from Olive Avenue on the north to Camelback Road on the south, and within city limits to the east and west. Staff included a 5% contingency for years three, four, and five for market adjustments and unforeseen circumstances.

Previous Related Council Action

On June 28, 2011, Council awarded a bid, authorized entering into Agreements for landscape right-of-way maintenance with Agave Environmental Contracting, Inc., Contract No. C-7721, and Basin Tree Service & Pest Control, Inc., Contract No. C-7722, and authorized the City Manager to renew the Agreements through July 1, 2016.

Community Benefit/Public Involvement

Well maintained public right of way aide in creating civic and community pride. If the efforts to maintain the appearance of the landscaping are diminished, the high standards that Glendale citizens have come to expect will be diminished, which could result in sight visibility issues, uncontrolled weed growth and urban blight. Completing regularly scheduled landscape maintenance to the city's roadways and city owned property maintains a positive public image to residents, businesses, and visitors.

Budget and Financial Impacts

Funding is available in the Fiscal Year 2016-17 Public Works Operating budget. Expenditures with URW are not to exceed $374,400 per fiscal year for the first two years, and not to exceed $1,988,111 over the full term of the contract; contingent upon Council Budget approval.

Cost	Fund-Department-Account
$374,400	**1340-16710-518200, Right of Way Maintenance**

Capital Expense? No

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from? N/A

AGREEMENT FOR
DEVELOPED AND UNDEVELOPED RIGHT-OF-WAY
LANDSCAPE MAINTENANCE
City of Glendale Solicitation No. RFP 16-37

This Agreement for Developed and Undeveloped ROW Landscape Maintenance for Olive Avenue South ("Agreement") is effective and entered into between CITY OF GLENDALE, an Arizona municipal corporation ("City"), and Basin Tree Service & Pest Control, Inc. dba United Right-of-Way, an Arizona corporation, 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 16-37 (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. 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 landscaping maintenance services for the Olive Avenue South area only, in accordance with the requirements contained in RFP 16-37. Contractor will devote sufficient staff and resources 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.

(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 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.

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.

3.4 Coordination; Interaction.

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

b. Subject to any limitations expressly stated in the Project Budget, Contractor will meet to review the Project, Schedule, Project Budget, and in-progress work with Coordinating Project Professionals and City as often and for durations as City reasonably considers necessary in order to ensure the timely work delivery and Project completion.

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

3.5 Work Product.

a. Ownership. Upon receipt of payment for services furnished, Contractor grants to City, and will cause its Sub-contractors to grant to the City, the exclusive ownership of and all copyrights, if any, to evaluations, reports, drawings, specifications, project manuals, surveys, estimates, reviews, minutes, all "architectural work" as defined in the United States Copyright Act, 17 U.S.C § 101, *et seq.*, and other intellectual work product as may be applicable ("Work Product").

(1) This grant is effective whether the Work Product is on paper (e.g., a "hard copy"), in electronic format, or in some other form.

(2) Contractor warrants, and agrees to indemnify, hold harmless and defend City for, from and against any claim that any Work Product infringes on third-party proprietary interests.

b. Delivery. Contractor will deliver to City copies of the preliminary and completed Work Product promptly as they are prepared.

c. City Use.

(1) City may reuse the Work Product at its sole discretion.

(2) In the event the Work Product is used for another project without further consultations with Contractor, the City agrees to indemnify and hold Contractor harmless from any claim arising out of the Work Product.

(3) In such case, City shall also remove any seal and title block from the Work Product.

4. Compensation for the Project.

4.1 Compensation. Contractor's compensation for the Project, including those furnished by its Sub-contractors will not exceed $1,988,111.00 over five (5) years, 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. Billings and Payment.

5.1 Applications.

a. Contractor will submit monthly invoices (each, a "Payment Application") to City's Project Manager and City will remit payments based upon the Payment Application as stated below.

b. The period covered by each Payment Application will be one calendar month ending on the last day of the month or as specified in the solicitation.

5.2 Payment.

a. After a full and complete Payment Application is received, City will process and remit payment within 30 days.

b. Payment may be subject to or conditioned upon City's receipt of:

(1) Completed work generated by Contractor and its Sub-contractors; and

(2) Unconditional waivers and releases on final payment from Sub-contractors as City may reasonably request to assure the Project will be free of claims arising from required performances under this Agreement.

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

a. If the Payment Application is rejected, the Project Manager will issue a written listing of the items not approved for payment.

b. City may withhold an amount sufficient to pay expenses that City reasonably expects to incur in correcting the deficiency or deficiencies rejected for payment.

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-contactors 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.

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 the Required Insurance whenever requested.

8.3 Indemnification.

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

Basin Tree Service & Pest Control, Inc.,
dba United Right-of-Way
c/o Chris Testa
1502 West Broadway Road
Phoenix, Arizona 85041

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 Eddie Sandoval
6210 West Myrtle Avenue
Glendale, Arizona 85301
623-930-2639

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 two(2)-year initial period. The City may, at its option and with the approval of the Contractor, extend the term of this Agreement an additional three (3) years, renewable on an annual basis. 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 any such price adjustment 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

Basin Tree Service & Pest Control, Inc.,
dba United Right-of-Way,
an Arizona corporation

By: Chris Testa
Its: General Manager

EXHIBIT A

DEVELOPED AND UNDEVELOPED RIGHT-OF-WAY

LANDSCAPE MAINTENANCE

RFP 16-73

PROJECT

The Contractor's work shall include: furnishing all materials, tools, supplies, chemicals that include fertilizers, herbicides, post- and pre-emergent, labor, equipment and vehicles necessary to provide landscape maintenance on public ROW areas in accordance with the provisions specified in Section 2.0 Scope of Work and consistent with the contractor's response to the RFP. RFP 16-37 and the Contractor's response are attached and considered as part of this agreement.

EXHIBIT B

DEVELOPED AND UNDEVELOPED RIGHT-OF-WAY

LANDSCAPE MAINTENANCE

RFP 16-73

COMPENSATION

METHOD AND AMOUNT OF COMPENSATION

The method of payment is provided in Section 5, Billings and Payment of the Agreement. The amount of the compensation for landscape services rendered, is provided in the City of Glendale best and final offer document for Solicitation No. RFP 16-37, which is attached for this Project (Olive Avenue South only) to this Exhibit B.

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 $374,400.00 per year for the initial 2-year term (i.e. a total amount of $748,800.00), $393,120.00 for year three, $412,776.00 for year four and $433,415.00 for year 5 and must not exceed the total amount of $1,988,111.00 for the entire 5 year period if all renewal term options are exercised.

DETAILED PROJECT COMPENSATION

The Contractor shall provide landscape maintenance services for the OLIVE AVENUE SOUTH portion of the scope of work. The project limits include 7,658,538 square feet of public ROW areas; approximately 3,001,631 sf of developed and approximately 4,656,907 sf of undeveloped areas and some sidewalks, from Olive Avenue on the north to Camelback Road on the south, and within city limits to the east and west. Sidewalks will need sweeping and clearing of weeds only. Sidewalk repairs are not part of the scope of work and will not be required unless contractor caused the damage.

EXHIBIT C

DEVELOPED AND UNDEVELOPED RIGHT-OF-WAY

LANDSCAPE MAINTENANCE

RFP 16-73

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.

COUNCIL COMMUNICATION CONSENSUS RFP 16-37 DEVELOPED & UNDEVELOPED ROW LANDSCAPE MAINTENANCE						
	Experience and Qualifications 45%	Method of Approach 30%	Pricing 25%	Maximum Points Awarded		
TOTAL CATEGORY POINTS AWARDED	450	300	250	1000	AOS	RANKING
ARTISTIC LAND MANAGEMENT	322	213	130	665	North	
	322	213	127	662	South	
	322	213	98	633	Airport	
THE GROUNDSKEEPER	418	247	250	915	North	
	418	247	181	846	South	
	418	247	167	832	Airport	
THE GROUNDSKEEPER BAFO	418	247	250	915	NORTH	1
	418	247	191	856	SOUTH	2
	418	247	167	832	AIRPORT	Canceled
ISS GROUNDS CONTROL	317	157	150	624	North	
	317	157	116	590	South	
	317	157	226	700	Airport	
MARIPOSA LANDSCAPE ARIZONA, INC.	358	233	230	821	North	
	358	233	241	832	South	
	358	233	250	841	Airport	
MARIPOSA LANDSCAPE ARIZONA, INC. BAFO	358	233	227	818	NORTH	3
	358	233	250	841	SOUTH	3
	358	233	250	841	AIRPORT	Canceled
SOMERSET LANDSCAPE MAINTNENACE	338	146	209	693	North	
	338	146	250	734	South	
	338	146	145	629	Airport	
UNITED RIGHT-OF WAY	442	285	151	878	North	
	442	285	157	884	South	
	442	285	63	790	Airport	
UNITED RIGHT-OF WAY BAFO	442	285	151	878	NORTH	2
	442	285	165	892	SOUTH	1
	442	285	63	790	AIRPORT	Canceled

Award Recommendations:

THE GROUNDSKEEPER, Olive North and **URW, Olive South** are deemed to be the most responsible and responsive offerors whose proposals are determined in writing to be the most advantageous to the City and best meets the overall needs of the City taking into consideration the evaluation factors set forth in the request for proposals. The Airport solicitation is cancelled at this time.

File #: 16-335, **Version:** 1

AUTHORIZATION TO ENTER INTO A CONSTRUCTION AGREEMENT WITH UTILITY CONSTRUCTION COMPANY, INC., FOR THE STREET LIGHT INFILL PROJECT (BID ALTERNATES 1 AND 2)
Staff Contact: Jack Friedline, Director, Public Works

Purpose and Recommended Action

This is a request for the City Council to authorize the City Manager to enter into a construction agreement with Utility Construction Company, Inc., in an amount not to exceed $74,464 to award Bid Alternates 1 and 2 of the Infill Street Lighting Installation Project.

Background

When a resident makes a request for infill lighting, an assessment is done to ensure an installation is warranted. Residents in generally older neighborhoods occasionally request additional street lighting to improve illumination in the area. The city's lighting standards have changed over the years; therefore lighting in these neighborhoods may not conform to current light spacing or placement standards. In other cases, staff has identified areas with sub-standard lighting where public safety warrants additional lighting.

The five (5) streetlights installed as part of this project are generally located at 63rd Avenue and Ocotillo Road (1 streetlight); 67th Avenue and Port au Prince Lane (1 streetlight); 59th Circle and Nancy Road (1 streetlight); 65th Avenue and Rose Lane (1 streetlight); and, 64th Avenue and Keim Drive (1 streetlight).

Analysis

The Engineering division opened bids for the Infill Street Lighting Installation project (project number 151607) on December 1, 2015. Four bids were received with Utility Construction Company, Inc. submitting the lowest responsive and responsible base bid in the amount of $85,355. Based on the funds available at the time, Alternates 1 and 2 were delayed in accordance with the City's Procurement Code Section 2-145(1)(c).

During the construction phase, additional funds were identified that could be used to fund the performance of the Alternate Bids. Upon evaluation of the initial project and alternates, and discussion with the Contractor, several Value Engineering options were proposed which were able to reduce the total project cost (Base bid plus Alternates). It was determined to be in the best interest of the city to award the contract to perform Alternates 1 and 2 to Utility Construction Company, Inc. This is a request for City Council to approve the award and authorize the City Manager to execute the attached agreement with Utility Construction Company, Inc.

Previous Related Council Action

On January 26, 2016, Council authorized entering into a Construction Agreement to Utility Construction

Company, Inc., Contract No. C-10261, for Infill Street Lighting Installation in an amount not to exceed $85,355.

Community Benefit/Public Involvement

Installation of infill street lighting is a result of coordination between residents and Engineering division staff, demonstrating city responsiveness to warranted resident requests. In addition, new street lighting improves visibility for the traveling public creating a safer community and increased quality of life.

Budget and Financial Impacts

Funds are available in the FY 2015-16 Capital Improvement Plan Budget. Expenditures with Utility Construction Company, Inc. for Bid Alternates 1 and 2 are not to exceed $74,464.

Cost	Fund-Department-Account
$74,464	1980-68121-550800, Street Light Replacement

Capital Expense? Yes

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from?

CONSTRUCTION AGREEMENT

This Construction Agreement ("Agreement") is entered into and effective between the CITY OF GLENDALE, an Arizona municipal corporation ("City"), and Utility Construction Company, Inc., an Arizona corporation, authorized to do business in Arizona ("Contractor") as of the _____ day of _____, 20__.

RECITALS

A. City intends to undertake a project for the benefit of the public and with public funds that is more fully set forth in the Notice to Contractors and the attached Exhibit A ("Project");

B. City desires to retain the services of Contractor to perform those specific duties and produce the specific work as set forth in the Project, the plans and specifications, the Information for Bidders, and the Maricopa Association of Governments ("MAG") General and Supplemental Conditions and Provisions;

C. City and Contractor desire to memorialize their agreement with this document.

AGREEMENT

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

1. Project.

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

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

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

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

1.3 Project Team.

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

(B) Project Team.

(1) The Project manager and all other employees assigned to the project by Contractor will comprise the "Project Team."

(2) Project Manager will have responsibility for and will supervise all other employees assigned to the project by Contractor.

(C) Sub-contractors.

(1) Contractor may engage specific technical contractor (each a "Sub-contractor") to furnish certain service functions.

(2) Contractor will remain fully responsible for Sub-contractor's services.

(3) Sub-contractors must be approved by the City, unless the Sub-contractor was previously mentioned in the response to the solicitation.

(4) Contractor shall certify by letter that contracts with Sub-contractors have been executed incorporating requirements and standards as set forth in this Agreement.

2. **Schedule.** The Project will be undertaken in a manner that ensures it is completed in a timely and efficient manner. If not otherwise stated in Exhibit A, the Project shall be completed by no later than within thirty (30) consecutive calendar days from and including the date of receipt of the Notice to Proceed.

3. **Contractor's Work.**

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

3.2 **Licensing.** Contractor warrants that:

(A) Contractor and Sub-contractors will hold all appropriate and required licenses, registrations and other approvals necessary for the lawful furnishing of services ("Approvals"); and

(B) Neither Contractor nor any Sub-contractor has been debarred or otherwise legally excluded from contracting with any federal, state, or local governmental entity ("Debarment").

(1) City is under no obligation to ascertain or confirm the existence or issuance of any Approvals or Debarments or to examine Contractor's contracting ability.

(2) Contractor must notify City immediately if any Approvals or Debarment changes during the Agreement's duration and the failure of the Contractor to notify City as required will constitute a material default of this Agreement.

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

3.4 **Coordination; Interaction.**

(A) If the City determines that the Project requires the coordination of professional services or other providers, Contractor will work in close consultation with City to proactively interact with any other contractors retained by City on the Project ("Coordinating Entities").

(B) Subject to any limitations expressly stated in the budget, Contractor will meet to review the Project, schedules, budget, and in-progress work with Coordinating Entities and the City as often and for durations as City reasonably considers necessary in order to ensure the timely work delivery and Project completion.

(C) If the Project does not involve Coordinating Entities, Contractor will proactively interact with any other contractors when directed by City to obtain or disseminate timely information for the proper execution of the Project.

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

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 $74,464, as specifically detailed in the Contractor's bid and set forth in Exhibit B ("Compensation").

4.2 **Change in Scope of Project.** The Compensation may be equitably adjusted if the originally contemplated scope of services as outlined in the Project is significantly modified by the City.

(A) Adjustments to the Scope or Compensation require a written amendment to this Agreement and may require City Council approval.

(B) Additional services which are outside the scope of the Project and not contained in this Agreement may not be performed by the Contractor without prior written authorization from the City.

5. Billings and Payment.

5.1 Applications.

(A) The Contractor will submit monthly invoices (each, a "Payment Application") to City's Project Manager and City will remit payments based upon the Payment Application as stated below.

(B) The period covered by each Payment Application will be one calendar month ending on the last day of the month.

5.2 Payment.

(A) After a full and complete Payment Application is received, City will process and remit payment within thirty (30) days.

(B) Payment may be subject to or conditioned upon City's receipt of:

(1) Completed work generated by Contractor and its Sub-contractors; and

(2) Unconditional waivers and releases on final payment from Sub-contractors as City may reasonably request to assure the Project will be free of claims arising from required performances under this Agreement.

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

(A) If the Payment Application is rejected, the Project Manager will issue a written listing of the items not approved for payment.

(B) City may withhold an amount sufficient to pay expenses that City reasonably expects to incur in correcting the deficiency or deficiencies rejected for payment.

(C) Contractor will provide, by separate cover, and concurrent with the execution of this Agreement, all required financial information to the City, including City of Glendale Transaction Privilege License and Federal Taxpayer identification numbers.

(D) City will temporarily withhold Compensation amounts as required by A.R.S. 34-221(C).

6. Termination.

6.1 For Convenience. City may terminate this Agreement for convenience, without cause, by delivering a written termination notice stating the effective termination date, which may not be less than fifteen (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 (7) 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-contactors 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 ten (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. **E-verify, Records and Audits.** To the extent applicable under A.R.S. § 41-4401, the Contractor warrant their compliance and that of its subcontractors with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). The Contractor or subcontractor's breach of this warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the City under the terms of this Agreement. The City retains the legal right to randomly inspect the papers and records of the other party to ensure that the other party is complying with the above-mentioned warranty. The Contractor and subcontractor warrant to keep their respective papers and records open for random inspection during normal business hours by the other party. The parties shall cooperate with the City's random inspections, including granting the inspecting party entry rights onto their respective properties to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

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:

Utility Construction Company, Inc.
Attn: Bob Martin
P.O. Box 1774
Gilbert, Arizona 85299

(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: Mark Gibson
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 Exhibit A. Any inconsistency between Exhibit A and this Agreement will be resolved by the terms and conditions stated in this Agreement.

13.2 Interpretation.

(A) The parties fairly negotiated the Agreement's provisions to the extent they believed necessary and with the legal representation they deemed appropriate.

(B) The parties are of equal bargaining position and this Agreement must be construed equally between the parties without consideration of which of the parties may have drafted this Agreement.

(C) The Agreement will be interpreted in accordance with the laws of the State of Arizona.

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

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

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

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

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

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

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

Exhibit A	Project
Exhibit B	Compensation
Exhibit C	Dispute Resolution

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

Utility Construction Company, Inc.
a(n) Arizona corporation

By: Bob Martin
Its: Vice President

WOMEN-OWNED/MINORITY BUSINESS [X] YES [ ] NO
CITY OF GLENDALE TRANSACTION PRIVILEGE TAX NO. 100028938
FEDERAL TAXPAYER IDENTIFICATION NO. 86-0810765

EXHIBIT A
CONSTRUCTION AGREEMENT

PROJECT

Installation and energization of up infill streetlights per project specifications. Locations are distributed throughout Glendale but within the APS service area. Contractor is to provide all labor and material.

EXHIBIT B
CONSTRUCTION AGREEMENT

COMPENSATION

METHOD AND AMOUNT OF COMPENSATION

By bid, including all services, materials and costs.

NOT-TO-EXCEED AMOUNT

The total amount of compensation paid to Contractor for full completion of all work required by the Project during the entire term of the Project must not exceed $74,464.

DETAILED PROJECT COMPENSATION

Award of Bid Alternate locations 1 and 2 as shown in detail on the Bid Schedule.

EXHIBIT C
CONSTRUCTION AGREEMENT

DISPUTE RESOLUTION

1. Disputes.

1.1 Commitment. The parties commit to resolving all disputes promptly, equitably, and in a good-faith, cost-effective manner.

1.2 Application. The provisions of this Exhibit will be used by the parties to resolve all controversies, claims, or disputes ("Dispute") arising out of or related to this Agreement-including Disputes regarding any alleged breaches of this Agreement.

1.3 Initiation. A party may initiate a Dispute by delivery of written notice of the Dispute, including the specifics of the Dispute, to the Representative of the other party as required in this Agreement.

1.4 Informal Resolution. When a Dispute notice is given, the parties will designate a member of their senior management who will be authorized to expeditiously resolve the Dispute.

(A) The parties will provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any Dispute in order to assist in resolving the Dispute as expeditiously and cost effectively as possible;

(B) The parties' senior managers will meet within 10 business days to discuss and attempt to resolve the Dispute promptly, equitably, and in a good faith manner, and

(C) The Senior Managers will agree to subsequent meetings if both parties agree that further meetings are necessary to reach a resolution of the Dispute.

2. Arbitration.

2.1 Rules. If the parties are unable to resolve the Dispute by negotiation within thirty (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 (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 fifteen (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 ten (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 ninety (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 (fifteen) 15 days after the arbitration hearing is concluded. This decision will be final and binding on the Parties.

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

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

4. **Exceptions.**

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

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

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

BID TABULATION

PROJECT 151607 - INFILL STREET LIGHTING INSTALLATION

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

DATE: DECEMBER 1, 2015 AT 9AM

CONTRACTOR	BID BOND\CHECK	ACK. ADDENDUM	BASE BID	BID ALTERNATE 1	BID ALTERNATE 2
Utility Construction Co.	Bid Bond	Yes	$ 85,355.00	$ 38,032.00	$ 36,432.00
AJP Electric Inc.	Bid Bond	Yes	$ 90,875.00	$ 36,870.00	$ 36,870.00
Redhawk Solutions Inc.	Bid Bond	Yes	$ 93,943.00	$ 33,319.20	$ 32,719.20
Talis Construction Corp.	Bid Bond	Yes	$ 95,612.50	$ 44,375.00	$ 44,525.00

File #: 16-331, **Version:** 1

POSITION RECLASSIFICATIONS
Staff Contact: Jim Brown, Director, Human Resources and Risk Management

Purpose and Recommended Action

This is a request for the City Council to authorize the City Manager to reclassify existing positions within the organization to align with the change in duties and/or responsibilities as a result of the City Manager reorganization.

Background

As the City seeks out ways to more innovatively provide city services, jobs must adapt to address those changes. Management works closely with the Human Resources and Risk Management Department to conduct job studies and make these changes when necessary. At times this may require a change in job duties and/or responsibilities that places the job in a different job classification. When this occurs, a reclassification of the job is necessary. Reclassifications, while permitted under Human Resources Policy 301, do create a change to Schedule 9 of the Fiscal Year (FY) 2015-16 Budget. Human Resources Policy 301.II.A.4 states the following with regard to position reclassifications:

A position may be reclassified when the essential duties and responsibilities of the position change significantly through the addition or deletion of essential job functions. Positions may be reclassified to a higher or lower classification and pay range as a result of a job study. The recommendation made to the City Manager by the Human Resources & Risk Management Director and approved by the City Council is final. Classification decisions are not appealable or grievable.

a. When a filled position is reclassified to a class in a higher pay range, the employee occupying the position may receive a salary adjustment for the reclassification as determined by Human Resources. If the employee's current salary is less than the minimum of the new range the employee will be placed at the minimum of the new range.

b. If, at the time of the reclassification, an employee is receiving temporary assignment pay for performing additional duties that fall within the scope of the new classification, the employee's base salary will be adjusted accordingly but shall not exceed the maximum of the new grade and the temporary assignment pay shall cease.

c. If a filled position is reclassified or reevaluated and assigned a lower pay range, the employee's pay will not be reduced. However, if the employee's current salary is above the maximum of the new pay range, the employee will not be eligible for any additional increase in salary until the pay range maximum is once again higher than the actual salary.

As the city moves forward, it is prudent to reassess the current structure and opportunities for realignment to better prepare the city for the future.

As part of the City Manager's departmental restructuring to better align department operations, balance managerial span of control and ensure high organizational performance, it is being requested that the following positions be reclassified to align with the new organizational structure. Reclassify an Assistant City Manager position to a Strategic Initiatives & Special Projects Executive Officer; reclassify the vacant Finance & Technology Director to a Budget & Finance Director; reclassify a vacant Communications Director position to a Public Facilities & Events Director; reclassify the Intergovernmental Programs Director to a Public Affairs Director; reclassify the Management Assistant to the City Manager to an Executive Assistant to the City Manager; and reclassify a vacant Marketing & Communications Program Manager to a Management Assistant within the City Manager's Office.

Analysis

The Human Resources and Risk Management Department has worked closely with the City Manager in conducting job studies to determine whether a job requires reclassification. It is important that job descriptions accurately reflect the duties being performed by employees and that the job classification reflects the level of duties and responsibilities required of the position. This helps ensure that the City provides a clear understanding to employees of what their duties are, helps to identify the appropriate level within the organization the position holds and helps supervisors with directing and assessing the performance of employees. It also assists with any confusion that might arise between the City and employees as to the duties and responsibilities required of a position.

Previous Related Council Action

On June 9, 2015, Council approved the FY 2015-16 Budget which includes a listing of all approved positions in Schedule 9 of the Budget Book.

Council approved position reclassifications at the June 23, 2015 Council meeting.

Council approved position reclassifications at the August 25, 2015 Council meeting.

Council approved position reclassifications at the October 13, 2015 Council meeting.

Council approved position reclassifications at the December 8, 2015 Council meeting.

Council approved position reclassifications at the March 22, 2016 Council meeting.

Council approved position reclassifications at the April 26, 2016 Council meeting.

Community Benefit/Public Involvement

Ensuring that job descriptions appropriately reflect the duties being performed protect the city from potential

litigation and help ensure that the citizens are receiving the appropriate level of services necessary.

Budget and Financial Impacts

Based on salary savings, there is no budget impact for the upcoming fiscal year.

Position Number	Department	Fund #	Fund Name	Previous Title	New Title	Description of Request	Effective Date of Action
00001773	City Manager's Office	1000	General	Asst City Manager	Strategic Initiatives & Special Proj Exec Officer	City Re-Organization	7/1/2016
00000956	Finance	1000	General	Finance & Tech Dir	Budget & Finance Director	City Re-Organization	7/1/2016
00001067	Marketing	1000	General	Comm Dir	Public Facilities & Events Director	City Re-Organization	7/1/2016
00001291	Intergov Programs	1000	General	Intergov Programs Dir	Public Affairs Director	City Re-Organization	7/1/2016
00001474	City Manager's Office	1000	General	Mgmt Asst to the City Mgr	Executive Asst to the City Mgr	City Re-Organization	7/1/2016
00000748	Marketing	1000	General	Marketing & Comm Prog Mgr	Management Assistant	City Re-Organization	7/1/2016

File #: 16-334, **Version:** 1

AUTHORIZATION TO ENTER INTO AN ADMINISTRATIVE SERVICE AGREEMENT AMENDMENT WITH BLUE CROSS BLUE SHIELD OF ARIZONA

Staff Contact: Jim Brown, Director, Human Resources and Risk Management

Purpose and Recommended Action

This is a request for City Council to approve entering into an administrative service agreement amendment with Blue Cross Blue Shield of Arizona for employee medical benefits for City of Glendale active employees, retirees and COBRA participants for the Fiscal year 2016-2017 with the option to renew three additional years in one year increments.

Background

In the fall of 2013, Human Resources & Risk Management conducted an RFP process for employee medical benefits. Human Resources & Risk Management worked with the Total Compensation Committee to review the proposals for administering the city's self-insured medical benefits plan. Blue Cross Blue Shield of Arizona was selected as the proposal that best matched both the needs of the employees and the City. We subsequently entered into an administrative service agreement with Blue Cross Blue Shield of Arizona to provide employee medical benefits for City of Glendale active employees, retirees and COBRA participants on July 1, 2014. The term of this current service agreement is five years through June 30, 2019 with options to extend four additional years in one year increments.

Analysis

Each year, Blue Cross Blue Shield of Arizona performs an actuarial analysis utilizing the City's medical claims history to project claims cost and premiums for the upcoming fiscal year. The projections for the expected liability during the upcoming fiscal year resulted in an 8.7% increase in premiums. This increase is due to medical cost inflation and the City's high claims over the past year. Additionally, the City's medical plans have been grandfathered into the provisions of the Affordable Care Act however, with additional analysis provided by our outside benefits consultant Segal, we determined that it was in the best interest of the City to un-grandfather our plans. This resulted in a final increase to premiums of 8.4%. Un-grandfathering our medical plans also provides additional benefits to our employees due to allowing preventative care services at no cost. This amendment to the existing service agreement includes the 8.4% increase in premiums which has also been included in the budget for FY16-17.

Previous Related Council Action

On April 23, 2013, Council approved the extension for the Blue Cross Blue Shield of Arizona service agreement through June 30, 2014.

On March 25, 2014, Council approved the contract with Blue Cross Blue Shield of Arizona for the FY14-15 with the option to renew four additional years.

Budget and Financial Impacts

Cost	Fund-Department-Account
$24,088,987	**2580-18210-540600, Benefits Trust Fund**

Capital Expense? No

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from?

BlueCross BlueShield of Arizona

An Independent Licensee of the Blue Cross and Blue Shield Association

Administrative Service Agreement Amendment (ASA Amendment)

(If the Employer has purchased BCBSAZ stop loss coverage, this ASA Amendment amends Exhibit C and Exhibit C-1 of the Maximum Aggregate and Specific Liability Agreement. If the Employer has NOT purchased BCBSAZ stop loss coverage, this ASA Amendment amends the ASA.)

Effective Date:	7/1/2016-6/30/2017	Date:	6/3/2016
Group / Bid ID:	11250	Bid/Renewal:	Renewal
Legal Name of Group:	City of Glendale	Days Notice:	240
Name of Group Health Plan:	City of Glendale Group Health Plan	SRE:	Ken Muth
Funding:	12/24 Incurred ASC, Medical and Pharmacy	Underwriter:	Craig Downs
Broker Paid:	Direct	UW Code:	LI
Commission:	N/A	Pooling / Specific Stop Loss:	$200,000
Commission (% of Billed Rate):	N/A	Aggregate Stop Loss:	125%
Total Enrollment:	1,629		

SOLD Plan(s) Benefit Outline

	Deductible	Coinsurance	OOP Max	OV	Spec	UC	ER	RX
PPO								
IN:	$500	80%	$3,000	$30	$45	$35	$100	$7/25/50
OON:	common	70%	$6,000					
EPO								
IN:	N/A	90%	$3,000	$30	$45	$35	$100	$7/25/50
Saver								
IN:	$1,500	80%	$5,000	Ded and coins	Ded and coins	Ded and coins	Ded and coins	$10/25/50/80 after ded
OON:	Common	60%	$10,000					

SOLD Rates

Active - PPO	Enrollment	Admin	SSL	ASL	Total Fixed Costs	ICAP	Expected Liability	Maximum Liability
Employee	140	$21.19	$53.60	$1.19	$75.98	$599.45	$555.54	$675.43
Employee + 1	64	$21.19	$53.60	$1.19	$75.98	$1,258.53	$1,082.80	$1,334.50
Employee + 2 +	132	$21.19	$53.60	$1.19	$75.98	$1,797.77	$1,514.19	$1,873.75
Total	336							

Active - EPO	Enrollment	Admin	SSL	ASL	Total Fixed Costs	ICAP	Expected Liability	Maximum Liability
Employee	345	$21.19	$53.60	$1.19	$75.98	$623.21	$574.64	$699.18
Employee + 1	196	$21.19	$53.60	$1.19	$75.98	$1,283.73	$1,102.96	$1,359.70
Employee + 2 +	589	$21.19	$53.60	$1.19	$75.98	$1,824.15	$1,535.30	$1,900.13
Total	1,130							

Retiree <65 PPO	Enrollment	Admin	SSL	ASL	Total Fixed Costs	ICAP	Expected Liability	Maximum Liability
Employee	60	$21.19	$53.60	$1.19	$75.98	$791.59	$709.25	$867.67
Employee + 1	28	$21.19	$53.60	$1.19	$75.98	$1,623.87	$1,375.07	$1,699.85
Employee + 2 +	4	$21.19	$53.60	$1.19	$75.98	$2,304.83	$1,919.64	$2,360.80
Total	92							

Retiree <65 EPO	Enrollment	Admin	SSL	ASL	Total Fixed Costs	ICAP	Expected Liability	Maximum Liability
Employee	70	$21.19	$53.60	$1.19	$75.98	$815.80	$728.62	$891.78
Employee + 1	36	$21.19	$53.60	$1.19	$75.98	$1,669.01	$1,411.19	$1,744.99
Employee + 2 +	9	$21.19	$53.60	$1.19	$75.98	$2,367.09	$1,969.65	$2,443.07
Total	115							

Retiree >65 PPO	Enrollment	Admin	SSL	ASL	Total Fixed Costs	ICAP	Expected Liability	Maximum Liability
Employee	40	$21.19	$53.60	$1.19	$75.98	$712.19	$645.73	$788.17
Employee + 1	31	$21.19	$53.60	$1.19	$75.98	$1,612.21	$1,365.74	$1,688.18
Employee + 2 +	2	$21.19	$53.60	$1.19	$75.98	$2,348.59	$1,954.85	$2,424.56
Total	73							

Retiree >65 EPO	Enrollment	Admin	SSL	ASL	Total Fixed Costs	ICAP	Expected Liability	Maximum Liability
Employee	32	$21.19	$53.60	$1.19	$75.98	$728.89	$659.09	$804.87
Employee + 1	10	$21.19	$53.60	$1.19	$75.98	$1,631.57	$1,381.23	$1,707.55
Employee + 2 +	0	$21.19	$53.60	$1.19	$75.98	$2,370.12	$1,972.08	$2,446.10
Total	42							

Active Saver	Enrollment	Admin	SSL	ASL	Total Fixed Costs	ICAP	Expected Liability	Maximum Liability
Employee	14	$21.19	$53.60	$1.19	$75.98	$449.58	$435.65	$525.66
Employee + 1	2	$21.19	$53.60	$1.19	$75.98	$943.90	$831.10	$1,019.88
Employee + 2 +	6	$21.19	$53.60	$1.19	$75.98	$1,348.32	$1,154.64	$1,424.30
Total	21							

Retiree <65 Saver	Enrollment	Admin	SSL	ASL	Total Fixed Costs	ICAP	Expected Liability	Maximum Liability
Employee	16	$21.19	$53.60	$1.19	$75.98	$593.69	$550.93	$669.67
Employee + 1	1	$21.19	$53.60	$1.19	$75.98	$1,217.90	$1,050.30	$1,293.88
Employee + 2 +	0	$21.19	$53.60	$1.19	$75.98	$1,728.62	$1,458.88	$1,804.60
Total	17							

Retiree >65 Saver	Enrollment	Admin	SSL	ASL	Total Fixed Costs	ICAP	Expected Liability	Maximum Liability
Employee	0	$21.19	$53.60	$1.19	$75.98	$534.14	$503.29	$610.12
Employee + 1	3	$21.19	$53.60	$1.19	$75.98	$1,209.15	$1,043.30	$1,265.13
Employee + 2 +	0	$21.19	$53.60	$1.19	$75.98	$1,761.43	$1,485.13	$1,837.41
Total	3							

HCR Suite:	N = Non-Grandfathered	PPO
HCR Suite:	N = Non-Grandfathered	EPO
HCR Suite:	N = Non-Grandfathered	Saver

Sold HealthEquity Account Pricing PEPM (not included above)	Plan	Billed by BCBSAZ	Billed by HealthEquity	Total
Health Savings Account	Saver	$2.70	$0.00	$2.70

	<500 Accounts	500 - 2,999 Accounts	3,000+ Accounts
Annual Set Up Fee (based on number HRA and FSA accounts and billed by HealthEquity)	$250	$500	$1,500

Groups selecting HealthEquity administration (including integration) services for HSA, HRA and/or FSA products hereby direct BCBSAZ to collect the HealthEquity administration fees reflected in the Administrative Service Agreement Amendment (ASA Amendment) and forward those fees to HealthEquity, along with the required personal health information. BCBSAZ is collecting the HealthEquity administration fees a courtesy and is not responsible for any reconciliation, recoupment or adjustments to payments received and forwarded to HealthEquity on behalf of Employer. If Employer and HealthEquity negotiate alternative fees, Employer shall notify BCBSAZ.

Employer agrees to pay charges for HealthEquity administration services. For HSAs and HRAs, those charges apply to all employees enrolled in a health plan the group has paired with a Health Equity account. For FSAs, those charges apply to any employees for whom an FSA selection has been sent to BCBSAZ by the employer.

Proposed administration assumes BCBSAZ will retain Rx Rebates. In exchange for retaining Rx Rebates, BCBSAZ has adjusted the Admin PEPM by the Rx Rebate Credit. Rx Rebate Credit (PEPM) = -$18.50.

Premium tax is included in the specific and aggregate charges.

Minimum Monthly Attachment Level:	$2,102,007 based on 100% enrolled	Deposit Required:	Yes
Is Mayo Provider included in network?	Yes	BCBSAZ will continue to retain the current claims deposit of $1,424,701.	
Rate Guarantee Sold:	Yes (Admin)	Wellness and Communication $50,000:	Yes
-Rate Guarantee Period:	See Assumptions		
-Rate Guarantee Details:	See Assumptions		
HealthEquity Integration:	Yes		

All information from the exhibit Assumptions #IASC-2016-011250-SOLD, Guarantees (Attachment 1), 100+ Employer Application (Exhibit 1) and Disclosure of "Eligible Indirect Compensation" (Exhibit 2) are incorporated herein by reference. Employer acknowledges electronic receipt of the Uniform Summaries of Benefits and Coverage (SBCs) for plans selected and the SBCs are incorporated herein by reference. As of the effective date on page 1, this amends and is made part of Employer's Administrative Services Agreement (ASA) with BCBSAZ. All provisions in the ASA not modified by this Amendment remain in full force and effect.

BCBSAZ reserves the right to adjust these premium rates retroactive to the first day of any billing month in which enrollment varies by more than fifteen percent (+/-15%) from that listed above.

The health reform law provides for a transitional reinsurance program beginning in 2014. Self-insured plans are required to contribute to the reinsurance program.

The ACA prohibits waiting periods in excess of 90 days. By signing below you represent that you do not impose a waiting period which is longer than 90 days and that you have made all necessary changes to bring all waiting periods for your plan into compliance with the ACA requirements. You agree to promptly advise BCBSAZ of any change which may impact the accuracy of this representation. You agree to provide BCBSAZ with timely and accurate information regarding enrollee effective dates and shall ensure such effective dates comply with applicable laws.

James a Burtt 5/9/2016

BCBS Representative Date

Group Representative Date

Title

ATTEST:

City Clerk

Approved as to form

City Attorney

City Of Glendale #011250

Effective Date: 07/01/2016 - 06/30/2017

Assumptions #IASC-2016-011250- SOLD

Assumptions

* Employer participation and contribution requirements apply:

  Where the employer contributes 100% of the employee cost, BCBSAZ requires 100% participation of all eligible employees, excluding those with other qualifying medical coverage.

  Where the employer does not contribute 100%, BCBSAZ requires 70% of all eligible employees to participate.

  BCBSAZ requires a minimum of 50% of all full-time employees in the group to be enrolled in the employer's group plan.

  Employer must contribute a minimum of 50% of the employee's health premium.

  Payroll deduction for employee contribution is required.

* Rates assume Blue Cross Blue Shield of Arizona is the sole medical and rx carrier.

* Rates assume Blue Cross Blue Shield of Arizona is the specific and aggregate stoploss carrier.

* BCBSAZ reserves the right to re-evaluate the rates if there is a significant change in the rating assumptions (e.g. enrollment).

* BCBSAZ reserves the right to adjust our specific stop loss rates in the event the retirees over and under 65 are no longer covered under our specific stop loss coverage.

* Currently BCBSAZ is holding a claims deposit of $1,424,701. Our offer assumes that we will continue to hold this deposit for the policy period 7/1/2016-6/30/2017, in exchange for a credit of $.81 PEPM made to the administration rate.

* BCBSAZ reserves the right to re-evaluate and change the rates if City Of Glendale adds or deletes a benefit eligible class that will have BCBSAZ medical coverage.

* BlueCard fees are included in the Attachment Point rate (if applicable) and are charged on the monthly invoice as a claim expense.

* BCBSAZ reserves the right to decline to provide coverage for residents of any state other than Arizona, if in BCBSAZ's sole opinion, such coverage would be inconsistent with state or federal law.

* The group will be billed each month prospectively for the Fixed Expenses.

* Our offer assumes Mayo is included as an In-Network provider.

* 100+ Groups (Fully Insured or ASC) who choose the network that includes Mayo Clinic in Arizona will also have, as an in-network provider at no additional charge, the Cancer Centers Treatment of America located in Arizona. Groups will also have access to Mayo Clinics and Cancer Treatment Centers of America facilities identified as "in-network" in the provider directory for other states.

* We have not included premium tax on this account, based on the assumption that all premiums are paid with the employer's funds, and the employer is a municipality.

* Costs for covered services provided by a chiropractor to PPO, EPO and Indemnity members, including an allowance for BCBSAZ to maintain this arrangement, will be paid by the Employer to BCBSAZ on a per member per month (PMPM) basis. The PMPM rate each Employer pays BCBSAZ will differ from the capitated fee BCBSAZ negotiated with the chiropractic administrator. BCBSAZ negotiated the fee that BCBSAZ pays the chiropractic administrator on the basis of BCBSAZ's entire book of business, without regard to any individual Plan. The PMPM rate BCBSAZ charges the employer is subject to change by BCBSAZ upon 60 days prior written notice.

  The PMPM rate(s) for chiropractic services applicable to this Employer is/are:
  EPO $2.93 PMPM
  PPO $2.93 PMPM
  Saver $2.93 PMPM

  The PMPM capitated fee(s) BCBSAZ pays the chiropractic provider is/are:
  EPO $2.62 PMPM
  PPO $2.62 PMPM
  Saver $2.62 PMPM

City Of Glendale #011250

Effective Date: 07/01/2016 - 06/30/2017

Assumptions #IASC-2016-011250- SOLD

- Pharmacy Network discounts are negotiated between BCBSAZ and our pharmacy benefit manager (PBM) over BCBSAZ's entire book of business and not on behalf of any group customer. You have been given the choice between the following PBM pricing models and have selected the Pass Through model effective 7/1/2014:

  Pass Through PBM pricing model: allows you to pay the same discounted price for prescription drugs that BCBSAZ pays its PBM. The pass through pricing model passes on to you 100% of the pharmacy network discount. Any projected savings (amounts you might save by choosing the Pass Through PBM pricing model rather than the Traditional PBM pricing model) discussed with you are only estimates and your actual savings may vary from these estimates.

  Traditional PBM pricing model: allows you to pay a discounted price for prescription drugs that is guaranteed regardless of the amount the PBM pays the pharmacies. The amount the PBM actually pays to pharmacies may be higher or lower than the guaranteed price. The traditional model guaranteed network discount has been negotiated over and applies to the entire BCBSAZ book of business that offers a prescription drug benefit.

- BCBSAZ enters into contracts with pharmaceutical manufacturers to receive rebate payments based on factors such as preferred drug list placement and the volume and/or market share of pharmaceutical products used by Participants in this Plan, participants in other group plans, and BCBSAZ subscribers ("rebate contracts"). BCBSAZ enters into rebate contracts on its own behalf, for its entire book of insured and administered business, and not on behalf of any specific individual or group benefit plan. BCBSAZ reserves the right to negotiate, enter into and terminate existing or future rebate contracts with pharmaceutical manufacturers at any time, and in its sole and absolute discretion.

  At Employer's request, the parties have agreed that BCBSAZ will provide Employer with an administrative fee credit, in the amount specified below, in lieu of BCBSAZ remitting, to Employer, any rebates attributable to drug utilization by Employer's participants. If BCBSAZ receives any rebates attributable to pharmaceutical products covered under the terms and conditions of this Agreement, and used by Participants of Employer's Plan, BCBSAZ shall retain any such rebates in exchange for the administrative credit BCBSAZ has extended to Employer. BCBSAZ shall not remit any rebate payments to Employer.

  Based on the amount of Rx rebates BCBSAZ received for its large group block of business for Calendar Year 2013, BCBSAZ calculates that the Rx rebates amount to approximately $5.74 Per Employee Per Month (PEPM) for Calendar Year 2013. Based on this group's contract period, claims experience and/or demographics, the group's administrative fees reflect a credit for Rx rebates as reflected in the ASA/Rate Acceptance Form. The parties agree to accept this credited amount regardless of the actual amount of rebates that BCBSAZ may receive for Participants' Rx utilization.

  The actual Rx PEPM rebate amount for your group, for 1 Qtr 2014 – 4 Qtr 2014 was $18.41 PEPM.

- Beginning in 2015 the Affordable Care Act provides that certain large employers will be subject to a penalty if they fail to offer full time employees and certain dependents health coverage which satisfies both a 60% minimum value standard and an affordability requirement and a full-time employee obtains a subsidy on the health insurance marketplace. Groups subject to these requirements and seeking to avoid a penalty are responsible for the ultimate determination of whether the minimum value and affordability requirements are satisfied.

  Using the minimum value calculator made available by HHS and the IRS, BCBSAZ estimates that the minimum value of the **EPO ,PPO and Saver plans do meet** the minimum value standard. It is important that you independently review and confirm these results as they may be impacted by information not available to us (for example, benefits not provided by BCBSAZ, non-standard benefits not suited for the calculator and certain HSA contributions or HRA funds). BCBSAZ has included its conclusion(s) about minimum value in the plan(s) SBC(s) that BCBSAZ provides to Group. Any changes that Group makes to that conclusion based on Group's independent analysis will also affect the minimum value statement(s) in the SBC.

- BCBSAZ will provide funds as discribed below; this budget is for items not included in BCBSAZ's standard materials.

Policy Period	Implementation	Wellness/ Communication
7/1/14-6/30/15	$ 40,000	$ 50,000
7/1/15-6/30/16	n/a	$ 50,000
7/1/16-6/30/17	n/a	$ 50,000

  BCBSAZ will pay City approved vendors directly.
  Any unused funds can be carried forward to future policy periods. In the event of termination all money in this fund will be forfeited.

- BlueCard fees are a claims expense and are included in the rate development.

- BCBSAZ agrees to an administrative rate guarantee for 7/1/2014 thru 6/30/2019. BCBSAZ reserves the right to change the rate guarantee due to legislative changes. The guarantee is based on the administrative charge before any credits for Rx rebates or claim deposits.

Policy Periods	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019
Guaranteed Admin before all credits	$ 40.50	$ 40.50	$ 40.50	$ 41.31	$ 42.14

- BCBSAZ will create the Uniform Summaries of Coverage (SBC) for coverage provided by BCBSAZ. BCBSAZ will not create SBCs for any coverage the Group provides through a third-party or for health reimbursement arrangements, flexible spending accounts or health savings accounts provided by the Group. Unless directed by the Group, BCBSAZ will provide SBCs to Subscribers, as required by PPACA, except that the Group is solely responsible for delivering SBCs in accordance with PPACA: (i) to Subscribers during open enrollment; (ii) to newly eligible individuals; and (iii) to special enrollees.

- BCBSAZ agrees to guarantee the Rx rebate credit for 7/1/2014 thru 6/30/2017 (see table below). This guarantee assumes BCBSAZ retains all Rx rebates.
  BCBSAZ reserves the right to change the credit guarantee due to legislative changes.
  During the negotiations of the 7/1/2016 renewal BCBSAZ will provide guaranteed amounts for policy periods 7/1/2017 and 7/1/2018.

Policy Periods	2014-2015	2015-2016	2016-2017
Guaranteed Rx rebate credit PEPM	$ 12.00	$ 11.50	$ 11.50

- BCBSAZ will pay run out claims (i.e., claims incurred but not paid during the term of the contract) as follows:
  - Month 1 through Month 24 following the effective date of termination WITH stop loss.

1. LOCAL

BCBSAZ pays some of its contracted medical providers an amount to manage the medical care of members diagnosed with certain medical conditions if the provider demonstrates to BCBSAZ it has satisfied BCBSAZ's criteria for effectively managing the care ("Value Based Services")

With respect to a BCBSAZ group members residing and receiving Value Based Services in Arizona under a BCBSAZ value based program, BCBSAZ will estimate at the beginning of the contract year the amount BCBSAZ projects it will pay BCBSAZ's contracted providers for members who receive Value Based Services throughout the upcoming year in the form of a PMPM or PEPM charge ("PMPM Charge"). BCBSAZ will charge BCBSAZ's ASC Groups via the Group's Claims Invoice this PMPM Charge beginning January 1, 2016.

On an aggregate basis for the entire Value Based Program, the amounts used to calculate PMPM charge are fixed amounts estimated to be necessary to finance the cost of a particular Value-Based Program. Because amounts are estimates, there may be positive or negative differences based on actual experience, and such differences will be accounted for in a variance account maintained by BCBSAZ until the end of the applicable Value-Based Program payment and/or reconciliation measurement period. The amounts needed to fund a Value-Based Program may be changed before the end of the measurement period if it is determined that amounts being collected are projected to exceed the amount necessary to fund the program or if they are projected to be insufficient to fund the program.

On an aggregate basis for the entire Value Based Program, , at the end of the Value-Based Program payment and/or reconciliation measurement period for these arrangements, BCBSAZ will take one of the following actions:

- Use any surplus in funds in the variance account to fund Value-Based Program payments or reconciliation amounts in the next measurement period.
- Address any deficit in funds in the variance account through an adjustment to the PMPM billing amount or the reconciliation billing amount for the next measurement period.

NOTE: If an ASC Group terminates its BCBSAZ contract, that Group will neither receive a refund nor a charge to reflect any variance between what BCBSAZ charged the Group in Value Based Charges and what BCBSAZ paid the providers for Value Based Services.

2. NATIONAL

Value Based Services will also apply to your members who reside in other states/geographical locations served by other Blue Cross Blue Shield Plans. A full description of these arrangements will be described in your contract.

For the following categories, provide the performance standard you are willing to offer, the financial penalty (maximum dollar amount or % of administrative fees) you will agree to pay if the standard is not met, and the method of measuring the penalty.

PERFORMANCE GUARANTEES	VENDOR RESPONSE
1. <u>Vendor attendance at the Client meetings</u> Attendance by vendor representatives when requested at meetings scheduled by the Client during the contract period and implementation phase.	BCBSAZ agrees to attend when requested by the City during the contract period and Implementation phase. BCBSAZ agrees. 1.5% of annual administrative fee.
2. <u>Vendor call (or e-mail) return timeliness</u> The Client or designated consultant's calls (or e-mails) to vendor are acknowledged within 24 business hours.	BCBSAZ agrees. 1.5% of annual administrative fee.
3. <u>Processing monthly eligibility updates</u> All updates to eligibility or enrollment records will be made within 3 business days after the information is received by the vendor.	BCBSAZ agrees. 1.5% of annual administrative fee. Ninety-nine percent of clean electronic eligibility files will be processed within 3 business days after the information is received by the vendor.
4. <u>Telephone call availability & answering speed</u> 90% of all calls are answered within 30 seconds, and telephone service is available between 8:00 am and 6:00 pm Arizona Time Zone on business days.	BCBSAZ agrees. 1.5% of annual administrative fee.[1] BCBSAZ Customer Service calls answered in an average of 45 seconds or less. Average speed of answer begins once the caller exits the IVR. Customer service hours 6 AM – 6PM.[1]
5. <u>Telephone call on-hold (in-queue) time</u> An average of less than 2 minute(s) on hold before a <u>human being</u> answers.	BCBSAZ agrees. 1.5% of annual administrative fee.[1] BCBSAZ Customer Service calls answered in an average of 45 seconds or less. Average speed of answer begins once the caller exits the IVR. Customer service hours 6 AM – 6PM.[1]
6. <u>Telephone Abandonment Rate</u>	

PERFORMANCE GUARANTEES	VENDOR RESPONSE
An abandonment rate of less than 3% is maintained during standard business hours.	BCBSAZ agrees. 1.5% of annual administrative fee.[1] Less than 5% of BCBSAZ Customer Service calls abandoned.[1]
7. <u>Claims Processing Accuracy</u> 99% of claims dollars submitted for payment will be accurately processed and paid. Regardless of whether or not these standards of performance are satisfied, the vendor must reimburse the Client for all overpayments that are not recovered from the recipient within 60 days after the overpayment is discovered. The Client will assign its right to any recover such overpayments to the vendor.	BCBSAZ agrees. 1.5% of annual administrative fee.[1] Ninety-nine percent of audited claims dollars are paid in accordance with benefit plan designs and in-force provider contracts. This penalty applies if BCBSAZ fails to perform in accordance with this standard quarterly. A penalty pay out of 1% would occur for results at or below 98.5%, and an additional 1% for results at or below 98%.[1]
8. <u>Turnaround Time on Claims Payments</u> 95% of all claims received will be completely processed (paid, denied, or pended for additional information) within 14 calendar days after they are received. 100% of claims will be processed within 30 calendar days of receipt.	BCBSAZ agrees. 1.5% of annual administrative fee.[1] Ninety percent of non-investigated clean claims processed (paid or rejected) within 14 calendar days after receipt of clean claim. A clean claim is defined as a written or electronic claim for health care services or benefits that may be processed without obtaining additional information, such as coordination of benefits information, from the health care provider, the enrollee or a third party. Claims processing penalties are not applicable on claims incurred outside of Arizona.[1]

PERFORMANCE GUARANTEES	VENDOR RESPONSE
9. **Timeliness of Claim Reports** Each report the vendor will supply the Client will be provided within a mutually agreed upon timeframe.	BCBSAZ agrees. 1.5% of annual administrative fee. **Report Timeliness**: Each report will be mutually agreed upon with the Vendor and the Client. Each report will be provided within a mutually agreed upon timeframe.
10. **Claims Coding** 99% of all claims will be coded with no errors.	BCBSAZ agrees. 1.5% of annual administrative fee.[1] Ninety-five percent of audited claims are processed in accordance with benefit plan designs.[1]
11. **Implementation** Successful implementation as defined by key milestones. Include measurable milestones in your proposal.	BCBSAZ agrees. 1.5% of annual administrative fee. Please refer to **Section 11H** for an Implementation Timeline.
12. **Data Exchange** Receive and transmit data with vendors based on a frequency defined by the business needs of the Client.	At this time there is no data exchange with any vendors other than our integrated/contracted partners.

BCBSAZ footnote:

1. If BCBSAZ fails to perform in accordance with these Guarantee(s) for two (2) consecutive reporting periods after the Guarantee(s) are effective, BCBSAZ will refund or credit the group up to the amount at risk per measure during the time period which BCBSAZ did not meet the performance guarantee(s).

BCBSAZ notes:

- The Performance Guarantee payout does not include stop loss premiums, claims reimbursement amounts, vendor interface fees, capitated claim payments, etc.
- BCBSAZ will determine the sample size of audited claims.
- BCBSAZ will evaluate performance 90 days after the end of the 4th quarter of the performance period. Any penalties due to the group would be payable annually on the 15th of the month following the 90 day period. BCBSAZ will not be required to pay a penalty for Performance Guarantees if the group is in default of its contract with BCBSAZ and/or has not paid all claims and premiums by the date due.

100+ EMPLOYER APPLICATION

BlueCross BlueShield of Arizona

An Independent Licensee of the Blue Cross and Blue Shield Association

REQUESTED EFFECTIVE DATE (MM/DD/YYYY): 7/1/14

Exhibit 1

GROUP # 11250

__ NEW

✓ Change to existing group

SECTIONS TO BE CHANGED: ✓ I ✓ II ✓ III __ IV __ V

PLEASE FULLY COMPLETE ALL SECTIONS OF THIS APPLICATION EVEN IF SPECIFIC PROVISIONS REMAIN UNCHANGED.

SECTION I – EMPLOYER GROUP INFORMATION

LEGAL COMPANY NAME: City of Glendale			
DBA:			
GROUP HEALTH PLAN NAME: City of Glendale Group Health Plan			
ARIZONA LOCATION STREET ADDRESS: 5850 W. Glendale Ave.	CITY: Glendale A Z	ZIP CODE PLUS FOUR: 85301	
BILLING ADDRESS ☑ SAME AS STREET ADDRESS	CITY, STATE	ZIP CODE PLUS FOUR	
COUNTY: Maricopa	FEDERAL TAX ID NUMBER: 86-6000247	ARIZONA STATE TAX ID NUMBER:	PLAN YEAR ANNIVERSARY MONTH: July
HEADQUARTERS STATE: Arizona	INCORPORATED STATE: Arizona	TYPE OF BUSINESS: Municipality	
GROUP EXECUTIVE: Jim Brown	TITLE: Executive Director of Human Resources and Risk Management		
E-MAIL: JWBrown@GLENDALEAZ.com	PHONE NUMBER: (623) 930-2277	FAX: ( )	
CHIEF FINANCIAL OFFICER:	TITLE:		
E-MAIL:	PHONE NUMBER: ( )	FAX: ( )	
CHIEF EXECUTIVE OFFICER:	TITLE:		
E-MAIL:	PHONE NUMBER: ( )	FAX: ( )	
GROUP BENEFIT ADMINISTRATOR ☑ BILLING CONTACT: Jim Brown	TITLE: Executive Director of Human Resources and Risk Management		
E-MAIL: JWBrown@GLENDALEAZ.com	PHONE NUMBER: (623) 930-2277	FAX: ( )	
OTHER CONTACT PERSON ☐ BILLING CONTACT ATTACH SHEET FOR ADD'L CONTACTS: Latrisse Kuzinski	TITLE: Senior HR Analyst		
E-MAIL: LKuzinski@GLENDALEAZ.com	PHONE NUMBER: (623) 930-2298	FAX: (623) 930-2107	

LEGAL ENTITY

__ CORP __ LLC __ PARTNERSHIP __ POLITICAL SUBDIVISION ✓ MUNICIPALITY __ UNIONS __ TRUSTS __ NON PROFIT

SECTION II – PLAN INFORMATION – INDICATE HEALTH / DENTAL PLAN SELECTED AND HEALTH ACCOUNT ADMINISTRATION FROM HEALTH EQUITY*, IF ANY, SELECT

✓ PPO ☐R ☐F	✓ PPO SAVER (HDHP) ☑H ☐L	___ INDEMNITY ☐R ☐F	___ BLUEPREFERRED DENTAL	
✓ PPO-EPO* ☐R ☐F	___ HMO ☐R ☐F	___ BSA (BEHAVIORAL HEALTH)	___ COMPATIBLE ___ YES ___ NO	

FOR EACH PLAN SELECTED, CHOOSE DESIRED HEALTH ACCOUNT OPTIONS: H=HSA, R=HRA, F=FSA, L=LIMITED PURPOSE FSA

*SELF-FUNDED ONLY

NEW GROUPS OR GROUPS MAKING BENEFIT CHANGES MUST HAVE SIGNED RATE ACCEPTANCE FORM.

SECTION III – ENROLLMENT, ELIGIBILITY AND EMPLOYER CONTRIBUTION

1) FOR ALL ELIGIBLE EMPLOYEES, THE EMPLOYER AGREES TO CONTRIBUTE AN AMOUNT EQUAL TO 50-100% OF THE EMPLOYEE'S PREMIUM. PLEASE REFER TO UNDERWRITING GUIDELINES FOR COMPLETE ELIGIBILITY, CONTRIBUTION AND PARTICIPATION REQUIREMENTS. (IF ELIGIBLE FOR RETIREE COVERAGE, SEE SECTION 12.) DEFINE EMPLOYEE CLASSIFICATION AND INDICATE EMPLOYER CONTRIBUTION BY DOLLAR AMOUNT OR PERCENTAGE. USE ADDITIONAL SHEET IF MORE THAN 3 CLASSES

FUTURE EMPLOYEE ENROLLMENT REGULATIONS/CONTRIBUTION BY CLASSIFICATION

CLASS I: Full Time Working 30 Hours	CLASS II: Part Time Working 20-30 Hours	CLASS III: New hires hired 1st, 2nd, 3rd of mon
EFFECTIVE DATE OF EMPLOYEE COVERAGE	EFFECTIVE DATE OF EMPLOYEE COVERAGE	EFFECTIVE DATE OF EMPLOYEE COVERAGE
☐ ODD EFFECTIVE or ☑ FIRST BILLING	☐ ODD EFFECTIVE or ☑ FIRST BILLING	☐ ODD EFFECTIVE or ☑ FIRST BILLING
___ DATE OF HIRE	___ DATE OF HIRE	___ DATE OF HIRE
___ DAYS	___ DAYS	___ DAYS
1 MONTHS	___ MONTHS	1 MONTHS
___ OTHER	___ OTHER	___ OTHER
☑ FIRST OF THE MONTH BILL	☑ FIRST OF THE MONTH BILL	☑ FIRST OF THE MONTH BILL
TERMINATION DATE OF EMPLOYEE COVERAGE	TERMINATION DATE OF EMPLOYEE COVERAGE	TERMINATION DATE OF EMPLOYEE COVERAGE
☐ ODD TERM OR ☑ END OF MONTH	☐ ODD TERM OR ☑ END OF MONTH	☐ ODD TERM OR ☐ END OF MONTH

2) ___ *ADDITIONAL CLASSES (SEE ATTACHED)*

3) DOMESTIC PARTNERS TO BE COVERED? – ATTACH CRITERIA	4) NUMBER OF ELIGIBLE EMPLOYEES	5) NUMBER OF NON-ARIZONA (US AND WORLDWIDE) ELIGIBLE EMPLOYEES	6) TOTAL NUMBER OF WORLDWIDE ELIGIBLE EMPLOYEES
YES ___ NO ✓ CRITERIA: STANDARD ___ CRITERIA: OTHER-ATTACHED ___	1293		

7) EMPLOYEE ELIGIBILITY:

☑ FULL-TIME, ACTIVE, WORKING 30 HOURS PER WEEK ☑ PART TIME (IF ELIGIBLE) HOURS PER WEEK 20+ ☐ OTHER (SPECIFY)

8) DEPENDENT ELIGIBILITY:

☑ SPOUSES ☑ CHILDREN TO AGE 26 ☑ OTHER (MUST SPECIFY, USE SEPARATE ATTACHMENT IF NEEDED)

Retirees, see below

9) NEW GROUP ENROLLMENT REGULATIONS:

EMPLOYER'S ENROLLMENT WAITING PERIODS WILL BE WAIVED AT THE NEW GROUP'S INITIAL ENROLLMENT YES ___ NO ___

10) PRE-EXISTING CONDITION (PEC) WAITING PERIODS (NOT ALLOWABLE FOR CHILDREN UNDER AGE 19)

A. FUTURE EMPLOYEE PEC WAITING PERIOD:
___ 11-MONTHS STANDARD (6 MO LOOKBACK APPLIES)
✓ NO PEC
___ OTHER: ___

B. NEW GROUP EMPLOYEE PEC WAITING PERIOD WAIVED:
___ YES: ANY PERSONS COVERED BY PRIOR CARRIER
___ YES: ALL PERSONS AT GROUP'S INITIAL OPEN ENROLLMENT
___ NO: HIPAA CREDITABLE COVERAGE APPLIES

C. RENEWAL GROUP EMPLOYEE PEC WAITING PERIOD WAIVED:
___ YES: AT RENEWAL ONLY
___ NO: HIPAA CREDITABLE COVERAGE APPLIES

D. LATE ENROLLEES PEC WAITING PERIOD: ___ SAME AS A (ABOVE) ___ 18 MONTHS ___ OTHER:

11) SECTION 125:

DOES THE GROUP HAVE A SECTION 125 PLAN? YES ✓ NO ___

12) LOSS OF COVERAGE

EFFECTIVE DATE: ✓ DATE OF LOSS UNDER ANOTHER GROUP PLAN ___ 1ST BILL DATE FOLLOWING LOSS

13) RETIREE COVERAGE:

RETIREMENT ELIGIBILITY	RETIREES TO BE COVERED?	IF YES:	RETIREES DEPENDENTS TO BE COVERED?	OTHER THAN NEWBORNS, ETC. FOR WHICH COVERAGE MAY BE MANDATED UNDER APPLICABLE ARIZONA LAW
	YES ✓ NO ___	✓ UNDER 65 ✓ 65 AND OLDER	YES ✓ NO ___	

14) RETIREMENT PARTICIPATION REQUIREMENTS

A) RETIREE MUST COMPLETE ___ YEARS OF SERVICE PRIOR TO RETIREMENT | B) RETIREE IS ELIGIBLE FOR COVERAGE ONLY THROUGH END OF BILLING PERIOD IN WHICH RETIREE REACHES AGE ___

C) OTHER: SEE ATTACHED See attached.

* HealthEquity is an independent company, contracted with BCBSAZ to administer HSAs, HRAs and FSAs for group benefit plans.

SECTION IV – BROKER/CONSULTANT ☐ BROKER ☐ CONSULTANT

LAST NAME	FIRST NAME	MI
None		

AGENCY NAME
None

SUITE NO.	STREET ADDRESS

CITY	STATE	ZIP + FOUR

PHONE NUMBER	FAX NUMBER
( )	( )

E-MAIL	EFFECTIVE DATE

SECTION V – IMPORTANT – READ CAREFULLY

As the authorized representative of Company, I certify that the Company is the sole employer of the employees to be enrolled under this proposed contract for health insurance or services to administer the group health plan identified on this application. I also certify that the information provided on this 100+ Employer Application and all other applicable documents submitted in connection with this Application, is complete and accurate. I agree that Company shall promptly notify Blue Cross Blue Shield of Arizona (BCBSAZ) of any changes in this information that may affect the eligibility of employees or their dependents, including the hire date of any new eligible employees, addition of dependents, and the termination date of any enrolled employee or dependent. I understand and agree that BCBSAZ may, in its sole discretion, verify health/medical and all other information with or through outside sources, including third party investigative firms, as BCBSAZ deems necessary or appropriate for finalizing its decision on this Application. I agree that if the information (including medical information) contained in this Application or other supporting documentation is incomplete, inaccurate, materially misleading, false, or fraudulent, that BCBSAZ has the right to (a) retroactively adjust the Company's rates and/or administrative fees if such information would have affected the rate/fee calculation; and (b) invalidate, or withdraw any rate/fee proposal, or terminate coverage for any group to the extent permitted by law.

I understand and agree that this Application is not accepted until approved by BCBSAZ and that BCBSAZ's acceptance shall be based on information supplied by the Group, the requested benefits, and any other information obtained from outside sources. BCBSAZ's acceptance shall be evidenced by the execution of this Application by an authorized representative of BCBSAZ, at which time this Application shall become binding upon BCBSAZ and the group. Upon acceptance, this Application shall be attached to and shall become a part of the Group Master Contract or Administrative Services Agreement With/ Without Stoploss (the "Contract"), as applicable. To the extent permitted by applicable law, BCBSAZ may terminate the Contract in accordance with the Contract terms, including the Group's failure to meet certain obligations under the Contract such as failure to pay premium/fees; failure to maintain Group contribution rates and percentages; and failure to maintain employee and/or dependent participation levels.

The Group agrees that it is solely responsible for ensuring that it complies with applicable laws in classifying employees for purposes of defining eligibility for benefits and in providing specific benefits, including laws prohibiting discrimination based on salary. Company understands and agrees that federal law requires Company to provide dependent coverage for children under age 26, and prohibits Company from imposing pre-existing condition waiting periods for children under age 19.

By including my e-mail address on the reverse side, I authorize BCBSAZ to send me information via e-mail. I also understand I may change my e-mail address or rescind this permission at any time by contacting BCBSAZ through azblue.com.

Company Authorized Officer / Owner / Partner

X [signature] — Brenda S. Fisher
SIGNATURE — PRINT NAME

City Manager — 4/3/14
TITLE — DATE

Glendale, AZ 85301
CITY, STATE & ZIP

X [signature] — Michael P. Tilton
BCBSAZ Authorized Signature — PRINT NAME

Vice President, Sales — 3/17/14
TITLE — DATE

Approved as to form

APPROVED AS TO FORM
BCBSAZ Legal Division
By: [signature]
Date: 3-14-14

ATTEST:

[signature]
City Clerk

[signature]
City Attorney

11-6279 (09) (2)

Addendum to Employer Application
Effective 07/01/2016
Group# 11250

Section 1- Additional Group Contacts

Vicki Moss, Human Resources Administrator
Phone: 623-930-2297
Vmoss@Glendaleaz.com

Charlotte Beadles, Human Resources Specialist
Phone: 623-930-2969
Cbeadles@Glendaleaz.com

Hanh Hang, Human Resources Technician
Phone: 623-930-2283
Hhang@Glendaleaz.com

Hillary Zagara, Human Resources Technician
Phone: 623-930-2282
Hzagara@Glendaleaz.com

Section 3- Retirement Participation Requirements:

Additional Note: To be eligible for retiree benefits, a retiree must have at least five(5) years of service at the City of Glendale if hired prior to 07/01/2005. Ten (10) years of service at the City of Glendale is hired after 07/01/2005. There is no age minimum or maximum for retiree coverage.

Re: 2016 Form 5500 Schedule C Service Provider Information – Disclosure of "Eligible Indirect Compensation" -

Dear Sir or Madam:

Blue Cross Blue Shield of Arizona ("BCBSAZ") is required to provide Employers with information regarding certain indirect compensation ("Eligible Indirect Compensation" or "EIC") paid by BCBSAZ to other Service Providers during 2016.

Under your contract with BCBSAZ, one of the benefits your employees and their dependents ("Participants") receive is access to healthcare services outside the geographic area BCBSAZ serves under a program known as BlueCard. Typically in that situation, Participants obtain care from healthcare providers that have a contractual agreement with the local Blue Cross and/or Blue Shield Licensee in that other geographic area (the "Host Blue"). Within that arrangement, BCBSAZ is referred to as the "Home Blue." The BlueCard Program is established and operated pursuant to policies established and enforced by the Blue Cross and Blue Shield Association.

A plan sponsor's reporting requirements for a self-funded plan on Schedule C are significantly streamlined for EIC about which a service provider has shared certain information. As such, below is a list of EIC that has been and/or is likely to be received in connection with the BlueCard Program. Note that the fees and compensation subject to disclosure under the Department of Labor rules include amounts that are not necessarily passed on to your ERISA Plan or your Participants. The financial terms of the BlueCard Program passed on to your ERISA plan, and additional details about the BlueCard Program, are described in your Agreement with BCBSAZ.

The following is a list of EIC:

1. **BlueCard Access Fees:** The Access Fee is charged by the Host Blue to us for making its applicable provider network available to your members. The Access Fee will not apply to nonparticipating provider claims. The Access Fee is charged on a per-claim basis and is charged as a percentage of the discount/differential we receive from the applicable Host Blue subject to a maximum of $2,000 per claim. When charged, we pass the Access Fee directly on to you.

2. **Administrative Expense Allowances (AEA):** The AEA is a fixed per-claim dollar amount charged by the Host Blue to us for administrative services the Host Blue provides in processing claims for your members. The dollar amount is normally based on the type of claim (e.g. institutional, professional, international, etc.) and can also be based on the size of your group enrollment. When charged, we pass the AEA fee directly on to you.

   Note: To be considered for reduced BlueCard PPO fees, the claim must be for an account whose total Blue PPO enrollment exceeds 1,000 contracts

3. **Use of Estimated or Average Pricing by Host Blues.** As described in your administrative service agreement, some Host Blues use estimated or average prices to determine the negotiated price that is made available to BCBSAZ when plan participants access the Host Blue's participating provider network. This may result in a difference (positive or negative) between the price you pay on a specific claim and the actual amount paid to the provider by the Host Blue.

   The following describes the formulas used for determining an estimated or average price:

   Estimated: A percentage is used to modify the claim price for covered services. This percentage (either positive or negative) allows Host Blues to incorporate

adjustments and actuarial projections prospectively into the final price. The percentage is determined by calculating the aggregate cost to the Host Blue over a look-back period less any initial payments made to providers divided by the total payments initially made to providers. The aggregate cost in the numerator includes all provider retrospective settlements, anti-fraud and abuse recoveries, provider refunds not applied on a claim-specific basis, performance-related bonuses or incentives, interest, other non-claim transactions and any positive or negative balance in the variance account. The percentage is then actuarially adjusted for anticipated changes in claims expenses for the prospective period. As of December 31, 2015 the modifying percentage applied to claims from those Host Blues that use estimated pricing ranged from -8.0% to +12.36% the rate of payment to the provider at the point of the claims. The modifying percentages applied to claims from those Host Blues that will be used for estimated pricing have not been calculated as of the date of this letter.

Average: An average price is determined for a defined category of provider (e.g., institutional, professional, etc.) of a Host Blue in a given geographic area. The average is determined as follows:

Total amount paid to such providers over a look-back period, including initial payments as well as applicable claim and non-claim related transactions, which may include but are not limited to provider retrospective settlements, anti-fraud and abuse recoveries, provider refunds not applied on a claim-specific basis, performance-related bonuses or incentives, interest, etc., and any positive or negative balance in the variance account

divided by

Total amount of such providers' corresponding charges for covered services over the same look-back period (claims for non-covered services are not included in the calculation)

This result is an average price that is applied to each claim for the defined category of provider of the Host Blue in the geographic area and presented as the negotiated price.

The Host Blue determines whether it will use an actual, estimated or average price. The use of estimated or average pricing may result in a difference (positive or negative) between the price you pay on a specific claim and the amount the Host Blue pays to the provider. However, the BlueCard Program requires that the amount paid by the member and you is the final price; no future price adjustment will result in increases or decreases to the pricing of past claims.

Any positive or negative differences in estimated or average pricing are accounted for through variance accounts maintained by the Host Blue and are incorporated into future claim prices. As a result, the amounts charged to you will be adjusted in a following year, as necessary, to account for over- or underestimation of the past years' prices. The Host Blue will not receive compensation from how the estimated price or average price methods, described above, are calculated. Because all amounts paid are final, neither positive variance account amounts (funds available to be paid in the following year), nor negative variance amounts (the funds needed to be received in the following year), are due to or from [you/account name]. If [you/account name] terminate, you will not receive a refund or charge from the variance account.

Variance account balances are small amounts relative to the overall paid claims amounts and will be [liquidated/drawn down] over time. The timeframe for their liquidation depends

on variables, including, but not limited to, overall volume/number of claims processed and variance account balance. Variance account balances may earn interest at the [federal funds or similar rate]. Host Blues may retain interest earned on funds held in variance accounts.

4. BlueCard Worldwide Program. The BlueCard Worldwide Program provides members with access to an international network of inpatient, outpatient and professional providers. The Blue Cross and Blue Shield Association has contracted with AXA Assistance USA, an independent company, to gain access to AXA's network for the program. Medical assistance and claims support services are also provided under the program by AXA Assistance USA. AXA Assistance USA's fees paid by the Home Blue are as follows:

Medical Assistance	Fee (in dollars)
General Inbound Calls (questions related to the BlueCard Worldwide Program and related processes; requests for provider information for non-medical situations, etc.)	$8.04 / Call
Provider Inquiry/Referral (non-medical situation)	$10.07 / Call
Cashless access	$19.21 / Call
Phone Translation	$28.00 / Call
Fulfillment	$7.28 / Mailing
Provider Referral/visitation (medical situation)	$31.82 / Referral
Misrouted Calls	$3.21 / Call

Medical Monitoring	Fee (in dollars)
Medical Monitoring < 3 Days	$195.12 / Case
Medical Monitoring 3 – 10 Days	$353.97 / Case
Medical Monitoring > 10 days	$545.31 / Case

Claims Support Services	Fee (in dollars)
Claim Preparation – (Image claim, route claim, verify eligibility, conduct provider follow-ups; excluding translation and currency conversion)	$3.70 / Bill
Claim Preparation and Currency Conversation	$3.70 / Bill
Claim Preparation and Translation	$4.08 / Bill
Claim Preparation, Translation and Currency Conversion	$4.08 / Bill
Claim coding (code claim to ICD standards)	$4.20 / Bill
Misrouted claim (for example, domestic)	$1.50 / Claim
Claim Status inquiry	4.15 / Claim
Other Document Translation (for example, medical records)	$28.00 / Page
Outside Translation Costs	At Cost

Claims Payment	
Payment Issuance (receive funds, match to file, purchase currency, issue check)	$2.22 / Payment
Currency Conversion gains/losses	At Cost
Void check requests	$1.13 / payment

Additional Services	Fee (in dollars)

Medical Evacuation coordination	$739.47 / Case
Medical Repatriation coordination	$657.97 / Case
Repatriation of Remains coordination	$446.91 / Case
Medical Travel - case	$602.17 / Case
Medical Travel – Travel assistance	$47.40 / Case

5. Negotiated Arrangements: With respect to one or more Host Plans, instead of using the BlueCard Program, BCBSAZ may process your Participant claims for Covered Services through Negotiated Arrangements.

   Non-Standard negotiated AEA fees for 2015 and 2016

   Non-standard negotiated fees can range from either $5.48 to $18.22 per claim, or $10.00 to $16.75 per contract per month depending on the negotiated arrangement and/or the health plan product

For informational Purposes Only - NO Action Required

Under new regulations related to the 2009 Form 5500 Schedule C - Service Provider Information, BCBSAZ is required to provide information regarding certain indirect compensation (referred to in this letter as "Eligible Indirect Compensation" or "EIC") paid by BCBSAZ to other Service Providers during 2016 related to your contract with BCBSAZ.

The following Service Providers received EIC from BCBSAZ during 2016:

Name of Service Provider Receiving EIC from BCBSAZ: SourceHOV LLC.
Address: 369 Inverness Parkway, Suite 300, Englewood, CO 80112
Service Provided: Claims Processing (Certain Specialty Type Claims) and Claims Edit Resolution
Basis of Compensation: $0.41 to $0.90 per Institutional Claim Processed (UB04); $0.28 to $0.55 per Professional Claim Processed (CMS1500); $0.31 to $0.32 per Dental Claim Processed; $1.019 - $2.038 per claim edit resolution

Name of Service Provider Receiving EIC from BCBSAZ: Sutherland Global Services, Inc.
Address: 2 Brighton Rd., Suite 300 Clifton, NJ 07012
Service Provided: Data entry for provider data, assistance with credentialing
Basis of Compensation: $4.23 - $34.35 per provider record completed and $28.04 per credentialing unit completed

Name of Service Provider Receiving EIC from BCBSAZ: Emdeon Inc.
Address: P.O. Box 572490, Murray Utah 84157-2490
Service Provided: Fee for the Recovery of Overpayments
Basis of Compensation: 21.5% of the Recovered Amount

Name of Service Provider Receiving EIC from BCBSAZ: OptumRx.[1]
Address: 1600 McConnor Parkway, Schaumberg, IL 60173-6801
Service Provided: Pharmacy Claims Processing and select PBM services
Basis of Compensation: for electronic claims only
Traditional Pricing Model = $0.50 per net paid claim dispensed by Walgreens Mail Service
Pass-Thru Pricing Model = $0.75 per net paid claim
[1] *BCBSAZ paid compensation to OptumRx.only for groups who used BCBSAZ to manage their pharmacy benefits.*

Pharmacy Rebates – BCBSAZ receives rebates from certain Pharmaceutical Manufacturers for certain drugs. Subject to the terms of your BCBSAZ Administrative Services Agreement your Group may be eligible for a Pharmacy Rebate. The current Rebate estimate for 100–plus member Groups is $5.74 per employee per month. BCBSAZ may earn interest income on Pharmacy Rebates during the period after the Rebate is paid to BCBSAZ and prior to payment to your Group.

Name of Service Provider Receiving EIC from BCBSAZ: KJB Health Care
Address: 5935 E. Kings Avenue, Scottsdale, AZ 85254
Service Provided: Clinical review of medication prior authorization and non-formulary requests
Basis of Compensation: Hourly, $100/hr

Name of Service Provider Receiving EIC from BCBSAZ: Inpharmative
Address: 8717 W. 110th St., Overland Park, KS 66210
Service Provided: Pharmacy Rebate Processing
Basis of Compensation: $0.04 per Claim Processed

Name of Service Provider Receiving EIC from BCBSAZ: Convergys
Address: 110 Hawkwatch Drive, Montgomery TX 77316
Service Provided: Provider Assistance Call Center
Basis of Compensation: $ 4.19 per call

BCBSAZ's list of affiliated Service Providers receiving EIC will be updated as necessary.
If you have any questions, please contact your BCBSAZ Account Manager.

For informational Purposes Only - NO Action Required

Sincerely,

Shawn A. Fried
Supervisor, Large Group Underwriting

cc:
Report File

Exhibit A to Supplemental Terms and Conditions to Administrative Services Agreement
HMO BlueCard Disclosure

I. Out-of-Area Services

Overview

BCBSAZ has a variety of relationships with other Blue Cross and/or Blue Shield Licensees referred to generally as "Inter-Plan Arrangements." These Inter-Plan Arrangements operate under rules and procedures issued by the Blue Cross Blue Shield Association ("Association"). Whenever Participants access healthcare services outside the geographic area BCBSAZ serves, the claim for those services may be processed through one of these Inter-Plan Arrangements. The Inter-Plan Arrangements are described generally below.

Typically, when accessing care outside the geographic area BCBSAZ serves, Participants obtain care from healthcare providers that have a contractual agreement ("participating providers") with the local Blue Cross and/or Blue Shield Licensee in that other geographic area ("Host Blue"). In some instances, Participants may obtain care from healthcare providers in the Host Blue geographic area that do not have a contractual agreement ("nonparticipating providers") with the Host Blue. BCBSAZ remain responsible for fulfilling its contractual obligations to Employer. BCBSAZ payment practices in both instances are described below.

- BCBSAZ Narrow Network Benefit Plan - BCBSAZ covers only limited healthcare services received outside of BCBSAZ's service area ("Out-of-Area Covered Healthcare Services"). Emergency services *and EGID and Medical Foods formulas* are covered when provided by providers contracted with a Host Blue and when provided by non-contracted providers. All other covered services must be obtained from providers contracted with a Host Blue.

- BCBSAZ Statewide Benefit Plan - BCBSAZ covers healthcare services received outside of our service area ("Out-of-Area Covered Healthcare Services"). Emergency services and EGID and Medical Foods formulas are covered when provided by providers contracted with a Host Blue and when provided by non-contracted providers. All other covered services must be obtained from providers contracted with a Host Blue.

Inter-Plan Arrangements Eligibility – Claim Types

All claim types are eligible to be processed through Inter-Plan Arrangements, as described above, except for all dental care benefits (except when paid as medical claims/benefits), and those prescription drug benefits or vision care benefits that may be administered by a third party contracted by BCBSAZ to provide the specific service or services.

A. BlueCard® Program

The BlueCard® Program is an Inter-Plan Arrangement. Under this Arrangement, when Participants access Out-of-Area Covered Services within the geographic area served by a Host Blue the Host Blue will be responsible for contracting and handling all interactions with its participating healthcare providers. The financial terms of the BlueCard Program are described generally below.

Liability Calculation Method Per Claim

1. Participant Liability Calculation

   Unless subject to a fixed-dollar copayment, the calculation of Participant liability on claims for Out-of-Area Covered Services processed through the BlueCard Program will be based on the lower of the participating provider's billed charges for Out-of-Area Covered Services or the negotiated price made available to BCBSAZ by the Host Blue.

2. Employer Liability Calculation

   The calculation of Employer liability on claims for Covered Services processed through the BlueCard Program will be based on the negotiated price made available to BCBSAZ by the Host Blue. Sometimes, this negotiated price may be greater for a given service or services than the billed charge in accordance with how the Host Blue has negotiated with its participating provider(s) for specific healthcare services. In cases where the negotiated price exceeds the billed charge, Employer may be liable for the excess amount even when

the Participant's deductible has not been satisfied. This excess amount reflects an amount that is necessary to secure (a) the provider's participation in the network, and (b) the overall discount negotiated by the Host Blue. The entire contracted price is paid to the provider even when the contracted price is greater than the billed charge.

Claims Pricing

Host Blues determine a negotiated price, which is reflected in the terms of each Host Blue's provider contracts. The negotiated price made available to BCBSAZ by the Host Blue may be represented by one of the following:

(i) An actual price. An actual price is a negotiated rate of payment in effect at the time a claim is processed without any other increases or decreases; or

(ii) An estimated price. An estimated price is a negotiated rate of payment in effect at the time a claim is processed, reduced or increased by a percentage to take into account certain payments negotiated with the provider and other claim- and non-claim-related transactions. Such transactions may include, but are not limited to, anti-fraud and abuse recoveries, provider refunds not applied on a claim-specific basis, retrospective settlements and performance-related bonuses or incentives; or

(iii) An average price. An average price is a percentage of billed charges for Out-of-Area Covered Healthcare Services in effect at the time a claim is processed representing the aggregate payments negotiated by the Host Blue with all of its providers or a similar classification of its providers and other claim- and non-claim-related transactions. Such transactions may include the same ones as noted above for an estimated price.

The Host Blue determines whether or not it will use an actual price, an estimated price or an average price. The use of estimated or average pricing may result in a difference (positive or negative) between the price the Employer pays on a specific claim and the actual amount the Host Blue pays to the provider.

However, the BlueCard Program requires that the amount paid by the Participant and Employer is a final price; no future price adjustment will result in increases or decreases to the pricing of past claims. Any positive or negative differences in estimated or average pricing are accounted for through variance accounts maintained by the Host Blue and are incorporated into future claim prices. As a result, the amounts charged to Employer will be adjusted in a following year, as necessary, to account for over- or underestimation of past years' prices. The Host Blue will not receive compensation from how the estimated price or average price methods, described above, are calculated.

Because all amounts paid are final, neither positive variance account amounts (funds available to be paid in the following year), nor negative variance amounts (the funds needed to be received in the following year), are due to or from Employer. If Employer terminates, Employer will not receive a refund or charge from the variance account.

Variance account balances are small amounts relative to the overall paid claims amounts and will be drawn down over time. The timeframe for their liquidation depends on variables, including, but not limited to, overall volume/number of claims processed and variance account balance. Variance account balances may earn interest at the federal funds or similar rate. Host Blues may retain interest earned on funds held in variance accounts.

Federal/State Taxes/Surcharges/Fees

In some instances, federal or state laws or regulations may impose a surcharge, tax, or other fee that applies to self-funded accounts. If applicable, BCBSAZ will disclose any such surcharge, tax or other fee to Employer, which will be Employer liability.

Return of Overpayments

Recoveries of overpayments from a Host Blue or its participating and nonparticipating providers can arise in several ways, including, but not limited to, anti-fraud and abuse recoveries, provider/hospital bill audits, credit balance audits, utilization review refunds and unsolicited refunds. Recovery amounts determined in the ways noted above will be applied so that corrections will be made, in general, on a claim-by-claim or prospective basis. If recovery amounts are passed on a claim-by-claim basis from a Host Blue to BCBSAZ, they will be credited to Employer's account. In some cases, the Host Blue will engage a third party to assist in identification or collection of overpayments. The fees of such a third party may be charged to Employer as a percentage of the recovery.

Unless otherwise agreed to by the Host Blue, BCBSAZ will request adjustments from the Host Blue for full refunds from providers due to the retroactive cancellation of membership but only for one year after the date of the Inter-Plan financial settlement process for the original claim. In some cases, recovery of claim payments associated with a retroactive cancellation may not be possible if, as an example, the recovery conflicts with the Host Blue's state law or provider contracts or would jeopardize the Host Blue's relationship with its providers.

BlueCard Fees and Compensation

Employer understands and agrees to reimburse BCBSAZ for certain fees and compensation which BCBSAZ is obligated under the BlueCard Program to pay to the Host Blues, to the Association and/or to vendors of BlueCard Program-related services, as described below. BlueCard Program Fees and compensation may be revised from time to time as described in section I.D below. BCBSAZ will charge these fees as follows:

Only the BlueCard Program Access Fee and the BlueCard Program Administrative Expense Allowance (AEA) fee may be charged separately each time a claim is processed through the BlueCard Program. All other BlueCard Program-related fees are included in the Administrative Charges.

The Access Fee is charged by the Host Blue to BCBSAZ for making the applicable Host Blue's provider network available to Employer's Participants. The Access Fee will not apply if the provider does not participate in the applicable Host Blue's network. The Access Fee is charged on a per-claim basis and is charged as a percentage of the discount/differential BCBSAZ receives from the applicable Host Blue subject to a maximum of $2,000 per claim. When charged, BCBSAZ passes the Access Fee directly on to Employer.

The AEA Fee is a fixed per-claim dollar amount charged by the Host Blue to BCBSAZ for administrative services that the Host Blue provides in processing claims for Employer's Participants. The dollar amount is normally based on the type of claim (e.g. institutional, professional, international, etc.) and can also be based on the size of your group enrollment. When charged, BCBSAZ passes the AEA Fee directly on to Employer.

See Administrative Service Agreement, Caveats) for the BlueCard Program Access Fee and AEA Fee and for Employer's general administrative fee.

BlueCard Program Access Fees

A BlueCard Program Access Fee may be charged only if the Host Blue's arrangement with its provider prohibits billing Participants for amounts in excess of the negotiated payment. However, a provider may bill Participants for non-covered healthcare services and for cost sharing (for example, deductibles, copayments and/or coinsurance) related to a particular claim.

How the BlueCard Program Access Fee Affects Employer

Sometimes the Access Fee is a negative amount, which is known as an Access Fee Credit. Any Access Fee Credits will be credited to BCBSAZ, and BCBSAZ will pass the entire Access Fee Credit on to Employer.

Instances may occur in which the claim payment is zero or BCBSAZ pays only a small amount because the amounts eligible for payment were applied to patient cost sharing (such as a deductible or coinsurance). In these instances, BCBSAZ will pay the Host Blue's Access Fee and pass it along to BCBSAZ as stated above even though Employer paid little or had no claim liability.

B. Nonparticipating Providers Outside BCBSAZ Service Area

Participant Liability Calculation

In General

When Out-of-Area Covered Healthcare Services are provided outside of BCBSAZ service area by nonparticipating providers, the amount(s) a Participant pays for such services will generally be based on either the Host Blue's nonparticipating provider local payment or the pricing arrangements required by applicable state law. Payments for out-of-network emergency services will be governed by applicable federal and state law.

Exceptions

In some exception cases, BCBSAZ may pay claims from nonparticipating providers for Out-of-Area Covered Healthcare Services based on the provider's billed charge. This may occur in situations where a Participant did not have reasonable access to a participating provider, as determined by BCBSAZ in BCBSAZ's sole and absolute discretion or by applicable state law. In other exception cases, BCBSAZ may pay such claims based on the payment BCBSAZ would make if BCBSAZ were paying a nonparticipating provider for the same covered healthcare services inside BCBSAZ's service area, as described elsewhere in this Agreement. This may occur where the Host Blue's corresponding payment would be more than BCBSAZ in-service area nonparticipating provider payment. BCBSAZ may choose to negotiate a payment with such a provider on an exception basis.

Fees and Compensation

Employer understands and agrees to reimburse BCBSAZ for certain fees and compensation which BCBSAZ is obligated under applicable Inter-Plan Arrangement requirements to pay to the Host Blues, to the Blue Cross Blue Shield Association and/or to vendors of Inter-Plan Arrangement-related services. Fees and compensation under applicable Inter-Plan Arrangements may be revised from time to time as provided for in section I.D below.

Specifically, BCBSAZ must pay an administrative fee to the Host Blue, and Employer further agrees to reimburse BCBSAZ for any such administrative fee as set forth below.

BCBSAZ will charge these fees as follows:

C. BlueCard Worldwide® Program

General Information

If Participants are outside the United States (hereinafter: "BlueCard service area"), they may be able to take advantage of the BlueCard Worldwide® Program when accessing Covered Services. The BlueCard Worldwide Program is unlike the BlueCard Program available in the BlueCard service area in certain ways. For instance, although the BlueCard Worldwide Program assists Participants with accessing a network of inpatient, outpatient and professional providers, the network is not served by a Host Blue. As such, when Participants receive care from providers outside the BlueCard service area, the Participants will typically have to pay the providers and submit the claims themselves to obtain reimbursement for these services.

☐ **Inpatient Services**

In most cases, if Participants contact the BlueCard Worldwide Service Center for assistance, hospitals will not require Participants to pay for covered inpatient services, except for their cost-share amounts. In such cases, the hospital will submit Participant claims to the BlueCard Worldwide Service Center to initiate claims processing. However, if the Participant paid in full at the time of service, the Participant must submit a claim to obtain reimbursement for Covered Services. **Participants must contact BCBSAZ to obtain precertification for non-emergency inpatient services.**

☐ **Outpatient Services**

Physicians, urgent care centers and other outpatient providers located outside the BlueCard service area will typically require Participants to pay in full at the time of service. Participants must submit a claim to obtain reimbursement for Covered Services.

☐ **Submitting a BlueCard Worldwide Claim**

When Participants pay for Covered Services outside the BlueCard service area, they must submit a claim to obtain reimbursement. For institutional and professional claims, Participants should complete a BlueCard Worldwide International claim form and send the claim form with the provider's itemized bill(s) to the BlueCard Worldwide Service Center (the address is on the form) to initiate claims processing. The claim form is available from BCBSAZ, the BlueCard Worldwide Service Center or online at www.bluecardworldwide.com. If Participants need assistance with their claim submissions, they should call the BlueCard Worldwide Service Center at 1.800.810.BLUE (2583) or call collect at 1.804.673.1177, 24 hours a day, seven days a week.

D. Modifications or Changes to Inter-Plan Arrangement Fees or Compensation

Modifications or changes to Inter-Plan Arrangement fees are generally made effective Jan. 1 of the calendar year, but they may occur at any time during the year. In the case of any such modifications or changes, BCBSAZ shall provide Employer with at least thirty (30) days' advance written notice of any modification or change to such Inter-Plan Arrangement fees or compensation describing the change and the effective date thereof and Employer's right to terminate this Agreement without penalty by giving written notice of termination before the effective date of the change. If Employer fails to respond to the notice and does not terminate this Agreement during the notice period, Employer will be deemed to have approved the proposed changes, and BCBSAZ will then allow such modifications to become part of this Agreement.

II. BlueCard Program Fees and Compensation

The Employer's General Administrative Fee, as set forth on the first page of the Administrative Service Agreement, encompasses fees BCBSAZ charges to Employer for administering Employer's benefit plan. They may include both local BCBSAZ service area and Inter-Plan fees. For purposes of this Agreement, they include the following BlueCard Program-related fees other than the BlueCard Program Access Fee and AEA Fee: namely, Central Financial Agency Fee, ITS Transaction Fee, Toll-Free Number Fee, PPO Provider Directory Fee and BlueCard Worldwide Program Fees, if applicable.

BCBSAZ Value-Based Programs

Value-Based Program (VBP) is outcome-based payment arrangement and/or a coordinated care model facilitated with one or more local providers that is evaluated against cost and quality metrics/factors and is reflected in provider payment.

LOCAL - BCBSAZ pays some of its contracted medical providers an amount to manage the medical care of members diagnosed with certain medical conditions if the provider demonstrates to BCBSAZ it has satisfied BCBSAZ's criteria for effectively managing the care ("Value Based Services")

With respect to BCBSAZ group members residing and receiving Value Based Services in Arizona under a BCBSAZ value based program, BCBSAZ will estimate at the beginning of the contract year the amount BCBSAZ projects it will pay BCBSAZ's contracted providers for members who receive Value Based Services throughout the upcoming year in the form of a PMPM or PEPM charge ("PMPM Charge"). BCBSAZ will charge BCBSAZ's self-insured ("ASC") Groups via the Employer's Claims Invoice this PMPM Charge beginning January 1, 2016.

On an aggregate basis for the entire Value Based Program, the amounts used to calculate PMPM charge are fixed amounts estimated to be necessary to finance the cost of a particular Value-Based Program. Because amounts are estimates, there may be positive or negative differences based on actual experience, and such differences will be accounted for in a variance account maintained by BCBSAZ until the end of the applicable Value-Based Program payment and/or reconciliation measurement period. The amounts needed to fund a Value-Based Program may be changed before the end of the measurement period if it is determined that amounts being collected are projected to exceed the amount necessary to fund the program or if they are projected to be insufficient to fund the program.

On an aggregate basis for the entire Value Based Program, at the end of the Value-Based Program payment and/or reconciliation measurement period for these arrangements, BCBSAZ do one of the following:

a. Use any surplus in funds in the variance account to fund Value-Based Program payments or reconciliation amounts in the next measurement period.

b. Address any deficit in funds in the variance account through an adjustment to the PMPM billing amount or the reconciliation billing amount for the next measurement period.

NOTE: If an ASC Group terminates its BCBSAZ contract, that Employer will neither receive a refund nor a charge to reflect any variance between what BCBSAZ charged the Employer in Value Based Charges and what BCBSAZ paid the providers for Value Based Services.

Exhibit A to Supplemental Terms and Conditions to Administrative Services Agreement
PPO BlueCard Disclosure

I. Out-of-Area Services

Overview

BCBSAZ has a variety of relationships with other Blue Cross and/or Blue Shield Licensees referred to generally as "Inter-Plan Arrangements." These Inter-Plan Arrangements operate under rules and procedures issued by the Blue Cross Blue Shield Association ("Association"). Whenever Participants access healthcare services outside the geographic area BCBSAZ serves, the claim for those services may be processed through one of these Inter-Plan Arrangements. The Inter-Plan Arrangements are described generally below.

Typically, when accessing care outside the geographic area BCBSAZ serves, Participants obtain care from healthcare providers that have a contractual agreement ("participating providers") with the local Blue Cross and/or Blue Shield Licensee in that other geographic area ("Host Blue"). In some instances, Participants may obtain care from healthcare providers in the Host Blue geographic area that do not have a contractual agreement ("nonparticipating providers") with the Host Blue. B C B S A Z remains responsible for fulfilling its contractual obligations to Employer. BCBSAZ payment practices in both instances are described below.

This disclosure describes how claims are administered for Inter-Plan Arrangements and the fees that are charged in connection with Inter-Plan Arrangements. Note that dental care benefits (except when not paid as medical claims/benefits), and those prescription drug benefits or vision care benefits that may be administered by a third party contracted by BCBSAZ to provide the specific service or services are not processed through Inter-Plan Arrangements.

A. BlueCard® Program

The BlueCard® Program is an Inter-Plan Arrangement. Under this Arrangement, when Participants access Covered Services within the geographic area served by a Host Blue, the Host Blue will be responsible for contracting and handling all interactions with its participating healthcare providers. The financial terms of the BlueCard Program are described generally below.

1. Liability Calculation Method Per Claim – In General

a. Participant Liability Calculation

Unless subject to a fixed dollar copayment, the calculation of the Participant liability on claims for Covered Services will be based on the lower of the participating provider's billed charges for Covered Services or the negotiated price made available to BCBSAZ by the Host Blue.

b. Employer Liability Calculation

The calculation of Employer liability on claims for Covered Services processed through the BlueCard Program will be based on the negotiated price made available to BCBSAZ by the Host Blue. Sometimes, this negotiated price may be greater for a given service or services than the billed charge in accordance with how the Host Blue has negotiated with its participating healthcare provider(s) for specific healthcare services. In cases where the negotiated price exceeds the billed charge, Employer may be liable for the excess amount even when the Participant's deductible has not been satisfied. This excess amount reflects an amount that may be necessary to secure (a) the provider's participation in the network and/or (b) the overall discount negotiated by the Host Blue. In such a case, the entire contracted price is paid to the provider, even when the contracted price is greater than the billed charge.

2. Claims Pricing

Host Blues determine a negotiated price, which is reflected in the terms of each Host Blue's provider contracts. The negotiated price made available to BCBSAZ by the Host Blue may be represented by one of the following:

(i) An actual price. An actual price is a negotiated rate of payment in effect at the time a

claim is processed without any other increases or decreases; or

(ii) An estimated price. An estimated price is a negotiated rate of payment in effect at the time a claim is processed, reduced or increased by a percentage to take into account certain payments negotiated with the provider and other claim- and non-claim-related transactions. Such transactions may include, but are not limited to, anti-fraud and abuse recoveries, provider refunds not applied on a claim-specific basis, retrospective settlements and performance-related bonuses or incentives; or

(iii) An average price. An average price is a percentage of billed charges for Covered Services in effect at the time a claim is processed representing the aggregate payments negotiated by the Host Blue with all of its healthcare providers or a similar classification of its providers and other claim- and non-claim-related transactions. Such transactions may include the same ones as noted above for an estimated price.

The Host Blue determines whether it will use an actual, estimated or average price. The use of estimated or average pricing may result in a difference (positive or negative) between the price Employer pays on a specific claim and the actual amount the Host Blue pays to the provider. However, the BlueCard Program requires that the amount paid by the Participant and Employer is a final price; no future price adjustment will result in increases or decreases to the pricing of past claims.

Any positive or negative differences in estimated or average pricing are accounted for through variance accounts maintained by the Host Blue and are incorporated into future claim prices. As a result, the amounts charged to Employer will be adjusted in a following year, as necessary, to account for over- or underestimation of the past years' prices. The Host Blue will not receive compensation from how the estimated price or average price methods, described above, are calculated. Because all amounts paid are final, neither positive variance account amounts (funds available to be paid in the following year), nor negative variance amounts (the funds needed to be received in the following year), are due to or from Employer. If Employer terminates, Employer will not receive a refund or charge from the variance account.

Variance account balances are small amounts relative to the overall paid claims amounts and will be drawn down over time. The timeframe for their liquidation depends on variables, including, but not limited to, overall volume/number of claims processed and variance account balance. Variance account balances may earn interest at the federal funds rate or similar rate. Host Blues may retain interest earned on funds held in variance accounts.

3. BlueCard Program Fees and Compensation

Employer understands and agrees to reimburse BCBSAZ for certain fees and compensation which BCBSAZ is obligated under the BlueCard Program to pay to the Host Blues, to the Association and/or to vendors of BlueCard Program-related services. The specific BlueCard Program fees and compensation that are charged to Employer are set forth in Administrative Service Agreement, Caveat. BlueCard Program Fees and compensation may be revised from time to time as described in section I.H below.

B. Negotiated Arrangements

With respect to one or more Host Plans, instead of using the BlueCard Program, BCBSAZ may process your Participant claims for Covered Services through Negotiated Arrangements.

In addition, if BCBSAZ and Employer have agreed that (a) Host Blue(s) shall make available (a) custom healthcare provider network(s) in connection with this Agreement, then the terms and conditions set forth in BCBSAZ's Negotiated Arrangement(s) for National Accounts with such Host Blue(s) shall apply. These include the provisions governing the processing and payment of claims when Participants access such network(s). In negotiating such arrangement(s), BCBSAZ is not acting on behalf of or as an agent for Employer, Employer's group health plan or Employer Participants.

Participant Liability Calculation

Participant liability calculation will be based on the lower of either billed charges for Covered Services or negotiated price (refer to the description of negotiated price under Section A., BlueCard Program, as

stated above) that the Host Blue makes available to BCBSAZ and that allows Employer's Participants access to negotiated participation agreement networks of specified participating providers outside of the BCBSAZ service area.

Under certain circumstances, if BCBSAZ pays the Healthcare Provider amounts that are the responsibility of the Participant, BCBSAZ may collect such amounts from the Participant.

In situations where participating agreements allow for bulk settlement reconciliations for Episode-Based Payment/Bundled Payments, BCBSAZ may include a factor for such settlement reconciliations as part of the fees BCBSAZ charges to Employer.

Where Employer agrees to use reference-based benefits, if offered, which are service-specific benefit dollar limits for specific procedures, based on a Host Blue's local market rates, Participants will be responsible for the amount that the healthcare provider bills for a specified procedure above the reference benefit limit for that procedure. For a participating provider, that amount will be the difference between the negotiated price and the reference benefit limit. For a nonparticipating provider, that amount will be the difference between the provider's billed charge and the reference benefit limit. Where a reference benefit limit exceeds either a negotiated price or a provider's billed charge, the Participant will incur no liability, other than any applicable Participant cost sharing under this Agreement.

Fees and Compensation

Employer understands and agrees to reimburse BCBSAZ for certain fees and compensation which BCBSAZ is obligated under applicable Inter-Plan Arrangement requirements to pay to the Host Blues, to the Association and/or to vendors of Inter-Plan Arrangement-related services. Fees and compensation under applicable Inter-Plan Arrangements may be revised from time to time as described in Section I.H below. In addition, the participation agreement with the Host Blue may provide that BCBSAZ must pay an administrative and/or a network access fee to the Host Blue, and Employer further agrees to reimburse BCBSAZ for any such applicable administrative and/or network access fees. The specific fees and compensation that are charged to Employer under Negotiated Arrangements are set forth in Administrative Service Agreement, Caveat.

C. **Special Cases: Value-Based Programs**

Value-Based Programs Overview

Employer's Participants may access Covered Services from providers that participate in a Host Blue's Value-Based Program. Value-Based Programs may be delivered either through the BlueCard Program or a Negotiated Arrangement. These Value-Based Programs may include, but are not limited to, Accountable Care Organizations, Global Payment/Total Cost of Care arrangements, Patient Centered Medical Homes and Shared Savings arrangements.

Value-Based Programs Definitions

- Accountable Care Organization (ACO): A group of healthcare providers who agree to deliver coordinated care and meet performance benchmarks for quality and affordability in order to manage the total cost of care for their member populations.
- Care Coordination: Organized, information-driven patient care activities intended to facilitate the appropriate responses to a Participant's healthcare needs across the continuum of care.
- Care Coordinator: An individual within a provider organization who facilitates Care Coordination for patients.
- Care Coordinator Fee: A fixed amount paid by a Blue Cross and/or Blue Shield Licensee to providers periodically for Care Coordination under a Value-Based Program.
- Global Payment/Total Cost of Care: A payment methodology that is defined at the patient level and accounts for either all patient care or for a specific group of services delivered to the patient such as outpatient, physician, ancillary, hospital services and prescription drugs.
- Negotiated Arrangement (a.k.a., Negotiated National Account Arrangement): An agreement negotiated between a Control/Home Licensee and one or more Par/Host Licensees for any National Account that is not delivered through the BlueCard Program.
- Patient-Centered Medical Home (PCMH): A model of care in which each patient has an ongoing relationship with a primary care physician who coordinates a team to take collective

responsibility for patient care and, when appropriate, arranges for care with other qualified physicians.

- Provider Incentive: An additional amount of compensation paid to a healthcare provider by a Blue Cross and/or Blue Shield Plan, based on the provider's compliance with agreed-upon procedural and/or outcome measures for a particular [group/population] of covered persons.
- Shared Savings: A payment mechanism in which the provider and payer share cost savings achieved against a target cost budget based upon agreed upon terms and may include downside risk.
- Value-Based Program (VBP): An outcomes-based payment arrangement and/or a coordinated care model facilitated with one or more local providers that is evaluated against cost and quality metrics/factors and is reflected in provider payment.

Value-Based Programs under the BlueCard Program

Value-Based Programs Administration

Under Value-Based Programs, a Host Blue may pay providers for reaching agreed-upon cost/quality goals in the following ways: *retrospective settlements, Provider Incentives, share of target savings, Care Coordinator Fees and/or other allowed amounts.*

The Host Blue may pass these provider payments to BCBSAZ, which BCBSAZ will pass directly on to Employer as either an amount included in the price of the claim or an amount charged separately in addition to the claim.

When such amounts are included in the price of the claim, the claim may be billed using one of the following pricing methods, as determined by the Host Blue:

(i) Actual Pricing: The charge to accounts for Value-Based Programs incentives/Shared Savings settlements is part of the claim. These charges are passed to Employer via an enhanced provider fee schedule.

(ii) Supplemental Factor: The charge to accounts for Value-Based Programs incentives/Shared Savings settlements is a supplemental amount that is included in the claim as an amount based on a specified supplemental factor (e.g., a small percentage increase in the claim amount). The supplemental factor may be adjusted from time to time.

When such amounts are billed separately from the price of the claim, they may be billed as follows:

☐ Per Member Per Month (PMPM) Billings: Per Member Per Month billings for Value- Based Programs incentives/Shared Savings settlements to accounts are outside of the claim system. BCBSAZ will pass these Host Blue charges directly through to Employer as a separately identified amount on the group billings.

The amounts used to calculate either the supplemental factors for estimated pricing or PMPM billings are fixed amounts that are estimated to be necessary to finance the cost of a particular Value-Based Program. Because amounts are estimates, there may be positive or negative differences based on actual experience, and such differences will be accounted for in a variance account maintained by the Host Blue (in the same manner as described in the BlueCard claim pricing section above) until the end of the applicable Value-Based Program payment and/or reconciliation measurement period. The amounts needed to fund a Value-Based Program may be changed before the end of the measurement period if it is determined that amounts being collected are projected to exceed the amount necessary to fund the program or if they are projected to be insufficient to fund the program.

At the end of the Value-Based Program payment and/or reconciliation measurement period for these arrangements, Host Blues will do one of the following:

- Use any surplus in funds in the variance account to fund Value-Based Program payments or reconciliation amounts in the next measurement period.
- Address any deficit in funds in the variance account through an adjustment to the PMPM billing amount or the reconciliation billing amount for the next measurement period.

The Host Blue will not receive compensation resulting from how estimated, average or PMPM price methods, described above, are calculated. If Employer terminates, Employer will not receive a refund or charge from the variance account. This is because any resulting surpluses or deficits would be eventually exhausted through prospective adjustment to the settlement billings in the case of Value-Based Programs. The measurement period for determining these surpluses or deficits may differ from the term of this Agreement.

Variance account balances are small amounts relative to the overall paid claims amounts and will be drawn down over time. The timeframe for their liquidation depends on variables, including, but not limited to, overall volume/number of claims processed and variance account balance. Variance account balances may earn interest, and interest is earned at the federal funds or similar rate. Host Blues may retain interest earned on funds held in variance accounts.

Note: Participants will not bear any portion of the cost of Value-Based Programs except when a Host Blue uses either average pricing or actual pricing to pay providers under Value-Based Programs.

Care Coordinator Fees

Host Blues may also bill BCBSAZ for Care Coordinator Fees for provider services which we will pass on to Employer as follows:

1. PMPM billings; or

2. Individual claim billings through applicable care coordination codes from the most current editions of either Current Procedural Terminology (CPT) published by the American Medical Association (AMA) or Healthcare Common Procedure Coding System (HCPCS) published by the U.S. Centers for Medicare and Medicaid Services (CMS).

As part of this Agreement, BCBSAZ and Employer will not impose Participant cost sharing for Care Coordinator Fees.

Value-Based Programs under Negotiated Arrangements

If BCBSAZ has entered into a Negotiated National Account Arrangement with a Host Blue to provide Value-Based Programs to Employer's Participants, BCBSAZ will follow the same procedures for Value-Based Programs administration and Care Coordination Fees as noted in the BlueCard Program section.

Exception: For negotiated arrangements, if any, for Value-Based programs to the extent that BCBSAZ and Employer have agreed to waive Participant cost sharing for Care Coordinator Fees, such waiver shall be a part of this Agreement.

D. Return of Overpayments

Recoveries of overpayments from a Host Blue or its participating and nonparticipating providers can arise in several ways, including, but not limited to, anti-fraud and abuse recoveries, audits/healthcare provider/hospital bill audits, credit balance audits, utilization review refunds and unsolicited refunds. Recovery amounts determined in the ways noted above will be applied so that corrections will be made, in general, on either a claim-by-claim or prospective basis. If recovery amounts are passed on a claim-by-claim basis from a Host Blue to BCBSAZ they will be credited to Employer's account. In some cases, the Host Blue will engage a third party to assist in identification or collection of overpayments. The fees of such a third party may be charged to Employer as a percentage of the recovery.

Unless otherwise agreed to by the Host Blue, for retroactive cancellations of membership, BCBSAZ will request the Host Blue to provide full refunds from participating healthcare providers for a period of only one year after the date of the Inter-Plan financial settlement process for the original claim. For Care Coordinator Fees associated with Value-Based Programs, BCBSAZ will request such refunds for a period of only up to ninety (90) days from the termination notice transaction on the payment innovations delivery platform. In some cases, recovery of claim payments associated with a retroactive cancellation may not be possible if, as an example, the recovery (a) conflicts with the Host Blue's state law or healthcare provider contracts, (b) would result from Shared Savings and/or Provider Incentive arrangements or (c) would jeopardize the Host Blue's relationship with its

participating healthcare providers, notwithstanding to the contrary any other provision of this Agreement.

E. Inter-Plan Programs: Federal/State Taxes/Surcharges/Fees

In some instances federal or state laws or regulations may impose a surcharge, tax or other fee that applies to self-funded accounts. If applicable, BCBSAZ will disclose any such surcharge, tax or other fee to Employer, which will be Employer's liability.

F. Nonparticipating Providers Outside BCBSAZ's Service Area

1. Participant Liability Calculation

a. In General

When Covered Services are provided outside of BCBSAZ's service area by nonparticipating providers, the amount(s) a Participant pays for such services will be based on either the Host Blue's nonparticipating healthcare provider local payment or the pricing arrangements required by applicable state law. In these situations, the Participant may be responsible for the difference between the amount that the nonparticipating provider bills and the payment will make for the covered services as set forth in this paragraph. Payments for out-of-network emergency services will be governed by applicable federal and state law.

b. Exceptions

In some exception cases, BCBSAZ may pay claims from nonparticipating healthcare providers outside of BCBSAZ's service area based on the provider's billed charge. This may occur in situations where a Participant did not have reasonable access to a participating provider, as determined by BCBSAZ in BCBSAZ's sole and absolute discretion or by applicable state law. In other exception cases, BCBSAZ may pay such claims based on the payment BCBSAZ would make if BCBSAZ were paying a nonparticipating provider inside of BCBSAZ's service area, as described elsewhere in this Agreement. This may occur where the Host Blue's corresponding payment would be more than BCBSAZ in-service area nonparticipating provider payment. BCBSAZ may choose to negotiate a payment with such a provider on an exception basis.

Unless otherwise stated, in any of these exception situations, the Participant may be responsible for the difference between the amount that the nonparticipating healthcare provider bills and the payment will make for the covered services as set forth in this paragraph.

2. Fees and Compensation

Employer understands and agrees to reimburse BCBSAZ for certain fees and compensation which BCBSAZ is obligated under applicable Inter-Plan Arrangement requirements to pay to the Host Blues, to the Association and/or to vendors of Inter-Plan Arrangement-related services. The specific fees and compensation that are charged to Employer are set forth in Administrative Service Agreement, Caveat. Fees and compensation under applicable Inter-Plan Arrangements may be revised from time to time as provided for in section I.H below.

G. BlueCard Worldwide® Program

1. General Information

If Participants are outside the United States (hereinafter: "BlueCard service area"), they may be able to take advantage of the BlueCard Worldwide Program when accessing Covered Services. The BlueCard Worldwide Program is unlike the BlueCard Program available in the BlueCard service area in certain ways. For instance, although the BlueCard Worldwide Program assists Participants with accessing a network of inpatient, outpatient and professional providers, the network is not served by a Host Blue. As such, when Participants receive care from providers outside the BlueCard service area, the Participants will typically have to pay the providers and

submit the claims themselves to obtain reimbursement for these services.

☐ **Inpatient Services**

In most cases, if Participants contact the BlueCard Worldwide Service Center for assistance, hospitals will not require Participants to pay for covered inpatient services, except for their cost-share amounts. In such cases, the hospital will submit Participant claims to the BlueCard Worldwide Service Center to initiate claims processing. However, if the Participant paid in full at the time of service, the Participant must submit a claim to obtain reimbursement for Covered Services. **Participants must contact BCBSAZ to obtain precertification for non-emergency inpatient services.**

☐ **Outpatient Services**

Physicians, urgent care centers and other outpatient providers located outside the BlueCard service area will typically require Participants to pay in full at the time of service. Participants must submit a claim to obtain reimbursement for Covered Services.

☐ **Submitting a BlueCard Worldwide Claim**

When Participants pay for Covered Services outside the BlueCard service area, they must submit a claim to obtain reimbursement. For institutional and professional claims, Participants should complete a BlueCard Worldwide International claim form and send the claim form with the provider's itemized bill(s) to the BlueCard Worldwide Service Center address on the form to initiate claims processing. The claim form is available from BCBSAZ, the BlueCard Worldwide Service Center, or online at www.bluecardworldwide.com. If Participants need assistance with their claim submissions, they should call the BlueCard Worldwide Service Center at 1.800.810.BLUE (2583) or call collect at 1.804.673.1177, 24 hours a day, seven days a week.

2. BlueCard Worldwide Program-Related Fees

Employer understands and agrees to reimburse BCBSAZ for certain fees and compensation which BCBSAZ is obligated under applicable Inter-Plan Arrangement requirements to pay to the Host Blues, to the Association and/or to vendors of Inter-Plan Arrangement-related services. The specific fees and compensation that are charged to Employer under the BlueCard Worldwide Program are set forth in Administrative Service Agreement, Caveat. Fees and compensation under applicable Inter-Plan Arrangements may be revised from time to time as provided for in section I.H below.

H. Modifications or Changes to Inter-Plan Arrangement Fees or Compensation

Modifications or changes to Inter-Plan Arrangement fees are generally made effective Jan. 1 of the calendar year, but they may occur at any time during the year. In the case of any such modifications or changes, BCBSAZ shall provide Employer with at least thirty (30) days' advance written notice of any modification or change to such Inter-Plan Arrangement fees or compensation describing the change and the effective date thereof and Employer right to terminate this Agreement without penalty by giving written notice of termination before the effective date of the change. If Employer fails to respond to the notice and does not terminate this Agreement during the notice period, Employer will be deemed to have approved the proposed changes, and BCBSAZ will then allow such modifications to become part of this Agreement.

II. BlueCard Program Fees and Compensation

Only the BlueCard Program Access Fee and the BlueCard Program Administrative Expense Allowance (AEA) fee may be charged separately each time a claim is processed through the BlueCard Program. All other BlueCard Program-related fees are included in the Administrative Charges.

The Access Fee is charged by the Host Blue to BCBSAZ for making the applicable Host Blue's provider network available to Employer's Participants. The Access Fee will not apply if the provider does not participate in the applicable Host Blue's network. The Access Fee is charged on a per-claim basis and is charged as a percentage of the discount/differential BCBSAZ receives from the applicable Host Blue subject to a maximum of $2,000 per claim. When charged, BCBSAZ passes the Access Fee directly on to the Employer.

BlueCard Program Access Fees: A BlueCard Program Access Fee may be charged only if the Host Blue's arrangement with its healthcare provider prohibits billing Participants for amounts in excess of the negotiated payment. However, a healthcare provider may bill Participants for non-covered healthcare services and for cost sharing (for example, deductibles, copayments and/or coinsurance) related to a particular claim.

How the Blue Card Program Access Fee Affects Employer: Sometimes the Access Fee is a negative amount, which is known as an Access Fee Credit. Any Access Fee Credits will be credited to BCBSAZ and BCBSAZ will pass the entire Access Fee Credit onto Employer.

Instances may occur in which the claim payment is zero or BCBSAZ pays only a small amount because the amounts eligible for payment were applied to patient cost sharing (such as a deductible or coinsurance). In these instances, BCBSAZ will pay the Host Blue's Access Fee and pass it along directly to Employer as stated above even though Employer paid little or had no claim liability.

The AEA Fee is a fixed per-claim dollar amount charged by the Host Blue to BCBSAZ for administrative services that the Host Blue provides in processing claims for Employer's Participants. The dollar amount is normally based on the type of claim (e.g. institutional, professional, international, etc.) and can also be based on the size of your group enrollment. When charged, BCBSAZ passes the AEA Fee directly on to Employer.

See the fee listing below for the BlueCard Program Access Fee and AEA Fee. The General Administrative Fee, are set forth in the Administrative Service Agreement, Caveat, includes all other fees relative to the BlueCard Program. These fees include the Central Financial Agency Fee, ITS Transaction Fee, Toll-Free Number Fee, PPO Provider Directory Fee and BlueCard Worldwide Program Fees, if applicable.

A General Administrative Fee encompasses fees BCBSAZ charges to Employer for administering Employer's benefit plan. They may include both local BCBSAZ service area and Inter-Plan fees. For purposes of this Agreement, they include the following BlueCard Program-related fees other than the BlueCard Program Access Fee and AEA Fee: namely, Central Financial Agency Fee, ITS Transaction Fee, Toll-Free Number Fee, PPO Provider Directory Fee and BlueCard Worldwide Program Fees, if applicable.

Inter-Plan Arrangements Fees:
BlueCard Program Fees

Access Fees:

- 4.79% in 2015 for fewer than 1,000 PPO or traditional enrolled Blue contracts
- 2.67% in 2015 for 1,000–9,999 Blue PPO enrolled contracts
- 2.48% in 2015 for 10,000–49,999 Blue PPO enrolled contracts of network savings, capped at $2,000.00 per claim

Standard Administrative Expense Allowances (AEAs) - For fewer than 1,000 PPO or traditional enrolled Blue contracts:

- Professional - $5.00 per claim
- Institutional - $11.00 per claim
- Non-Participating Provider $3.00 per claim
- Medicare related claims $1.00 per claim

Reduced Administrative Expense Allowances (AEAs) – To be considered for reduced fees, the Employer must exceed 1,000 PPO or traditional enrolled Blue contracts:

- Professional - $4.00 per claim
- Institutional - $9.75 per claim
- Non-Participating Provider $3.00 per claim
- Medicare related claims $1.00 per claim

Negotiated Arrangement: Non-standard negotiated fees can range from either $5.48 to $18.22 per claim or $10.00 to $16.75 per contract per month depending on the negotiated arrangement and/or the health plan product.

BCBSAZ Value-Based Programs

1. **LOCAL**

BCBSAZ pays some of its contracted medical providers an amount to manage the medical care of members diagnosed with certain medical conditions if the provider demonstrates to BCBSAZ it has satisfied BCBSAZ's criteria for effectively managing the care ("Value Based Services")

With respect to BCBSAZ group members residing and receiving Value Based Services in Arizona under a BCBSAZ value based program, BCBSAZ will estimate at the beginning of the contract year the amount BCBSAZ projects it will pay BCBSAZ's contracted providers for members who receive Value Based Services throughout the upcoming year in the form of a PMPM or PEPM charge ("PMPM Charge"). BCBSAZ will charge BCBSAZ's self-insured ("ASC") Groups via the Employer's Claims Invoice this PMPM Charge beginning January 1, 2016.

On an aggregate basis for the entire Value Based Program, the amounts used to calculate PMPM charge are fixed amounts estimated to be necessary to finance the cost of a particular Value-Based Program. Because amounts are estimates, there may be positive or negative differences based on actual experience, and such differences will be accounted for in a variance account maintained by BCBSAZ until the end of the applicable Value-Based Program payment and/or reconciliation measurement period. The amounts needed to fund a Value-Based Program may be changed before the end of the measurement period if it is determined that amounts being collected are projected to exceed the amount necessary to fund the program or if they are projected to be insufficient to fund the program.

On an aggregate basis for the entire Value Based Program, at the end of the Value-Based Program payment and/or reconciliation measurement period for these arrangements, BCBSAZ do one of the following:

a. Use any surplus in funds in the variance account to fund Value-Based Program payments or reconciliation amounts in the next measurement period.

b. Address any deficit in funds in the variance account through an adjustment to the PMPM billing amount or the reconciliation billing amount for the next measurement period.

NOTE: If an ASC Group terminates its BCBSAZ contract, that Employer will neither receive a refund nor a charge to reflect any variance between what BCBSAZ charged the Employer in Value Based Charges and what BCBSAZ paid the providers for Value Based Services.

2. **NATIONAL**

Value Based Services will also apply to your members who reside in other states/geographical locations served by other Blue Cross Blue Shield Plans. A full description of these arrangements will be described in your contract.

CITY OF GLENDALE, an Arizona
municipal corporation

_____
Kevin Phelps, City Manager

ATTEST:

_____
Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

_____
Michael D Bailey, City Attorney

File #: 16-329, **Version:** 1

AUTHORIZATION TO EXECUTE AMENDMENT NO. 1 AGREEMENT FOR SERVICES FOR CITY CONTRACTS 8672 AND 8832 TO ASSIGN AND TRANSFER RIGHTS AND OBLIGATIONS TO SMG FOR THE PROVISION OF PUBLIC SAFETY SERVICES PROVIDED AT THE UNIVERSITY OF PHOENIX STADIUM AND EXTENDING THE TERM OF THE CONTRACTS TO SEPTEMBER 30, 2016

Staff Contact: Jean Moreno, Economic Development Officer

Purpose and Recommended Action

This is a request for City Council to authorize the City Manager to execute Amendment No. 1 Agreement for Services for city contracts numbered 8672 and 8832 to assign and transfer rights and obligations to SMG for the provision of public safety services provided by the City of Glendale at the University of Phoenix Stadium and extending the term of the contracts to September 30, 2016. The draft Amendment No. 1 attached is in substantial final form and this request includes authorization for the City Attorney to make any final changes consistent with the intent of the Amendment.

Background

The Arizona Sports and Tourism Authority (AZSTA) owns and operates the University of Phoenix Stadium (stadium) located in the City of Glendale. The City and AZSTA entered into an Intergovernmental Services Agreement in September 2002 that addressed among other things the provision of public safety services associated with events taking place at the stadium. The focus of the city's planning efforts surrounding all special events is to ensure the best possible visitor experience for event guests, while maintaining the delivery of quality public services to residents, businesses, and the community as a whole. A mega events strategic plan was developed and presented to City Council on October 18, 2005, which included public safety for citizens and visitors while special events are taking place in our community. Subsequently, the AZSTA assigned the responsibility of securing public safety services to the stadium's venue manager, Global Spectrum.

The City currently has two agreements with Global Spectrum to provide public safety services. Contract 8672 is for the provision of emergency medical and fire prevention/inspection services executed on October 22, 2013 which can be mutually extended by both parties. Contract 8832 is for the provision of police services executed on April 10, 2014 and expires on July 1, 2016. Both of these contracts outline the scope of service and a compensation or reimbursement rate to be paid by Global Spectrum to the city for services rendered. Total compensation is paid based on an hourly rate for each staffed position provided by the city whether it is city staff or through the use of coalition officers.

Analysis

The AZSTA recently completed a competitive selection process for management of the stadium and has

selected SMG to take over venue management effective July 1, 2016. Both the AZSTA and SMG have expressed their desire to continue contracting with the City for fire and police services, but given the time constraints and the desire to provide continuity of services, it is necessary to assign the existing contracts to SMG and extend the effective date through September 30, 2016 to allow adequate time to negotiate terms for the new contracts. Those contracts would be presented to City Council at a future date prior to the expiration of the extension.

SMG has a five year contract with the AZSTA for the management of the Stadium. In the past, the terms of the public safety services contracts have varied and required new contracts or extensions every 2-3 years. It is staff's recommendation that the city attempt to negotiate a contract term that is aligned with the existing venue management agreement to ensure continuity of service, improve efficiency as it relates to time spent negotiating the contracts, and to allow for stabilization in the planning and resource allocation process.

Previous Related Council Action

On April 8, 2014 City Council authorized the City Manager to enter into an agreement with Global Spectrum, L.P. for police services at the University of Phoenix Stadium.

On October 22, 2013 City Council authorized the City Manager to enter into an agreement with Global Spectrum, L.P. for emergency medical services and fire inspection/prevention services at the University of Phoenix Stadium.

Community Benefit/Public Involvement

The University of Phoenix stadium programs on average over 120 events annually and consistently ranks among the busiest of the NFL stadiums. Combined event attendance in FY2015 was approximately 1,282,000 and FY2014 was approximately 1,150,000. In addition to being the home of the Arizona Cardinals, the University of Phoenix Stadium has brought international exposure to the City of Glendale as a result of hosting large-scale national events including Super Bowl XLII, Super Bowl XLIX, 2015 Pro Bowl, two BCS college football championships, the College Football Playoff, the annual Fiesta Bowl, major concerts, and will be the host for the 2017 NCAA Men's Final Four college basketball tournament. Working in partnership with the AZSTA, the Arizona Cardinals, and the University of Phoenix Stadium venue manager in the provision of public safety services supports local, regional, and state objectives which are all aligned to enhance the economy, attract visitors, and increase commerce in an effort to improve the quality of life for all Arizonans.

Budget and Financial Impacts

A budget allocation for stadium event staffing associated with these contracts and other obligations was included in the FY2017 budget.

ASSIGNMENT AND AMENDMENT NO. 1
AGREEMENT FOR SERVICES

This Assignment and Amendment No. 1 (the "Assignment and Amendment") of and to the Agreement for Services dated October 22, 2013 and labeled Contract C-8672 by the City of Glendale City Clerk (the "Agreement") is made this _____ day of _____, 2016, ("Effective Date"), by and between the City of Glendale, an Arizona municipal corporation (the "City") Global Spectrum, L.P., a Delaware limited partnership ("Global Spectrum"), and SMG, authorized to do business in Arizona ("SMG").

RECITALS

A. The City and Global Spectrum previously entered into the Agreement; and

B. Effective July 1, 2016, SMG is the venue manager for University of Phoenix Stadium (the "Stadium"), and has the authority to enter into service agreements on behalf of the Arizona Sports and Tourism Authority, the entity that owns the Stadium; and

C. Global Spectrum wishes to assign and transfer to SMG all of Global Spectrum's rights and obligations under the Agreement, as amended, and SMG desires to assume all of Global Spectrum's rights and obligations as provided in this Assignment and Amendment, as of July 1, 2016; and

D. City and SMG wish to amend the Agreement by extending its term in accordance with the terms of this Assignment and Amendment.

AGREEMENT

In consideration of the mutual promises set forth in this Amendment and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the City, Global Spectrum and SMG agree as follows:

1. Recitals. The recitals set forth above are not merely recitals, but form an integral part of this Assignment and Amendment.

2. Assignment. Global Spectrum assigns and transfers to SMG all of Global Spectrum's rights and obligations under the Agreement, as amended, and SMG assumes all of Global Spectrum's rights and obligations under the Agreement. The City consents to Global Spectrum's assignment of its rights and obligations to SMG.

3. Term. The term of the Agreement is extended so that the Agreement now expires September 30, 2016, unless otherwise terminated or canceled as provided by the Agreement. This paragraph modifies and supersedes the conflicting provisions of Paragraph 4 of the Agreement, but all other provisions of the Agreement except as set forth in this Assignment and Amendment remain in their entirety.

4. Non-discrimination. SMG 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. SMG will require any Sub-contractor to be bound to the same requirements as stated within this section. SMG, and on behalf of any subcontractors, warrants compliance with this section.

5. Ratification of Agreement. The City and SMG agree that except as expressly provided in this Amendment and Assignment, the provisions of the Agreement remain in full force and effect and that if any provision of this Assignment and Amendment conflicts with the Agreement, then the provisions of this Assignment and Amendment prevail.

[SIGNATURES ON 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

ASSIGNOR:

Global Spectrum, L.P.,
a Delaware limited partnership

_____
Name:
Title:

ASSIGNEE:

SMG, a

_____
Name:
Title:

ASSIGNMENT AND AMENDMENT NO. 1
AGREEMENT FOR SERVICES

This Assignment and Amendment No. 1 (the "Assignment and Amendment") of and to the Agreement for Services dated April 10, 2014 and labeled Contract C-8832 by the City of Glendale City Clerk (the "Agreement") is made this _____ day of _____, 2016, ("Effective Date"), by and between the City of Glendale, an Arizona municipal corporation (the "City") Global Spectrum, L.P., a Delaware limited partnership ("Global Spectrum"), and SMG, authorized to do business in Arizona ("SMG").

RECITALS

A. The City and Global Spectrum previously entered into the Agreement; and

B. Effective July 1, 2016, SMG is the venue manager for University of Phoenix Stadium (the "Stadium"), and has the authority to enter into service agreements on behalf of the Arizona Sports and Tourism Authority, the entity that owns the Stadium; and

C. Global Spectrum wishes to assign and transfer to SMG all of Global Spectrum's rights and obligations under the Agreement, as amended, and SMG desires to assume all of Global Spectrum's rights and obligations as provided in this Assignment and Amendment, as of July 1, 2016; and

D. City and SMG wish to amend the Agreement by extending its term in accordance with the terms of this Assignment and Amendment.

AGREEMENT

In consideration of the mutual promises set forth in this Amendment and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the City, Global Spectrum and SMG agree as follows:

1. Recitals. The recitals set forth above are not merely recitals, but form an integral part of this Assignment and Amendment.

2. Assignment. Global Spectrum assigns and transfers to SMG all of Global Spectrum's rights and obligations under the Agreement, as amended, and SMG assumes all of Global Spectrum's rights and obligations under the Agreement. The City consents to Global Spectrum's assignment of its rights and obligations to SMG.

3. Term. The term of the Agreement is extended so that the Agreement now expires September 30, 2016, unless otherwise terminated or canceled as provided by the Agreement. This paragraph modifies and supersedes the conflicting provisions of Paragraph 4 of the Agreement, but all other provisions of the Agreement except as set forth in this Assignment and Amendment remain in their entirety.

4. Non-discrimination. SMG 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. SMG will require any Sub-contractor to be bound to the same requirements as stated within this section. SMG, and on behalf of any subcontractors, warrants compliance with this section.

5. Ratification of Agreement. The City and SMG agree that except as expressly provided in this Amendment and Assignment, the provisions of the Agreement remain in full force and effect and that if any provision of this Assignment and Amendment conflicts with the Agreement, then the provisions of this Assignment and Amendment prevail.

[SIGNATURES ON 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

ASSIGNOR:

Global Spectrum, L.P.,
a Delaware limited partnership

_____
Name:
Title:

ASSIGNEE:

SMG, a

_____
Name:
Title:

File #: 16-297, **Version:** 1

RESOLUTION 5125: AUTHORIZATION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH TOLLESON UNION HIGH SCHOOL DISTRICT NO. 214 FOR THE SERVICES OF A SCHOOL RESOURCE OFFICER AT ONE SCHOOL CAMPUS DURING THE 2016-17 SCHOOL YEAR

Staff Contact: Debora Black, Police Chief

Purpose and Recommended Action

This is a request for City Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into an intergovernmental agreement (IGA) with Tolleson Union High School District No. 214 (TUHSD214) to assign one Glendale Police Officer at a select campus to serve as a School Resource Officer (SRO) during the 2016-17 school year.

Background

SROs were assigned to schools in the Glendale area from 1992-2010. This program was primarily funded through grants received by the school districts and was found to be very effective for both the schools and the Glendale Police Department (GPD). Assigned SROs serve as a liaison between the school and GPD; promoting crime prevention and police/community relations in the school and to other groups that have a potential impact on juvenile crime. The SROs educate the students and school personnel by providing relevant and informative educational programs dealing with peer pressure, child abuse, gangs, drug awareness, and other related issues. The SROs work on campus while school is in session. During the summer break SROs complete duties assigned by the Police Department.

In 2011, due to a lack of grant funding, the assignment of SROs at campuses was discontinued. In 2013, a few school districts, including TUHSD214, were able to locate funding in their budgets and began participating in the program once again. In late June 2014, the School Safety Program Oversight Committee agreed to spend almost $12 million in the upcoming school year on school safety programs to add officers to school sites across the state. Copper Canyon High School, which is part of TUHSD214, was among the schools selected to receive funds. One officer has been assigned to Copper Canyon High School for the last two consecutive school years. Grant funding is continuing for the 2016-17 school year and this IGA will allow the high school to continue with an SRO for the new school year beginning August 3, 2016.

Analysis

If approved, one officer will be assigned to Copper Canyon High School until May 26, 2017. Staff is recommending that Council adopt the proposed resolution authorizing the City Manager to enter into an IGA with TUHSD214 to assign one Glendale Police Officer at the select campus to serve as an SRO.

Previous Related Council Action

On June 23, 2015, Council adopted a resolution (No. 4991 New Series) authorizing the City Manager to enter into an IGA with TUHSD214 to assign one Glendale Police Officer at a select campus to serve as an SRO.

Community Benefit/Public Involvement

This partnership allows GPD to continue educational efforts in local schools while increasing police visibility and presence in the community.

Budget and Financial Impacts

The 2016-17 salary and benefits for the officers in the SRO positions was estimated at $126,811 per officer. TUHSD214 received grant funding in the approximate amount of $93,991 for each officer at each school to cover the salary and grant-reimbursable employee related expenses, covering the ten months of the school year. The remaining $32,820 of each officer's salary and benefits will be paid for by the Police Department.

Cost	Fund-Department-Account
$32,820	**1840-33228-500200, School Resource Officer IGAs-Training Salaries**

Capital Expense? No

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from?

RESOLUTION NO. 5125 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF AN INTERGOVERNMENTAL AGREEMENT WITH TOLLESON UNION HIGH SCHOOL DISTRICT NO. 214 FOR A SCHOOL RESOURCE OFFICER AT COPPER CANYON HIGH SCHOOL DURING THE 2016-17 SCHOOL YEAR.

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

SECTION 1. That it is deemed in the best interest of the City of Glendale and the citizens thereof that an Intergovernmental Agreement with the Tolleson Union High School District No. 214 for one police officer at Copper Canyon High School during the 2016-17 school year to aid in reducing crime on the school campus through education, positive interaction and enforcement be entered into, which agreement in 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

iga_pd_tuhsd.doc

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE CITY OF GLENDALE
AND
TOLLESON UNION HIGH SCHOOL DISTRICT NO. 214
FOR
SERVICES OF SCHOOL RESOURCE OFFICERS

This Intergovernmental Agreement ("Agreement") is entered into this ____ day of _____, 2016, by and between the City of Glendale, a municipal corporation ("City"), and the Tolleson Union High School District No. 214 ("District"), for Copper Canyon High School, 9126 West Camelback Road, Glendale, Arizona, 85305 ("CCHS"), a political subdivision of the State of Arizona. (City and District are referred to herein individually as a "Party" and collectively as the "Parties").

RECITALS

A. The District has funding available through its School Safety Program Grant to fund school resource officer services ("SRO Services") for CCHS.

B. The City and the District desire to enter into an agreement whereby the City will provide a sworn, certified police officer to provide SRO Services at CCHS during the 2016-2017 school year (the "School Year").

C. The District is authorized to enter into the Agreement pursuant to A.R.S. §§ 15-342 and 11-952.

D. The City is authorized to enter into this Agreement pursuant to A.R.S. § 11-952.

AGREEMENT

Now, therefore, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. General Terms and Conditions
    a. Term. The term of this Agreement shall be from August 3, 2016 until May 26, 2017 (the end of the school year).

    b. Relationship of Parties. City shall have the status of an independent contractor for the purpose of this Agreement. The School Safety Officer ("SRO") assigned to the School shall be considered an employee of the City and shall be subject to its control and supervision. The SRO will be subject to the current procedures in effect for police officers of the Glendale Police Department ("GPD"), including

attendance at all mandated training and testing to maintain police officer certification. The City, and not the District, shall determine the time of its performance of the SRO Services agreed to in this Agreement, so long as it complies with the scope of work set out in this Agreement in Section 2 and all of its subparagraphs. This Agreement is not intended to, and will not constitute, create, give rise to, or otherwise recognize a joint venture, partnership, or formal business association or organization of any kind between the Parties, and the rights and obligations of the Parties shall be only those expressly set forth in this Agreement. The Parties agree that no person supplied by the District to accomplish the goal of this Agreement is a City employee and no rights under City civil service, retirement, or personnel rules accrue to any such person. The District does not have the authority to supervise or control the actual work of the City, its employees, or its subcontractors.

c. Chain of Command and Channels of Communication. The Principal or Principal's designee will communicate directly with the SRO's commanding officer about any issues or concerns involving the SRO. If there is an issue that cannot be resolved between the Principal or designee and the commanding officer, the District's Grants and Federal Programs Coordinator will communicate with the commanding officer or his/her superiors, as determined appropriate by the City.

d. Coordination of Processes to Address Student Misconduct. The Parties will work together to identify and streamline any separate processes for investigating and responding to acts of student misconduct that may also implicate criminal misconduct.

e. Records. Parties shall maintain the records required in this Agreement for a period of three years after the termination of this Agreement.

f. Program Continuation Subject to Appropriation. The provisions of this Agreement for payment of funds by the District shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. If the District is denied the School Safety Grant, it may, at its discretion, initiate an Appeal under the School Safety Manual guidelines. The District shall be the sole judge and authority in determining the availability of funds under this Agreement and the District shall keep the City fully informed as to the availability of funds for this program. The obligation of the District to make any payment pursuant to this Agreement is a current expense of the District, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of the District. If the Governing Board of the District fails to appropriate money sufficient to pay the reimbursements as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of the then-current fiscal year and the City and the District shall be relieved of any subsequent obligation under this Agreement.

The City is obligated only to pay its obligations set forth in this Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during the City's then current fiscal year. The City's obligations under this Agreement are current expenses subject to the "budget law" and unfettered legislative decision of the City concerning budgeted purposes and appropriation of funds. Should the City elect not to appropriate and budget funds to pay its Agreement obligations, this Agreement shall be deemed terminated at the end of the then current fiscal year term for which such funds were appropriate and budgeted for such purpose and the City shall be relieved of any subsequent obligation under this Agreement. The parties agree that the City has no obligation or duty of good faith to budget or appropriate the payment of the City's obligations set forth in the Agreement in any budget in any fiscal year other than the fiscal year in which the Agreement is executed and delivered. The City shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The City shall keep the District informed as to the availability of funds for this Agreement. The obligation of the City to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the City. The District hereby waives any and all rights to bring any claim against the City from or relating in any way to City's termination of this Agreement.

g. Termination. Either Party may terminate this Agreement upon thirty (30) days prior written notice to the other Party at the addresses indicated below. Five (5) days after the District fails to make reimbursements as required by this Agreement, the City may terminate this Agreement by delivering ten (10) days written notice to the District. The District may terminate this Agreement immediately should the School Safety Grant funding became unavailable for any reason. The District further has the right to terminate this Agreement at any time that it appears in the reasonable judgment of the District that the SRO is displaying inappropriate conduct that negatively affects or distracts from the teaching environment. In such an event, the District shall direct the SRO to return to his/her GPD station and shall immediately contact the SRO's superior officer and/or another person designated by the City by telephone or fax to describe the situation and the District's concern. The City, then, shall have seventy-two (72) hours to correct the problem or to schedule a meeting with the District to attempt to resolve the issue. If the issue cannot be resolved, the District and the City agree:
    i. The City shall supply the District with another certified police officer, who is trained as an SRO and shall meet the requirements of Paragraph 2, to replace the SRO, or
    ii. The City and the District may mutually agree that the School will no longer have an SRO for the remainder of the school year, nor will the District be required to pay for the unfulfilled portion of the SRO's work (although District is required to pay for any work already performed by the SRO), or
    iii. District may terminate the Agreement.

The District shall not be required to pay for the SRO's services during any time the SRO is reassigned to the GPD pending resolution of an issue concerning inappropriate conduct.

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

i. Dispute Resolution Process. The Parties agree that they shall use all reasonable efforts to resolve any dispute or claim through good faith negotiations. If the Parties are unable to resolve the dispute or claim through negotiations, upon written request of either party, the City's Police Chief or designee, and the School Principal or designee, will attempt to resolve the matter with ten (10) days of the date of the written request that referred the matter to them. If the matter is not resolved, the matter shall be immediately referred to the City Manager or designee and the District Superintendent or designee. If the matter is still not resolved within ten (10) days, the Parties may terminate this Agreement pursuant to Paragraph 1.g of this Agreement.

j. Entire Agreement. This Agreement comprises the entire agreement of the Parties and supersedes any other agreements or understandings, oral and written, whether previous to the execution of this Agreement or contemporaneous herewith. Any amendments or modifications to this Agreement shall be made only in writing and signed by the Parties to this Agreement.

k. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

l. Workers' Compensation. Any employee of either Party shall be deemed to be an "employee" of both public agencies while performing pursuant to this Agreement solely for the purposes of A.R.S. § 23-1022 and the Arizona Workers' Compensation laws. The primary employer shall be solely liable for any workers' compensation benefits that may accrue. Each Party shall post a notice pursuant to the provisions of A.R.S. § 23-1022 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."

m. FERPA Compliance. The Parties will ensure that the dissemination and disposition of educational records complies at all times with the Family Educational Rights and Privacy Act of 1974 and any subsequent amendments thereto.

n. Non-Discrimination. The District nor City 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 identify or expression, genetic characteristics, familial status, U.S. military veteran status, or any disability. The District will require any Sub-contractor to be bound to the same requirements as stated within this section. The District, and on behalf of any sub-contractors, warrants compliance with this section.

o. Property Disposition. The Parties do not anticipate having to dispose of any property upon partial or complete termination of this Agreement. However, to the extent that such disposition is necessary, property shall be returned to its original owner.

p. E-Verify. The Parties acknowledge that immigration laws require them to register and participate with the E-Verify program (employment verification program administered by the United States Department of Homeland Security and the Social Security Administration or any successor program) as they both employ one or more employees in this state. The Parties warrant that they have registered with and participate with E-Verify. If either Party later determines that the other non-compliant Party has not complied with E-Verify, it will notify the non-compliant Party by certified mail of the determination and the right to appeal the determination.

To the extent applicable under A.R.S. § 41-4401, the Parties and their subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). The Parties also agree that any violation of this requirement shall be deemed a material breach of the contract that is subject to penalties up to and including termination of this Agreement. The Parties acknowledge that the other party retains the legal right to inspect the papers of the other Party's contractor and subcontractor employees that work on this Agreement to verify such compliance.

q. Fingerprinting Requirements. The City represents and warrants that it will ensure that each officer assigned to perform services on district property pursuant to this Agreement will be fingerprinted and successfully complete a background check performed by the City before such assignment.

r. Severability and Savings. If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion without inequity to the Parties.

s. Notices. All notices relating to this Agreement shall be deemed given when mailed, by certified or registered mail, or overnight courier, to the other Party at

the address set forth below or such other addresses as may be given in writing from time to time:

If to CITY:	Glendale Police Department Attn: Chief Debora Black 6835 North 57th Drive Glendale, Arizona 85301
With a copy to:	Glendale City Attorney 5850 West Glendale Avenue Glendale, Arizona 85301
If to DISTRICT:	Tolleson Union High School District No. 214 Attn: Hilda Ortega-Rosales 9801 West Van Buren Street Tolleson, Arizona 85353
With a copy to:	Udall Shumway, PLC Attn: Cathleen Dooley 1138 N. Alma School Road, Ste. 101 Mesa, Arizona 85201

t. Time References. All references to "days" within this Agreement mean calendar days, and not business days.

u. Both parties to the Agreement accept the guidelines as set out in the School Safety Program Manual, which is attached as Exhibit A to this Agreement.

2. Obligations of the City:

a. During the School Year, the City shall provide SRO Services to the District at CCHS on an hourly basis, as required by the Principal, but not to exceed forty (40) hours per week. In determining which GPD Officer(s) to assign as SRO to the District's CCHS, the City will review and consider the SRO Recommended Qualifications and Recommended Job Description set out in the School Safety Program guidelines (Ex. A). If feasible in the sole discretion of City, the SRO assigned to the school will be the same individual from year to year if new agreements are executed for the remainder of the School Safety Program Grant. The City agrees that in the event it provided SRO Services throughout the three year School Safety Grant Program at CCHS, it will assign no more than three separate SROs to CCHS during the three year cycle.

b. The City agrees to involve the District, including CCHS personnel, in the selection process for assigning an officer to the SRO position if the currently assigned officer must be replaced. This process will include allowing a CCHS administrator to be on the final selection committee once GPD has identified final candidates for the position. The City agrees that it will select an officer for the

SRO position who demonstrates a commitment to the goals of the School Safety Grant.

c. The City will invoice the District for payment of the SRO's services on a monthly basis.

d. During the days the School is not in session, the police officer assigned as a SRO shall perform his/her regular police duties at a station as determined by the Chief of Police or his/her designee. The City agrees that it is responsible for 100% of the SRO's salary and expenses when the SRO is assigned to work at another location during times the School is not in session.

e. The City shall ensure that the designated GPD officer(s) performing SRO Services attend annual training provided by the Arizona Department of Education ("ADE").

f. The City shall ensure that the SRO's GPD supervisor attends training provided by the ADE.

g. The SRO(s) performing SRO Services shall fulfill their duties as sworn law enforcement officers for the State of Arizona. SROs must be present and accessible on the CCHS campus as assigned by the Grant. Absent an emergency, the SRO shall not be called away from the CCHS. If the SRO is called away on police business, including but not limited to City-mandated training, City-mandated meetings, City-related emergencies, etc., the District shall not be invoiced for that time and the costs shall be borne by the City. If the SRO is attending an SRO-related training or other activity mandated by the Grant, the District shall be invoiced for that time.

h. The City shall ensure that the SRO(s) assigned to CCHS complete 180 hours of Law Related Education ("LRE"), which shall consist of 80 hours of classroom instruction to ongoing cohort groups of students, and at least 100 hours of universal instruction.

i. The SRO will maintain a weekly activity log that tracks his/her LRE instruction hours, teacher and subject or staff/community group the instruction was directed at, the topic of each LRE lesson, and the time that the SRO spends off of CCHS campus during duty hours. The SRO shall also provide a monthly recap of LRE activities, law enforcement activity, and time on campus to be presented to the Principal.

j. The City shall, within ten (10) business days of a request by the District, provide verification to the District of the SRO's successful criminal records check, e.g., a copy of current fingerprint clearance card, copy of criminal records report, etc.

k. To the extent permitted by law, City specifically agrees that it shall indemnify the District, for costs, including, but not limited to, actual damages, compensatory damages, punitive damages, and any related attorneys' fees and costs that arise from an SRO's use of physical force on students or the interviewing and searching of students where the SRO is acting outside of or in excess of the District's rules and policies related to use of physical force or interviewing and searching students.

l. The SRO assigned to CCHS shall:

i. Serve as a liaison between the School and GPD.
ii. Solicit and promote crime prevention and police/community relations in School and/or to other groups that have a potential impact on juvenile crime.
iii. Consult with students, parents, teachers, and School officials regarding problems and issues and will be knowledgeable of referral agencies in order to provide information to the requesting parties.
iv. Work with other unit members and School personnel and provide supervision in a positive, cooperative, and productive manner.
v. Enforce all applicable laws in a fair and consistent manner.
vi. Perform tasks or assignments as instructed by the GPD supervisor.
vii. Educate the students and School personnel by providing relevant and informative educational programs.
viii. Be flexible in his/her work schedule to attend major events (without causing the SRO to incur overtime hours) as deemed appropriate by School administration.
ix. Maintain a highly visible presence on and around campus.
x. Be available for duty at CCHS each day that School is in session during the regular school year. Other than any GPD-related activities that the SRO may perform when not at the School, the SRO's activities will be restricted to CCHS except for:
    1. Follow-up home visits when needed as a result of School related student problems.
    2. Incentive programs approved by the Parties.
    3. In response to off-campus, but School related criminal activity.
    4. In response to emergency police activities.
    5. To attend mandatory GPD meetings.
    6. To attend mandatory GPD programs to maintain continuing proficiency standards to maintain police officer certification.
    7. To attend any scheduled court hearings, trials, or grand jury that requires the SRO's appearance.

3. <u>Obligations of the District</u>:
    a. The District shall reimburse the City monthly for the services the City provides pursuant to its obligations identified in Paragraph 2 of this Agreement. Specifically, the District agrees:

i. To pay the City an amount not to exceed $93,990.73 for the 2016-2017 school year for the SRO's benefits and salary.
ii. The District will not pay for SRO Services for any times that school is not in session, nor for any personal vacations or sick leave taken by the SRO during times that school is in session. To pay the City an amount not to exceed $93,990.73 for the 2016-2017 school year for the SRO's benefits and salary. The Fiscal Year (FY) 2017 School Safety Program application is a continuation application for year three of a three year grant. Requests for salary and benefits (under purchased professional services) for a continuing officer must be consistent with the FY 2015 approved salary and benefits amount for that officer. Upward adjustments in salary and benefits cannot be accepted. If the actual salary of an officer is less than what was approved in FY 2015, the lesser amount of the two must be requested.
iii. The SRO's time worked at CCHS must be substantiated by time cards and approved by the Principal or his/her designee. The District and the City shall share equally the cost of the SRO's overtime worked on school-related investigations, with each Party paying 50% of the cost, not to exceed 20 hours annually. The District shall not use Program Grant funds to pay any part of overtime costs for the SRO's overtime. The SRO must obtain approval from the GPD before working on any school-related overtime. Overtime payments shall not exceed, under any circumstance, twenty (20) hours annually. The City shall pay 100% of the SRO's costs during the one month summer vacation and any other times that school is not in session and the City assigns the SRO to City related duties.
iv. The District shall pay invoices from the City within fifteen (15) days of receipt, so long as proper documentation is on file to support the invoiced amount.

b. The District shall provide office space that provides privacy for the SRO to conduct confidential business. The office shall include the necessary equipment for the SRO to effectively perform his/her duties.

c. The District will complete an SRO performance assessment twice per year. The SRO(s) will assist the Principal with the preparation of the assessment based upon requirements of ADE and the District. The District will share the performance assessment with the SRO's GPD supervisor.

d. The District shall provide $100 for classroom instructional supplies for the SRO as may be incurred throughout the School Year. The District shall pay travel-related expenses incurred by the SRO for attending mandatory ADE SRO training, if the grant allocates funding.

e. No District or CCHS administrator shall interfere with the sworn law enforcement duties of a GPD officer. It is agreed, however, that at such times as the SRO is acting within the role of a sworn law enforcement officer but is also acting outside

of or in excess of District rules and policies regarding interviewing and searching students and/or the use of appropriate physical force on students, the City shall hold the District harmless from such actions by the SRO. The SRO shall not be responsible for assistance in administrative discipline, unless a definitive danger is perceived by school staff or the student is suspected of breaking a criminal law.

f. The District shall provide a complete copy of the School Safety Program grant application and aware to each SRO when s/he begins service at CCHS.

IN WITNESS WHEREOF, the City and the District have executed this Agreement as of the date of the last signature set forth below.

CITY OF GLENDALE, an Arizona municipal corporation

_____
Kevin R. Phelps, City Manager

ATTEST:

_____
Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

_____
Michael D. Bailey, City Attorney

By: _____
Tolleson Union High School District No. 214

Approved as to Form and within the powers and authority of the District:

_____
Legal Counsel for the District

File #: 16-298, **Version:** 1

RESOLUTION 5126: AUTHORIZATION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH GLENDALE UNION HIGH SCHOOL DISTRICT FOR THE SERVICES OF A SCHOOL RESOURCE OFFICER AT TWO SCHOOL CAMPUSES DURING THE 2016-17 SCHOOL YEAR

Staff Contact: Debora Black, Police Chief

Purpose and Recommended Action

This is a request for City Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into an intergovernmental agreement (IGA) with Glendale Union High School District (GUHSD) to assign one Glendale Police Officer at each of the two select campuses to serve as a School Resource Officer (SRO) during the 2016-17 school year.

Background

SROs were assigned to schools in the Glendale area from 1992-2010. This program was primarily funded through grants received by the school districts and was found to be very effective for both the schools and the Glendale Police Department (GPD). Assigned SROs serve as a liaison between the school and GPD; promoting crime prevention and police/community relations in the schools and to other groups that have a potential impact on juvenile crime. The SROs educate the students and school personnel by providing relevant and informative educational programs dealing with peer pressure, child abuse, gangs, drug awareness, and other related issues. The SROs work on campus while school is in session. During the summer break SROs complete duties assigned by the Police Department.

In 2011, due to a lack of grant funding, the assignment of SROs at campuses was discontinued. In 2013, a few school districts, including GUHSD, were able to locate funding in their budgets and began participating in the program once again. In late June 2014, the School Safety Program Oversight Committee agreed to spend almost $12 million in the upcoming school year on school safety programs to add officers to school sites across the state. Glendale High School and Independence High School, which are part of GUHSD, were among the schools selected to receive funds. One officer has been assigned to each campus for the last two consecutive school years. Grant funding is continuing for the 2016-17 school year and this IGA will allow both schools to continue with an SRO for the new school year beginning August 8, 2016.

Analysis

If approved, one officer will be assigned to Glendale High School, and one officer will be assigned to Independence High School until May 24, 2017. Staff is recommending that City Council adopt the proposed resolution authorizing the City Manager to enter into an IGA with GUHSD to assign one Glendale Police Officer at each of the two select campuses to serve as an SRO.

Previous Related Council Action

On June 23,2015, Council adopted a resolution (No. 4993 New Series) authorizing the City Manager to enter into an IGA with GUHSD to assign one Glendale Police Officer at each of the two select campuses to serve as an SRO.

Community Benefit/Public Involvement

This partnership allows the GPD to continue educational efforts in local schools while increasing police visibility and the presence in the community.

Budget and Financial Impacts

The 2016-17 salary and benefits for the officers in the SRO positions was estimated at $126,811 per officer. GUHSD received grant funding in the approximate amount of $93,991 for each officer at each school to cover the salary and grant-reimbursable employee related expenses, covering the ten months of the school year. The remaining $32,820 of each officer's salary and benefits will be paid for by the Police Department.

Cost	Fund-Department-Account
$65,640	**1840-33228-500200, School Resource Officer IGAs-Training Salaries**

Capital Expense? No

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from?

RESOLUTION NO. 5126 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF AN INTERGOVERNMENTAL AGREEMENT WITH GLENDALE UNION HIGH SCHOOL DISTRICT FOR SCHOOL RESOURCE OFFICERS DURING THE 2016-17 SCHOOL YEAR AT THE FOLLOWING SCHOOLS: ONE POLICE OFFICER AT GLENDALE HIGH SCHOOL AND ONE POLICE OFFICER AT INDEPENDENCE HIGH SCHOOL.

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

SECTION 1. That it is deemed in the best interest of the City of Glendale and the citizens thereof that an Intergovernmental Agreement with the Glendale Union High School District for one police officer at Glendale High School and one police officer at Independence High School during the 2016-17 school year to aid in reducing crime on the school campus through education, positive interaction and enforcement 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

iga_pd_guhsd.doc

INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF GLENDALE AND GLENDALE UNION HIGH SCHOOL DISTRICT FOR SERVICES OF SCHOOL RESOURCE OFFICERS

This Intergovernmental Agreement ("Agreement") is entered into this ____ day of _____ 2016, by and between the City of Glendale, a municipal corporation ("City"), and the Glendale Union High School District ("District"), for Glendale High School, 6216 West Glendale Avenue, Glendale, AZ 85301, and Independence High School, 6602 North 75th Avenue, Glendale, AZ 85303 ("School(s)"), political subdivisions of the State of Arizona. (City, District and Schools are referred to herein individually as a "Party" and collectively as the "Parties").

WITNESSETH

1. Purpose of Agreement. The purpose of this Agreement is for the City to assign one police officer to each of the Schools from August 8, 2016 to May 24, 2017. The program is a cooperative effort between the City and the District. The police officers will work with and aid the School's administration and student population in reducing crime on the School's campus. Activities include education, positive police/student interaction, and enforcement of criminal laws.

2. Term. The term of the Agreement shall be from August 8, 2016 until the end of the school year, May 24, 2017. During the days the Schools are not in session, the police officers shall perform his/her regular police duties at a station as determined by the Chief of Police or his/her designee.

3. Termination. Either Party upon 30 days prior written notice may terminate the Agreement without cause.

4. Relationship of Parties. City shall have the status of an independent contractor for the purpose of this Agreement. The police officer assigned to the School, shall be considered an employee of the City and shall be subject to its control and supervision; however, the principal (or his/her designee) of the School will provide an evaluation of the assigned police officer to the Chief of Police or his/her designee. The police officer assigned to the School will be subject to the current procedures in effect for police officers of the Glendale Police Department ("GPD"), including attendance at all mandated training and testing to maintain state police officers certification. This Agreement is not intended to, and will not constitute, create, give rise to, or otherwise recognize a joint venture, partnership, or formal business association or organization of any kind between Parties, and the rights and obligations of the Parties shall be only those expressly set forth in this Agreement. The Parties agree that no person supplied by the District to accomplish the goal of this Agreement is a City employee and no rights under City civil service, retirement, or personnel rules accrue to such person.

5. Cost. District agrees to pay the City $93,990.73 for the 2016-17 school year for each of the police officer's benefits/salary. The District will not be responsible for overtime (unless the District requests it) or other expenses relating to or resulting from police related activities, such as criminal investigations and response to gang fights, assaults, and arsons. Each Party will maintain a budget for expenditures under this Agreement. Payment from the District is due upon receipt of an itemized statement.

6. Police Officers Responsibilities. The police officer's duties and responsibilities while at their assigned School shall be as follows:

   6.1 Serve as a liaison between the School and GPD.
   6.2 Solicit and promote crime prevention and police/community relations in School and/or to other groups that have a potential impact on juvenile crime.
   6.3 Consult with students, parents, teachers, and School officials regarding problems and issues. Be knowledgeable of referral agencies in order to provide information to the requesting parties.
   6.4 Work with other unit members, School personnel, and provide supervision in a positive, cooperative and productive manner.
   6.5 Enforce all applicable laws in a fair and consistent manner.
   6.6 Perform authorized tasks or assignments as instructed by their GPD supervisor.
   6.7 Educate the students and School personnel by providing relevant and informative educational programs.
   6.8 Will be flexible in his/her work schedule to attend major events as deemed appropriate by School administration.
   6.9 Maintain a high visible presence on and around campus.

7. Time and Place of Performance. The police officer will be available for duty at the assigned School each day that the School is in session during the regular School year. The police officer's activities will be restricted to the designated School grounds except for:

   7.1 Follow-up home visits when needed as a result of School related student problems.
   7.2 Incentive programs approved by the Parties.
   7.3 In response to off campus, but School related criminal activity.
   7.4 In response to emergency police activities.
   7.5 Mandatory GPD meetings.
   7.6 Mandatory GPD programs to maintain continuing proficiency standards to maintain police officers certification.
   7.7 Any scheduled court hearings, trials or grand jury that requires the police officer's appearance.

8. District Responsibilities.

8.1 The District will provide each police officer an office and such equipment, as is necessary, at their assigned School. The equipment shall include a telephone and filing space capable of being secured.

8.2 The Schools agree to act reasonably and in good faith to assist the police officer in the performance of his/her duties and responsibilities.

9. Cancellation. The City and the District acknowledge that this Agreement is subject to cancellation by either Party pursuant to the provisions of A.R.S. § 38-511.

10. Program Continuation Subject to Appropriation. The provisions of this Agreement shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment by the District. The District shall be the sole judge and authority in determining the availability of funds under this Agreement. The District shall keep the City fully informed as to the availability of funds for its program. The obligation of the District to make any payment pursuant to this Agreement is a current expense of the District, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of the District. If the Board of the District fails to appropriate money sufficient to pay the reimbursements as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of then-current fiscal year and the City and the District shall relieved of any subsequent obligation under this Agreement.

11. Entire Agreement. This Agreement comprises the entire agreement of the Parties and supersedes any and all other agreements or understandings, oral and written, whether previous to the execution hereof or contemporaneous herewith. Any amendments or modifications to this Agreement shall be made only in writing and signed by the Parties to this Agreement.

12. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

13. Worker's Compensation. An employee of either Party shall be deemed to be an "employee" of both public agencies while performing pursuant to this Agreement solely for purposes of A.R.S. § 23-1022 and the Arizona Workers' Compensation laws. The primary employer shall be solely liable for any workers' compensation benefits, which may accrue. Each Party shall post a notice pursuant to the provisions of A.R.S. § 23-1022.

14. FERPA Compliance. Both Parties will ensure that the dissemination and disposition of educational records complies at all times with the Family Educational Rights and Privacy Act of 1974 and any subsequent amendments thereto.

15. Non-Discrimination. The Parties 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. Each Party will require any subcontractor to be bound to the same requirements as stated within this section. Each Party and on behalf of any subcontractors, warrants compliance with this section.

16. Property Disposition. The Parties do not anticipate having to dispose of any property upon partial or complete termination of this Agreement. However, to the extent that such disposition is necessary, property shall be returned to its original owner.

17. E-Verify. To the extent applicable under A.R.S. § 41-4401, both parties and their subcontractors warrant compliance with all federal immigration laws and regulations that relate their employees and compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Both parties also agree that any violation of this requirement shall be deemed a material breach of the contract that is subject to penalties up to and including termination of this Agreement. Both parties acknowledge that the other party retains the legal right to inspect the papers of the other party's contractor and subcontractor employees that work on this Agreement to verify such compliance.

18. Conflict of Interest. City and District's participation in this Agreement is subject to Section 38-511 of the Arizona Revised Statutes, which provides that this Agreement may be cancelled if any person significantly involved in initiating, negotiating, securing, drafting, or creating this Agreement on behalf of City or District, respectively, is, at any time while this Agreement, or any extensions thereof, is in effect, an employee or agent of the other party to this Agreement in any capacity or a consultant to any other party with respect to the subject matter of this Agreement.

19. Failure of Legislature to Appropriate. If District's performance under this Agreement depends upon the appropriation of funds by District's Governing Board, then the parties agree that the following applies to this Agreement:

    District is obligated only to pay its obligations set forth in this Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during District's then current fiscal year. District's obligations under this Agreement are current expenses subject to the "budget law" and the unfettered legislative decision of District concerning budgeted purposes and appropriation of funds. Should District elect not to appropriate and budget funds to pay its Agreement obligations, this Agreement shall be deemed terminated at the end of the then current fiscal year term for which such funds were appropriated and budgeted for such purpose and District shall be relieved of any subsequent obligation under this Agreement. The parties agree that District has no obligation or duty of good faith to budget or appropriate the payment of District's obligations set forth in the Agreement in any budget in any fiscal year other than the fiscal year in which the Agreement is executed and

delivered. District shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. District shall keep City informed as to the availability of funds for this Agreement. The obligation of District to make any payment pursuant to this Agreement is not a general obligation or indebtedness of District. City hereby waives any and all rights to bring any claim against District from or relating in any way to District's termination of this Agreement.

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

If to City:	Glendale Police Department Attn: Chief Debora Black 6835 North 57th Drive Glendale, Arizona 85301
With a copy to:	Glendale City Attorney 5850 West Glendale Avenue Glendale, Arizona 85301
If to District:	Glendale Union High School District Attn: Allison Mattingly 7650 North 43rd Avenue Glendale, Arizona 85301
With a copy to:	Gust Rosenfeld P.L.C. Attn: Robert D. Haws One East Washington Street, Suite 1600 Phoenix, Arizona 85004

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS HEREOF, the Parties, through their respective undersigned authorized officers, have duly executed this Agreement as of the day and year first written above.

"City"	"District"
CITY OF GLENDALE, an Arizona municipal corporation	GLENDALE UNION HIGH SCHOOL DISTRICT, an Arizona school district
Kevin R. Phelps, City Manager	Brian Capistran, Superintendent
Date:_____	Date: 6-1-2016

ATTEST:

Pamela Hanna, City Clerk

In accordance with the requirements of Ariz. Rev. Stat. § 11-952(D), the undersigned attorneys acknowledge that (i) they have reviewed the above Agreement on behalf of their respective clients and that (ii) as to their respective clients only, each attorney has determined that this Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

Michael D. Bailey, Attorney for the City	Robert D. Haws, Attorney for the District

File #: 16-309, **Version:** 1

RESOLUTION 5127: AUTHORIZATION TO ENTER INTO A NEW DEVELOPMENT AGREEMENT WITH HABITAT FOR HUMANITY CENTRAL ARIZONA FOR THE USE OF EXISTING FY 2014/15 HOME INVESTMENT PARTNERSHIP FUNDS

Staff Contact: Erik Strunk, Director, Community Services

Purpose and Recommended Action

This is a request for City Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to execute a new Development Agreement which will extend the period of performance, accept and ratify all action taken to date during the time agreement C-9765-1 was in place, and continue the partnership with Habitat for Humanity Central Arizona for the HOME Investment Partnership Funds Program (HOME). This new agreement will allow the City of Glendale to continue partnering with Habitat for Humanity Central AZ to use $530,290 of existing FY 2014/15 HOME funds for the Rehabilitation, and Resale of Infill Housing for first-time homebuyers.

Background

In 2015, the Maricopa County HOME Consortium, of which Glendale is a member, announced it was seeking proposals to reallocate HOME funds being returned to it by the City of Scottsdale and Maricopa County, in the form of HOME program income. The City of Glendale, in partnership with Habitat for Humanity Central Arizona, applied for $200,000 of these funds to supplement four housing units that are currently under contract and environmentally cleared. The additional funds would be used for new infill "shovel ready" projects in Glendale, which meet the completion deadlines for the Consortium and resulted in high-quality housing that added value to Glendale neighborhoods. As a result of its past success with the use of HOME funds, the City was successful and was awarded the additional HOME funds with City Council approval. Since that time the funds have been utilized to continue the construction of four houses.

Analysis

Habitat for Humanity Central Arizona continues to be important partners in helping Glendale meet its housing goals. By approving this contract, the City will continue to acquire and renovate homes which become available, and provide affordable homebuyer opportunities to low-to-moderate income families in our community. There is no impact on city departments, staff, or service levels.

Previous Related Council Action

On June 23, 2015, the Council conducted a public hearing and approved a resolution 4971 amending the City's FY 14-15 Annual Action Plan to accept the $200,000 in additional HOME funds from the Maricopa County Consortium. On June 23, 2015 Council approved resolution 4972 amending to

Development Agreement C9765-1 to award an additional $200,000 to Habitat for Humanity Central Arizona bringing the contract amount to $530,290.

Community Benefit/Public Involvement

The acquisition, revitalization and resale of foreclosed single family houses has helped stabilize neighborhoods and improve the quality of life for the existing homeowners. To date over 45 previously foreclosed homes have been completely rehabilitated with the incorporation of energy-efficient and green building features, which has helped maintain affordability for the homebuyers of these houses.

Budget and Financial Impacts

This is a federally-funded program; there will be no fiscal impact on the city. No General Funds will be used for these agreements.

Cost	Fund-Department-Account
$530,290	1300-300091-518200, Habitat for Humanity Professional Contractual

Capital Expense? No

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from?

RESOLUTION NO. 5127 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO THE DEVELOPMENT AGREEMENT FOR INFILL HOUSING DEVELOPMENT UNDER THE HOME INVESTMENT PARTNERSHIP PROGRAM WITH HABITAT FOR HUMANITY CENTRAL ARIZONA; AND DIRECTING THAT THE AGREEMENT BE RECORDED.

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

SECTION 1. That it is deemed in the best interest of the City of Glendale and the citizens thereof that the Development Agreement for Infill Housing Development under the Home Investment Partnership with Habitat for Humanity Central Arizona be entered into, which said 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.

SECTION 3. That the City Clerk is directed to forward the development agreement for recording to the Maricopa County Recorder's Office within ten (10) days after the execution.

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
d_housing_habitat.doc

WHEN RECORDED, RETURN TO:

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

DEVELOPMENT AGREEMENT FOR INFILL HOUSING DEVELOPMENT UNDER THE HOME INVESTMENT PARTNERSHIP PROGRAM

This Development Agreement for Infill Housing Development under the Home Investment Partnership Program ("Agreement") is entered into this **___day of _____ 2016**, by and between the City of Glendale, an Arizona municipal corporation ("City"), and Habitat for Humanity Central Arizona, an Arizona non-profit corporation ("Developer").

RECITALS

WHEREAS, the City has applied for and received federal funds pursuant to the HOME Investment Partnerships Act at title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C. 12701, *et seq.* ("HOME Program") to assist low-income persons and families in obtaining decent and affordable homeownership opportunities;

WHEREAS, the Maricopa County HOME Consortium administers the HOME Program in Maricopa County, Arizona;

WHEREAS, the City has received an allocation from the Maricopa County HOME Consortium from a direct entitlement made by the U.S. Department of Housing and Urban Development ("HUD");

WHEREAS, Developer is a non-profit corporation that has applied for HOME Program funds from the City to be used to assist low-income persons and families in obtaining decent and affordable homeownership opportunities;

WHEREAS, the City believes that the activities of the Developer described in the Project comply with the requirements of the HOME Program regulations;

WHEREAS, it is necessary that the City and Developer to enter into an Agreement for the implementation of eligible activities; and

WHEREAS, the City desires to enter into this Agreement and provide Developer **$530,290** in HOME Program funds to pay for the costs of implementing the Project.

The Parties enter into the following agreement:

AGREEMENT

1. **HOME Program Activity.** Developer, in close coordination with the City, will perform all professional, technical and construction services necessary to purchase, rehabilitate or provide new construction of single family homes as detailed in **Exhibit A** ("Project").

2. **Agreement Amount.** The City shall provide financial assistance in an amount not to exceed **$530,290** subject to the terms of this Agreement and subject to the availability of federal funds. Providing this Agreement amount constitutes the City's entire participation and obligation in the performance and completion of all work to be performed under this Agreement.

3. **Commitment of Match.** Pursuant to 24 C.F.R. §§ 92.504 and 219, Developer agrees to make a match of at least 25% of the City's financial assistance. Developer therefore agrees to commit **$132,573**, provided in the Match Letter attached as **Exhibit B** and the Memorandum of Agreement attached as **Exhibit C.**

4. **Duration of the Agreement.** This Agreement shall be effective as of **May 1, 2016** and continue in effect for 18 months, expiring on **October 31, 2017**, unless sooner terminated pursuant to the provisions contained herein. This contract may be renewed for an addition one (1) year period, in the City's sole, unreviewable discretion.

5. **Project Budget.** The City will provide Developer, **$530,290** as generally described in the Project Budget that is attached as **Exhibit D**.

6. **Eligibility of Homeowner.**

   6.1 In order to be eligible for HOME Program assistance, Homeowners must have a gross annual household income that does not exceed 80% percent of area median income ("AMI"), adjusted for household size. Verification of household income must be conducted by Developer in accordance with 24 C.F.R. § 92.203.

   6.2 Homeowners must produce documentation certifying to the Developer his or her lawful presence in the United States, as required by A.R.S. §§ 1-501 or 1-502, as applicable.

7. **Developer's Responsibilities.** Developer is responsible for performing those tasks defined in the Project for the purchase, rehabilitation or new construction of homes receiving HOME Program assistance and in the sale of homes in zip codes of 85301, 85302, and 85303, including, but not limited to, the following tasks:

   7.1 Enter into appropriate agreements with Homeowners.

      a. These agreements with the Homeowners must require the recapture of all or a portion of the Home Program funds if the housing does not continue to be the "Principle Residence" of the family for the duration of affordability in accordance with 24 C.F.R. § 92.254(a)(5)(ii). For this requirement, "Principal Residence" is defined as the homeowner occupying the home no less than nine (9) months in a year; and

      B. As required by 24 C.F.R. § 92.254, these agreements must be accompanied by loan documents necessary to recapture the Home Program funds are a Homeowner Deferred Loan Agreement for HOME Investment Partnership Funds ("Homeowner Deferred Loan Agreement") attached as **Exhibit E**, a Deed of Trust and Assignment of Rents ("Homeowner Deed of Trust") attached as **Exhibit F**, and a Promissory Note ("Homeowner Note") attached as **Exhibit G**.

   7.2 Enter into appropriate agreements with the City.

      a. Agreements between the Developer and City must require the recapture of all or a portion of the Home Program funds if the housing does not continue to be the "Principle Residence" for families meeting the requirements for the duration of affordability in accordance with 24 C.F.R. § 92.254(a)(5)(ii); and

      b. The HOME Program funds designated for the Project will be secured by a Deed of Trust and Assignment of Rents ("Developer Deed of Trust") attached as **Exhibit H** and a Promissory Note ("Developer Note") attached as **Exhibit I**, as required by 24 C.F.R. Part 92. These documents must be recorded with the County Recorder. Related documents, such as restrictive land covenants, must also be recorded, if applicable.

   7.3 Draft and enter into appropriate agreements with each entity being contracted to perform work. Oversee the performance of architects, engineers, attorneys, accountants, contractors

and subcontractors and others that are constructing the housing to assure compliance with this Agreement and with all applicable federal, state and local laws and regulations.

7.4 Assure that any payments made for professional and construction services to attorneys, consultants, developers, general contractors, subcontractors, architects, engineers and others are reasonable, competitive and necessary to carry out the Project in accordance with federal OMB Circular A-122 and 24 C.F.R. § 84, *et seq.*

7.5 Assure that all HOME Program funds provided under this Agreement are used only for eligible Project expenses and that there is no misuse and/or mismanagement of HOME Program funds.

7.6 Maintain an accurate accounting of any "Program Income," which is defined as the gross income received by Developer directly generated from the use of HOME Program funds or matching contributions ("Program Income").

7.7 Report Program Income to the City quarterly. Any Program Income may be retained by Developer, but must be used on HOME Program eligible projects within City municipal boundaries.

7.8 Monitor and document affordability requirements, affordability period and affirmatively market assisted housing to protected classes of citizens as required in 24 C.F.R. § 92.254.

7.9 Submit support documents which demonstrate continued compliance with affordability requirements annually by June 30.

7.10 Review appropriate documents to verify household income, family size, sources of income, current address, location and condition of home to be acquired, appraised home values, completeness and accuracy of information provided by household members and determine the type and amount of assistance to be provided in accordance with 24 C.F.R. § 92.203.

7.11 Assure that all Homes purchased, rehabilitated or constructed with HOME Program funds meet HUD Section 8 Housing Quality Standards ("HQS") and local building codes in accordance with 24 C.F.R. § 92.251 upon completion and during the period of affordability.

7.12 Assure the legal sufficiency of loan instruments, attend loan closings and facilitate the filing and recordation of liens and/or deed restrictions required by the HOME Program in accordance with 24 C.F.R. § 92.254(a)(5)(i).

7.13 Assure that Homeowners are protected against fraudulent and predatory lending practices and that prudent business practices including underwriting standards reviewed by a licensed mortgage underwriter are followed that assure affordability and sustainability of the mortgage throughout the HOME Program affordability period and the mortgage term.

7.14 Maintain a complete file for each approved application for assistance and such additional records as may be required by law and/or regulation, and in accordance with applicable sections of 24 C.F.R. § 92.508.

7.15 Complete the Project as expeditiously as possible and undertake every effort to ensure that the Project will proceed and will not be delayed. Failure to adhere to the Project expenditure deadline can result in cancellation of this Agreement and the revocation of HOME Program funds.

7.16 Assure that the amount of HOME Program funds invested in each Home is in compliance with the minimum and maximum subsidy requirements. Assure that a minimum of $1,000 in assistance is invested per home in accordance with 24 C.F.R. § 92.205(c), and no more than the maximum per unit subsidy allowed in 24 C.F.R. § 92.250(a).

7.17 Collect and maintain Homeowner information pertaining to household size, income levels, racial characteristics, and the presence of Female Headed Households in order to determine low- and moderate income benefit in a cumulative and individual manner.

7.19 Execute and abide by Certifications mandated by federal grant requirements as listed in **Exhibit J.**

7.20 Carry out projects and perform services administered in compliance with all federal laws and regulations as further described in **Exhibit K.**

8. City Responsibilities.

8.1 City will provide Developer information regarding its requirements for the Project.

8.2 City will conduct progress inspections of work completed to ensure that the Project complies with federal regulations to protect its interests as lender.

8.3 City will provide information to the Developer regarding any progress inspections or monitoring to assist it in ensuring compliance.

9. Period of Affordability.

9.1. The Project is subject to ongoing compliance requirements of the HOME Program for the length of the affordability period identified in 24 C.F.R. § 92.254.

9.2 The affordability period begins once Maricopa County HOME Consortium records the close of the Project in the Integrated Disbursement Information System, a nationwide database providing HUD with current information regarding the Home Program activities underway across the nation, including funding data ("IDIS").

9.3 The affordability period is dependent upon expenditures provided in the table below:

HOME $ Per Unit	Length of Affordability/Compliance
Less than $15,000	5 Years
$15,000 - $40,000	10 Years
More than $40,000	15 Years
New Construction of Rental Housing (regardless of the expenditure amount)	20 Years

10. Use of HOME Program Funds.

10.1 Developer will utilize the HOME Program funds awarded by this Agreement solely for activities eligible under the provisions of the HOME Investment Partnerships Act, the Project application, this Agreement, and applicable federal laws, federal regulations and Executive Orders as well as HUD notifications and guidance that currently exist and that may be issued in the future, and will use said funds for no other purpose.

10.2 The amount of HOME Program direct Project costs spent will not exceed any line item as shown in the Project Budget by more than 10% percent without the expressed written approval of the City. Additionally, in no event will Developer exceed the total amount of HOME Program funds provided under the Project Budget.

10.3 The City will review and provide prompt approval for reasonable and unforeseen cost increases provided such cost increases do not exceed the statutory per unit cost limits in 24 C.F.R. § 92.250 or the amount of funds provided in the Project Budget.

11. Reimbursement of Expenses & Developer Fees.

11.1 Project expenses (excluding developer fees) will be paid based on invoices for actual expenses incurred or paid. All such expenses will be in conformance to the approved Project Budget. Developer will be responsible for any cost overruns.

11.2 The City will pay Developer, as maximum compensation or fee for the Developer services for the amount identified in the Project Budget.

11.3 Developer covenants that all expenditures will comply with OMB circular A-122, and will be allowable, allocable and reasonable. The City reserves the right to inspect records and Project sites to determine that reimbursement and compensation requests meet the terms of OMB circular A-122. The City also reserves the right to hold payment until adequate documentation has been provided and reviewed.

11.4 Developer may submit a final invoice upon completion of the Project. Final payment will be made after the City has determined that all services have been rendered, files and documentation delivered, and Homes have been acquired, rehabilitated or constructed in full compliance with HOME Program regulations, including submission of a completion report and documentation of eligible occupancy, property standards and long-term use restrictions.

11.5 Developer will be monitored by the City for compliance with the regulations of 24 C.F.R. § 92.254(a) (4) for the affordability period specified above. Developer will provide reports and access to Project files as requested by the City during the construction of the Project and for six (6) years after completion and closeout of the Agreement or during the affordability period, whichever is longer.

12. Project Requirements.

12.1 Environmental Review. No HOME Program funds may be encumbered until the City has completed an Environment Review pursuant to the provisions of the National Environmental Policy Act of 1969 ("NEPA") and the related authorities listed in HUD's implementing regulations at 24 C.F.R. § 50.1, *et seq.* and 24 C.R.F. § 58.1, *et seq.* Until the Environment Review is complete, Developer will not undertake or commit any HOME Program funds to physical or choice-limiting actions, including property acquisition, demolition, movement, rehabilitation, conversion, repair or construction prior to environmental clearance. The results of the Environmental Review may result in a decision to proceed with, modify or cancel the Project.

12.2 Non-Discrimination. In the selection of Homeowners, Developer will comply with all non-discrimination requirements of 24 C.F.R. § 92.350. Developer agrees to post notices containing this policy against discrimination in conspicuous places available to applicants for employment and employees. All solicitations or advertisements for employees, placed by or on the behalf of Developer, will state that all qualified applicants will receive consideration for employment without regard to race, color, religion, disability, sex, national origin, financial status, age, sexual orientation, gender identity, or marital status.

12.3 Relocation. No Project or activity that entails the relocation of occupants before, during or after the award of HOME Program funds under this Agreement will be conducted without the express written approval and coordination of the relocation activity with the City. The Project will not be approved where it is determined that any relocation of occupants has taken place prior to the submission of the Project Application.

12.5 Affordability Requirements.

a. Developer will adhere to the repayment of investment requirements set forth in 24 C.F.R. § 92.503. Any HOME Program funds invested in the Project that do not meet the affordability requirements for the period specified in 24 C.F.R. §§ 92.252 or 92.254, as applicable, must be repaid in accordance with 24 C.F.R. § 92.503(b)(3).

b. Housing assisted with HOME Program funds meet the affordability requirements of 24 C.F.R. §§ 92.252 or 92.254, as applicable. Repayment of the HOME Program funds will be required if the housing does not meet the affordability requirements for the specified time period. The affordability period must be enforced by means of liens on real property, deed restrictions or covenants running with the land. Homeownership projects must set forth resale or recapture requirements as part of the enforcement.

c. All HOME Program funds recaptured because the housing no longer meets affordability requirements, will be forwarded to the City in accordance with 24 C.F.R. § 92.503.

13. Repayment of HOME Program Funds.

13.1 All HOME Program funds are subject to repayment in the event that Developer does not complete all professional, technical and construction services necessary to complete the Project.

13.2 Items that trigger full repayment prior to property transfer include, but are not limited to, the following:

a. The Home does meet Property standards as adopted by the City in the 2012 IBC Building Code; or

b. The Home is not sold to an income-eligible homebuyer; or

c. Developer does not comply with the HOME Program federal regulations.

13.3 Items that trigger repayment based on Net Proceeds occur subsequent to a Property transfer, and include, but are not limited to, the following:

a. The Home owner does not maintain compliance during affordability period; or

b. The Home owner does not maintain principal residency requirements.

13.4 Upon completion of the Project, any HOME Program funds reserved but not expended under this Agreement will revert to the City.

13.5 Any repayment of HOME Program funds will be made out of Net Proceeds from the sale of the HOME Program assisted unit. "Net Proceeds" are defined as: Sales Price minus non-HOME debt minus closing cost.

14. Procurement Standards.

14.1 Developer will comply with local procurement requirements as listed in the Additional Requirements as further described in **Exhibit L.**

14.2 Developer will establish procurement procedures to ensure that materials and services are obtained in a cost-effective manner. When procuring services to be provided under this Agreement, Developer will comply, at a minimum, with the nonprofit procurement standards at 24 C.F.R. §§ 84.40-48.

14.3 Any Developer that can be considered to be a religious organization will abide by all portions of 24 C.F.R. § 92.257.

15. **Maximum Home Value.** Developer must assure that the value as well as the purchase price of any home assisted with HOME Program funds does not exceed 95% of the home value limits in the Metropolitan Statistical Area as defined in Federal Housing Administration Section 203(b) and 24 C.F.R. § 92.250.

16. **Uniform Administrative Requirements.** To the extent applicable to a nongovernmental recipient of federal funds, Developer will comply with OMB Circulars A-87, A-102, A-110, A-122, A-133, as amended, the Davis-Bacon Act (40 U.S.C. 276a *et seq.*), as amended, and as supplemented by Department of Labor regulations (29 C.F.R. Part 5, as amended), the Copeland Anti-Kickback Act (18 U.S.C. 874), as amended, and as supplemented by Department of Labor regulations (29 C.F.R. Part 3, as amended), the Agreement Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*), as amended, and as supplemented by Department of Labor regulations (29 C.F.R. Part 5, as amended); Executive Order 11246 (Equal Opportunity), as amended, and as supplemented by Department of Labor regulations (41 C.F.R., chapter 60, as amended); and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*, as amended and Section 104(d) of the Act), and in accordance with 24 C.F.R. Part 42, as amended.

17. **Other Federal Requirements.**

17.1 Affirmative Marketing. Developer must adopt affirmative marketing procedures and requirements for HOME Program-assisted housing containing three (3) or more housing units. "Affirmative marketing procedures" will consist of actions to provide information and otherwise attract eligible persons from all racial, ethnic, and gender groups in the housing market area to the available housing and will comply with the requirements and procedures of 24 C.F.R. § 92.351.

17.2 Displacement, Relocation, and Acquisition.

a. Developer must ensure that it has taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of the Project.

b. Developer will consult the City prior to proceeding with any Project activity with HOME Program funds that may cause temporary or permanent displacement of the beneficiary of HOME Program investment. Such consultation shall assure compliance with appropriate relocation requirements of 24 C.F.R. § 92.353 in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 ("URA") (42 U.S.C. §§ 4201-4655) and implementing regulations at 49 C.F.R. Part 24, as amended and the Fair Housing Act (42 U.S.C. §§ 3601-19).

c. The Project is subject to the requirements of the Housing and Community Development Act of 1974, and implementing regulation at 24 C.F.R. § 570. This includes the section 104 (d) requirements to provide relocation assistance and replace low- and moderate-income housing as described at 24 C.F.R. § 570.606(c).

d. The acquisition of the Homes is subject to the URA and the requirements of 49 C.F.R. Part 24.1, *et seq.*

17.3 Labor Requirements.

a. Federal regulation 24 C.F.R. § 92.354 requires that any contract for the construction (rehabilitation or new construction) of affordable housing with 12 or more units assisted with funds made available under the HOME Program must contain a provision requiring that the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. §§ 276a-5), will be paid to all laborers and mechanics employed in the development of affordable

housing involved. Such agreements must also be subject to the overtime provisions, as applicable, to the Work Hours and Safety Standards Act (40 U.S.C. §§ 327-332).

b. Developer will comply with regulations issued under Federal Laws and Regulations pertaining to labor standards and HUD handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs), as applicable.

17.4 Debarment and Suspension. As required by 24 C.F.R. Part 24.1, federal funds will not be used directly or indirectly to employ, award contracts to, or otherwise engage the services of, or fund any contractor, subcontractor, developer, business, consultant or any entity during any period of debarment, suspension, or placement in ineligibility status, including the beneficiary of HOME Program investment.

18. Immigration Law Compliance.

18.1 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.

18.2 Any breach of warranty under subsection 18.1 above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.

18.3 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 18.1 above.

18.4 City may conduct random inspections, and upon request of City, Contractor will provide copies of papers and records of Contractor demonstrating continued compliance with the warranty under subsection 18.1 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.

18.5 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.

18.6 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.

18.7 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.

19. Conditions of Religious Organizations.

19.1 Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the HOME Program. Neither the federal government nor a state or local government receiving funds under the HOME Program will discriminate against an organization on the basis of the organization's religious character or affiliation.

19.2 Organizations that are directly funded under the HOME Program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the assistance funded under this section.

19.3 If an organization conducts such activities, the activities must be offered separately, in time or location, from the assistance funded under this part, and participation must be voluntary for the beneficiaries of the assistance provided.

19.4 The completed Project must be used exclusively by the owner entity for secular purposes, available to all persons regardless of religion. In particular, there must be no religious or membership criteria for tenants of the Property.

19.5 An organization that participates in the HOME Program will not, in providing HOME Program assistance, discriminate against a Program beneficiary or prospective Program beneficiary on the basis of religion, religious belief or lack thereof.

19.6 The City will assure that any use of HOME Program funds by a religious organization, when commingled with funds of the religious organization, meet the requirements of 24 C.F.R. § 92.257.

20. Insurance.

20.1 Requirements. Developer must obtain, maintain and provide evidence of the following insurance ("Required Insurance") consistent with **Exhibit M**, Insurance Certificate:

a. Developer and Sub-contractors. Developer, 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) Developer 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 Developer 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 is required by Arizona law.

e. Equipment Insurance. Developer 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 Developer or its Sub-contractors.

f. Notice of Changes. Developer's Policies must provide for not less than 30 days' advance written notice to City Representative of:

(1) Cancellation or termination of Developer or Sub-contractor's Policies;

(2) Reduction of the coverage limits of any of Developer or and Sub-contractor's Policies; and

(3) Any other material modification of Developer or Sub-contractor's Policies related to this Agreement.

g. Certificates of Insurance.

(1) Within 10 business days after the execution of the Agreement, Developer must deliver to City Representative certificates of insurance for each of Developer 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 Developer 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 Developer and Sub-contractor's Policies, or to examine Developer 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) Developer's failure to secure and maintain Developer 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 Developer 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.

20.2 Sub-contractors.

a. Developer 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. Developer and Sub-contractors must provide to the City proof of Required Insurance whenever requested.

21. **Bonds**. Upon execution of this Agreement, and if applicable, Developer must furnish payment and performance bonds as required under A.R.S. § 34-608 and 24 C.F.R. Part 85.36(h).

22. **Conflict.**

22.1 Developer 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.

22.2 Developer agrees to abide by the provisions of 24 C.F.R. § 92.356 with respect to conflicts of interest, and covenants that no person who exercises or have exercised any functions or responsibilities with respect to activities assisted with HOME Program funds or who are in a position to participate in a decision making process or gain any inside information with regard to these activities, may obtain a financial interest or benefit from the Project, or have an interest in any contract, subcontract or agreement with respect thereto, or proceeds derived from the Project, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

22.3 Developer covenants that no person on its Board of Directors or any member of its staff has an identity of interest with any person or entities that might benefit directly or indirectly financially from this Agreement.

22.4 Developer further covenants that in the performance of this Agreement no person, having such a financial interest and/or influence with regard to the Project, will be employed or retained by Developer.

22.5 No owner, developer or sponsor of a project assisted with HOME Program funds (or officer, employee, agent or consultant of the owner, developer or sponsor) whether private, for profit or nonprofit (when acting as an owner, developer or sponsor) may occupy a HOME Program-assisted affordable housing unit in the Project. This provision does not apply to an individual who receives HOME Program funds to acquire or rehabilitate his or her principle residence or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the Project manager or maintenance worker.

22.6 If such conflict as outlined above does exist, Developer is bound to disclose officially in writing, on Developer's letterhead, the nature and extent of that conflict prior to execution of this Agreement, or if discovered subsequently, to disclose such conflict as soon as it occurs or is known.

22.7 Exceptions to above requirements are allowed under certain circumstances in accordance with 24 C.F.R. §§ 92.356(d), (e) and (f)(2). Requests for exceptions must be made to the City who, after determination as to whether an exception request is warranted, will render a decision and/or seek the approval of HUD to render a decision.

22.8 Developer will exercise due diligence and take all necessary steps to assure compliance with the requirements of this Section.

23. **Equal Employment Opportunity.**

23.1 Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, national origin, financial status, age, sexual orientation, gender identity, or marital status. Such action will include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City's Representative setting forth the provisions of this nondiscrimination clause.

23.2 Developer will, in all solicitations or advertisements for employees placed by or on behalf of Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, disability, national origin, financial status, age, sexual orientation, gender identity, or marital status.

23.3 Developer will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the City's Representative, advising the labor union or worker's representative of Developer's commitments under Executive Order No. 11246 of September 24, 1965, and will post copies of the notice in conspicuous places available to employees and applicants for employment.

23.4 Developer will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

23.5 Developer will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the City and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and order.

23.6 In the event Developer is found to be in noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations or orders, this Agreement may be canceled, terminated or suspended in whole or in part and Developer may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965 or by rule, regulations, or order of the Secretary of Labor or as otherwise provided by law.

23.7 Developer will include the provisions of paragraphs this section of this Agreement in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor.

24. Labor, Training & Business Opportunity.

24.1 It is agreed that performance under this Agreement is on a Project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. § 1701u), as well as any and all applicable amendments thereto. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be provided to low and moderate income residents of the Project area, and that contracts for work in connection with the Project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the Project area.

24.2 Developer will comply with the regulations issued pursuant thereto by HUD as set forth in Title 24 of the Code of Federal Regulations and all applicable rules and orders of HUD issued there under as well as any and all applicable amendments thereto prior to the execution of this Agreement as well as during the term of this Agreement. Developer certifies and agrees that it is under no contractual or other disability, which would prevent it from complying with these requirements as well as any and all applicable amendments thereto.

24.3 In construction contracts of $100,000 or more, Developer will include a clause that in every subcontract performing work in connection with the Project and will, at the direction of the City, take appropriate action under 24 C.F.R. Part 135. Developer will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under Title 24 of the Code of Federal Regulations and will not enter

into any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with these requirements as well as with any and all applicable amendments thereto.

24.4 Compliance with the provisions of Section 3, the regulations set forth in Title 24 of the Code of Federal Regulations and all applicable rules and orders of HUD issued thereunder is a condition precedent to federal financial assistance being provided to and continuing to be provided to the Developer. Such compliance will be binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements will subject Developer or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by Title 24 of the Code of Federal Regulations, as amended, and may be cause to terminate this Agreement.

25. Compliance with Federal, State & Local Laws. Developer covenants and warrants that it will comply with all applicable laws, ordinances, codes, rules and regulations of the state local and federal governments, and all amendments thereto, including, but not limited to; Title 8 of the Civil Rights Act of 1968 PL.90-284; Executive Order 11063 on Equal Opportunity and Housing Section 3 of the Housing and Urban Development Act of 1968; Housing and Community Development Act of 1974, and all requirements of the Home Program as set forth in 24 C.F.R. Part 92.

26. Suspension & Termination.

26.1 In accordance with 24 C.F.R. § 85.43, suspension or termination may occur if Developer materially fails to comply with any term of the award, and that the award may be terminated for convenience in accordance with 24 C.F.R. § 85.44.

26.2 If Developer is unable to meet the approved timelines as required by HOME Program regulations or complete the Project because of delays resulting from Acts of God, untimely review and approval by the City and other governmental authorities having jurisdiction over the Project, or other delays that are not caused solely by Developer, the City will grant a reasonable extension of time for completion of the Project. It will be the responsibility of Developer to notify the City promptly in writing whenever a delay is anticipated or experienced, and to inform the City of all facts and details related to the delay. Developer will also inform the City when it expects the delay to end and when it expects the Project to be complete.

26.3 If Developer fails in any manner to fully perform and carry out any of the terms, covenants, and conditions of the Agreement, or if Developer refuses or fails to proceed with the Project with such diligence as will ensure its completion within the time fixed by HOME Program regulations, Developer will be in default and notice in writing will be given to Developer's Representative of such default by the City or an agent of the City. If Developer fails to cure such default within such time as may be required by such notice, the City may at its option terminate and cancel the Agreement at the expiration of the cure period.

26.4 In the event of such termination, all HOME Program funds awarded to Developer pursuant to this Agreement will be immediately revoked and any approvals related to the Project will immediately be deemed revoked and canceled. In such event, Developer will no longer be entitled to receive any compensation for work undertaken after the date of the termination of this Agreement, as the grant funds will no longer be available for this Project.

26.5 In the event of such termination, Developer will be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder prior to the date of said termination.

26.6 Notwithstanding the above, Developer will not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by the Developer. The City may withhold any payments to the Developer for the purpose of setoff against

such damages until such time as the exact amount of damages due the City from Developer is determined whether by court of competent jurisdiction or otherwise.

26.7 The waiver or failure to enforce a breach of any term, covenant or condition hereof will not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition hereof.

27. Default-Loss of HOME Program Funds.

27.1 In the event of such termination, all HOME Program funds awarded to Developer pursuant to this Agreement will be immediately revoked and any approvals related to the Project will immediately be deemed revoked and canceled. In such event, Developer will no longer be entitled to receive any compensation for work undertaken after the date of the termination of this Agreement, as the HOME Program funds will no longer be available for this Project.

27.2 Such termination will not affect or terminate any of the rights of the City as against Developer then existing, or which may thereafter accrue because of such default, and the foregoing provision will be in addition to all other rights and remedies available to the City under the law and the Note and Deed of Trust (if in effect), including but not limited to compelling Developer to complete the Project in accordance with the terms of this Agreement, in a court of equity.

27.3 The waiver of a breach of any term, covenant or condition hereof will not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition hereof.

28. Inspection, Monitoring & Access to Records.

28.1 The City reserves the right to inspect, monitor, and observe work and services performed by Developer at any and all reasonable times.

28.2 The City reserves the right to audit the records of Developer any time during the performance of this Agreement and for a period of six (6) years after the period of affordability has been satisfied under this Agreement.

28.3 Developer will provide the City with a copy of their single audit and management letter pursuant to the requirements of OMB Circular A-133 annually, but no later than 30 days after completion of single audit.

28.4 Access will be immediately granted to the City, HUD, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of Developer or its contractors which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

29. Indemnification Agreement. Developer will, during the term of this Agreement, indemnify, hold, protect, and save harmless the City and any and all of its officers, elected officials, agents, and employees from and against any all actions, audits, proceedings, claims and demands, loss, liens, costs, expenses and liability of any kind and nature whatsoever, for injury to or death of persons, or damage to property, including property owned by the City brought, made, filed against, imposed upon or sustained by the City, its officers, agents, or employees in and arising from attributable to or caused directly or indirectly by the negligence, wrongful acts, omissions or from operations conducted by the Developer, its officers, agents or employees, or by any person acting on behalf of Developer and with Developer's knowledge and consent, expressed or implied.

30. Prohibited Lobbying Activities. Developer, his/her agent or representative will not have any lobbying contact, as defined by the Lobbying Disclosure Act (2 U.S.C. 1602), orally or in any written form with any City elected official or any City employee other than the Planning and Community Development Department, City Manager, Deputy or Assistant City Manager or City Attorney's office (for legal issues only) regarding the contents of this Agreement.

31. Prohibited Political Contribution. Developer, during the term of this Agreement, will not make a contribution reportable under Title 16, Chapter 6, Article 1, Arizona Revised Statutes to a candidate or candidate committee for any City elective office during the term of this Agreement. The City reserves the right to terminate the Agreement without penalty for any violation of this provision.

32. Contingent Fees. Developer promises that it has not employed or retained any company or person, other than bona fide employees working solely for Developer, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than bona fide employees working solely for Developer, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach of this promise, the City may cancel this Agreement without liability or, at its discretion, deduct the full amount of the fee, commission, percentage, brokerage fee, gift or contingent fee from the compensation due Developer.

33. Successors and Assigns. This Agreement is binding on the City and Developer, and its successors and assigns. Neither the City nor Developer will assign or transfer its interest in this Agreement without the written consent of the other.

34. Enforcement of the Agreement.

34.1 The City will enforce this Agreement in accordance with 24 C.F.R. § 85.43, by suspension or termination of the Agreement should Developer fail to comply with any term of the Agreement, or for convenience in accordance with 24 C.F.R. § 85.44.

34.2 Developer acknowledges and agrees that it will be subject to sanctions set forth in HOME Program Regulation 24 C.F.R. Part 92, if determined to be applicable by the City.

34.3 The parties hereto agree that this Agreement will be construed and enforced according to the laws of the State of Arizona and all applicable federal laws and regulations.

35. Representatives.

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

Attn: Lisa Weide, Grant Administrator
Habitat for Humanity Central Arizona
9133 NW Grand Ave Ste. 1
Peoria, Arizona 85345

35.2 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: Gilbert Lopez
Community Revitalization Division
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

35.3 Concurrent Notices.

a. All notices to City's Representative must be given concurrently to City Manager and City Attorney.

b. A notice will not be considered to have been received by City's Representative until the time that it has also been received by the City Manager and City Attorney.

c. 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.

35.4 Changes. Developer 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.

36. Other Provisions.

36.1 Developer is responsible for all applicable state and federal social security benefits and unemployment taxes and agrees to indemnify and protect the City against such liability.

36.2 Developer will maintain a procurement Code of Conduct for its organization, and ensure compliance by all employees.

36.3 Alternations to the Project and Budget must be mutually agreed upon by the City and Developer, and will be incorporated into this Agreement by written amendments signed by both parties.

36.4 This Agreement represents the entire agreement between the parties and supersedes all prior representations, negotiations or agreements whether written or oral.

36.5 Title and paragraph headings are for convenient reference and are not a part of this Agreement.

36.6 In the event of conflict between the terms of this Agreement and any terms or conditions contained in any attached documents, the terms in this Agreement will rule.

36.7 No waiver or breach of any provision of this Agreement will constitute a waiver of a subsequent breach of the same or any other provision hereof, and no waiver will be effective unless made in writing.

36.8 Should any provisions, paragraphs, sentences, words or phrases contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Arizona, such provisions, paragraphs, sentences, words or phrases will be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable to conform with such laws, then same will be deemed severable, and in either event, the remaining terms and provisions of this Agreement will remain unmodified and in full force and effect.

36.9 Developer and its employees and agents will be deemed to be independent contractors, and not agents or employees of the City, and will not attain any rights or benefits under the civil service or pension ordinances of the City, or any rights generally afforded classified or unclassified employee; further they will not be deemed entitled to state compensation benefits as an employee of the City.

36.10 Funding for this Agreement is contingent on the availability of funds and continued authorization for the Project and is subject to amendment or termination due to lack of funds, or authorization, reduction of funds, and/or change in regulations.

37. 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	Match Letter
Exhibit C	Memorandum of Agreement
Exhibit D	Project Budget
Exhibit E	Homeowner Deferred Loan Agreement for HOME Program Funds
Exhibit F	Homeowner Deed of Trust and Assignment of Rents
Exhibit G	Homeowner Promissory Note
Exhibit H	Developer Deed of Trust and Assignment of Rents
Exhibit I	Developer Promissory Note
Exhibit J	Certifications
Exhibit K	Federal Laws and Regulations
Exhibit L	Additional Requirements
Exhibit M	Insurance

(Signatures Appear on the Next Page)

IN WITNESS WHEREOF, all parties concerned acknowledge that they have read, understand, approve, and accept all of the provisions of this Agreement.

CITY OF GLENDALE, an Arizona municipal corporation

_____
Kevin R. Phelps
City Manager

ATTEST:

_____
Pam Hanna
City Clerk (SEAL)

APPROVED AS TO FORM:

_____
Michael D. Bailey
City Attorney

Habitat for Humanity Central Arizona, an Arizona non-profit corporation

By: _____
Its: JASON B. BARLOW PRESIDENT & CEO

STATE OF ARIZONA)
) ss.
County of Maricopa)

SUBSCRIBED AND SWORN to before me this 17 day of June, 2016, by Jason Barlow, the Developer who signed the above document.

Dana Webb
Notary Public

My Commission Expires:
April 5, 2017

DANA WEBB
Notary Public - State of Arizona
MARICOPA COUNTY
My Commission Expires
April 5, 2017

EXHIBIT A

PROJECT DECRIPTION

1. The City has awarded Developer **$530,290** in HOME Program funds to be for constructions cost associated with the renovation of four (10) homes to assist low-income persons and families in obtaining decent and affordable homeownership opportunities within the zip codes 85301, 85302, & 85303. The funds will be put into the following properties which Habitat Central Arizona hold title to and has site control:

   6746 N 54th Dr. Glendale AZ 85301
   5511 W Orangewood Glendale AZ 85301
   5515 W Orangewood Glendale AZ 85301
   6618 W Oregon Glendale AZ 85301
   5946 W Pasadena Glendale AZ 85301
   6618 N 54th Ave Glendale AZ 85301
   6200 W Glenn Dr. Glendale AZ 85301
   6829 N 61st Ave Glendale AZ 85301
   6825 N 61st Ave Glendale AZ 85301
   6717 N 54th Drive Glendale AZ 85301

2. The total budget for the Project is $949,863.
3. The average cost to renovate the homes is $77,000 per home. The Developer will be allowed a maximum of $10,000 of the Home grant award for Developer Fees associated with this project. The Developer will provide each homebuyer with $5,000 in HOME for down payment and closing cost assistance.
4. The Developer will match the HOME Program funds provided in the amount of **$132,573** from a Federal Home Loan.
5. Any cost overruns will be handled using Developer's general donations, Developer's fund for mortgages or Developer's line of credit.

EXHIBIT B

MATCH LETTER

(On Developer Letterhead)

Date: May , 2016

Gilbert Lopez
Community Revitalization Division
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

COMMITMENT OF MATCH

Dear Gilbert Lopez:

Habitat for Humanity Central Arizona ("Developer") is committed to making a match of **$132,573** which constitutes 25% of the Home Investment Partnerships Program ("HOME Program") funds contributed by the City of Glendale for the purchase, rehabilitation or construction of single family homes.

The non-federal match funds of amount of funded amount are committed for the Fiscal Year 2014-2015 Agreement. The source of the match funds is Federal Home Bank.

If you should have any additional questions, or need additional information, please contact me by phone at (623) 583-2417 or by email (insert email address).

Sincerely,

Name of Developer: Habitat For Humanity Central AZ

By: _____

Its: JASON B. BARLOW PRESIDENT & CEO

EXHIBIT C

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("MOA"), by and between the City of Glendale, an Arizona municipal corporation ("City"), and Habitat for Humanity Central Arizona, an Arizona non-profit corporation ("Developer").

RECITALS

WHEREAS, Congress established a partnership between the federal government, states, local government and non-profit organizations pursuant to the HOME Investment Partnerships Act at title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C. 12701, *et seq.* ("HOME Program") to assist low-income persons and families in obtaining decent and affordable homeownership opportunities

WHEREAS, in order to participate in the HOME Program Developer is required to make matching contributions in an amount that equals 25% of certain HOME Program expenditures;

WHEREAS, the Developer is a non-profit organization that builds affordable infill housing that meets HOME Program qualifications;

WHEREAS, the Developer desires to donate a portion of their HOME Program eligible match credit to the City; and

WHEREAS, the provisions of this MOA are intended to, and shall be construed to be, a binding agreement among the parties hereto.

AGREEMENT

1. **Commitment of Match.** Developer will make a matching contribution of **$132,573** which constitutes 25% of the HOME Program funds contributed by the City for the purchase, rehabilitation or construction of single family homes

2. **Duration of the MOA.** This MOA shall be effective for eighteen (18) months commencing on **May 1, 2016** and expiring on **October 31, 2017**, unless sooner terminated pursuant to the provisions contained herein. This contract may be renewed for an addition one (1) year period, in the City's sole, unreviewable discretion.

3. **Foregone Taxes, Fees and Charges.** The Developer may donate all of their HOME Program eligible match credit for development impact fee waivers, if any, to the City for the term of this MOA.

4. **Future Match Donations.** The Developer may donate additional HOME Program eligible match credit to the City. Such additional donations will be at the Developer's discretion.

5. **City's Ownership of Match Credit.** Once the Developer donates HOME Program eligible match credit to the City, the match credit belongs to the City. The City may use the match credit as needed to meet any HOME Program-mandated match obligations. The City may, at its discretion, return any unused match credit to the Developer.

6. **Developer's Ownership of Match Credit.** The Developer's remaining HOME Program eligible match credit not otherwise donated to the City, shall belong to the Developer.

IN WITNESS WHEREOF, all parties concerned acknowledge that they have read, understand, approve, and accept all of the provisions of this MOA.

CITY OF GLENDALE, an Arizona municipal corporation

_____
Kevin R. Phelps
City Manager

ATTEST:

_____
Pam Hanna
City Clerk (SEAL)

APPROVED AS TO FORM:

_____
Michael D. Bailey
City Attorney

Habitat For Humanity Central AZ,
an Arizona non-profit corporation

By: _____
Its: JASON B. BARLOW PRESIDENT & CEO

STATE OF ARIZONA)
) ss.
County of Maricopa)

SUBSCRIBED AND SWORN to before me this 17 day of June, 2016, by Jason Barlow, the Developer who signed the above document.

Dana Webb
Notary Public

My Commission Expires:
April 5, 2017

DANA WEBB
Notary Public - State of Arizona
MARICOPA COUNTY
My Commission Expires
April 5, 2017

EXHIBIT D

PROGRAM BUDGET

REVENUE	TOTAL PROGRAM FUNDING FY 2014/2015
City HOME Program Funding	$530,290
Other City of Glendale Funding	$0
Other Federal Funding	$0
State Funding	$0
Municipal Funding (Other Cities and Maricopa County)	$0
Non-Faith Based Charity	$0
Foundation and Corporate Support/Grants	$175,000
Volunteer In-Kind Contributions	$88,000
Other Income	$24,000
25% HOME Match	$132,573
Total	$949,863

EXPENSES	GLENDALE FUNDING	OTHER RESOURCES	VOLUNTEER / IN-KIND CONTRIBUTIONS	TOTAL PROGRAM BUDGET FY 2014/2015
Personnel Costs	$	$	$	$
Operational Expenses	$	$	$	$
Developer Fee	$10,000	$	$	$10,000
In-kind	$		$88,000	$88,000
Down Payment Assistance	$50,000	$	$	$50,000
	$	$	$	$
Building/Construction Expenses	$470,290	$307,573	$	$777,863
Other Expenses (specify)	$	$24,000	$	$24,000
	$	$	$	$
TOTAL	$530,290	$331,573	$88,000	$949,863

Exhibit E

WHEN RECORDED, RETURNED TO:

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

HOMEOWNER DEFERRED LOAN AGREEMENT FOR
HOME INVESTMENT PARTNERSHIP PROGRAM FUNDS

This Homeowner Deferred Loan Agreement for HOME Investment Partnership Program Funds ("Agreement") is entered into this _____ day of _____, 2016, by and between the City of Glendale, an Arizona municipal corporation ("City"), and _____, ("Homeowner").

RECITALS

WHEREAS, the City has applied for and received federal funds pursuant to the HOME Investment Partnerships Act at title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C. 12701, *et seq.* ("HOME Program") to assist low-income persons and families in obtaining decent and affordable homeownership opportunities;

WHEREAS, the City is a "pass-through agency" for the distribution of the HOME Program funds and the City is required by the NSP Program to regulate and restrict the occupancy and ownership of the Property;

WHEREAS, the City believes that Homeowner is qualified to receive the HOME Program funds;

WHEREAS, the City and Homeowner are required by the HOME Program to enter into a Homeowner deferred loan agreement for the acquisition of property with HOME Program funds;

WHEREAS, the City and Homeowner desire to enter into the Agreement for the amount of $_____ as a loan of HOME Program funds to acquire the Property described in the Deed of Trust and Assignment of Rents ("Property").

AGREEMENT

1. Definitions. The following terms have the meanings and content set forth herein where used in this Agreement or attached exhibits:

1.1 Area Median Income. The median income for the Maricopa County Primary Metropolitan Statistical Area ("PMSA"), with adjustments for household size, as adjusted from time to time by HUD.

1.2 Deed of Trust. The Deed of Trust and Assignment of Rents ("Homeowner Deed of Trust"), and any other security agreement placed on the Property or any part therefore as security for any loan and other obligations with Homeowner as trustor and the City as Beneficiary, as well as any amendments to, modification of, and restatement of the Homeowner Deed of Trust.

1.3 Affordability Period. The period of affordability is based upon the direct HOME subsidy provided to the homebuyer that enabled the homebuyer to purchase the unit. The amount of time the affordability period is in place is defined in the chart in section 4.3 of this agreement.

1.4 HUD. The U.S. Department of Housing and Urban Development.

1.5 Homeowner Investment. An initial down payment.

1.6 House. The residential dwelling unit that is located on the Property.

1.7 Loan. The deferred loan of HOME Program funds for the purchase of the Property.

1.8 Loan Documents. Collectively the Agreement, Deed of Trust, Promissory Note, Note Rider and any loan agreement, deed of trust, or promissory note entered into between the City and Homeowner with respect to any of the Property, as they may be amendments to these documents.

1.9 Principal Residence. The homeowner occupying the Property no less than nine (9) months in a year.

1.10 Promissory Note. The promissory note and note rider executed by Homeowner in favor of the City evidencing any part of a loan, which is secured by a Homeowner Deed of Trust, as well as any amendments to, modifications or, or restatements of said Homeowner Promissory Note. The Homeowner Promissory Note will be on file with the City.

1.11 Homeowner. The qualifying household that is the purchaser of the Property whose income is Eighty Percent (80%) or under of Area Median Income, as determined periodically by HUD, who is otherwise eligible to acquire the Property.

1.12 HOME Program Funds. The federal funds received pursuant to the HOME Program.

1.13 Homeowner Investment. The Homeowner's down payment on the Property.

1.14 Qualifying Sales Price. A price of the Property that does not exceed Ninety-Five Percent (95%) of the median purchase price for the area, as determined by HUD.

2. Term of Agreement. The Agreement shall remain in full force and effect during the Affordability Period regardless of any expiration of the term of any loan, any payment or prepayment of any loan, any assignment of a note, any reconveyance of a deed of trust, or any sale, assignment, transfer, or conveyance of the Property, unless terminated earlier by City in writing or extended by the mutual consent of the parties. However, failure to record this Agreement by City shall not relieve Homeowner of any of the obligations specified herein. The covenants in this Agreement will run with the land for the benefit of City and its heirs, assigns and successors and be binding on Homeowner and Homeowner's heirs, assigns and successor for the full term of this Agreement.

3. Use of Funds. HOME Program Funds will be used to acquire the Property. Funds will be utilized in a soft second assistance program, which will effectively allow the Qualifying Household to acquire the Property.

4. Affordability.

4.1 The Property will qualify as affordable housing and will have:

a. An initial purchase price that is a Qualifying Sales Price; and

b. An estimated appraisal value at acquisition that does not exceed Qualifying Sales Price.

4.2 The Property must be the Principal Residence of the Homeowner.

4.3 Pursuant to 24 C.F.R. § 92.254, the Homeowner must comply with the Affordability Period requirements in order to use of NSP Program funds to purchase the Property. The Affordability Period is defined below:

HOME Program Funds	Affordability Period
< $15,000	5 Years
$15,000 - $40,000	10 Years
>$40,000	15 Years

5. Recapture of HOME Program Funds.

5.1 Pursuant to HOME Funds regulations 24 C.F.R. § 92.254(a) (iii), HOME Program funds will be recaptured if the Property does not continue to be the Principal Residence of Homeowner for the duration of the Affordability Period. If all or any part of the Property or any interest in it is sold, rented, refinanced, conveyed of transferred (or if a beneficial interest in Homeowner is sold, rented, refinanced, conveyed, or transferred and Homeowner is not a natural person). If the Property is sold, rented, refinanced conveyed, or transferred within the first year of the term of the Deed of Trust and Promissory Note, the City will receive one hundred percent (100%) of the balance of the Agreement.

5.2 Utilizing the recapture provisions of the HOME Program, the fair return to the Homeowner will calculate based on the net proceeds from the sale and the amount of the original HOME Program funds invested in the Property. The HOME Program funds will be recoverable any time the Property is sold before the expiration of the Affordability Period. The method that will be used to calculate the fair return and the HOME Program funds to be recovered shall be detailed in the Deed of Trust.

5.3 If the Period of Affordability has been satisfied, Homeowner will be entitled to all net proceeds from the sale of the Property.

5.4 In the case of a foreclosure, the Affordability Period will be terminated. Upon receipt of the notice that a foreclosure is pending the City will take positive steps to assert rights to a share of the proceeds from the foreclosure sale. The City will, to the extent feasible, recapture the original HOME Program funds. If Homeowner has failed to make payment to the first mortgage holder, the City will not be obligated to correct any deficient payment. The amount recaptured shall be based on the amount of the net proceeds from the foreclosure sale. If no proceeds are generated, the HOME Program funds will not be recaptured.

5.5 The method that will be used to calculate the amount of the recapture funds will be detailed in the Deed of Trust and the Promissory Note. If the affordability period has been satisfied, the City will have no rights to the net proceeds resulting from the foreclosure sale.

5.6 If Homeowner ceases to occupy the Property as a Principal Residence, voluntarily or involuntarily, or upon the death of the Homeowner (or where ownership is joint upon the death of the sole survivor having remaining interest), the original HOME Program funds will become due and payable.

a. The method used to calculate the amount of the recaptured funds shall be detailed in the Deed of Trust and Promissory Note. If the Property is occupied as the Principal Residence by a valid and authorized descendant of a deceased Homeowner, and the descendant's income level qualifies, the descendant may receive HOME Program funds in the same manner in which the deceased Homeowner qualified, according to the most recent income limits.

b. The City, at its discretion, can elect to allow the occupant to live on the Property for the remainder of the Affordability Period. If the Affordability Period has been satisfied, the City will have no interest the Property.

5.7 If the Homeowner defaults on the Agreement, the City has the right to allow a non-profit partner to exercise a different but approved recapture/resale provision, if in the best interest

of the HOME Program. Failure to resolve the default may result in the City exercising its right to foreclose in order to satisfy the Agreement and comply with the HOME Program.

5.8 If Homeowner does not occupy the Property as their Principal Residence during the entire loan term, the balance will be due and payable or other arrangements can be made that meet HUD regulations as are approved by the City. If the Property is sold, rented, refinance, conveyed, or transferred within the first year the term of the Promissory Note secured by this Deed of Trust, one hundred percent (100%) of the full loan balance as follows:

a. Principal on the First Note and the Deed of Trust; and

b. Principal on this Second Note and Deed of Trust to the City of Glendale; and

c. All costs of sale, including costs of brokers' commissions, escrow fees, title costs and fees, recording costs, etc.; and

d. Current year taxes, including all pro-rata real estate taxes calculated to the date of sale; and

e. Borrower's down payment not including the loan from the City to Borrower; and

f. All Principal paid down on the First Note and Deed of Trust; and

g. Costs of any improvements to the Property provided such improvements were approved by the City prior to construction and provided that such improvements have been documented to the satisfaction of the City.

5.9 The HOME Program funds will still be due and payable. In the event that a negative Equity situation exists, and the full amount of the HOME funds are not available to be recaptured, the amount of HOME funds required to be repaid to the City will be as set forth in 24 CFR 92.254(a)(ii)(a)93).

a. To calculate the Net Proceeds to be returned to the city use the formula below:

$$\frac{\text{Direct HOME Subsidy}}{\text{Direct HOME Subsidy + Homebuyer Investment}} \times \text{Net Proceeds} = \text{HOME Funds Recaptured}$$

b. To calculate the Net Proceeds available to the homebuyer use the formula below:

$$\frac{\text{Homebuyer Investment}}{\text{Direct HOME Subsidy + Homebuyer Investment}} \times \text{Net Proceeds} = \text{Funds to Homebuyer}$$

6. Property Management.

6.1 During the Affordability Period, the Homeowner will at his or her own expense maintain the Property in food condition, in good repair, and in decent, safe, sanitary and habitable living conditions for the benefit of that Homeowner's household and any prospective occupants. Homeowner shall maintain the Property in conformance with all applicable state, federal and local laws, ordinances, codes and regulations.

6.2 If Homeowner fails to maintain the Property in accordance with these standards and after at least thirty (30) business days' notice to the Homeowner, the City or the City's contractor or agent may, but shall be under no obligation to, enter upon the Property, make such repairs or replacements as are deemed necessary in the City's discretion, and provide for payment thereof. Any amount advanced by the City to make such repairs, together with interest thereon from the date of such advance at the rate of seven (7) percent (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowable by applicable law), shall become an additional obligation of the Homeowner to the City and shall be secured by any Deed of Trust, if not previously reconveyed.

7. **Repayment.** HOME Program funds that are loaned to the Homeowner are to be remitted (principal and interest, as warranted) to the City to be retained and used as HOME Program income for additional first-time homebuyers.

8. **HOME Program Requirements.** Homeowner will comply with the following:

8.1 Maximum Per-Unit Subsidy Amount. The amount of HOME Program funds that a participating jurisdiction may invest on a per-unit basis in affordable housing will not exceed the per-unit dollar limits established by the HOME Program.

8.2 Property Standards. Housing that is assisted with HOME Program funds must, at a minimum, the Housing Quality Standards defined in Section 8 of the U.S. Housing Act of l937 (42 U.S.C. 1437f).

8.3 Property Cost Limits. The value of acquisition of the Property must not exceed ninety-five percent (95%) of the median purchase price for the area, as determined by HUD and amended from time to time.

8.4 Ownership Interest. The Homeowner must have fee simple title upon the sale of the Property purchased with the assistance of HOME Program funds.

8.5 Refinance. The City will subordinate to the following refinance situations only, subject to City approval and additional documentation is required:

a. A Federal Housing Administration streamline refinance, with a reduction in total principal, interest, taxes & insurance ("PITI") and no cash out.

b. A U.S. Department of Veterans Affairs rate reduction refinance, with a reduction in total PITI and cash out.

c. A conventional rate and term refinance, with a reduction in total PITI and no cash out.

9. **Defaults and Remedies.** In the event of any breach or violation of any agreement or obligation under this Agreement, the City may proceed with any or all of the remedies as described in the Deed of Trust.

10. **Indemnity.** Notwithstanding the insurance covered required herein, Homeowner shall indemnify and hold the City and its officers, officials, directors, employees, agents and authorized representatives (each, an "Indemnified Party," and collectively, "Indemnified Parties") free and harmless against any losses, damages, liabilities, claims, demands, judgments, actions, court costs, and legal or other expenses (including attorney's fees) which any Indemnified Party may incur as a direct or indirect consequence of (1) Homeowner's failure to perform any obligations as and when required by this Agreement; (2) any failure of Homeowner's representatives or warranties to be true and complete; or (3) any act or omission by Homeowner or any contractor, subcontractor, management agent, or supplier with respect the Property, except where such losses are caused by the sole negligence or willful misconduct of Indemnified Parties. Homeowner shall pay immediately upon the City's demand any amounts owing under this indemnity. The duty of the Homeowner to indemnify includes the duty to defend Indemnified Parties in any court action, administrative action, or other proceeding brought by any third party arising from the Property. Homeowner's duty to indemnify Indemnified Parties shall survive the term of this Agreement.

11. **Subordination.** This Agreement shall be subordinated in priority only to the liens and encumbrances approved by the City in the Agreement or otherwise in writing by the City in its sole and absolute discretion.

12. **Governing Law.** This Agreement shall be interpreted under and be governed by the laws of the State of Arizona.

IN WITNESS WHEREOF, all parties concerned acknowledge that they have read, understand, approve, and accept all of the provisions of this Agreement.

Homeowner Signature: _____

Homeowner Print Name: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2016, by _____, the Homeowner who signed the above document.

_____
Notary Public

My Commission Expires:

_____

Homeowner Signature: _____

Homeowner Print Name: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2016, by _____, the Homeowner who signed the above document.

_____
Notary Public

My Commission Expires:

_____

EXHIBIT F

WHEN RECORDED, RETURN TO:

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

DEED OF TRUST AND ASSIGNMENT OF RENTS

(Homeowner)

DATE: _____

TRUSTOR: _____
(ADDRESS): _____
_____

BENEFICIARY: City of Glendale
(ADDRESS): 5850 West Glendale Avenue
Glendale, Arizona 85301

TRUSTEE: City of Glendale
(ADDRESS): 5850 West Glendale Ave
Glendale, AZ 85301

SUBJECT REAL PROPERTY in Maricopa County, State of Arizona, described in the Legal Description attached as Exhibit A ("Property").

This Deed of Trust and Assignment of Rents ("Homeowner Deed of Trust") is made among the above-named Trustor, Trustee and Beneficiary.

1. **Conveyance.** Trustor irrevocably grants and conveys to Trustee in trust, with power of sale, the Property, subject to covenants, conditions, restrictions, rights of way and easements of record, to be held as security for the payment by Trustor of the obligation secured and for the performance of other obligations of Trustor as set forth in this Homeowner Deed of Trust.

2. **Appurtenances.** Trustor grants, together with the Property, all buildings and improvements now or hereafter erected thereon, and all fixtures attached to or used in connection with the Property (including, without limiting the generality of the foregoing, all ventilating, heating, air conditioning, refrigeration, plumbing and lighting fixtures), together with all leases, rents, issues, profits or income therefrom (hereinafter "Property Income"), subject however, to the right, power and authority hereinafter given to Beneficiary to collect and apply such property income.

3. **Taxes and Assessments and Trust Expenses.** Trustor shall pay before delinquent taxes and assessments affecting the Property or any part thereof, which appear to be prior or superior hereto all cost, fees and expenses of this trust and all lawful charges, costs and expenses of any reinstatement of the Deed of Trust following default.

4. **Fire Insurance.** Trustor shall, at Trustor's expense, maintain in force fire and extended coverage insurance in any amount of not less than full replacement value of any buildings which may exist on the Property with loss payable to Beneficiary. Trustor shall provide fire insurance protection on his

furniture, fixtures and other personal property on the Property in an amount equal to the full insurable value thereof, and promises that any insurance coverage in this regard will contain a waiver of the insurer's right of the subrogation against Beneficiary.

5. **Liability Insurance.** Trustor shall, at Trustor's expense, maintain in force policies of liability insurance, with Beneficiary as an additional insured thereunder, insuring Trustor against any claims resulting from the injury to or the death of any person or the damage to or the destruction of any property belonging to any person by reason of Beneficiary's interest hereunder or the use and occupancy of the Property by Trustor.

6. **Processing of Insurance Policies.** Trustor shall promptly deliver to Beneficiary the originals or true and exact copies of all insurance policies required by this Homeowner Deed of Trust. Trustor shall not do or omit to do any act that will in any way impair or invalidate any insurance policy required by this Deed of Trust. All insurance policies shall contain a written obligation of the insurer to notify Beneficiary in writing at least 10 days prior to any cancellation thereof.

7. **Indemnification of Trustee and Beneficiary.** Trustor shall hold Trustee and Beneficiary harmless from and indemnify them for any and all claims raised by any third party against Trustee or Beneficiary resulting from their interests hereunder or the acts of Trustor. Such indemnification shall include reasonable attorneys' fees and costs, including cost of evidence of title.

8. **Right Beneficiary or Trustee to Pay Obligations of Trustor.** If Trustor fails or refuses to pay any sums due to be paid by it under the provisions of this Homeowner Deed of Trust, or fails or refuses to take any action as herein provided, then Beneficiary or Trustee shall have the right to pay any such sum due to be paid by Trustor and to perform any act necessary. The amount of such sums paid by Beneficiary or Trustee for the account of Trustor and the cost of any such action, together with interest thereon at the maximum legal contractual rate per annum, from the date of payment until the satisfaction, shall be added to the obligation secured. The payment of Beneficiary or Trustee of any such sums or the performance of any such action shall be prima facie evidence of the necessity therefore.

9. **Condemnation.** Any award of damages in connection with any condemnation or injury to any of the Property by reason of public use or for damages for private trespass or injury thereto, are assigned in full and shall be paid to Beneficiary, who shall apply them to payment of the principal of the obligation secured, the interest thereon, and any other charges or amounts secured hereby in such manner as Beneficiary may elect. Any remaining balance shall be paid to Trustor. Beneficiary may, at Beneficiary's option, appeal from any such award in the name of Trustor. Unless Trustor and Beneficiary otherwise agree in writing, any application of such proceeds to principal shall not extend or postpone the due dates of any installment payments of the obligation secured or change the amount of such payments.

10. **Care of Property.** Trustor shall take reasonable care of the Property and the buildings thereon and shall maintain them in good repair and condition as at the original date of this Homeowner Deed of Trust, ordinary depreciation excepted. Trustor shall commit or permit no waste and do no act which will unduly impair or depreciate the value of the Property as required, and then Beneficiary or Trustee, at their option, may make necessary repairs and add the cost thereof to the Obligation Secured. Trustor shall purchase and use on the Property the amount of water to which it is or shall be entitled and shall not abandon any water rights, power rights or any rights of whatever nature which are appurtenant to the Property.

11. **Right to Inspect the Property.** At all convenient and reasonable times, upon prior notice to Trustor, Beneficiary or Trustee shall have the right and license to go on and into the Property to inspect it in order to determine whether the provisions of the Homeowner Deed of Trust are being kept and performed.

12. **Acceleration.** In the event of default by Trustor, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to the Trustee of written notice setting forth the nature thereof and of election to cause the Property to be sold under this Homeowner Deed of Trust. Beneficiary shall also deposit with Trustee all documents evidencing the obligation secured and any expenditures secured hereby.

13. **Event of Default.** Each of the following shall be considered an event of default of the Homeowner Deed of Trust:

13.1 The failure of Trustor to make any payment due hereunder or under the Obligation Secured on or before the due date thereof;

13.2 The failure of Trustor to perform any duty required by this Homeowner Deed of Trust;

13.3 The failure of Trustor to occupy the Property as his/her primary residence;

13.4 The sale or attempted sale of the Property by Trustor without the consent of Beneficiary;

13.5 The removal or attempted removal by Trustor of any property included in the Property without the consent of Beneficiary; or

13.6 Abandonment of the Property by Trustor;

13.7 The filing, execution or occurrence of:

a. A petition in bankruptcy by or against Trustor;

b. A petition or answer seeking a reorganization, composition, readjustment, liquidation, dissolution or other relief of the same or different kind under any provision of the Bankruptcy Act;

c. Adjudication of Trustor as a bankrupt or insolvent, or insolvency in the bankruptcy equity sense;

d. An assignment by Trustor for the benefit of creditors, whether by trust, mortgage or otherwise;

e. A petition or other proceedings by or against Trustor for the appointment of a trustee, receiver, guardian, conservator or liquidator of Trustor with respect to all or substantially all of the Property; or

f. Trustor's dissolution or liquidation, or the taking of possession of the Property by any governmental authority in connection with dissolution or liquidation.

13.8 A determination by Beneficiary that the security of the Homeowner Deed of Trust is inadequate or in danger of being impaired or threatened from any cause whatsoever.

14. **Trustee's Sale.** Upon receipt of Beneficiary's notice of election to cause the Property to be sold, Trustee shall, in accordance with all provisions of law, give notice of Trustee's sale and, after the lapse of the required amount of time, sell the Property at public auction, at the time and place specified in the Notice of Trustee's Sale, to the highest bidder for cash in lawful money of the United States, payable at the time of sale. Any persons, including Trustor, Trustee or Beneficiary may purchase at the Trustee's Sale. Trustee may postpone or continue the sale by giving notice of postponement or continuance by public declaration at the time and place last appointed for sale. Upon sale, Trustee shall deliver to the purchaser a Trustee's Deed conveying the Property, but without any covenant or warranty, expressed or implied.

15. **Net Proceeds of the Trustee's Sale.** After deducting all costs, fees and expenses of Trustee and of this trust, including the cost of evidence of title in connection with the sale and reasonable attorney's fees, Trustee shall apply the proceeds of sale to payment of all sums then secured hereby and all other

sums due under the terms hereof, with accrued interest, and the remainder, if any, to the persons legally entitled thereto or as provided by A.R.S. § 33-812.

16. **Defaults on Prior Encumbrances.** If there are mortgages upon the Property or other encumbrances which are prior in time or prior in right, then Trustor promises to comply with the terms of these prior mortgages or encumbrances. If Trustor fails to comply with such terms and defaults on these mortgages or obligations, such default shall also be considered a default of this Homeowner Deed of Trust, and Trustee or Beneficiary herein may advance the monies necessary to remedy such defaults, and, if it does, such monies shall be added to the obligation secured and shall bear the maximum contractual legal rate of interest from the date monies are tendered. Beneficiary may also proceed on this default by exercising the same remedies it has on this Homeowner Deed of Trust.

17. **Deficiency Judgment.** Unless prohibited by law, Beneficiary shall be entitled to a deficiency judgment against Trustor if the Trustee's Sale yields an amount insufficient to fully satisfy Trustor's obligation pursuant to A.R.S. § 33-814.

18. **Foreclosure and Revival of Applicable HUD Affordability Requirements.** If the primary mortgage on the Property is a Federal Housing Administration ("FHA") or a U.S. Department of Veterans ("VA") loan, and it is assigned to the U.S. Department of Housing and Urban Development ("HUD") or the VA, or if a person forecloses on Trustor's interest in the Property or takes a deed in lieu of foreclosure and such person's mortgage or security deed was prior in time to this Homeowner Deed of Trust, this Deed of Trust and promissory note shall terminate and no longer affect the Property. Notwithstanding the foregoing, if the foreclosed upon or deed in lieu of foreclosure loan is subject to HUD Affordability Period requirements, the covenants and restrictions set forth in this Homeowner Deed of Trust shall be revived and shall remain in full force for the remainder of any applicable affordability period when and if the owner of record or Trustor before such foreclosure or deed in lieu of foreclosure is given acquires or obtains any ownership interest in the Property at any time during such affordability period.

19. **Reinstatement After Default.** Notwithstanding Beneficiary's acceleration of sums secured by this Deed of Trust, Trustor shall have the right to have any proceedings begun by Beneficiary to enforce this Deed of Trust discontinued and to have this Homeowner Deed of Trust reinstated at any time before the day of the Trustee's Sale or before the filing of a foreclosure action. In order to have the Homeowner Deed of Trust reinstated after default, the Trustor must:

19.1 Pay to beneficiary the entire amount due under this Homeowner Deed of Trust and the Obligation Secured, other than such portion of the principal as would not be due had no default occurred;

19.2 Cure all defaults or any covenants or agreements of Trustor as contained in this Homeowner Deed of Trust;

19.3 Pay costs and expenses incurred by Beneficiary and Trustee in enforcing the terms of this Deed of Trust and pursuing remedies;

19.4 Pay reasonable attorneys' fees actually incurred by Beneficiary and Trustee, in an amount not to exceed $250 or one-half of one percent of the entire unpaid principal sum secured, whichever is greater;

19.5 Pay the recording fee for any cancellation of notice of sale;

19.6 Pay the Trustee's fees, in an amount not to exceed $250 or one-half of one percent of the entire unpaid principal sum secured, whichever is greater. Upon reinstatement, this Homeowner Deed of Trust and the obligation secured hereby shall remain in full force and effect as if no acceleration had occurred.

20. Assignment of Property Income.

20.1 As additional security, Trustor hereby gives Beneficiary the right, power and authority during the continuance of this Trust, to collect the Property Income, reserving to Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such Property Income as it becomes due and payable.

20.2 Upon any such default, Beneficiary may at any time, without notice, either in person, by agent or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Property or any part thereof; in its own name sue for or otherwise collect such Property Income, including that past due and unpaid; and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby; and in such order as Beneficiary may determine. The entering upon and taking possession of the Property, the collection of such Property Income and the application thereof, shall not cure or waive any default or notice of Trustee's Sale hereunder or invalidate any act done pursuant to such notice.

21. Acts of Trustee Affecting the Property. At any time, without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Obligation Secured for endorsement, Trustee may, without liability, release and reconvey all or any part of the Property; consent to the making and recording, or either; of any map or plat of all or any part of the Property; join in granting any easement thereon; join in or consent to any extension agreement or any agreement subordinating the lien, encumbrance or charge hereof. Any such action by Trustee may be taken without affecting the personal liability of any person for payment of the indebtedness secured hereby, without affecting the security hereof for the full amount secured hereby on all property remaining subject hereto, and without the necessity that any sum representing the value or any portion thereof the Property affected by Trustee's action be credited on the indebtedness.

22. Satisfaction of the Obligation. If Trustee receives full payment of the obligation secured in the amount secured, at the request of Trustor, Trustee shall acknowledge satisfaction of the Homeowner Deed of Trust by recording and delivering to Trustor a Satisfaction or Release of Realty Homeowner Deed of Trust pursuant to A.R.S. § 33-712.

23. Notices. Copies of all notices and communication concerning this Homeowner Deed of Trust shall be mailed to the parties at the addresses specified in this Homeowner Deed of Trust, and any change of address shall be communicated to the other party in writing. Any documents which may adversely affect the rights of any party to this Homeowner Deed of Trust shall be dispatched by Certified Mail, Return Receipt Requested.

24. Applicable Law. This Homeowner Deed of Trust shall be subject to and governed by the laws of the State of Arizona, in particular the provisions of A.R.S. Title 33, Chapter 6.1, regardless of the fact that one or more parties is now or may become a resident of a different state.

25. Waiver. Any waiver by either party of a breach of any provision of this Homeowner Deed of Trust shall not operate or be constructed as a waiver of any subsequent breach hereof.

26. Succession of Benefits. The provisions of this Homeowner Deed of Trust shall inure to the benefit of and be binding upon the parties hereto, their heirs, personal representatives, conservators and permitted assigns.

27. Successor Trustee. Beneficiary may appoint a Successor Trustee in the manner prescribed by law. A Successor Trustee herein shall, without conveyance from the predecessor Trustee, succeed to all predecessors' title, estate, rights, powers and duties. Trustee may resign by mailing or delivering notice thereof to Beneficiary and Trustor.

28. **Entire Agreement.** The terms of this Homeowner Deed of Trust constitutes the entire agreement among the parties, and the parties represent that there are no collateral or side agreements not otherwise provided for within the terms of this Homeowner Deed of Trust.

29. **Modification.** No modification of this Homeowner Deed of Trust shall be binding unless evidenced by an agreement in writing and signed by all parties.

30. **Partial Invalidity.** If any provision of this Homeowner Deed of Trust is held to be invalid or unenforceable, all the remaining provisions shall nevertheless continue in full force and effect.

31. **Sales Transaction.** In the event all or any part of the Property or any interest in it is sold, conveyed, or encumbered, all obligations secured by the Homeowner Deed of Trust shall become due and payable immediately upon notice to the Trustee by the Beneficiary.

32. **Warranty.** The Trustor indemnifies the Beneficiary and Trustee against any liability for the violation by the Trustor or its affiliates of any Federal or State Statute, law or regulation dealing with environment. The Trustor warrants that he will comply with those laws or regulations. The Trustor warrants the mortgaged Property does not contain any hazardous substance and indemnifies the Beneficiary and the Trustee as to any liability for hazardous waste disposal or cleanup. The warrant and indemnification shall survive any foreclosure of the Deed of Trust or the acceptance of a Deed in Lieu of Foreclosure. Trustor shall promptly notify the Beneficiary and the Trustee of any suspected or alleged environmental violations during the term of this loan.

(Signatures Appear on the Next Page)

Homeowner Signature: _____

Homeowner Print Name: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2016, by _____, the Trustor who signed the above document.

_____
Notary Public

My Commission Expires:

_____

Homeowner Signature: _____

Homeowner Print Name: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2016, by _____, the Trustor who signed the above document.

_____
Notary Public

My Commission Expires:

_____

Do not destroy this Deed of Trust OR the Note which it secures. Both must be delivered to the Trustee for cancellation before release and conveyance will be made.

EXHIBIT G

WHEN RECORDED, RETURN TO:

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

PROMISSORY NOTE

(Homeowner)

Loan Amount: $_____ Glendale, Arizona

Date: _____

FOR VALUE RECEIVED, the undersigned jointly and severally promise(s) to pay to the order of the City of Glendale, an Arizona municipal corporation (City), or its successors, the principal sum of _____ Dollars and 00/100 ($_____) payable as follows: City of Glendale.

This Homeowner Promissory Note ("Homeowner Note") is secured by a Homeowner Deed of Trust and Assignment of Rents ("Homeowner Deed of Trust") encumbering the Property identified in the Deed of Trust ("Property").

It is understood and agreed by the parties hereto that the undersigned shall occupy the Property as his/her primary residence and shall not assign or otherwise transfer any right, title or interest in or to the Property or this encumbrance for a period of five (5) years, six (6) months from the closing date for the Property.

So long as the undersigned is not in default of this Homeowner Note or the Homeowner Deed of Trust securing this Note, no interest shall be charged on the principal balance. In the event of such assignment of transfer without written consent, or in the event the Property is not occupied as the undersign's primary residence, the entire unpaid principal balance, accrued late penalties and all accrued interest shall, at the option of the City, become all due and payable. Default interest shall be computed on the principal of the Homeowner Note from the date of default until this Homeowner Note is paid in full and shall be computed at the highest rate of interest in effect under the laws of the State of Arizona, but not to exceed 10% per annum.

The undersigned and endorsers hereof waive presentment, demand, notice of dishonor and protest.

If suit be brought to recover on this Homeowner Note, the undersigned will pay such sum as the Court may fix as attorneys' fees.

Having reviewed, accepted, and approved this Note with all its terms and conditions; this Homeowner Note shall supersede any and all other agreements, and is hereby accepted in its final form.

(Signatures Appear on the Next Page)

Homeowner Signature: _____

Homeowner Print Name: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2016, by _____, who signed the above Note.

_____
Notary Public

My Commission Expires:

_____

Homeowner Signature: _____

Homeowner Print Name: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2016, by _____, who signed the above Note.

_____
Notary Public

My Commission Expires:

_____

EXHIBIT H

WHEN RECORDED, RETURN TO:

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

DEED OF TRUST AND ASSIGNMENT OF RENTS

(Developer)

DATE: _____

TRUSTOR: _____
(ADDRESS): _____
_____

BENEFICIARY: City of Glendale
(ADDRESS): 5850 West Glendale Avenue
Glendale, Arizona 85301

TRUSTEE: City of Glendale.
(ADDRESS): 5850 West Glendale Ave
Glendale, AZ 85301

SUBJECT REAL PROPERTY in Maricopa County, State of Arizona, described in the Legal Description attached as Exhibit A ("Property").

This Developer Deed of Trust and Assignment of Rents ("Developer Deed of Trust") is made between the Trustor, Trustee and Beneficiary above named.

WITNESSETH: That Trustor irrevocably grants and conveys to Trustee in Trust, with Power of Sale, the above described real property, together with: (1) all buildings, improvements and fixtures now or hereafter placed thereon; (2) all existing leases, and all future leases executed with respect to such property; (3) all rents, issues, profits and income thereof (all of which are hereinafter called "property income"); (4) all classes of property now, or at any time hereafter, attached to or used in any way in connection with the use, operation or occupancy of such property; (5) all property, rights, permits and privileges now or hereafter owned by Trustor or now or hereafter appurtenant to such property, which entitle Trustor or such property to receive water or electrical power for use thereon; all property granted, transferred and assigned to Trustee hereunder is hereafter referred to as the "Property," and Trustor warrants that it is well and truly seized of a good and marketable title in fee simple to the real property hereby conveyed; that the title to all property conveyed by this Developer Deed of Trust is clear, free and unencumbered, and Trustor will forever warrant and defend the same unto Beneficiary, its successors and assigns, against all claims whatsoever;

SUBJECT, HOWEVER, to the right, power, and authority hereinafter given to and conferred upon Beneficiary to collect and apply such Property Income;

AND SUBJECT TO, any easements and restrictions listed in a schedule of exceptions to coverage in any title insurance polity insuring Beneficiary's interest in the Property.

1. For the Purpose of Securing:

1.1 Performance of each agreement of Trustor herein contained.

1.2 Payment of the indebtedness evidenced by promissory note or notes of even date herewith, and any extension or renewal thereof, in the principal sum of _____ Dollars and 00/100 ($_____) executed by Trustor in favor of Beneficiary or order.

1.3 Payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or his successors or assigns, when evidenced by a promissory note or notes that are secured by this Deed of Trust.

2. To Protect the Security of this Deed of Trust, Trustor covenants and agrees:

2.1 To keep the Property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged, or destroyed thereon, and to pay when due all claims for labor performed and materials furnished therefore; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer, or permit any act upon said Property in violation of law; and to do all other acts which from the character or use of the Property may be reasonably necessary, the specific enumerations herein not excluding the general.

2.2 To keep all improvements now or hereafter erected on said property continuously insured against loss by fire or other hazards specified by Beneficiary in an amount not less than the total obligation secured hereby. All policies will be held by Beneficiary and be in such companies as Beneficiary may approve and have loss payable first to Beneficiary, as his interest may appear and then to Trustor. The amount collected under any insurance policy may be applied upon any indebtedness hereby secured and in such order as Beneficiary may determine or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release will not cure or waive any default hereunder nor cause discontinuance of any action that may have been or may thereafter be taken by Beneficiary or Trustee because of such default.

2.3 To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses of Beneficiary or Trustee, including cost of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear or be named, and in any suit brought by Beneficiary to enforce this Developer Deed of Trust.

2.4 To pay before delinquent, all taxes and assessments affecting said Property; when due, all encumbrances, charges and liens, on said Property or any part thereof, which appear to be prior or superior hereto; all costs, fees, and expenses of this Trust, including, without limiting the generality of the foregoing, the fees of Trustee for issuance of any Deed of Partial Release and Partial Reconveyance or Deed of Release and Full Reconveyance and all lawful charges, costs, and expenses in the event of reinstatement of, following default in, this Deed of Trust or the obligations secured hereby.

2.5 The should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: Make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said Property for such

purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge, or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel, and pay his reasonable attorneys' fees. All amounts so paid, together with interest thereon at the same rate as is provided for in the note secured by this Developer Deed of Trust or at the highest legal rate, whichever is greater, will be part of the debt secured by this Developer Deed of Trust and a lien on the above Property.

2.6 To pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to the provisions hereof, together with interest from date of expenditure at the same rate as is provided for in the note secured by this Developer Deed of Trust or at the highest legal rate, whichever is greater. Any amounts so paid by Beneficiary or Trustee will become part of the debt secured by this Developer Deed of Trust and a lien on the Property and immediately due and payable at option of Beneficiary or Trustee.

3. Recapture Provision:

3.1 The HOME Investment Partnerships Act at title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C. 12701 *et seq.* ("HOME Program"), requires that housing provided through homeowner assistance must be secured for the use of low-income households for a period of affordability. The period of affordability period is determined based on the amount of the HOME Program subsidy.

HOME Funds Provided	Affordability Period
< $15,000	5 Years
$15,000 - $40,000	10 Years
>$40,000	15 Years

3.2 Under the HOME Program regulations, the City can recapture of all or a portion of the Home Program funds if the housing does not continue to be the "Principle Residence" of the family for the duration of affordability.

3.3 Utilizing the recapture provisions of the HOME Program regulation, the fair return to the seller will calculate based on the net proceeds from the sale and the amount of the original HOME Program fund investment in the Property. The HOME Program subsidy will be recoverable any time the house is sold before the expiration of the affordability period. The method that will be used to calculate the fair return and the HOME Program subsidy to be recovered will be detailed in the Developer Deed of Trust and Developer Note for the Property. If the affordability period has been satisfied, the seller will be entitled to all net proceeds from the sale of the Property.

3.4 In the case of a foreclosure or foreclosure sale, the period of affordability will be terminated. Upon receipt of the notice that a foreclosure is pending the City will take positive steps to assert rights to a share of the proceeds from the foreclosure sale. The City will, to the extent feasible, recapture the original HOME Program investment. If the homeowner has failed to make payment to the first mortgage holder, the City will not be obligated to correct any deficient payment. The amount recaptured will be based on the amount of the net proceeds from the foreclosure sale. If no proceeds are generated, the HOME Program investment will not be recaptured. The method that will be used to calculate the amount of the recapture funds will be detailed in the Developer Deed of Trust and the Developer Note. If the affordability period has been satisfied, the City will have no rights to the net proceeds resulting from the foreclosure sale.

3.5 If the original homeowner ceases to occupy the Property as the principal place of residence, voluntary or involuntarily, or upon the death of the owner (or where ownership is joint upon the death of the sole survivor having remaining interest), the original HOME Program investment will become due and payable. The method that will be used to calculate the amount of the recaptured funds will be detailed in the Developer Deed of Trust and Developer Note. If the Property is occupied as the principal residence by a valid and authorized descendant of a deceased owner, and the descendant's income level qualifies, the descendant may receive HOME Program assistance in the same manner in which the deceased owner qualified, according to the most recent income limits. The City, at its discretion, can elect to allow the occupant to live on the Property for the remained of the affordability period. If the affordability period has been satisfied, the City will have no interest in the occupants of the Property.

3.6 If the homeowner is in default of the agreement, the City has the right to allow a non-profit partner to exercise a different but approved recapture/resale provision, if in the best interest of the HOME Program and the customer. Failure to take action may result in the City exercising its right to foreclose in order to satisfy the contract and comply with federal requirements.

3.7 If the Property owner does not occupy the home as their principal residence during the entire loan term, the balance will be due and payable or other arraignments can be made that meet HUD regulations that have been approved by the City.

4. It is Mutually Agreed:

4.1 That any award of damages in connection with any condemnation or any taking, or for injury to the Property by reason of public use, or for damages for private trespass or injury thereto, is assigned and will be paid to Beneficiary as further security for all obligations secured hereby (reserving unto Trustor, however, the right to sue therefore and the ownership thereof, subject to this Developer Deed of Trust), and upon receipt of such moneys Beneficiary may hold the same as such further security, or apply or release the same in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

4.2 That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay. Without affecting the obligation of Trustor to pay and perform as herein required; without affecting the personal liability of any person for payment of the indebtedness secured hereby; and without affecting the lien or priority of lien hereof on the Property, Beneficiary may, at its option, extend the time for payment of said indebtedness, or any part thereof, reduce the payment thereon, release any person liable on any of said indebtedness, accept a renewal note therefore, modify the terms of said indebtedness, take or release other or additional security, or join in any extension or subordination agreement. Any such action by Beneficiary or the Trustee at Beneficiary's direction may be taken without the consent of any junior lienholder, and will not affect the priority of this Developer Deed of Trust over any junior lien. Time is of the essence for this Deed of Trust.

4.3 That at any time or from time to time, and without notice, upon written request of Beneficiary and presentation of this Developer Deed of Trust and said note(s) for endorsement, and without liability therefore, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, and without affecting the security hereof for the full amount secured hereby on all Property remaining subject hereto,

and without the necessity that any sum representing the value or any portion thereof of the Property affected by the Trustee's action be credited on the indebtedness, the Trustee may: (a) release and reconvey all or any part of said Property; (b) consent to the making and recording, or either, of any map or plat of the Property or any part thereof; (c) join in granting any easement thereon; (d) join in or consent to any extension agreement of any agreement subordinating the lien, encumbrance or charge hereof. Any Trustor signing this Trust as a surety or accommodation party or that has subjected the Property to this Trust to secure the debt of another, expressly waives the benefits of A.R.S. § 12-1641.

4.4 That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Developer Deed of Trust and said note(s) to Trustee for cancellation and retention, and upon payment of its fees, Trustee will release and reconvey, without covenant or warranty, express or implied, the property then held hereunder, the recitals in such reconveyance, of any matters or facts, will be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

4.5 That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power, and authority, during the continuance of this Trust, to collect the property income, reserving to Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such property income as it becomes due and payable. Upon any such default Beneficiary may at any time, without notice either by person, by agent, or by receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of the Trustor, enter upon and take possession of said Property or any part thereof, in his own name sue for or otherwise collect such Property income, including that past due and unpaid and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees of Beneficiary and Trustee, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said Property, the collection of such Property Income, and the application thereof as aforesaid, will not cure or waive any default or notice of Trustee's sale hereunder or invalidate any act done pursuant to such notice. Beneficiary will expressly have all rights provided for in A.R.S. §§ 33-702(B) and 33-807.

4.6 That upon default by Trustor in the payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written notice thereof, setting forth the nature thereof, and of election to cause to be sold the Property under this Developer Deed of Trust. Beneficiary also will deposit with Trustee this Developer Deed of Trust, said note(s), and all documents evidencing expenditures secured hereby.

4.7 Trustee will record and give notice of Trustee's sale in the manner required by law, and after the lapse of such time as may then be required by law, Trustee will sell, in the manner required by law, said property at public auction at the time and place fixed by it in said notice of Trustee's sale to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee at its discretion may postpone or continue the sale from time to time by giving notice of postponement or continuance by public declaration at the time and place last appointed for the sale. Trustee will deliver to such purchaser its Developer Deed of Trust conveying the property so sold, but without any covenant or warranty, expressed or implied. Any persons, including Trustor, Trustee or Beneficiary, may purchase at such sale. The purchaser at the Trustee's sale will be entitled to immediate possession of the Property as against the Trustee or other persons in possession and will have a right to the summary proceedings to obtain possession provided in Title 12, Chapter 8, Article 4, Arizona Revised Statues, together with costs and reasonable attorneys' fees.

4.8 After deducting all costs, fees, and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale and reasonable attorney's fees of Beneficiary and Trustee, Trustee will apply the proceeds of sale to payment of: all sums then secured hereby and all other sums due under the terms hereof, with accrued interest; and the remainder, if any, to the person or persons legally entitled thereto, or as provided in A.R.S. § 33-812. To the extent permitted by law, an action may be maintained by Beneficiary to recover a deficiency judgment for any balance due hereunder. In lieu of sale pursuant to the power of sale conferred hereby, this Developer Deed of Trust may be foreclosed in the same manner provided by law for the foreclosure of mortgages on real property. Beneficiary will also have all other rights and remedies available to it hereunder and at law or in equity. All rights and remedies will be cumulative.

4.9 That Beneficiary may appoint a successor Trustee in the manner prescribed by law. Trustor and Beneficiary authorize Trustee, in the event any demand or notice is made or tendered to it concerning this Developer Deed of Trust or the Property, to hold any money and documents and to withhold action or performance until an action will be brought in a court of competent jurisdiction to determine the rights asserted or the property of the demand, notice or action requested and Trustee will be without liability or responsibility for awaiting such court action. A Successor Trustee herein will without conveyance from the predecessor Trustee, succeed to all the predecessor's title, estate, rights, powers, and duties. Trustee may resign at any time by mailing or delivering notice thereof to Beneficiary and Trustor and having so resigned will be relieved of all liability and responsibility to Trustor, Beneficiary or otherwise hereunder. "Trustee" herein will include all successor trustees. Trustee will not be liable for any action taken in its discretion and in good faith, or upon advice of counsel, or upon any information supplied or direction given by Beneficiary. Unless Trustee is adjudged grossly negligent or guilty of intentional wrongdoing or breach of contract, Trustor and Beneficiary will, upon demand, indemnify and hold harmless Trustee against all costs, damages, attorneys' fees, expenses and liabilities which it may incur or sustain in connection with this Developer Deed of Trust or any foreclosure or sale hereof or any court or other action or proceeding arising here from.

4.10 That this Developer Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term "Beneficiary" will mean the owner and holder of the note(s) secured hereby, whether or not named as Beneficiary herein. In this Developer Deed of Trust, whenever the contest so required, the masculine gender includes the feminine and neuter, and the singular number includes the plural.

4.11 That Trustee accepts this Trust when this Developer Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee may but is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee will be a party, unless brought by Trustee.

The undersigned Trustor requests that a copy of any notice of Trustee's sale hereunder be mailed to him at his address set forth above.

(Signatures Appear on Next Page)

CITY OF GLENDALE, an Arizona
municipal corporation

_____
Kevin R. Phelps
City Manager

ATTEST:

_____
Pam Hanna
City Clerk (SEAL)

APPROVED AS TO FORM:

_____
Michael D. Bailey
City Attorney

_____,
an Arizona non-profit corporation

By: _____
Its: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2016, by _____, the Developer who signed the above document.

_____
Notary Public

My Commission Expires:

_____

Do not destroy this Deed of Trust OR the Note which it secures.

Both must be delivered to the Trustee for cancellation before release and conveyance will be made

EXHIBIT I

WHEN RECORDED, RETURN TO:
City of Glendale
City Clerk
5850 West Glendale Avenue
Glendale, Arizona 85301

PROMISSORY NOTE

(Developer)

Loan Amount: $_____ Glendale, Arizona

Date: _____

FOR VALUE RECEIVED, the undersigned jointly and severally promise(s) to pay to the order of the City of Glendale, an Arizona municipal corporation (City), or its successors, the principal sum of _____ Dollars and 00/100 ($_____). This Developer Promissory Note ("Developer Note") is made on a 40-year Deferred Payment, non-interest bearing basis on and is secured by a Developer Deed of Trust and Assignment of Rents ("Developer Deed of Trust") encumbering the property identified in the Developer Deed of Trust ("Property").

This Note shall become due and payable upon any transfer, voluntary, involuntary, or by operation of law, of the Property within ten years from the date of this Note, or at any time within ten years from the date of this Note undersigned ceases to occupy or use the Property to provide services to assist low-income persons and families in obtaining decent and affordable homeownership opportunities.

This Note is secured by a Developer Deed of Trust executed by the undersigned naming the City as Beneficiary; which Deed of Trust and this Note are security for the obligations of the undersigned contained in the Development Agreement for Infill Housing Development Under the Home Investment Partnership Program ("Agreement") executed by the parties on _____.

The amount due at such time shall be the amount of the current fair market value of the Property less any portion attributable to the improvements made to the Property as authorized by the HOME Investment Partnerships Act at title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C. 12701, *et seq.* ("HOME Program"). The current fair market value of the Property shall be established by independent appraisal. The portions of fair market value attributable to HOME Program funds will be established at completion of the rehabilitation improvements through a subsequent appraisal. Appraisals completed to determine such values shall be at the sole cost and expense of the City.

If at the end of the term of this Developer Note, the undersigned has continuously provided the services and complied with the provisions of the Agreement, the City shall consider the obligations of this Note to have been met and shall consider its security interest in the Property to be released to the undersigned.

Should default be made in the payment of any amount when due, or should the undersigned default on any obligation owed to the City under the terms of this Developer Note or the Developer Deed of Trust providing security, therefore, the whole sum of principal shall become immediately due and payable at the option of the City.

If suit or action is instituted by City to recover on this Developer Note, the undersigned will pay reasonable attorneys' fees and costs in addition to the amount due on the Developer Note.

Diligence, demand, protest and notice of demand and protest are hereby waived and the undersigned hereby waives, to the extent which otherwise would apply to the debt evidenced by this Developer Note. Consent is hereby given to the extension of time of payment of this Developer Note, without notice.

The undersigned reserves the right to repay at any time all of the principal amount of this Developer Note in a single payment without the penalties, discount or premiums.

IN WITNESS WHEREOF, this Developer Note and Developer Deed of Trust securing the Developer Note, have been duly executed by the undersigned, as of the date above written.

CITY OF GLENDALE, an Arizona
municipal corporation

_____
Kevin R. Phelps
City Manager

ATTEST:

_____
Pam Hanna,
City Clerk (SEAL)

APPROVED AS TO FORM:

_____
Michael D. Bailey
City Attorney

_____,
an Arizona non-profit corporation

By: _____
Its: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2016, by _____, the Developer who signed the above document.

_____
Notary Public

My Commission Expires:

EXHIBIT J

CERTIFICATIONS

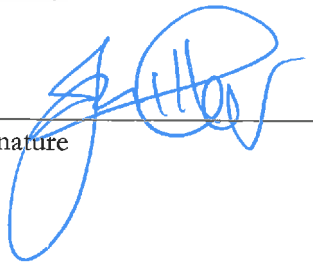
See attached Certifications:

1. Policy of Nondiscrimination on the Basis of Disability.
2. Section 319 of Public Law 101-121.
3. Contracting with Small and Minority Firms, Women's Business Enterprises and Labor Surplus Area Firms.
4. Drug-Free Workplace.

###

POLICY OF NONDISCRIMINATION ON THE BASIS OF DISABILITY

The undersigned representative agrees, on behalf of Client, to have or adopt a Policy of Nondiscrimination on the Basis of Disability. Such Policy will state that the Developer does not discriminate on the basis of disabled status in the admission or access to, or treatment or employment in, its federally assisted programs or activities.



Signature

6-17-16

Date

SECTION 319 OF PUBLIC LAW 101-121

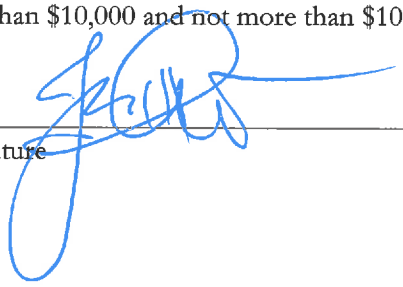
The Undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the awarding of any Federal contract, the making of any federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned will require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements), and that all agencies will certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification will be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.



Signature

6-17-16

Date

CONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISES AND LABOR SURPLUS AREA FIRMS

1. It is a national policy to award a fair share of contracts to small and minority business firms. Accordingly, affirmative steps must be taken to assure that small and minority businesses are utilized when possible as sources of supplies, equipment, construction, and services. Affirmative steps will include the following:

   1.1 Qualified small and minority businesses on solicitation lists.

   1.2 Assuring that small and minority businesses are solicited whenever they are potential sources, and to the greatest extent possible that these businesses are located within the metropolitan area.

   1.3 When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation.

   1.4 Where the requirement permits, establish delivery schedules which will encourage participation by small minority businesses.

   1.5 Using the services and assistance of the Small Business Administration, and the Office of Minority Business Enterprises of the Department of Commerce and the Community Services Administration as required.

   1.6 If any subcontracts are to be let, requiring the prime contractor to take the affirmative steps in §§ 1.1 through 1.5. Grantees will take similar appropriate action in support of women's enterprises.

   1.7 To the greatest extent feasible, opportunities for training and employment will be given to low and moderate income persons residing within the metropolitan area.

2. The above-described equal opportunity requirements are obligations of the City because federal funds are being utilized to finance the Project to which this Project pertains.

3. In executing any contract, the Developer agrees to comply with the requirements and to provide appropriate documentation at the request of the City.

Signature _____ Date 6-17-16

DRUG-FREE WORKPLACE

The Developer certifies that it will maintain a drug-free workplace in accordance with the requirements of 24 C.F.R. Part 24, Subpart F by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Developer's workplace and specifying the actions that will be taken against employees for violation of such prohibition.

2. Establishing an ongoing drug-free awareness program to inform employees about:

   2.1 The dangers of drug abuse in the workplace;

   2.2 The Developer's policy of maintaining a drug-free workplace;

   2.3 Any available drug counseling, rehabilitation and employee assistance programs; and

   2.4 The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

3. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph 1.

4. Notifying the employee in the statement required by paragraph 1 that, as a condition of employment under the grant, the employee will:

   4.1 Abide by the terms of the statement; and

   4.2 Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.

5. Notifying the City in writing, within ten calendar days after receiving notice under paragraph 4.2 from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice will include the identification number(s) of each affected grant.

6. Taking one of the following actions, within 30 calendar days of receiving notice under paragraph 4.2, with respect to any employee who is so convicted:

   6.1 Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

   6.2 Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, local health requirements, law enforcement, or other appropriate agency.

7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of the above-described paragraphs.

Signature

6-17-16
Date

EXHIBIT K

FEDERAL LAWS AND REGULATIONS

###

FEDERAL LAWS AND REGULATIONS

1. **Applicability of Uniform Administrative Requirements.** The parties should comply with all administrative requirements, cost principles, and audit requirements as provided in 2 CFR Part 200 in compliance with the Final Guidance issued by U.S. Department of Housing and Urban Development on Feb. 26, 2015 (Notice: SD-2015-01) (see attached).

2. **Equal Opportunity.**

   2.1 The Agency agrees to comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and the HUD regulations under 24 CFR Part 1, which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance by way of grant, loan, or contract and will immediately take any measures necessary to effectuate this Contract. If any real property or structure thereof is provided or improved with the aid of Federal financial assistance extended to the Agency, this assurance will obligate the Agency, or in the case of any transfer of such property or structure is used for a purpose of which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

   2.2 The Agency agrees to comply with Title VIII of the Civil Rights Act of 1968 (P.L. 90-284), as amended by the Fair Housing Amendments Act of 1988 (P.L. 100-430), and will administer all programs and activities relating to housing and community development in a manner to affirmatively further fair housing within Constitutional limitations throughout the United States.

   2.3 The Agency agrees to comply with Section 109 of the Housing and Community Development Act of 1974 and 1977, as amended, and in conformance with all requirements imposed pursuant to the regulations of the Department of HUD (24 CFR Part 570.602) issued pursuant to that Section; and in accordance with Equal Opportunity obligations of that Section, no person in the United States will, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, any program or activity funded in whole or in part with the Community Development funds. Section 109 of the Act further provides that any prohibition against discrimination on the basis of age, under the Age Discrimination Act of 1975 (24 CFR Part 146), or with respect to an otherwise qualified handicapped person, as provided in Section 504 of the Rehabilitation Act of 1973 (24 CFR Part 8), will also apply to any program or activity funded in whole or in part with funds made available pursuant to the Act.

   2.4 The Agency agrees to comply with Executive Order 11063 on equal opportunity in housing and related facilities owned or operated by the Federal Government or provided with Federal financial assistance.

   2.5 The Agency agrees to comply with Executive Order 11246, as amended, requiring nondiscrimination and affirmative action to ensure nondiscrimination in employment by government contractors and subcontractors and under federally assisted construction contractors.

   2.6 The Agency agrees to comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), as amended, the HUD regulations issued pursuant thereto (24 CFR Part 135) as follows:

a. The work to be performed under this Contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u); Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns that are located in or owned in substantial part by persons residing in the area of the project.

b. The parties to this Contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued there under prior to the execution of this Contract. The parties to this Contract certify and agree that they are under no contractual or other disability that would prevent them from complying with these requirements.

c. The contractor will send to each labor organization or representative or workers, with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advertising the said labor organization or workers' representative of his commitments under this Section 3 clause and will post copies of the notice in conspicuous places available to employees and applicants for employment or training.

d. The contractor will include this Section 3 clause to every subcontract for work in connection with the project and will, at the direction of the applicant or Community of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

e. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued there under prior to the execution of this Contract, will be a condition of the Federal financial assistance provided to the project.

3. **Subcontracting.** All work or services covered by this Contract, which is subcontracted by the Agency, will be specified by written contract and subject to all provisions of this Contract. All subcontracts must be approved by the City prior to execution.

4. **Interest of Certain Federal Officials.** No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Contract or to any benefit to arise from the same.

5. **Interest of Members, Officers or Employees of the Agency, Members of Local Governing Body, or Other Public Officials.** No member, officer, or employee of the Agency or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for 1 year thereafter, will have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this Contract.

6. **Hatch Act.** The Agency agrees to comply with all provisions of the Hatch Act and that no part of the program will involve political activities, nor will personnel employed in the administration of the program be engaged in activities in contravention of Title V, Chapter 15, of the United States Code.

7. **Labor Standards Provisions.** The Agency agrees to comply with 24 CFR § 570.603, "Labor Standards" published by HUD for Community Development Block Grants.

8. **Compliance with Environmental Requirements.** The Agency agrees to comply with any conditions resulting from the City's compliance with the provisions of the National Environmental Policy Act of 1969 and the other provisions of law specified at 24 CFR § 58.5 insofar as the provisions of such Act apply to activities set forth in the Statement of Work.

9. **Compliance with Flood Disaster Protection Act.**

   9.1 This Contract is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234). No portion of the assistance provided under this Contract is approved for acquisition or construction purposes as defined under Section 3(a) of said Act, for use in any area identified by the Secretary as having special flood hazards, which is located in a community not then in compliance with the requirements for participation in the national flood insurance program pursuant to Section 201(d) of said Act; and the use of any assistance provided under this Contract for such acquisition or construction in such identified areas in communities then participating in the national flood insurance program will be subject to the mandatory purchase of flood insurance requirements of Section 102(a) of said Act.

   9.2 Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared, or improved with assistance provided under this Contract shall contain, if such land is located in an area identified by the Secretary as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq., provisions obligating the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance required with respect to financial assistance for acquisition or construction purposes under Section 102(2) of Flood Disaster Protection Act of 1973. Such provisions will be required notwithstanding the fact that the construction of such land is not itself funded with assistance under this Contract.

10. **Compliance with Environmental Laws.**

   10.1 This Contract is subject to the requirements of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.; and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended from time to time.

   10.2 In compliance with said regulations, the City will cause or require to be inserted in full in all contracts and subcontracts with respect to any nonexempt transaction thereunder funded with assistance provided under this Contract, the following requirements:

      a. A stipulation by the contractor or subcontractor that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the list of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR § 15.20.

      b. Agreement by the contractor to comply with all the requirements of Section 114 of the Clear Air Act, as amended (42 U.S.C. 1857c-8), and Section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements

specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.

c. A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the director, Office of Federal Activities EPA, indicating that a facility utilized or to be utilized for the contract is under consideration to be listed on the EPA list of Violating Facilities.

d. Agreement by the contractor that he will include or cause to be included the criteria and requirements in paragraphs (a) through (d) of this section in every nonexempt subcontract and requiring the contractor to take such action as the Government may direct as means of enforcing such provisions.

e. In no event will any amount of the assistance provided under this Contract be utilized with respect to a facility that has given rise to a conviction under Section 113(c)(1) of the Clean Air Act or Section 309(c) of the Federal Water Pollution Control Act.

10.3 The Resource Conservation and Recovery Act. Agency will comply with the Resource Conservation and Recovery Act (**"RCRA"**), including, but not limited to, 42 U.S.C. § 6962, which requires preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (**"EPA"**) (40 C.F.R. parts 247 through 254).

10.4 The Toxic Substances Control Act. The Agency will comply with the Toxic Substances Control Act (**"TSCA"**), 15 U.S.C. § 2601 et seq.

10.5 The Federal Insecticide, Fungicide and Rodenticide Act. The Agency will comply with the Federal Insecticide, Fungicide and Rodenticide Act (**"FIFRA"**), 7 U.S.C. § 136 et seq.

10.6 Agency will comply with all other applicable federal and state environmental laws and regulations.

11. **Historic Preservation.** This Contract is subject to the requirements of P.L. 89-665, the Archaeological and Historic Preservation Act of 1974 (P.L. 93-291), Executive Order 11593, and the procedures prescribed by the Advisory Council on Historic Preservation in 36 CFR Part 800. The City must take into account the effect of a project on any district, site, building, structure, or object listed in or found by the Secretary of the Interior, pursuant to 35 CFR Part 800, to be eligible for inclusion in the National Register of Historic Places, maintained by the National Park Service of the U. S. Department of the Interior, and must make every effort to eliminate or minimize any adverse effect on a historic property.

12. **Historic Barriers.** This Contract is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151) and its regulations. Every building or facility (other than a privately owned residential structure) designed, constructed, or altered with CDBG funds must comply with requirements of the "American Standards Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped."

13. **Lead-Based Paint.** This Contract is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 et seq.), and Lead-Based Paint Regulations (24 CFR Part 35 and 24 CFR § 570.608 and/or 92.335), and related amendments thereto. The use of lead-based paint is prohibited whenever federal funds are used directly or indirectly for the construction, rehabilitation, or modernization of residential structures. All federally assisted residential structures and related property constructed prior to 1978, Homebuyer Programs, Tenant-Based Rental Assistance, and Special-Needs Housing (acquisition), will comply with existing and new Lead-Based Paint Hazard Reduction Requirements,

effective September 15, 2000. As the Grantor or Participating Jurisdiction, the City of Glendale shall be consulted regarding the Agency/Grantee's compliance status.

14. **Property Disposition.** Real or personal property purchased in whole or in part with CDBG funds shall not be disposed through sale, use, or location without the written permission of the City. The proceeds from the disposition of real property will be considered Program Income and subject to 24 CFR § 570.504(c).

15. **Lobbying.** Block Grant funds shall not be used for publicity or propaganda purposes designed to support or defeat legislation proposed by federal, state, or local governments.

16. **Acquisition/Relocation.** This Contract is subject to providing a certification that it will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, implementing regulations at 49 CFR Part 24, and 24 CFR Part 511.14, which govern the acquisition of real property for the project and provision of relocation assistance to persons displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

17. **Section 504.** The Agency agrees to comply with any federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against the handicapped in any federally assisted program.

18. **Federal Fire Prevention and Control Act of 1992.** The Fire Administration Authorization Act of 1992 added a new Section 31 to the Federal Fire Prevention and Control Act of 1974. This Section requires that approved smoke detectors be installed in all houses assisted under the Community Development Block Grant Program. To comply with this requirement and locally adopted codes Agency shall install smoke detectors in all sleeping areas and any hallway connecting these sleeping areas.

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U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF THE DEPUTY SECRETARY
WASHINGTON, DC 20410-0050

Special Attention of:

NOTICE: SD-2015-01
Issued:
FEB 26 2015

HUD Regional Directors
HUD Field Office Directors
HUD Offices of Community Planning and Development (CPD),
Fair Housing and Equal Opportunity (FHEO),
Housing,
Native American Programs (ONAP),
Lead Hazard Control and Healthy Homes (OLHCHH),
Public and Indian Housing (PIH),
Policy Development and Research (PD&R)
HUD Grant Administrators, Grant Officers, Government Technical Monitors (GTMs), and Government Technical Representatives (GTRs) and Recipients of HUD Federal Financial Assistance

This notice remains effective until amended, superseded or rescinded

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SUBJECT: Transition to 2 CFR Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Final Guidance*

TABLE OF CONTENTS

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1. BACKGROUND

On December 26, 2013, the Office of Management and Budget (OMB) published (at 78 Federal Register 78590; https://federalregister.gov/a/2013-30465) final guidance on the above subject, which is codified at 2 CFR part 200. OMB and the Federal awardmaking agencies published a joint interim final rule implementing the final guidance as requirements for recipients of Federal financial assistance on December 19, 2014 (at 79 Federal Register 75871; https://www.federalregister.gov/articles/2014/12/19/2014-28697/federal-awarding-agency-regulatory-implementation-of-office-of-management-and-budgets-uniform). OMB also made technical corrections to part 200.

The purpose of 2 CFR part 200 is to streamline the Federal government's guidance on administrative requirements, cost principles, and audit requirements to more effectively focus Federal resources on improving performance and outcomes, while ensuring the financial integrity of taxpayer dollars in partnership with non-Federal stakeholders. The uniform guidance supersedes, consolidates, and streamlines requirements from eight OMB Circulars:

- A-21, *Cost Principles for Educational Institutions*,
- A-87, *Cost Principles for State, Local and Indian Tribal Governments*,
- A-89, *Catalog of Federal Domestic Assistance*,
- A-102, *Grants and Cooperative Agreements With State and Local Governments*,
- A-110, *Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations*,
- A-122, *Cost Principles for Non-Profit Organizations*,
- A-133, *Audits of States, Local Governments, and Non-Profit Organizations*, and
- The guidance in OMB Circular A-50, *Audit Followup*, on Single Audit Act follow-up.

HUD adopted this guidance at a new part, 2 CFR part 2400. The uniform guidance also removed: 2 CFR parts 215, 220, 225, and 230. HUD amended 24 CFR parts 84 and 85, which had codified OMB Circulars superseded by 2 CFR part 200, by removing all substantive provisions and including a saving provision that provides that Federal awards made prior to December 26, 2014, will continue to be governed by parts 84 or 85 as codified in the 2013 edition of the Code of Federal Regulations (CFR) or as provided under the terms of the Federal award.

3. PURPOSE

The purpose of this Notice is to identify and explain significant changes made in 2 CFR part 200, and provide transition guidance and links to additional resource materials for HUD and its grant program stakeholders and other recipients of Federal financial assistance from HUD. This Notice is broken out by the six subparts in 2 CFR part 200:

- Subpart A – *Acronyms and Definitions*;
- Subpart B – *General Provisions*;
- Subpart C – *Pre-Federal Award Requirements and Contents of Federal Awards*;
- Subpart D – *Post-Federal Award Requirements*;
- Subpart E – *Cost Principles*; and
- Subpart F – *Audit Requirements*.

Appendix A of this Notice provides the table of contents for 2 CFR part 200. HUD highly recommends that recipients familiarize themselves with 2 CFR part 200 in its entirety. This Notice is intended to highlight major changes and topical areas that may apply across all HUD programs or be of general interest.

4. SUBPART A – ACRONYMS AND DEFINITIONS: HIGHLIGHTS

Subpart A of 2 CFR part 200 lists definitions and acronyms for key terms found throughout the uniform guidance. Each definition is in its own section so that the reader can look at the table of contents to see defined terms. Since the uniform guidance originated in eight different Circulars, there are numerous conforming changes made to provide consistency for the terms used. In particular, part 200 uses "non-Federal entity" and "pass-through entity." "Non-Federal entity" means a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient. "Pass-through entity" means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

Policy decisions are reflected in some definitions, including: §200.18, *Cognizant agency for audit*, §200.23, *Contractor*, §200.33, *Equipment*, §200.73, *Oversight agency for audit*, and §200.94, *Supplies*. Section 13.b of this Notice provides a link to a crosswalk developed by OMB from the existing OMB Circulars to the final uniform guidance in 2 CFR part 200.

Definition of Indian Tribe: The definition of Indian tribe in §200.54 differs from the definition in the Native American Housing Assistance and Self-Determination Act (NAHASDA) (25 U.S.C. 4013, et seq.). The definition of Indian tribe in §200.54 has no effect on programs with statutory definitions of "Indian tribe."

5. SUBPART B – GENERAL PROVISIONS: HIGHLIGHTS

Subpart B covers general provisions, including the basic purpose of 2 CFR part 200 and its applicability to different types of Federal awards to non-Federal entities, and states that

Major Reforms and Policy Changes

The policy reforms brought about by OMB's consideration of public comments and efforts to streamline federal grant-making processes are identified as the following:

- Eliminate duplicative/conflicting guidance;
- Focus on performance over compliance for accountability;
- Encourage efficient use of information technology (IT)/shared services;
- Provide for consistent treatment of costs;
- Limit allowable costs for the best use of Federal resources;
- Incorporate standard business processes using data definitions;
- Strengthen oversight; and
- Target audit requirements on risk of waste, fraud, and abuse.

In addition to the consolidation of the OMB Circulars, major audit changes include the following:

- The Single Audit threshold is raised from $500,000 to $750,000, which eliminates the need for more than 5,000 audits, with a cost savings estimated at $250 million;
- The questioned cost limit in Single Audits is raised from $10,000 to $25,000;
- Assessment of government-wide audit quality is to be conducted every six years (beginning in 2018).

The uniform guidance, which provides a government-wide framework for grants management, is designed to reduce administrative burden for non-Federal entities receiving Federal awards.

2. EFFECTIVE DATE AND APPLICABILITY TO HUD

The uniform guidance was applicable for Federal agencies, including HUD, effective December 26, 2013. Federal agencies, including HUD, adopted 2 CFR part 200 as requirements for Federal financial assistance programs by the interim final rule published December 19, 2014. It was made applicable to non-Federal entities (recipients of Federal financial assistance) effective December 26, 2014, with one exception: §200.110(a) was revised to give a one-year grace period for implementation of the procurement standards. As will be detailed in the 2015 OMB Compliance Supplement, non-Federal entities choosing to delay implementation for the procurement standards will need to specify in their documented policies and procedures that they continue to comply with OMB Circulars A-87 or A–110 for one additional fiscal year which begins after December 26, 2014. For example, the first full fiscal year for a non-Federal entity with a June 30th year would be the year ending June 30, 2016. See also the General Transition Rules section of this Notice.

Federal agencies, including HUD, may apply subparts A-E to for-profit entities. Exceptions to the applicability of the rule are listed in 2 CFR 200.101(d) and (e) and 2 CFR 200.102. This subpart makes clear that part 200 does not supersede any existing or future authority under law or by executive order or the Federal Acquisition Regulation (FAR). As an example, for public housing, the disposition statute at Section 18 of the U.S. Housing Act of 1937 (42 U.S.C. 1437p) supersedes the disposition instructions in §200.311(c). Subpart B also covers Authorities, Effect on other issuances, Agency implementation, OMB responsibilities, Inquiries, Effective date, English language, Conflict of interest, and Mandatory disclosures. Highlights are discussed below.

Applicability: Section 200.101 includes a table that summarizes how the guidance applies to types of Federal awards. This table must be read along with the other provisions of section 200.101:

The following portions of Part 200:	Are applicable to the following types of Federal Awards (except as noted in paragraphs (d) and (e) of section 200.101):	Are NOT applicable to the following types of Federal Awards:
Subpart A—Acronyms and Definitions.	—All.	
Subpart B—General Provisions, except for §§200.111 English Language, 200.112 Conflict of Interest, 200.113.Mandatory disclosures	—All.	
§§ 200.111 English Language, 200.112 Conflict of Interest, and 200.113. Mandatory Disclosures	—Grant agreements and cooperative agreements.	—Agreements for: loans, loan guarantees, interest subsidies, and insurance. —Cost-reimbursement contracts awarded under the Federal Acquisition Regulation and cost-reimbursement subcontracts under these contracts. —Fixed-price contracts and subcontracts awarded under the Federal Acquisition Regulation whenever cost analysis is performed or the contract requires the determination or negotiation of costs.
Subparts C–D, except for Subrecipient Monitoring and Management.	—Grant agreements and cooperative agreements	—Agreements for: loans, loan guarantees, interest subsidies, and insurance. —Cost-reimbursement contracts awarded under the Federal Acquisition Regulation and cost-reimbursement subcontracts under these contracts. —Fixed-price contracts and subcontracts awarded under the Federal Acquisition Regulation whenever cost analysis is performed or the contract requires the determination or negotiation of costs.
Subpart D—Post Federal Award Requirements, Subrecipient Monitoring and Management.	—All.	
Subpart E—Cost Principles.	—Grant agreements and cooperative agreements, except those providing food commodities. —Cost-reimbursement contracts awarded under the Federal Acquisition Regulation and cost-reimbursement subcontracts under these contracts in accordance with the FAR. —Fixed price contracts and subcontracts awarded under the Federal Acquisition Regulation whenever cost analysis is performed or the contract requires the determination or negotiation of costs.	—Grant agreements and cooperative agreements providing food commodities. —Fixed amount awards. —Agreements for: loans, loan guarantees, interest subsidies, insurance. —Federal awards to hospitals (see Appendix IX to Part 200—Hospital Cost Principles).
Subpart F—Audit Requirements.	—All.	

Exceptions:

- Section 200.102(a) allows OMB to make exceptions to 2 CFR part 200 for certain classes of Federal awards or for certain non-Federal entities, but only in unusual circumstances and if such exceptions are not prohibited by law. Where the provisions of Federal statutes or regulations differ from the provisions of part 200, the provisions of the Federal statutes or regulations take precedence.
- Section 200.102(b) allows HUD to make certain exceptions on a case-by-case basis except where otherwise required by law or where OMB or other approval is expressly required by 2 CFR part 200. Under §200.102(c), HUD may apply more restrictive requirements to a class of Federal awards or non-Federal entities when approved by OMB or required by Federal statutes or regulations. HUD may also apply less restrictive requirements when making fixed amount awards as defined in Subpart A, §200.45.
- Exemptions from Subpart F, Audit Requirements, are not permitted under any circumstances.

English Language: Section 200.111 makes clear that all HUD financial assistance announcements, HUD award information (e.g., Notices of Funding Availability), and applications must be in the English language. Non-Federal entities may translate the Federal award and other documents into another language, however, in the event of any inconsistency, the English language meaning would control. Where a significant portion of the non-Federal entity's employees working on the award are not fluent in English, the non-Federal entity must provide the HUD award in English and the language(s) with which the employees are more familiar.

Conflict of Interest: Section 200.112 requires HUD to establish conflict of interest policies for Federal awards and requires non-Federal entities to disclose in writing any potential conflict of interest to HUD or the pass-through entity in accordance with HUD's policy. The general procurement standards in §200.318 require non-Federal entities to maintain written standards of conduct covering conflicts of interest, including organizational conflicts of interest. "Organizational conflicts of interest" means that, because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

6. SUBPART C – PRE-FEDERAL AWARD REQUIREMENTS AND CONTENTS OF FEDERAL AWARDS: HIGHLIGHTS

Subpart C prescribes the instructions and other pre-award information to be used in the funding announcement and application process.

Selecting the Instrument for Award: Section 200.201 requires the Federal awarding agency or pass-through entity to decide on the appropriate instrument for the Federal award (i.e., grant agreement, cooperative agreement, or Federal contract under the Federal Acquisition Regulation) in accordance with the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301-08). The program statute or pass-through entity may have another name for

the document (e.g., annual contributions contract), but the choice is limited to these three instruments, in accordance with the Federal Grant and Cooperative Agreement Act.

Fixed Amount Awards: Section 200.201(b) allows for "fixed amount" awards under which the amount is negotiated using the cost principles (or other pricing information) as a guide. Fixed amount awards generally may be used if the project scope is specific and if adequate cost, historical, or unit pricing data are available to establish a fixed amount award based on a reasonable estimate of actual cost. Accountability is based on performance. There is no governmental review of the actual costs incurred by the non-Federal entity in performance of the award. Payments may be based on milestones, on a unit price basis, or in a single payment upon completion of the Federal award. The non-Federal entity is required to provide a certification regarding completion. Periodic reports may be required.

Funding Announcements and Award Agreements: Sections 200.202, 200.203, 200.210, and Appendix I require funding opportunities to be available for at least 60 days and impose standard requirements on HUD's notices of funding opportunities, on application requirements, and Federal award requirements. HUD will include with each Federal award any program-specific or other terms and conditions, and will share both the general and the program-specific or other requirements on a public website and in Notices of Funding Availability (NOFAs).

Risk-Based Awards: Sections 200.204 and 200.205 require Federal agencies to design and execute a merit review process for competitive applications using a risk-based approach that relies, in part, on HUD review of OMB-designated repositories of government-wide eligibility qualification or financial integrity information (such as the Federal Awardee Performance and Integrity Information System (FAPIIS), "Do Not Pay" lists, etc.)[1]. This assessment can include, for example:

- financial stability,
- the quality of management systems and ability to meet the management standards in 2 CFR part 200,
- history of performance,
- reports and findings from audits, and
- the applicant's ability to effectively implement statutory, regulatory, or other requirements, and debarment and suspension guidelines.

HUD must also comply with the debarment and suspension guidelines in 2 CFR part 180.

[1] FAPIIS is a database that has been established to track contractor misconduct and performance. The database contains Federal contractor criminal, civil, and administrative proceedings in connection with federal awards; suspensions and debarments; administrative agreements issued in lieu of suspension or debarment; non-responsibility determinations; contracts terminated for fault; defective pricing determinations; and past performance evaluations (see: https://www.fapiis.gov/fapiis/index.jsp). The "Do Not Pay" Business Center was developed for programs administered and/or funded by the Federal government to help prevent, reduce and stop improper payments while protecting citizens' privacy, and partner with agencies to identify potential fraud, waste, and abuse while protecting citizens' privacy (see: http://donotpay.treas.gov/index.htm).

Section 200.207 authorizes Federal agencies and pass-through entities to impose additional specific award conditions on applicants or recipients who have a history of failure to comply with terms and conditions, or failure to meet performance goals, or are not otherwise responsible. The conditions include requiring reimbursements rather than advance payments, requiring additional, more detailed reports, additional monitoring, etc. If such additional requirements are imposed, HUD or the pass-through entity must notify the applicant or non-Federal entity as to the nature of, and reasons for, the requirements, actions needed, and timeframe, if applicable. Special conditions must be promptly removed once the causal conditions have been corrected.

7. SUBPART D – POST-FEDERAL AWARD REQUIREMENTS: HIGHLIGHTS

Subpart D describes the requirements standards for managing and administering HUD awards. It includes standards for financial and program management, property and procurement standards, performance and financial monitoring and reporting, subrecipient monitoring and management, record retention and access, remedies for noncompliance, the provisions of the Federal Funding and Accountability Transparency Act (FFATA)[2] and closeout. NOTE: There will be exceptions to the items listed below and they will be published by regulation. See also Section 5 of this Notice.

Performance Measurement: Section 200.301 requires, as appropriate and in accordance with OMB information collection requirements, recipients to relate financial data to performance accomplishments of the Federal award and provide cost information to demonstrate cost effective practices (e.g., through unit cost data). This is in line with the shift in 2 CFR part 200 from compliance to performance. It also requires Federal agencies to use only OMB-approved forms for performance reports. Non-Federal entities must comply with FFATA. A recipient's performance should be measured in a way that will help HUD and other non-Federal entities improve program outcomes, share lessons learned, and spread the adoption of promising practices.

Internal Controls and Protected Personally Identifiable Information: Section 200.303 sets forth requirements for internal controls. This section reflects requirements that were previously in the A-133 audit requirements. It also addresses the non-Federal entity's responsibilities to take reasonable measures to safeguard protected personally identifiable information and other information designated as sensitive by the Federal awarding agency or the pass-through entity, consistent with applicable Federal, state and local laws regarding privacy and obligations of confidentiality.

Payment: Section 200.305 describes cash management requirements applicable to states and other non-Federal entities to minimize the time elapsed between agencies' advance

[2] FFATA, signed September 26, 2006, requires information on Federal awards (Federal financial assistance and expenditures) to be made available to the public via a single, searchable website, which is www.USASpending.gov. The intent is to empower every American with the ability to hold the government accountable for each spending decision. The end result is to reduce wasteful spending in the government. Amendments to FFATA have expanded its scope. See also https://www.fsrs.gov/.

payments of funds to the non-Federal entity and the entity's disbursement of funds for direct program or project costs.

Interest Earned on Federal Advances: Section 200.305(b)(8) requires non-Federal entities to maintain advance Federal payments in interest-bearing accounts (with some exceptions). Interest amounts up to $500 per year may be retained by the non-Federal entity for administrative expenses. Under §200.303(b)(9), interest earned in excess of $500 must be remitted annually to the Department of Health and Human Services' Payment Management System (either electronically through the system, or by check to the Department of Health and Human Services to the Treasury-approved lockbox: HHS Program Support Center, P.O. Box 530231, Atlanta, GA 30353-0231).

Program Income: Section 200.307 generally encourages recipients to earn income to offset program costs. This section has several provisions that include, but are not limited to, the following:

- Proceeds from the sale of property or equipment are not program income; such proceeds will be handled in accordance with the requirements of §200.311, *Real property*, and §200.313, *Equipment*, or as specifically identified in Federal statutes, regulations, or the terms and conditions of the Federal award.
- If the Federal awarding agency does not specify in its regulations or the terms and conditions of its award, or give prior approval for how program income is to be used, then, ordinarily, program income must be deducted from total allowable costs to determine the net costs. Program income must be used for current costs unless HUD authorizes otherwise. Program income that the recipient did not anticipate at time of the Federal award must be used to reduce the award rather than to increase the funds committed to the project.

Revision of Budget and Program Plans: Section 200.308 requires, among other things, recipients to obtain Federal agency approvals for budget and program or project scope revisions.

Property Standards: Sections 200.310-200.316 set forth standards for real property, equipment, supplies, and intangible property. The regulations cover title, insurance, property trust relationships, and disposition. When real property is no longer needed for the originally authorized purpose, the non-Federal entity must obtain disposition instructions from HUD that provides for: 1) retention of title after compensation to HUD, 2) sale of the property and compensation to HUD, or 3) transfer of title to HUD or a third party approved or designated by HUD.

Procurement: §§200.317- 200.326 cover procurement standards. The standards are generally consistent with the requirements in 24 CFR part 85 for all non-Federal entities. For governmental recipients, the regulations have not substantially changed.

- The regulations require non-Federal entities to maintain written standards of conduct covering conflicts of interest, including organizational conflicts of interest, and governing the performance of their employees engaged in the selection, award and administration of contracts. "Organizational conflicts of interest" means that,

because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization (§200.318(c)(2)).

- The non-Federal entity's procurement procedures must be designed to avoid acquisition of unnecessary or duplicative items and the non-Federal entity is encouraged to enter into intergovernmental or inter-entity agreements to procure or use common goods and services (§200.318(d) and (e)).
- Non-Federal entities, in conducting procurements, must conduct them in a manner providing full and open competition and are prohibited from using state or local geographical preferences in evaluating bids or proposals (except where applicable Federal statutes expressly mandate or encourage geographical preferences, such as HUD's Section 3 requirements in 24 CFR part 135) (§200.319).
- Methods of procurement now include a micro-purchase option, which is the acquisition of supplies or services that do not exceed $3,000 (or $2,000 for acquisitions for construction subject to the Davis-Bacon Act) (§200.320(a)).
- "Supplies" includes computing devices if the acquisition cost was less than the lesser of the capitalization level established by a non-Federal entity for financial statement purposes or $5,000, regardless of the length of their useful life (§200.94).
- The Simplified Acquisition Threshold for small purchase procedures, which are those relatively simple and informal procurement methods for securing services, supplies or other property, is now $150,000. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources. The Simplified Acquisition Threshold is set by the Federal Acquisition Regulation (FAR) at 48 CFR Subpart 2.1 and will be periodically adjusted for inflation (§200.88 and §200.320(b)).
- The non-Federal entity's contracts must contain certain provisions which are included in Appendix II of 2 CFR part 200 (§200.326).
- Non-Federal entities have one full fiscal year after the effective date to comply with the revised procurements standards (see *Implementation Dates* in the December 19, 2014, Federal Register at https://www.federalregister.gov/articles/2014/12/19/2014-28697/federal-awarding-agency-regulatory-implementation-of-office-of-management-and-budgets-uniform).

Bonding Requirements: Section 200.325 permits the Federal agency to accept the recipient's bonding policy and requirements if the Federal agency has determined that the Federal interest is adequately protected, and if not, the minimum requirements (abbreviated) are as follows:

- A bid guarantee equal to five percent of the bid price.
- A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment

as required by law of all persons supplying labor and materials in the execution of the work provided for in the contract.

Performance and Financial Monitoring and Reporting: Sections 200.327-328 address the frequency, standards, and OMB approval requirements for agency collection of recipient performance and financial data and monitoring of recipient performance.

Real Property Reporting: Section 200.329 requires annual reporting on real property for which there is a Federal interest, but permits an option for various and less stringent multi-year reporting periods where the Federal interest extends beyond 15 years.

Subrecipient or Contractor: Section 200.330 provides guidance for determining whether an entity is a subrecipient or contractor, in order to apply the appropriate oversight of the Federal funds.

Requirements for Pass-Through Entities: Section 200.331 requires pass-through entities to comply with certain requirements in order to meet their own responsibility to the Federal awarding agency. Many of these requirements were in OMB Circular A-133. Pass-through entities are required to identify certain, clearly identified subaward information. This includes an indirect cost rate if the subrecipient has indirect costs. Pass-through entities must consider risks associated with subawards. The evaluation of a subrecipient's risk of noncompliance with Federal statutes and regulations is used to determine the appropriate level of subrecipient monitoring. Specific subrecipient monitoring tools are outlined, giving pass-through entities flexibility to adjust their oversight framework based on that consideration of risk.

Record Retention: Section 200.333 continues the existing record retention period of generally three years, with some exceptions and caveats. Federal agencies and non-Federal entities should, whenever practicable, collect, transmit and store Federal award-related information in machine-readable formats instead of closed formats or on paper.

Remedies for Noncompliance: Sections 200.338-200.342 cover remedies for noncompliance, including termination and notices of termination. Section 200.338 permits conditions to be imposed on the award if the non-Federal entity fails to comply with the requirements of the award. Previously, only pre-award conditions were authorized.

Closeout: Section 200.343 describes specific closeout actions that are required for all Federal awards at the end of the period of performance and should be completed no later than one year after receipt and acceptance of all required final reports. The non-Federal entity must submit all required final reports within 90 days after the end of the period of performance. The period of performance, defined at §200.77, means from the start to the end dates in the Federal award.

Post-closeout Adjustments and Continuing Responsibilities: Section 200.344 limits the period during which any post-closeout adjustments can be made. The Federal awarding agency or pass-through entity must make any cost disallowance determination and notify

the non-Federal entity within the record retention period. However, amounts due can be collected after this period.

8. SUBPART E – COST PRINCIPLES: HIGHLIGHTS

Subpart E covers the principles that must be used in determining the allowable costs of work performed by a non-Federal entity under a Federal award and in the pricing of fixed-price contracts and subcontracts where costs are used in determining the appropriate prices. It covers exemptions (§200.401(c)) and basic considerations (§§200.402-200.411). The application of the cost principles should require no significant changes in the internal accounting policies and practices of non-Federal entities. The Basic Considerations for costs are largely unchanged. Changes have been made to some select items of cost.

Profit: Section 200.400(g) states that non-Federal entities may not earn or keep any profit resulting from the Federal financial assistance (unless explicitly authorized by the terms and conditions of the Federal award). This is not new.

Prior Approval: In recognition of the difficulty in determining the reasonableness and allocability of certain items of cost, non-Federal entities may seek the prior written approval of the cognizant agency for indirect costs or the Federal awarding agency in advance of incurring unusual or special costs. Prior approval is specifically required for allowability under certain circumstances as described in §200.407.

Direct Costs: Direct costs are covered in §200.413. This section is largely unchanged from previous OMB cost principles.

- Direct costs are identified specifically with the Federal award or can be easily and accurately assigned to activities of the award. Typical direct costs include employee compensation, fringe benefits, materials and other items attributable to the award.
- If directly related to a specific award, certain costs that would otherwise be included with an indirect cost rate can be direct charged, such as extraordinary utility consumption, cost of materials supplied from stock or services from specialized facilities or other institutional service operations.

Indirect Costs: Indirect costs are addressed in §200.414. This section is largely unchanged from previous OMB cost principles.

- Negotiated indirect cost rates must be accepted by all Federal awarding agencies unless certain conditions are met. A Federal awarding agency must implement and make publicly available (e.g., via the Federal Register) the policies, procedures, and general decision-making criteria the programs would follow in seeking and justifying deviations from negotiated rates.
- Pass-through entities must accept a federally recognized indirect cost rate between a subrecipient and the Federal government or, if no such rate exists, either negotiate a rate between the entity and the subrecipient or establish a de minimis indirect cost rate (see also §200.331(a)(4)).

- If a non-Federal entity has never received a negotiated indirect cost rate, it may elect to charge a de minimis rate of 10% of modified total direct costs (MTDC) as defined in §200.68, which may be used indefinitely (§200.414(f)). (Exceptions for some non-Federal entities are listed in Appendix VII, paragraph (d)(1)(B).)
- Non-Federal entities that are able to allocate and charge 100% of their costs directly may continue to do so. Charging the Federal award for indirect costs is never mandatory; a non-Federal entity may conclude that the amount it would recover thereby would be immaterial and not worth the effort needed to obtain it.
- Non-Federal entities that have a federally negotiated indirect cost rate may apply for a one-time extension of the current rate for a period up to four years, subject to the review and approval of the cognizant agency for indirect costs. At the end of the four-year extension period, the non-Federal entity must negotiate a rate. This rate may be extended.

Certifications: Section 200.415 addresses certifications, which are required to be submitted with annual and final fiscal reports, vouchers for payment, and proposals to establish a cost allocation plan or indirect cost rate. Specific language is included acknowledging the statutory consequences of false certifications.

Special Considerations: Special considerations for states, local governments, and Indian tribes for identification and assignment of central service costs are included in §§200.416 and 200.417. Special considerations for institutions of higher education are covered in §§200.418 and 200.419.

General Provisions for Selected Items of Cost: General provisions for 56 selected items of cost are covered in §§200.420-200.475; this section uses language from three Circulars, A-21 (2 CFR part 220), A-87 (2 CFR part 225), and A-122 (2 CFR part 230). These principles apply whether a particular item is properly treated as either a direct or indirect cost. These selected items include two additions (§200.428, *Collections of Improper Payments*, and §200.440, *Exchange Rates*), some changed provisions (including the deletion of *Communications*, which OMB thought could be addressed through "Basic Considerations," §§200.402 – 200.411), and some clarifications.

- Audit Services: Any costs when audits required by the Single Audit Act have not been conducted or costs of auditing grantees or recipients that are not required to have a single audit are not allowable (§200.425). This provision was in OMB Circular A-133.
- Collections of Improper Payments: Costs of recipients to recover improper payments may be charged as direct or indirect, and may be used in accordance with cash management standards described in §200.305 (§200.428).
- Compensation – Personal Services: §200.430 requires non-Federal entities to maintain a strong system of internal controls over their records to justify costs of salaries and wages and provides additional flexibility in the processes they use to meet these standards.
- Conferences: Allowable conference costs paid by non-Federal entities must be necessary and reasonable for successful performance under the award and may include facilities rentals, speakers' fees, costs of meals and refreshments, local

transportation, and other incidental items, unless further restricted by the terms and conditions of the Federal award (§200.432).

- Contingency Provisions: Contingency definitions, allowances, and disallowances are set forth in §200.433.
- Fines, Penalties, Damages, and Other Settlements: Costs resulting from a recipient's violations of, alleged violations of, or failure to follow Federal, State, local, tribal, or foreign laws or regulations are unallowable (§200.441).
- Lobbying: The cost to influence activities associated with obtaining grants, contracts, cooperative agreements or loans is unallowable (§200.450).
- Organization Costs: Costs for items such as incorporation fees, attorneys, or accountants in connection with establishment or reorganization of an entity are unallowable except with prior approval of the Federal awarding agency (§200.455).
- Pre-award Costs: Are only allowable to the extent that they would have been approved if incurred after the date of the Federal award and only with prior approval of the Federal awarding agency (§200.458).

9. SUBPART F – AUDIT REQUIREMENTS: HIGHLIGHTS

Subpart F sets forth the standards for audits of non-Federal entities expending Federal awards.

Increased Audit Threshold: One of the significant changes is the raised threshold which requires a non-Federal entity to have a single or program-specific audit conducted for any year in which the non-Federal entity expends $750,000 or more (up from $500,000) (§200.501(a)).

Making Audits Publicly Available: Auditees must make copies of their audit available for public inspection, ensuring that protected personally identifiable information is not included. Audit reports must be submitted to the Federal Audit Clearinghouse (FAC) and all Federal agencies, pass-through entities, and others interested in an audit report must obtain it from the FAC. Indian tribes may opt out of authorizing the FAC to publish the reporting package on the Web, but are then responsible for providing the reporting package directly to any affected pass-through entities and also making it available for public inspection (§200.512(b)(2)).

Federal Agency Responsibilities: §200.513 requires Federal agencies, including HUD, to:

- Appoint a Single Audit Accountable Official (SAAO) and a Single Audit Liaison;
- Participate in a government-wide project to determine the quality of single audits;
- Use cooperative audit resolution mechanisms to improve Federal program outcomes through better audit resolution follow-up and corrective action; and
- Develop a baseline, metrics, and targets to track, over time, the effectiveness of the Federal agency's process to follow up on audit findings and the effectiveness of Single Audits in improving non-Federal agency accountability and their use in making award decisions.

Audits and GAGAS: Audits must be conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS) (§200.514(a)).

Higher Threshold for Known Questioned Costs: The threshold for known questioned costs has been increased to $25,000 from $10,000. As before, in evaluating the effect of questioned costs on its opinion on compliance, the auditor must consider the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The higher threshold amount is also used in several related aspects of auditing (§200.516(a).

Major Program Determinations and Low-Risk Auditees: Changes have been made to the auditor's risk-based approach for determining which Federal programs are major programs (§200.518). Auditees that meet the criteria for a low-risk auditee are eligible for reduced audit coverage (§200.520).

Transition Guidance: To ensure the uniform application of the requirements of Subpart F for all Federal programs, the requirements will be effective for audits of fiscal years starting December 26, 2014, or later. These revised audit requirements are not applicable to fiscal years beginning before that date.

10. 2 CFR PART 200 APPENDICES: A BRIEF DESCRIPTION

2 CFR part 200 contains 11 Appendices, briefly described here:

- Appendix I: This Appendix provides the full text of the notice of funding opportunities as required by §200.203, along with application and submission information, application review information, Federal award administration information, and Federal awarding agency contact(s) requirements.
- Appendix II: This Appendix contains required contract provisions for all contracts made by a non-Federal entity under a Federal award. The description of each provision should be sufficient for a non-Federal entity to determine if the provision needs to be included in a specific contract.
- Appendix III: This Appendix provides criteria for identifying and computing indirect cost rates at institutions of higher education (IHEs).
- Appendix IV: This Appendix provides guidance for identifying and assigning indirect costs and making rate determinations for nonprofit organizations.
- Appendix V: This Appendix provides guidance on a process for state and local governments to identify and assign central service costs to benefitted activities on a reasonable and consistent basis.
- Appendix VI: This Appendix extends requirements by the Department of Health and Human Services (HHS) on developing, documenting, submitting, negotiating, and approving public assistance cost allocation plans to all Federal agencies whose

programs are administered by a state public assistance agency. (Most such programs are funded by HHS; few, if any, are funded by HUD.)

- Appendix VII: This Appendix provides guidance to state and local governments and Indian tribes on developing, submitting and documenting indirect cost rate proposals.
- Appendix VIII: This Appendix lists those nonprofit organizations that are exempted from the requirements of Subpart E, *Cost Principles*.
- Appendix IX: This Appendix makes clear that existing principles at 45 CFR Part 74 Appendix E, *Principles for Determining Cost Applicable to Research and Development under Grants and Contracts with Hospitals*, remains in effect until OMB implements revised guidance for hospitals.
- Appendix X: This Appendix states that the Data Collection Form SF-SAC for Single Audits is available on the Federal Audit Clearinghouse (FAC) website. The FAC website address http://harvester.census.gov/sac/, given in §200.36, *Federal Audit Clearinghouse (FAC)*, for accessing the FAC, was valid as of the issuance of this Notice.
- Appendix XI: This Appendix states that the audit compliance supplement for Single Audits cited by §200.21, *Compliance supplement*, is available on OMB's website, and provides an address (http://www.whitehouse.gov/omb/circulars) that was valid for accessing the supplement as of the issuance of this Notice.

11. GENERAL TRANSITION RULES

HUD's regulations adopting the requirements of 2 CFR part 200 for HUD programs were published in the Federal Register on December 19, 2014 (https://www.federalregister.gov/articles/2014/12/19/2014-28697/federal-awarding-agency-regulatory-implementation-of-office-of-management-and-budgets-uniform). Questions have been raised about the applicability of these requirements. The following applies:

- Federal awards made before December 26, 2014, will continue to be governed by the terms and conditions of the Federal award. The grant agreements for some HUD programs (e.g., Community Development Block Grant, HOME Investment Partnerships, Emergency Solutions Grants, Indian Housing Block Grants, Native Hawaiian Block Grants, Indian Community Development Block Grants) incorporate the regulations "as now in effect and as may be amended from time to time" and, therefore, 2 CFR part 200 will be applicable to these grants.
- New Federal awards made on or after December 26, 2014, are governed by 2 CFR part 200, including formula awards.

- For Federal agencies that consider incremental funding action on previously made awards to be opportunities to change award terms and conditions, 2 CFR part 200 applies to the first funding increment issued on or after December 26, 2014, and any subsequent funding increment. Awards made before then that have been modified on or after that date in ways that do not increase the funding amount (such as a no-cost extension, or more frequent reporting) will continue to be governed by the terms and conditions of the Federal award. As a result, 2 CFR part 200 will not apply to such awards unless there is another requirement that makes that part apply to them.

- For Federal agency incremental funding actions that are subject to 2 CFR part 200, non-Federal entities are not obligated to segregate or otherwise track old funds and new funds but may do so at their discretion. For example, a non-Federal entity may track the old funds and continue to apply the Federal award flexibilities to the funding awarded under the old rules (e.g., local ability to issue fixed price subawards, non-Federal entity determination of the need to incur administrative and clerical salaries based on major project classification).

- For Federal awards made with modified award terms and conditions at the time of incremental funding actions, Federal awarding agencies may apply 2 CFR part 200 to the entire Federal award that is uncommitted or unobligated as of the Federal award date of the first increment received on or after December 26, 2014.

- Existing negotiated indirect cost rates will remain in place until they are due to be re-negotiated. HUD and indirect cost negotiating agencies will use 2 CFR part 200, both in generating proposals and negotiating new rates (when the rate is due to be re-negotiated) for non-Federal entities' fiscal years that start on or after December 26, 2014.

- The effective date of 2 CFR part 200 for subawards is the same as the effective date of 2 CFR part 200 for the Federal award from which the subaward is made. The requirements for a subaward, no matter when made, flow from the requirements of the original Federal award from the Federal awarding agency.

- Subpart F, Audit requirements, applies to audits of non-Federal entity fiscal years beginning on or after December 26, 2014. The revised audit requirements are not applicable to fiscal years beginning before that date.

OMB provided additional guidance on the effective dates in its Frequently Asked Questions updated November 2014:

Q.110-13 (Previously Q II-2) Effective Dates and Federal Awards Made Previously

Will this apply only to awards made after the effective date, or does it apply to awards made earlier?

•Once the Uniform Guidance goes into effect for non-Federal entities, it will apply to Federal awards or funding increments after that date, in cases where the Federal agency considers funding increments to be an opportunity to modify the terms and conditions

of the Federal award. It will not retroactively change the terms and conditions for funds a non-Federal entity has already received.

•We would anticipate that for many of the changes, non-Federal entities with both old and new awards may make changes to their entity-wide policies (for example to payroll or procurement systems). Practically speaking, these changes would impact their existing/older awards. Non-Federal entities wishing to implement entity-wide system changes to comply with the Uniform Guidance after the effective date of December 26, 2014 will not be penalized for doing so.

12. CONFORMING PROGRAM REGULATIONS AND GUIDANCE

HUD will publish conforming rule changes for its programs and will provide notification of these changes when they are made. These changes will update the program regulations to revise the sections that refer to the OMB Circulars and HUD regulations in 24 CFR parts 84 and 85, as well as to reflect the provisions of 2 CFR part 200 that are not applicable because they are inconsistent with a program statute or because OMB has given an exception to specific requirements.

HUD recognizes that there may be uncertainty pending publication of the conforming program regulations. The provisions of 2 CFR part 200 apply, consistent with the exceptions given to the HUD program for requirements which are detailed in the 2013 edition of the Code of Federal Regulations in 2 CFR parts 215, 220, 225, and 230, 24 CFR parts 84 and 85, and OMB Circulars. HUD will notify recipients through program regulations, grants or cooperative agreements, or other guidance, which subparts are applicable to specific programs.[3]

13. ADDITIONAL RESOURCE MATERIALS

Grant recipients are strongly encouraged to review this information to obtain a better understanding of the uniform guidance and its implications for their Federal awards. The Council on Financial Assistance Reform (COFAR) has provided additional tools to assist in the transition including:

a. Frequently Asked Questions for New Uniform Guidance at 2 CFR 200: The FAQ For 2 CFR 200 (https://cfo.gov/wp-content/uploads/2014/11/2014-11-26-Frequently-Asked-Questions.pdf).

b. Uniform Guidance Crosswalk from Existing Guidance to Final Guidance: http://www.whitehouse.gov/sites/default/files/omb/fedreg/2013/uniform-guidance-crosswalk-from-predominate-source-in-existing-guidance.pdf.

[3] Separate guidance will be issued as necessary to identity and clarify whether all provisions of part 200 apply to the Section 8 project-based and tenant-based programs, particularly with respect to financial management concerns and alternative requirements. This guidance will be based, in part, on the treatment of this assistance in CMS Contract Management Services et al v. Massachusetts Housing Finance Agency v. United States for which the Solicitor General has sought certiorari from the Supreme Court (745 F.3d 1379 (Fed. Cir. 2014)).

c. COFAR Webcast Trainings & Slides:

i. Uniform Guidance 1-27-14 Training Webcast
COFAR Training Intro 1-27-14
http://youtu.be/SOET4b-7my8

ii. COFAR Training Administrative Requirements 1-27-14
http://youtu.be/BP3l3PjI1JQ
Link to the Training Webcast Presentation Slides
COFAR Training Administrative Requirements 1-27-14 Slides
https://cfo.gov/wp-content/uploads/2014/01/COFAR-Uniform-Guidance-Training-Administrative-Requirements-Public.pptx

iii. COFAR Training Cost Principles 1-27-14
http://youtu.be/q0rWXdv2ICM
Link to the Training Webcast Presentation Slides
COFAR Training Cost Principles 1-27-14 Slides
https://cfo.gov/wp-content/uploads/2014/01/COFAR-Uniform-Guidance-Training-Cost-Principles-Public.pptx

iv. COFAR Training Audit Requirements 1-27-14
http://youtu.be/g-U8HGbbC-Y
Link to the Training Webcast Presentation Slides
COFAR Training Audit Requirements 1-27-14 Slides
https://cfo.gov/wp-content/uploads/2014/01/COFAR-Uniform-Guidance-Audit-Requirements-Public.pptx

v. Uniform Guidance Implementation: A Conversation Presented by the Council on Financial Assistance Reform; October 2, 2014
https://www.youtube.com/channel/UCL7wVVxWl4pRHL6cHgi0vVQ/videos

14. UPCOMING TRAINING AND ADDITIONAL GUIDANCE

Additional upcoming training and/or guidance by COFAR will be publicized on its website; recipients of Federal financial assistance, and their subrecipients and contractors, are encouraged to periodically check https://cfo.gov/cofar/. HUD is also planning program-specific guidance and additional training, including an on-line financial management curriculum that integrates and highlights the requirements of 2 CFR part 200, and will provide notification of such when developed. In addition, we have established an internal Frequently Asked Questions (FAQ) Outlook mailbox in the Grants Management and Oversight Division of the Office of Strategic Planning and Management to which HUD employees may address implementation questions. Questions can be sent to the email address: 2 CFR 200 Administrative Requirements@hud.gov.

15. CONTACTS FOR QUESTIONS

Questions from grant recipients, subrecipients and contractors should be directed to their HUD Headquarters or Field Office contacts, Government Technical Representatives (GTRs) or Government Technical Monitors (GTMs).

For HUD Headquarters and field office staff, operational questions should be directed to the Office of Strategic Planning and Management's Grants Management and Oversight Division at (202) 402-3964 (this is not a toll-free number), or Loyd.LaMois@hud.gov, and policy questions should be directed to the Office of the Chief Financial Officer's Financial Policy & Procedures Division at (202) 402-2277 or Scott.Moore@hud.gov. Persons with hearing or speech impairments may access the number above through TTY by calling the toll-free Federal Relay Services at (800) 877-8339.

Appendix A: 2 CFR part 200 Table of Contents

EXHIBIT L

ADDITIONAL REQUIREMENTS

See attached requirements:

1. Procurement
2. Disputes/Grievance Procedure
3. Right to Refuse Service

PROCUREMENT

1. The Developer agrees to comply with federal procurement requirements and the City's procurement code for all expenditures of funds. Below is an overview of the procurement requirements.

    1.1 Purchases over $50,000 must be publicly bid.

    1.2 Purchases between $10,001 and $50,000 must follow competitive purchasing procedures based on written quotations.

    1.3 Purchases of $5,000 to $10,000, whenever practical, must be based on oral quotations, with file documentation of vendors contacted and quotations received.

    1.4 Purchases under $5,000 do not require written or oral quotations.

    1.5 Expenditures for employee salaries or items such as client subsidies would not generally be subject to procurement requirements. (Such items do not generally constitute purchases.)

2. The Developer agrees to adopt a written procurement policy that, at a minimum, complies with the above procurement requirements, and to follow accounting procedures that will assure compliance with federal and city procurement codes.

3. The Developer further agrees to retain sufficient supporting documentation to demonstrate compliance with these requirements. Examples include, but are not limited, to the following:

    3.1 Copies of bid documents;

    3.2 Written quotations; and

    3.3 Evidence of oral quotations.

###

DISPUTES/GRIEVANCE PROCEDURE

1. The Developer agrees to negotiate and resolve any disputes in the delivery of activities stated herein and will inform the City in writing of such negotiations and resolutions.
2. In the event the issue is not resolved, the City will confer with all parties to understand the issue, if appropriate, offer guidance, and try and reach an amicable solution.

###

RIGHT TO REFUSE SERVICE

The City reserves the right to refuse, terminate, or suspend service or accounts to an individual, company, or agency, if the City believes that conduct or actions violate applicable law, is harmful to the interests of the City of Glendale and its affiliates, or meets the criteria covered under City's Right to Refuse Assistance Policy. Legal counsel will be consulted before such action is undertaken, unless an emergency exists.

###

EXHIBIT M

INSURANCE CERTIFICATE

(See attached)

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 03/02/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURERS(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Lockton Affinity, LLC P.O. Box 873401 Kansas City, MO 64187-3401	CONTACT NAME: PHONE (A/C No.Ext): 888-553-9002 FAX (A/C, No): E-MAIL ADDRESS:
INSURED Habitat for Humanity Central Arizona 9133 W Grand Ave. Suite 1, Peoria, AZ 85345	INSURER(S) AFFORDING COVERAGE / NAIC INSURER-A: ACE American Insurance Co. 22667 INSURER-B: INSURER-C: INSURER-D: INSURER-E: INSURER-F:

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY	X		GL1064439-16	04/01/2016	04/01/2017	EACH OCCURRENCE	$ 1,000,000
	X COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 1,000,000
	CLAIMS MADE X OCCUR						MED EXP (Any one person)	$ 0
							PERSONAL & ADV INJURY	$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 2,000,000
	X POLICY						PRODUCTS – COMP/OP AGG	$ 2,000,000
								$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	ANY AUTO						BODILY INJURY (Per Person)	$
	ALL OWNED AUTOS / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS / NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
	UMBRELLA LIAB OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB CLAIMS MADE						AGGREGATE	$
	DED RETENTION $							
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						WC STATU-TORY LIMITS / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE Y/N						E.L. EACH ACCIDENT	$
	OFFICER/MEMBER EXCLUDED? (MANDATORY IN NH)						E.L. DISEASE – EA EMPLOYEE	$
	If yes, describe under						E.L. DISEASE – POLICY LIMIT	$
	DESCRIPTION OF OPERATIONS below							

CERTIFICATE HOLDER

City of Glendale
6829 North 58th Drive, Suite 104,
Glendale, AZ 85301

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS

AUTHORIZED REPRESENTATIVE

File #: 16-311, **Version:** 1

RESOLUTION 5128: AUTHORIZATION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR INSTALLATION OF EMERGENCY VEHICLE PRE-EMPTION SYSTEMS CITYWIDE

Staff Contact: Jack Friedline, Director, Public Works

Purpose and Recommended Action

This is a request for City Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into Intergovernmental Agreement (IGA) with Arizona Department of Transportation (ADOT) for the installation of Emergency Vehicle Pre-Emption (EVP) systems citywide.

Background

Emergency vehicle preemption (EVP) allows for fire vehicles to preempt a traffic signal by providing a green light to an approaching emergency vehicle. The City of Glendale's current EVP system is limited and is no longer supported by the supplier/manufacturer. Of the 198 signalized intersections citywide, only 10 have operational EVP equipment. These are primarily located on Bell Road.

At the October 6, 2015 Council Workshop, staff presented the opportunity to apply for federal funds for the EVP project through the Maricopa Association of Governments (MAG) programming process and received direction from City Council to proceed with the application.

Analysis

An emergency vehicle moving through an intersection will cause delay and impact to traffic with or without EVP. However, EVP establishes a more controlled operation and reduces delays and travel time variability for both emergency vehicles and roadway users. The installation of EVP will achieve the city's objective of reducing emergency vehicle response times at a cost that is minimal compared to building new fire stations.

This project is to install EVP at 58 high-priority intersections. 48 will be located at major intersections using existing conduit with no ground disturbance. The remaining 10 are located at fire station access signals and along high priority corridors. The project also includes one Central Management Software (CMS), one CMS maintenance agreement, 58 radio units, and 57 vehicle equipment (37 for Glendale and 20 for neighboring jurisdictions that respond to emergencies within the city limits). Federal funding for design and construction of this project has been secured and is identified in the MAG Transportation Improvement Program for federal Fiscal Year 2016 (design) and federal Fiscal Year 2018 (construction).

Under the terms of the IGA, ADOT will advertise, bid, award, and administer the scoping, design, and construction of the project. The city will be required to provide a 5.7% match of the capped federal funding

and 100% of all costs that exceed the cap.

The total estimated design cost of the project is $125,000. Of the total anticipated design cost, $117,875 is available through federal funding. The required city match of $7,125 is available in the Fiscal Year (FY) 2016-17 Capital Improvement Plan Emergency Vehicle Preemption project for FY 2017.

The total estimated construction cost of the project is $711,248. Of the total anticipated construction cost, $399,832 is available through federal funding. The required city match of $311,416 is available in the FY2017-18 Capital Improvement Plan Emergency Vehicle Preemption project for FY 2018.

Previous Related Council Action

On October 6, 2015, staff presented the opportunity to apply for federal funds for the EVP project through the MAG programming process and received direction from City Council to proceed with the application.

Community Benefit/Public Involvement

Residents and guests in Glendale expect reasonable response times in the case of an emergency. Technology enhancements will continue to provide efficient traffic management for the traveling public and emergency response units, helping to achieve this goal.

Budget and Financial Impacts

Funding for the city match for design is available in the Fiscal Year 2016-17 Capital Improvement Plan budget. Expenditures with ADOT are estimated at $7,125.

Funding for the city match for construction is available in the Fiscal Year 2017-18 Capital Improvement Plan budget. Expenditures with ADOT are estimated at $311,416, contingent upon Council Budget approval.

While staff does not anticipate additional project costs, should this project exceed the estimate outlined in the IGA, the City will be responsible for the additional costs. Since the funds listed in the IGA are estimates, staff requests flexibility in spending up to 10 percent of the total project cost in additional funds for construction cost overruns. Budgeting of future ongoing maintenance would occur for the year of anticipated operation through the typical budget process.

Cost	Fund-Department-Account
$7,125	**2070-70809-518200, Emergency Vehicle Preemption (FY 2016-17)**
$311,416	**2070-70809-518200, Emergency Vehicle Preemption (FY 2017-18)**

Capital Expense? No

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from?

RESOLUTION NO. 5128 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 ARIZONA DEPARTMENT OF TRANSPORTATION (IGA/JPA 16-0005851-I) FOR THE INSTALLATION OF EMERGENCY VEHICLE PRE-EMPTION (EVP) SYSTEMS CITYWIDE PROJECT IN THE CITY OF GLENDALE.

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

SECTION 1. That it is deemed in the best interest of the City of Glendale and the citizens thereof that the Intergovernmental Agreement between the Arizona Department of Transportation and the City of Glendale for the installation of Emergency Vehicle Pre-Emption (EVP) Systems Citywide Project (IGA/JPA 16-0005851-I) be entered into, which agreement is now on file in the office of the City Clerk of the City of Glendale.

SECTION 2. That the Mayor or City Manager and the City Clerk be authorized and directed to execute and deliver any and all documents necessary to effectuate 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

iga_transit_evp.doc

ADOT File No.: IGA/JPA 16-0005851-I
AG Contract No.: P001 2016 001470
Project Name: Emergency Vehicle Pre-Emption (EVP)
Project Location: Citywide
Federal-aid No.: GLN-0(254)T
ADOT Project No.: T0077 01D/01C
TIP/STIP No.: GLN18-460D & GLN18-460
CFDA No.: 20.205 - Highway Planning and Construction
Budget Source Item No.: n/a

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF GLENDALE

THIS AGREEMENT is entered into this date _____, 2016, 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, hereinafter referred to as the "Project", consists of the procurement and installation of Emergency Vehicle Pre-Emption (EVP) Systems Citywide at 48 arterial to arterial intersections using existing conduit with no ground disturbance, five signalized fire station access points and five additional high priority signalized intersections. The Project also includes the purchase of one Central Management Software (CMS), one CMS Maintenance Agreement, 58 radio units, 3 (EA) installation cables and 57 vehicle equipment (37 for the City and 20 additional units for neighboring jurisdictions that respond to the City emergencies). The State will advertise, bid, award and administer the scoping, design and construction of the Project. The plans, estimates and specifications for the Project will be prepared and, as required, submitted to Federal Highway Administration (FHWA) for approval.

4. The City, in order to obtain federal funds for the design and 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.

5. The interest of the State in this Project is the acquisition of federal funds for the use and benefit of the City and the authorization of such federal funds for the Project pursuant to federal law and regulations. The State shall be the designated agent for the City for the Project, if the Project is approved by FHWA and funds for the Project are available. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project specifications and terms and conditions.

6. The Parties will perform their responsibilities consistent with this Agreement; 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:

T0077 01D (scoping/design):

Federal-aid funds @ 94.3%	$ 117,875.00
City's match @ 5.7%	$ 7,125.00
Subtotal – Scoping/Design*	**$ 125,000.00**

T0077 01C (construction):

Federal-aid funds @ 94.3% (capped)	$ 399,832.00
City's match @ 5.7%	$ 24,168.00
City's match @ 100%	$ 287,248.00
Subtotal – Construction**	**$ 711,248.00**
TOTAL Estimated Project Cost	**$ 836,248.00**
Total Estimated City's Funds	**$ 318,541.00**
Total Federal Funds	**$ 517,707.00**

* (Includes ADOT Project Management & Design Review (PMDR) Costs)
** (Includes 15% CE (this percentage is subject to change, any change will require concurrence from the City) and 5% Project contingencies)

8. The Parties acknowledge that the final Project costs may exceed the initial estimate(s) shown above, and in such case, the City is responsible for, and agrees to pay, any and all 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 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. Execute this Agreement, and if the Project is approved by FHWA and funds for the Project are available, be the City's designated agent for the Project.

b. Execute this Agreement, prior to performing or authorizing **any** work, invoice the City for the City's share of the Project design costs, currently estimated at **$7,125.00**. If PMDR costs increase during the development of design, invoice the City in increments of $5,000.00 to cover the City's share of additional PMDR costs. Once the costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual PMDR and design costs.

c. After receipt of the City's estimated share of the Project design costs, on behalf of the City, prepare and provide all documents pertaining to the design and post-design of the Project, incorporating

comments from the City, as appropriate; and review and approve documents required by FHWA to qualify the Project for and to receive federal funds. Such work may consist of, but is not specifically limited to, preparation of environmental documents; analysis and documentation of environmental categorical exclusion determinations; geologic materials testing and analysis; right-of-way related activities; preparation of reports, design plans, maps, specifications and cost estimates and such other related tasks essential to the achievement of the objectives of this Agreement.

d. Submit all required documentation pertaining to the Project to FHWA with the recommendation that the maximum federal funds programmed for this Project be approved for scoping/design. Upon authorization, proceed to advertise for and enter into contract(s) with the consultant(s) for the design and post design of the Project.

e. After completion of design and prior to bid advertisement, invoice the City for the City's share of the Project construction costs, estimated at **$311,416.00.** Once the Project costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs; and de-obligate or otherwise release any remaining federal funds from the scoping/design phase of the Project.

f. After receipt of the City's estimated share of the Project construction costs, submit all documentation required to FHWA with the recommendation that funding be approved for construction and request the maximum federal funds programmed for the construction of this Project. Should costs exceed the maximum federal funds available, it is understood and agreed that the City will be responsible for any overage.

g. With FHWA authorization, proceed to administer construction, advertise for, receive and open bids, award and enter into a contract with the firm for the construction of the Project. If the bid amounts exceed the construction cost estimate, obtain City concurrence prior to awarding the contract. Once awarded, invoice the City for the difference between estimated and actual costs, if applicable.

h. Be granted, without cost requirements, the right to enter City right-of-way as required to conduct any and all construction and pre-construction related activities for said Project, including without limitation, temporary construction easements or temporary rights of entry on to and over said rights-of-way of the City.

i. Enter into an agreement with the design consultant which states that the design consultant shall provide professional post-design services as required and requested throughout and upon completion of the construction phase of the Project. Upon completion of the construction phase of the Project, provide an electronic version of the record drawings to the City.

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

k. 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 for the Project if the Project is approved by FHWA and funds for the Project are available.

b. Within 30 days of receipt of an invoice from the State pay the City's Project design costs, estimated at **$7,125.00**. If, during the development of design, additional funding to cover PMDR costs is

required, pay the invoiced amount to the State within 30 days of receipt. Be responsible for any difference between the estimated and actual PMDR and design costs of the Project.

c. Review design plans, specifications, cost estimates and other such documents 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. After completion of design, within 30 days of receipt of an invoice from the State and prior to bid advertisement, pay to the State, the City's Project construction costs, estimated at **$311,416.00.** Once the Project costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs; de-obligate or otherwise release any remaining federal funds from the scoping/design phase of the Project.

e. Be responsible for all costs incurred in performing and accomplishing the work as set forth under this Agreement, that are 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 30 days of receipt of an invoice from the State.

f. Certify that all necessary rights-of-way have been or will be acquired prior to advertisement for bid and that all obstructions or unauthorized encroachments of any 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, 9.06 Monitoring Process and 9.07 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.

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

h. 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, temporary construction easements or temporary rights of entry to accomplish among other things, soil and foundation investigations.

i. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase Project costs. Be responsible for the cost of any requested changes to the scope of the work of the Project, 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 30 days of receipt of an invoice from the State.

j. Upon notification by the State of Project completion, agree to accept, maintain and assume full responsibility of the Project in writing.

k. Upon notification of Project completion, agree to accept, maintain and assume full responsibility of the Project and all Project components in writing.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of the Project and all related deposits and/or reimbursements are made. Any provisions for

maintenance shall be perpetual, unless assumed by another competent entity. This Agreement may be cancelled at any time prior to the award of the Project contract and after 30 days written notice to the other Party. It is understood and agreed that, in the event the City terminates this Agreement, the City will be responsible for all costs incurred by the State up to the time of termination. It is further understood and agreed that in the event the City terminates this Agreement, the State shall in no way be obligated to complete or maintain the Project.

2. The City shall indemnify, defend, and hold harmless the State, any of its departments, agencies, officers or employees (collectively referred to in this paragraph as the "State") from any and all claims, demands, suits, actions, proceedings, loss, cost and damages of every kind and description, including reasonable attorneys' fees and/or litigation expenses (collectively referred to in this paragraph as the "Claims"), which may be brought or made against or incurred by the State on account of loss of or damage to any property or for injuries to or death of any person, to the extent caused by, arising out of, or contributed to, by reasons of any alleged act, omission, professional error, fault, mistake, or negligence of the City, its employees, officers, directors, agents, representatives, or contractors, their employees, agents, or representatives in connection with or incident to the performance of this Agreement. The City's obligations under this paragraph shall not extend to any Claims to the extent caused by the negligence of the State, except the obligation does apply to any negligence of the City which may be legally imputed to the State by virtue of the State's ownership or possession of land. The City's obligations under this paragraph shall survive the termination of this Agreement

3. The State shall include Section 107.13 of the 2008 version of the Arizona Department of Transportation Standard Specifications for Road and Bridge Construction, incorporated to this Agreement by reference, in the State's contract with any and all contractors, of which the City shall be specifically named as a third-party beneficiary. This provision may not be amended without the approval of the City.

4. The cost of scoping, design, construction and construction engineering work under this Agreement is to be covered by the maximum available amount of federal funds programmed for this Project. The City acknowledges that the actual costs may exceed the maximum available amount of federal funds, or that certain costs may not be accepted by the federal government as eligible for federal funds. Therefore, the City agrees to pay the difference between actual Project costs and the federal funds received.

5. Should the federal funding related to this Project be terminated or reduced by the federal government, or 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.

6. The cost of the Project under this Agreement includes indirect costs approved by FHWA, as applicable.

7. 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.

8. The City acknowledges compliance with federal laws and regulations and may be subject to the Office of Management and Budget (OMB), Single Audit, Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations). Entities that expend $500,000.00 or more (prior to 12/26/14) and $750,000.00 or more (on or after 12/26/14) of federal assistance (federal funds, federal grants, or federal awards) are required to comply by having an independent audit. Either an electronic or hardcopy of the Single Audit is to be sent to Arizona Department of Transportation Financial Management Services within the required deadline of nine (9) months of the sub recipient fiscal year end.

ADOT – FMS
Attn: Cost Accounting Administrator

206 S 17th Ave. Mail Drop 204B
Phoenix, AZ 85007
SingleAudit@azdot.gov

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

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

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

12. 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".

13. 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.

14. 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.

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

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

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

For Agreement Administration:

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

City of Glendale
Attn: Debbie Albert
5850 W Glendale Ave.
Glendale, AZ 85301
(623) 847-7524
dalbert@glendaleaz.com

For Project Administration:

Arizona Department of Transportation
Project Management Group
1615 W Jackson St.
Phoenix, AZ 85007
(602)712-4428

City of Glendale
Attn: Debbie Albert
5850 W Glendale Ave.
Glendale, AZ 85301
(623) 847-7524
dalbert@glendaleaz.com

For Financial Administration:

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

City of Glendale
Attn: Vicki Rios
5850 W Glendale Ave.
Glendale, AZ 85301
(623) 930-2480

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

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

CITY OF GLENDALE

By _____
JERRY WEIERS
Mayor

ATTEST:

By _____
PAMELA HANNA
City Clerk

STATE OF ARIZONA
Department of Transportation

By _____
STEVE BOSCHEN, P.E.

IGA/JPA 16-0005851-I

ATTORNEY APPROVAL FORM FOR THE CITY OF GLENDALE

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY OF GLENDALE, an agreement 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 _____ day of _____, 2016.

_____

City Attorney

File #: 16-312, **Version:** 1

RESOLUTION 5129: AUTHORIZATION TO ENTER INTO AMENDMENT NO. 2 TO TERMINATE A GRANTOR AGREEMENT WITH THE ARIZONA DEPARTMENT OF ECONOMIC SECURITY FOR VENDING MACHINE OPERATIONS

Staff Contact: Jack Friedline, Director, Public Works

Purpose and Recommended Action

This is a request for City Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into Amendment No. 2 to terminate a Grantor Agreement with the Arizona Department of Economic Security for vending machine operations.

Background

The Arizona Department of Economic Security (ADES), Rehabilitation Services Administration, Business Enterprise Program has been providing vending machine operations at city facilities since 2008. Per the terms of the Intergovernmental Agreement (IGA) that was extended in 2013, ADES was to provide service through June 30, 2018.

On February 23, 2016, Council authorized entering into a new IGA for vending machine services at expanded locations effective March 18, 2016 through July 31, 2020 with two additional five-year term extensions. With the new Agreement in place, ADES has requested to terminate the original IGA.

Analysis

This action will terminate an unnecessary and redundant IGA.

Previous Related Council Action

On February 23, 2016, Council authorized entering into a Grantor Agreement with the Arizona Department of Economic Security, Contract No. C-10670, through July 31, 2020 with two additional five-year term extensions.

Budget and Financial Impacts

There is no budget impact from this action.

RESOLUTION NO. 5129 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF AMENDMENT NO. 2 AUTHORIZING THE TERMINATION OF THE GRANTOR AGREEMENT (DE071130-001) WITH THE ARIZONA DEPARTMENT OF ECONOMIC SECURITY FOR VENDING MACHINE OPERATIONS.

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

SECTION 1. That it is deemed in the best interest of the City of Glendale and the citizens thereof that Amendment No. 2 authorizing the termination of the Grantor Agreement (DE071130-001) between the City of Glendale and the Arizona Department of Economic Security for vending machine operations be entered into, which amendment is now on file in the office of the City Clerk of the City of Glendale.

SECTION 2. That the City Manager or designee and the City Clerk be authorized and directed to execute any and all documents necessary to effectuate said amendment on behalf of the City of Glendale.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this day of , 2016.

_____
M A Y O R

ATTEST:

_____
City Clerk (SEAL)

APPROVED AS TO FORM:

_____
City Attorney

REVIEWED BY:

_____
City Manager

iga_facilities_vending.doc

DEPARTMENT OF ECONOMIC SECURITY
Your Partner For A Stronger Arizona

Intergovernmental Agreement
CONTRACT AMENDMENT

1. CONTRACTOR *(Name and address)*	2. CONTRACT ID NUMBER
City of GLENDALE 5600 W Union Hills Dr Glendale, AZ 85308	DE071130-001
	3. AMENDMENT NUMBER 2

4. THE PARTIES AGREE TO THE FOLLOWING AMENDMENT

Pursuant to the GENERAL TERMS AND CONDITIONS, Paragraph 4, "Amendments," this agreement is being terminated by mutual agreement and is effective 3/18/2016.

Contract replaced with DG16-001032.

All contract obligations have been fulfilled.

5. EXCEPT AS PROVIDED HEREIN, ALL TERMS AND CONDITIONS OF THE ORIGINAL CONTRACT AS HERETOFORE CHANGED AND/OR AMENDED REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT. THE AMENDMENT SHALL BECOME EFFECTIVE ON THE DATE OF LAST SIGNATURE UNLESS OTHERWISE SPECIFIED HEREIN. BY SIGNING THIS FORM ON BEHALF OF THE CONTRACTOR, THE SIGNATORY CERTIFIES HE/SHE HAS THE AUTHORITY TO BIND THE CONTRACTOR TO THIS CONTRACT.

6. **ARIZONA DEPARTMENT OF ECONOMIC SECURITY**	7. NAME OF CONTRACTOR **City of GLENDALE**
SIGNATURE OF AUTHORIZED INDIVIDUAL	SIGNATURE OF AUTHORIZED INDIVIDUAL
TYPED NAME	TYPED NAME
TITLE	TITLE
DATE	DATE

IN ACCORDANCE WITH ARS §11-952 THIS CONTRACT AMENDMENT HAS BEEN REVIEWED BY THE UNDERSIGNED WHO HAVE DETERMINED THAT THIS CONTRACT AMENDMENT IS IN APPROPRIATE FORM AND WITHIN THE POWERS AND AUTHORITY GRANTED TO EACH RESPECTIVE PUBLIC BODY.

By: _____
Public Agency Legal Counsel

Date: _____

File #: 16-316, **Version:** 1

RESOLUTION 5130: AUTHORIZATION TO ENTER INTO AN AMENDMENT TO AN INTERGOVERNMENTAL AGREEMENT WITH THE REGIONAL PUBLIC TRANSPORTATION AUTHORITY FOR TRANSIT SERVICES
Staff Contact: Jack Friedline, Director, Public Works

Purpose and Recommended Action

This is a request for City Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into an Amendment to an Intergovernmental Agreement (IGA) with the Regional Public Transportation Authority (RPTA) for the continued operation of fixed-route and express bus service in the City of Glendale, the reimbursement of transit services for Americans with Disabilities Act (ADA) eligible riders in an amount not to exceed $729,059, for the operation of Regional Dial-A-Ride (RDA) services in an amount not exceed $213,000, and the reimbursement for capital projects (park and ride) in an amount of $2,557,571. This Amendment will be effective July 1, 2016 through June 30, 2017.

Background

RPTA operates express bus service throughout the urban area through contracts with local municipalities. Prior to the start of the Fiscal Year, RPTA will estimate the gross cost of the service provided minus the fare revenues, based on the estimate number of miles driven within Glendale. For Fiscal Year 2016-17, RPTA is estimating a gross cost of $4,593,674, with estimated fare revenues of $1,194,947 and a federally reimbursable preventative maintenance credit of $22,843. RPTA will fund the resulting net cost of $3,375,884.

This Amendment to the IGA also provides reimbursement to the City of Glendale for Fiscal Year 2016-17 ADA transit costs up to $729,059, with funds provided through Proposition 400. This is an increase of $18,274 from last fiscal year. Program costs exceeding $729,059 will be absorbed by City of Glendale GO funds, and any program savings will be used for other ADA-certified rider eligible expenses. Glendale provides ADA transit service within three-quarters of a mile of fixed-route service, as required by ADA legislation.

Additionally, this amendment includes operation of Regional Dial-A-Ride Services (RDAR) by RPTA for which the City of Glendale will pay RPTA an estimated amount of $213,000 for FY2016-17.

Finally, this agreement provides for reimbursement for the park and ride project with funds provided through Proposition 400. There is $2,557,571 of regional funds remaining allocated to this project.

Analysis

This action provides citizens with continued bus service on Glendale, Peoria, 59th and 67th avenues, the two express routes in Glendale, as well as the Grand Avenue Limited service. Fixed-route and express service was provided to more than 2.5 million riders in Glendale last year. In that same time frame, Glendale provided

over 20,540 ADA trips.

It is anticipated that the RDAR services will provide 4,277 door-to-door regional ADA paratransit service trips for the upcoming fiscal year 2016-17.

Previous Related Council Action

On June 23, 2015, Council authorized entering into an Amendment to the IGA with the RPTA for transit services for FY2015-16.

On June 10, 2014, Council authorized entering into an Amendment to the IGA with the RPTA for transit services for FY2014-15.

On June 25, 2013, Council authorized entering into an IGA with the RPTA, Contract No. C-8523, for transit services, for an indefinite term to be amended on an annual basis.

Community Benefit/Public Involvement

Public transportation services are important to a vibrant community. A seamless fixed-route transit system is a quality-of-life benefit to residents and visitors of the City of Glendale.

The goal of Valley Metro's RDAR is to ensure that ADA certified Glendale residents and visitors are able to make regional Dial-A-Ride trips in a safe, comfortable, and convenient manner. RDAR will provide door-to-door paratransit service to ADA certified individuals making ADA eligible trips that would otherwise involve two or more local Dial-A-Ride providers.

Budget and Financial Impacts

Funding for the Regional Dial-A-Ride service is available in the Fiscal Year 2016-17 Transportation Operating budget. Expenditures for this service are not to exceed $213,000.

RPTA will reimburse Glendale up to $729,059 for ADA transit expenses, and up to $2,557,571 for the park and ride project, for a total possible reimbursement of $3,286,630.

RPTA will fund and operate the express bus service.

Cost	Fund-Department-Account
$213,000	**1660-16530-518200, Dial-A-Ride Professional and Contractual**

Capital Expense? No

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

RESOLUTION NO. 5130 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF AN AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT WITH THE REGIONAL PUBLIC TRANSPORTATION AUTHORITY (RPTA) FOR THE PROVISION OF PUBLIC TRANSPORTATION SERVICES.

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

SECTION 1. That it is deemed in the best interest of the City of Glendale and the citizens thereof that the Amendment to the Intergovernmental Agreement (Contract No. 133-75-2017) between the City of Glendale and the Regional Public Transportation Authority 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 any and all documents necessary to effectuate 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

iga_transit_amend rpta.doc

TRANSIT SERVICES AMENDMENT

BETWEEN

THE CITY OF GLENDALE

AND

THE REGIONAL PUBLIC TRANSPORTATION AUTHORITY

Contract # 133-75-2017

THIS AMENDMENT dated this 1st day of July, 2016, amends the following items of the Transit Service Agreement Contract #133-75-2016 entered into between the City of Glendale and the Regional Public Transportation Authority, dated the 1st day of July 2013 as amended July 1, 2014 and July 1, 2015.

The following Sections of the Agreement dated July 1, 2013 are hereby amended to include:

SECTION 2. SCOPE OF AGREEMENT

During the term of this agreement RPTA shall provide the following services:

Regional Dial-a-Ride (RDAR) (Schedule C) means a shared-ride, door-to-door transportation service operated for the purpose of transporting designated passengers, within designated time periods, between origins and destinations that would otherwise require travel on two or more local Dial-a-Ride systems.

SECTION 31. INCORPORATION OF EXHIBITS

For each year during the term of this Agreement and in coordination with RPTA's adopted fiscal year budget process, Schedules hereto shall be revised and incorporated into this Agreement and made a part hereof as though fully set forth herein.

Schedule "C" Dial a Ride Services

The following Schedules amend those Schedules of the agreement entered into July 1, 2015.

The attached Schedule A amends Schedule A entered into July 1, 2015.

The attached Schedule E amends Schedule E entered into July 1, 2015.

The attached Schedule H amends Schedule H entered into July 1, 2015.

The following Schedule is added to the agreement entered into July 1, 2013, as amended:

The attached Schedule C

All other terms of the Parties Transit Services Agreement dated July 1, 2013 remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the Parties have each executed this Agreement as of the date first set forth above.

REGIONAL PUBLIC TRANSPORTATION AUTHORITY (RPTA)

By: _____

Scott W. Smith, Interim Chief Executive Officer

APPROVED AS TO FORM:

By: _____

Michael J. Minnaugh, General Counsel

City of Glendale

By: _____

Kevin R. Phelps, City Manager

By: _____

Pamela Hanna, City Clerk

APPROVED AS TO FORM:

By: _____

Michael Bailey, Attorney

SCHEDULE "A" REGIONALLY FUNDED FIXED ROUTE BUS SERVICE

Sources of Project Operating Budget

I. Regionally Funded Fixed Route Bus Service **$3,375,884.00** (including express)

The above line represents the value of transit service paid for by the RPTA to the benefit of the City of Glendale
The calculation to derive this figure is daily revenue miles of service x number of service days x cost per revenue mile of service.

FY17 Fixed Route Estimate

RPTA Funded Service in the City of Glendale

Level	Route	Jurisdiction	Annual Miles	CPM	Gross Cost	Fares	PM	Net Cost
W	59	Glendale	161,870	7.18	$1,162,501	($261,100)		$901,401
W	67	Glendale	92,719	7.18	665,883	(132,016)		533,867
W	70	Glendale	211,289	7.88	1,664,049	(576,561)		1,087,489
W	106	Glendale	46,175	7.88	363,658	(36,484)		327,174
W	573	Glendale	24,753	7.06	174,880	(39,670)	(16,129)	119,080
W	575	Glendale	4,731	7.06	33,423	(15,958)	(3,083)	14,383
W	GAL	Glendale	5,572	7.07	39,368	(18,101)	(3,631)	17,636
S	67	Glendale	5,268	7.18	37,835	(14,385)		23,450
S	70	Glendale	18,653	7.88	146,903	(31,651)		115,253
S	106	Glendale	4,539	7.88	35,749	(7,048)		28,701
H	67	Glendale	6,508	7.18	46,738	(6,814)		39,923
H	70	Glendale	23,042	7.88	181,469	(48,208)		133,261
H	106	Glendale	5,233	7.88	41,217	(6,950)		34,267
Grand Total			**610,352**		**$4,593,674**	**($1,194,947)**	**($22,843)**	**$3,375,884**

Note: City of Phoenix routes include PM credits in the CPM.

SCHEDULE "C" –REGIONAL DIAL A RIDE SERVICES AND FINANCIAL INFORMATION

I. Sources of Project Operating Budget:

FY 2016-2017

For the period of time July 1, 2016 through June 30, 2017, the City of Glendale will pay RPTA an estimated amount of **$213,000.00** for provision of Regional Dial-a-Ride Services (RDAR). Payments will be billed in equal quarterly installments on July 1, October 1, January 1 and shall become due within thirty (30) calendar days after the receipt of an invoice from RPTA. The fourth quarter billing will occur in conjunction with the annual reconciliation process. CITY shall pay RPTA in four (4) quarterly installments of **$53,250.00**. Should actual program costs exceed the installment billing amount, arrangements will be made with the City to bill the supplemental amount. Program billings will be based on the boarding fees and billable miles traveled by Member Jurisdiction residents, less fares collected and retained by Valley Metro's RDAR contractor. Valley Metro will also bill the Member Jurisdiction for its share of travel by ADA certified visitors in accordance with ADA requirements and the regionally adopted Visitor Policy, less fares collected and retained by the RDAR contractor. Valley Metro will also bill the Member Jurisdiction for its share of performance-based incentives paid to the RDAR contractor, and Valley Metro will credit the Member Jurisdiction for its share of performance-based penalties assessed against the RDAR contractor. Valley Metro will also bill the Member Jurisdiction for its share of budgeted overhead. Each quarter's billing will be based on actual expenses billable to the Member Jurisdiction.

The goal of Valley Metro's Regional Dial-a-Ride service (RDAR) is to ensure that ADA certified residents of and visitors to the Valley are able to make regional Dial-a-Ride trips in a safe, comfortable, convenient and legally compliant manner. RDAR provides door-to-door ADA paratransit service to ADA certified individuals making ADA eligible trips that would otherwise involve two or more local Dial-a-Ride providers.

SCHEDULE "C" – REGIONAL DIAL A RIDE SERVICE SPECIFICATIONS

The program is intended to meet the requirements of the federal Americans with Disabilities Act as well as specific requirements established by participating jurisdictions. The following is a description of the service:

1. Service Description

RDAR is an advanced reservation, door-to-door, shared-ride paratransit system which provides ADA compliant Dial-a-Ride service to ADA certified individuals making ADA eligible trips which begin and end within different Dial-a-Ride service areas. RDAR also provides other regional Dial-a-Ride trips as directed by individual member cities.

RDAR service is provided by a private company who contracts with Valley Metro. The contractor accepts calls from customers, verifies the customer's eligibility for the trip, schedules each trip, assigns each trip to an appropriate vehicle and driver, groups trips whenever appropriate, provides the trip, collects the applicable fare, provides all trip-related data to Valley Metro, accepts and resolves service complaints, and prepares all required data and reports. Total Transit's fleet includes a mix of sedans and vans as well as a number of lift and ramp equipped vans and minivans which ensure that service can be provided in a timely manner to all customers—regardless of their mobility needs.

2. Program Eligibility

Currently, Valley Metro utilizes two different eligibility certification processes for individuals who wish to use Dial-a-Ride.

- For ADA Regional Dial-a-Ride - Individuals must go through the regionally adopted in-person eligibility assessment and certification process administered by Valley Metro and be certified as ADA eligible.

- Non-ADA Regional Dial-a-Ride – Depending on the jurisdiction of residence, individuals must either be a senior age 65 or above or an ADA certified person with a disability. Individuals can apply as a senior by completing an application and providing documentation demonstrating age and jurisdiction of residence. Individuals with disabilities can use the same in-person functional ADA evaluation and certification process as described above.
- If a jurisdiction wishes to provide RDAR to any other individuals, that jurisdiction must implement and manage its own eligibility certification process and provide the names, contact information, and any other appropriate information for eligible individuals to Valley Metro so that service can be provided in accordance with the jurisdiction's eligibility policies and procedures.

3. Restrictions/Priorities:

There are no trip priorities or there are no restrictions or trip priorities for ADA eligible riders making ADA eligible RDAR trips. If a jurisdiction wishes to establish restrictions or priorities for non-ADA RDAR service, the jurisdiction and Valley Metro will agree on those restrictions and priorities prior to the beginning of the fiscal year during which they will be in effect and as necessary thereafter.

4. Fares:

Fares for ADA eligible riders making ADA eligible RDAR trips are $4 per one-way trip. Fares for non-ADA RDAR trips may be established by each jurisdiction providing non-ADA service. Fares may be paid in cash or with pre-purchased East/Northwest Valley or Regional Dial-a-Ride tickets. Phoenix residents who wish to pay the fare with Phoenix Dial-a-Ride tickets or with a Phoenix Dial-a-Ride monthly pass may do so; however, these fare instruments are not available to residents of any other jurisdictions.

Valley Metro will bill each jurisdiction for the actual cost of service provided to its residents, less the amount of fares to be collected. Valley Metro will also bill any jurisdiction for any fares which the RDAR contractor was unable to collect under the following circumstances:

- The resident was making a return trip and was unable/unwilling to pay the fare. (In such instances, transportation will be provided to the passenger's home, and the passenger will be subject to disciplinary action, up to and including suspension of service.)
- The resident was making a trip to or from a life sustaining medical treatment (such as kidney dialysis) and was unable/unwilling to pay the fare. (In such instances, transportation will be provided to ensure that the passenger is able to receive the necessary medical treatment, and the passenger will be subject to disciplinary action, up to and including suspension of service.)
- The resident lives in Phoenix and paid his/her fare with a Phoenix Dial-a-Ride Monthly Pass.

Valley Metro will also bill jurisdictions for East Valley/Northwest Valley, Regional Dial-a-Ride and Phoenix Dial-a-Ride tickets turned in by the RDAR contractor.

5. Days and Hours of Service

RDAR service will be available for any ADA eligible rider at any time when the requested trip can be made using Valley Metro bus and/or light rail service. If a jurisdiction wishes to provide RDAR service for non-ADA trips, Valley Metro and the jurisdiction will agree on a schedule during which RDAR service will be made available to eligible residents of that jurisdiction.

6. Service area:

For ADA eligible riders making ADA eligible trips, RDAR service is available anywhere where Valley Metro service operates. For non-ADA service, RDAR is available anywhere in Maricopa County, subject to any limitations established by each jurisdiction for its residents making non-ADA trips.

7. Complaints

Valley Metro will accept all comments, complaints and commendations regarding RDAR service. Customers, caregivers and other interested parties may file a comment, complaint or commendation about RDAR service by contacting Valley Metro's Customer Service Center by phone at (602) 253-5000, by email at csr@valleymetro.org, or via Valley Metro's website, valleymetro.org. Valley Metro staff will direct the comment to the most appropriate party (e.g. the RDAR provider or Valley Metro staff who oversees the service) and will document any findings made or actions taken by either provider or Valley Metro staff as a result to the comment, complaint or commendation.

8. Payment to Provider:

The RDAR contractor will be paid a boarding fee for each trip and for each revenue mile or group trip operated, less the fares to be collected. The contractor will also be paid or assessed additional amounts based on the contractor achieving or failing to achieve levels of performance set forth in the contract.

Each jurisdiction will pay all boarding fees, per-mile charges, group charges and retain all fares for trips taken by its residents. All costs associated with incentives and all savings associated with penalties will be apportioned to each jurisdiction based on its pro rata share of service.

SCHEDULE "C" – REGIONAL DIAL A RIDE SERVICE SPECIFICATIONS Cont.

9. Contract Administration

Valley Metro shall serve as Contract Administrator. Valley Metro Shall:

- Provide detailed operational and financial performance data to each jurisdiction on an at-least monthly basis
- Process, review, validate, and pay contractor invoices
- Accept, monitor and resolve customer complaints
- Procure, oversee and manage the RDAR contractor and ensure compliance with all applicable federal, state and local laws and ordinances
- Administer federal, regional, and local project funds and apportion all program revenues and expenses to each jurisdiction as described herein
- Provide public information regarding RDAR service
- Assist jurisdictions to implement strategies to maximize the safety, quality, effectiveness, efficiency and cohesiveness of RDAR service

SCHEDULE "C" – REGIONAL DIAL A RIDE SERVICE COST ESTIMATE

FY17 - Regional Trips

Trips:	Regional Glendale
ADA Ambulatory	3,336
ADA Wheelchair	941
Total Trips	4,277
Cost:	
ADA Ambulatory	$161,064
ADA Wheelchair	$45,428
Total Variable Cost	$206,492
Contractor's Incentive	$3,139
RPTA Salaries, Fringes & OHD	$18,784
Total Gross Program Cost	$228,415
Total Fare Revenue	$17,108
Total Net Program Cost Before PTF	**$211,307**
ADA Costs	$211,307
Non-ADA Costs	$0
Net Program by ADA and Non-ADA:	$211,307
Remaining PTF Available	$0
PTF Applied	$0
Member City Contributions:	
ADA-Costs	$211,307
Non-ADA Costs	$0
Additional per City	$1,693
Total Contribution	**$213,000**

SCHEDULE "E" – AMERICANS WITH DISABILITIES ACT (ADA) – PUBLIC TRANSPORTATION FUNDS (PTF) AVAILABILITY

For the period July 1, 2016 to June 30, 2017 the maximum amount of Public Transportation Funds (PTF) available for the City of Glendale is **$729,059.00.** The PTF will pay actual costs for ADA trips and other requests for Paratransit service made by ADA certified Riders up to the maximum amount. A final reconciliation at fiscal year-end will be performed and adjustments, if necessary, will be made using actual ADA eligible costs.

Any remaining ADA PTF funds not used up to the maximum reimbursements may be requested by City for other ADA certified rider eligible expenses, and certified by the City's chief financial officer or designee. RPTA will reimburse City within thirty (30) business days based upon availability of funds. City may request that reimbursements be made electronically. Wire transfers must be pre-arranged through the RPTA Finance Department.

Maximum amount: **$729,059.00**

SCHEDULE"H" - CAPITAL PROJECTS

Project	Description	Quantity	Estimated Cost	PTF Share
N Glendale Park-and-Ride, Transit Center	Design, Construction		$12,787,855	$2,557,571

ATTACHMENT "A" – PTF EXPENSE REIMBURSMENT REQUEST

Regional Public Transportation Authority

PTF Expenditure Reimbursement Request

The information provided will be used by the Regional Public Transportation Authority (RPTA) to monitor designated lead agency cash flow to ensure compliance with ARS 48-5103. No further monies may be paid out under this program unless this report is completed and filed as required.

RECIPIENT ORGANIZATION NAME AND ADDRESS	PROJECT AGREEMENT NUMBER	REQUEST NO.
	REPORTING PERIOD (Dates) FROM:	TO:

	TOTAL	PTF SHARE
TOTAL ELIGIBLE COSTS	$ -	$ -
TOTAL PREVIOUS PAYMENTS	$ -	$ -
CURRENT PAYMENT REQUESTED	$ -	$ -
REMAINING FUNDING	$ -	$ -

REQUIRED SIGNATURE

This document must be signed by the recipient's Chief Financial Officer or their designated representative.

CERTIFICATION

I certify the financial expenditures submitted for reimbursement with this report, including supporting documentation, are eligible and allowable expenditures consistent with the project goals and requirements, have not been previously requested, and that payment is due. I also certify that all matching requirements have been met and sufficient documentation exists in our files and are available upon request or in the event of an audit.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	DATE REQUEST SUBMITTED
TYPED OR PRINTED NAME AND TITLE	TELEPHONE

Instructions

1. Keep a copy of everything submitted.
2. All project records, including financial records, must be maintained for 3 years beyond project completion.

For RPTA use only

Date request received:	Life cycle compliance review (signature/date)
Approved for funds availability	10 Date of funds transfer

File #: 16-322, **Version:** 1

RESOLUTION 5131: AUTHORIZATION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH ARIZONA DEPARTMENT OF TRANSPORTATION FOR CAMELBACK ROAD FROM 51ST AVENUE TO 91ST AVENUE INTELLIGENT TRANSPORTATION SYSTEMS ENHANCEMENTS PROJECT

Staff Contact: Jack Friedline, Director, Public Works

Purpose and Recommended Action

This is a request for City Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into an Intergovernmental Agreement (IGA) with Arizona Department of Transportation (ADOT) for the Camelback Road from 51st Avenue to 91st Avenue Intelligent Transportation Systems (ITS) Enhancements Project.

Background

The city has made a significant investment in deployment of ITS infrastructure along arterial and collector streets to enhance the management of traffic. These improvements enable Transportation staff to remotely monitor traffic and adjust signal timing based on current traffic patterns, or in response to resident requests. Additionally, drivers can receive real-time information on event traffic conditions and travel times via dynamic message signs (DMS).

The city's ITS infrastructure is currently comprised of over 100 miles of fiber optic cable that provides communication to 160 of the city's 198 traffic signals, 115 closed-circuit television (CCTV) cameras, and 14 DMS. Future infrastructure expansions include 51st Avenue, Olive Avenue, Northern Avenue, and Maryland Avenue.

Analysis

This project to install ITS infrastructure along Camelback Road, from 51st Avenue to 91st Avenue, was identified in the city's ITS Strategic Plan as priority number one for communication enhancement projects. This project includes the design and installation of five miles of conduit, fiber optic cable, communications equipment and five closed-circuit television (CCTV) cameras. Once completed, six traffic signals on Camelback Road will be connected to the central signal system via fiber optic cable. This project is identified in the Maricopa Association of Governments' Transportation Improvement Program, and federal funds for design have been secured for federal FY 2016 and for construction for federal FY 2019.

ADOT will advertise, bid, award, and administer the scoping, design, and construction of the project, and will prepare all required submissions to the Federal Highway Administration. The city will be required to provide a 5.7% match of the capped federal funding and 100% of all costs that exceed the cap.

The total estimated design cost of the project is $177,058. Of the total anticipated design cost, $166,966 is available through federal funding. The required city match of $10,092 is available in the Fiscal Year (FY) 2016-17 Smart Traffic Signals.

The total estimated construction cost of the project is $848,356. Of the total anticipated construction cost, $800,000 is available through federal funding. The required city match of $48,356 is available in the FY2018-19 Smart Traffic Signals.

Previous Related Council Action

On April 26, 2016, Council authorized entering into Amendment No. 1 to an IGA with ADOT for the 67th Avenue from Glendale Avenue to Cholla Street ITS Enhancements project.

On October 8, 2013, Council authorized entering into an IGA with ADOT for the 67th Avenue from Glendale Avenue to Cholla Street ITS Enhancements project.

Community Benefit/Public Involvement

Technology enhancements will continue to provide efficient traffic management for the traveling public, and this design and construction project will address improvements to the ITS infrastructure along one of Glendale's most critical east-west corridors.

Budget and Financial Impacts

Funding for the city match for design is available in the Fiscal Year 2016-17 Smart Traffic Signals budget. Expenditures with ADOT are estimated at $10,092.

Funding for the city match for construction is available in the Fiscal Year 2018-19 Smart Traffic Signals budget. Expenditures with ADOT are estimated at $48,356, contingent upon Council Budget approval.

While staff does not anticipate additional project costs, should this project exceed the estimate outlined in the IGA, the City will be responsible for the additional costs. Since the funds listed in the IGA are estimates, staff requests flexibility in spending up to 10 percent of the total project cost in additional funds for construction cost overruns.

Cost	Fund-Department-Account
$10,092	**2210-65005-551200, Smart Traffic Signals (FY 2016-17)**
$48,356	**2210-65005-518200, Smart Traffic Signals (FY 2018-19)**

Capital Expense? No

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

RESOLUTION NO. 5131 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 ARIZONA DEPARTMENT OF TRANSPORTATION (IGA/JPA 16-0005850-I) FOR THE INSTALLATION OF FIVE MILES OF CONDUIT AND FIBER OPTICS, COMMUNICATIONS EQUIPMENT AND FIVE CCTV CAMERAS ALONG CAMELBACK ROAD BETWEEN 51ST AND 91ST AVENUES.

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

SECTION 1. That it is deemed in the best interest of the City of Glendale and the citizens thereof that the Intergovernmental Agreement between the Arizona Department of Transportation and the City of Glendale (IGA/JPA 16-0005850-I) for five miles of conduit and fiber optics, communications equipment and five CCTV cameras along Camelback Road between 51st and 91st Avenues 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 any and all documents necessary to effectuate 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

iga_transit_cctv.doc

ADOT File No.: IGA/JPA 16-0005850-I
AG Contract No.: P001 2016 001512
Project Name: Camelback Rd, – 51st Ave to 91st Ave
Project Location: Camelback Rd: 51st Ave. to 91st Ave.
Federal-aid No.: GLN-0(253)T
ADOT Project No.: T0076 01D/01C
TIP/STIP No.: GLN19-760D & GLN19-760C
CFDA No.: 20.205 - Highway Planning and Construction
Budget Source Item No.: n/a

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF GLENDALE

THIS AGREEMENT is entered into this date _____, 2016, 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, hereinafter referred to as the "Project", consists of the design and installation of five miles of conduit, fiber optic cable, communications equipment and five CCTV cameras at the intersections along Camelback Road between 51st Avenue and 91st Avenue. The State will advertise, bid, award and administer the scoping, design and construction of the Project. The plans, estimates and specifications for the Project will be prepared and, as required, submitted to Federal Highway Administration (FHWA) for 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.

5. The interest of the State in this Project is the acquisition of federal funds for the use and benefit of the City and the authorization of such federal funds for the Project pursuant to federal law and regulations. The State shall be the designated agent for the City for the Project, if the Project is approved by FHWA and funds for the Project are available. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project specifications and terms and conditions.

6. The Parties will perform their responsibilities consistent with this Agreement; 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:

T0076 01D (scoping/design):

Federal-aid funds @ 94.3%	$ 166,966.00
City's match @ 5.7%	$ 10,092.00
Subtotal – Scoping/Design*	**$ 177,058.00**

T0076 01C (construction):

Federal-aid funds @ 94.3% (capped)	$ 800,000.00
City's match @ 5.7%	$ 48,356.00
Subtotal – Construction**	**$ 848,356.00**
TOTAL Estimated Project Cost	**$1,025,414.00**
Total Estimated City's Funds	**$ 58,448.00**
Total Federal Funds	**$ 966,966.00**

* (Includes ADOT Project Management & Design Review (PMDR) Costs)
** (Includes 15% CE (this percentage is subject to change, any change will require concurrence from the City) and 5% Project contingencies)

The Parties acknowledge that the final Project costs may exceed the initial estimate(s) shown above, and in such case, the City is responsible for, and agrees to pay, any and all 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 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. Execute this Agreement, and if the Project is approved by FHWA and funds for the Project are available, be the City's designated agent for the Project.

   b. Execute this Agreement, and prior to performing or authorizing **any** work, invoice the City for the City's share of the Project design costs, estimated at **$10,092.00**. If PMDR costs increase during the development of design, invoice the City in increments of $5,000.00 to cover additional PMDR costs. Once the costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual PMDR and design costs.

c. After receipt of the City's estimated share of the Project design costs, on behalf of the City, prepare and provide all documents pertaining to the design and post-design of the Project, incorporating comments from the City, as appropriate; and review and approve documents required by FHWA to qualify the Project for and to receive federal funds. Such work may consist of, but is not specifically limited to, preparation of environmental documents; analysis and documentation of environmental categorical exclusion determinations; geologic materials testing and analysis; right-of-way related activities; preparation of reports, design plans, maps, specifications and cost estimates and such other related tasks essential to the achievement of the objectives of this Agreement.

d. Submit all required documentation pertaining to the Project to FHWA with the recommendation that the maximum federal funds programmed for this Project be approved for scoping/design. Upon authorization, proceed to advertise for and enter into contract(s) with the consultant(s) for the design and post design of the Project.

e. After completion of design and prior to bid advertisement, invoice the City for the City's share of the Project construction costs, estimated at **$48,356.00.** Once the Project costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs; and de-obligate or otherwise release any remaining federal funds from the scoping/design phase of the Project.

f. After receipt of the City's estimated share of the Project construction costs, submit all documentation required to FHWA with the recommendation that funding be approved for construction and request the maximum federal funds programmed for the construction of this Project. Should costs exceed the maximum federal funds available, it is understood and agreed that the City will be responsible for any overage.

g. With FHWA authorization, proceed to administer construction, advertise for, receive and open bids, award and enter into a contract with the firm for the construction of the Project. If the bid amounts exceed the construction cost estimate, obtain City concurrence prior to awarding the contract. Once awarded, invoice the City for the difference between estimated and actual costs, if applicable.

h. Be granted, without cost requirements, the right to enter City right-of-way as required to conduct any and all construction and pre-construction related activities for said Project, including without limitation, temporary construction easements or temporary rights of entry on to and over said rights-of-way of the City.

i. Enter into an agreement with the design consultant which states that the design consultant shall provide professional post-design services as required and requested throughout and upon completion of the construction phase of the Project. Upon completion of the construction phase of the Project, provide an electronic version of the record drawings to the City.

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

k. 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. Designate the State as the City's authorized agent for the Project.

   b. Within 30 days of receipt of an invoice from the State pay the City's Project design costs, estimated at **$10,092.00**. If, during the development of design, additional funding to cover PMDR costs is required, pay the invoiced amount to the State within 30 days of receipt. Be responsible for any difference between the estimated and actual PMDR and design costs of the Project.

   c. Review design plans, specifications, cost estimates and other such documents 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. After completion of design, within 30 days of receipt of an invoice from the State and prior to bid advertisement, pay to the State, the City's Project construction costs, estimated at **$48,356.00.** Once the Project costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs; de-obligate or otherwise release any remaining federal funds from the scoping/design phase of the Project.

   e. Be responsible for all costs incurred in performing and accomplishing the work as set forth under this Agreement, that are 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 30 days of receipt of an invoice from the State.

   f. Certify that all necessary rights-of-way have been or will be acquired prior to advertisement for bid and that all obstructions or unauthorized encroachments of any 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, 9.06 Monitoring Process and 9.07 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.

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

   h. 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, temporary construction easements or temporary rights of entry to accomplish among other things, soil and foundation investigations.

   i. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase Project costs. Be responsible for the cost of any City requested changes to the scope of work of the Project, such changes will require State and FHWA approval. Be responsible for any contractor claims for additional compensation caused by Project delay attributable to the City. Payment for these costs will be made to the State within 30 days of receipt of an invoice from the State.

j. Upon notification of Project completion, agree to accept, maintain and assume full responsibility of the Project and all Project components in writing.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of the Project and all related deposits and/or reimbursements are made. Any provisions for maintenance shall be perpetual, unless assumed by another competent entity. This Agreement may be cancelled at any time prior to the award of the Project construction contract, upon 30 days written notice to the other party. It is understood and agreed that, in the event the City terminates this Agreement, the City will be responsible for all costs incurred by the State up to the time of termination. It is further understood and agreed that in the event the City terminates this Agreement, the State shall not be obligated to complete and/or maintain the Project.

2. The City shall indemnify, defend, and hold harmless the State, any of its departments, agencies, officers or employees (collectively referred to in this paragraph as the "State") from any and all claims, demands, suits, actions, proceedings, loss, cost and damages of every kind and description, including reasonable attorneys' fees and/or litigation expenses (collectively referred to in this paragraph as the "Claims"), which may be brought or made against or incurred by the State on account of loss of or damage to any property or for injuries to or death of any person, to the extent caused by, arising out of, or contributed to, by reasons of any alleged act, omission, professional error, fault, mistake, or negligence of the City, its employees, officers, directors, agents, representatives, or contractors, their employees, agents, or representatives in connection with or incident to the performance of this Agreement. The City's obligations under this paragraph shall not extend to any Claims to the extent caused by the negligence of the State, except the obligation does apply to any negligence of the City which may be legally imputed to the State by virtue of the State's ownership or possession of land. The City's obligations under this paragraph shall survive the termination of this Agreement.

3. The State shall include Section 107.13 of the 2008 version of the Arizona Department of Transportation Standard Specifications for Road and Bridge Construction, incorporated to this Agreement by reference, in the State's contract with any and all contractors, of which the City shall be specifically named as a third-party beneficiary. This provision may not be amended without the approval of the City.

4. The cost of scoping, design, construction and construction engineering work under this Agreement is to be covered by the maximum available amount of federal funds programmed for this Project. The City acknowledges that the actual costs may exceed the maximum available amount of federal funds, or that certain costs may not be accepted by the federal government as eligible for federal funds. Therefore, the City agrees to pay the difference between actual Project costs and the federal funds received.

5. Should the federal funding related to this Project be terminated or reduced by the federal government, or 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.

6. The cost of the Project under this Agreement includes indirect costs approved by FHWA, as applicable.

7. 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.

8. The City acknowledges compliance with federal laws and regulations and may be subject to the Office of Management and Budget (OMB), Single Audit, Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations). Entities that expend $500,000.00 or more (prior to 12/26/14) and $750,000.00 or more (on or after 12/26/14) of federal assistance (federal funds, federal grants, or federal awards) are required to comply by having an independent audit. Either an electronic or hardcopy of the Single Audit is to be sent to Arizona Department of Transportation Financial Management Services within the required deadline of nine (9) months of the sub recipient fiscal year end.

   ADOT – FMS
   Attn: Cost Accounting Administrator
   206 S 17th Ave. Mail Drop 204B
   Phoenix, AZ 85007
   SingleAudit@azdot.gov

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

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

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

12. 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".

13. 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.

14. 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.

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

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

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

For Agreement Administration:

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

City of Glendale
Attn: Debbie Albert
5850 W Glendale Ave.
Glendale, AZ 85301
(623) 847-7524
dalbert@glendaleaz.com

For Project Administration:
Arizona Department of Transportation
Multi Modal Planning
1615 W Jackson St.
Phoenix, AZ 85007
(602)712-4428

City of Glendale
Attn: Debbie Albert
5850 W Glendale Ave.
Glendale, AZ 85301
(623) 847-7524
dalbert@glendaleaz.com

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

City of Glendale
Attn: Vicki Rios
5850 W Glendale Ave.
Glendale, AZ 85301
(623) 930-2480

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

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

CITY OF GLENDALE

By _____
JERRY WEIERS
Mayor

ATTEST:

By _____
PAMELA HANNA
City Clerk

STATE OF ARIZONA
Department of Transportation

By _____
STEVE BOSCHEN, P.E.
IDO Assistant Director

IGA/JPA 16-0005850-I

ATTORNEY APPROVAL FORM FOR THE CITY OF GLENDALE

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY OF GLENDALE, an agreement 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 _____ day of _____, 2016.

_____

City Attorney

File #: 16-325, **Version:** 1

RESOLUTION 5132: AUTHORIZATION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR DESIGN AND CONSTRUCTION OF PEDESTRIAN IMPROVEMENTS ALONG PARADISE LANE BETWEEN 55TH AND 59TH AVENUES

Staff Contact: Jack Friedline, Director, Public Works

Purpose and Recommended Action

This is a request for City Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into an Intergovernmental Agreement (IGA) with the Arizona Department of Transportation (ADOT) for the design and construction of a sidewalk along the north side of Paradise Lane between 55th and 59th Avenues.

Background

Paradise Lane is a half-mile collector street that connects 55th and 59th avenues. While there is sidewalk, curb, and gutter on the south side of Paradise Lane between 55th and 59th avenues, the north side only has curb and gutter. Installation of a sidewalk and associated Americans with Disabilities (ADA) approved curb ramps will allow for enhanced access for school children and other pedestrians to an adjacent school and residential area as well as a nearby park.

Analysis

Glendale standards for collector streets include pedestrian facilities along both sides of the roadway. Federal Congestion Mitigation and Air Quality funds for design and construction of these needed improvements were secured during the last Maricopa Association of Governments programming cycle. Design funds were programmed for federal Fiscal Year (FY) 2016 and construction funds are included in federal FY 2019.

Under the terms of the IGA, ADOT will advertise, bid, award, and administer the scoping, design, and construction of the project. The city will be required to provide a 5.7% match of the capped federal funding and 100% of all costs that exceed the cap.

The total estimated design cost of the project is $58,000, of which $54,694 is available through federal funding. The required city match of $3,306 is available in the city's Fiscal Year (FY) 2016-17 Capital Improvement Plan Sidewalk and Curb Improvements project budget.

The total estimated construction cost of the project is $264,100 of which a capped amount of $223,402 is available through federal funding. The required city match of $40,698 is available in the FY 2018-19 Capital Improvement Plan Sidewalk and Curb Improvements budget, contingent upon Council Budget approval.

Community Benefit/Public Involvement

Access to alternative modes of transportation is a direct quality-of-life benefit. Adding a sidewalk along the north side of Paradise Lane will provide connectivity between numerous homes, schools, and other nearby destinations. Providing options for all modes of transportation including convenient, continuous sidewalks helps to promote alternative transportation usage, which can lead to decreased traffic congestion and contribute to cleaner air.

The Citizen Bicycle Advisory Committee at their January 4, 2016 meeting and the Citizens Transportation Oversight Commission at their January 7, 2016 meeting were informed of and approve of this project.

Budget and Financial Impacts

Funding is available in the Fiscal Year 2016-17 and FY 2018-19 Capital Improvement Plan budget. City expenditures with ADOT are estimated at $44,004, contingent upon Council Budget approval.

While staff does not anticipate additional project costs, should this project exceed the estimate outlined in the IGA, the City will be responsible for the additional costs. Since the funds listed in the IGA are estimates, staff requests flexibility in spending up to 10 percent of the total project cost in additional funds for design and construction cost overruns. Budgeting of future ongoing maintenance would occur for the year of anticipated operation through the typical budget process.

Cost	Fund-Department-Account
$44,004	**2210-65101-551200, Sidewalk and Curb Improvements**

Capital Expense? Yes

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from?

RESOLUTION NO. 5132 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 ARIZONA DEPARTMENT OF TRANSPORTATION FOR THE DESIGN AND CONSTRUCTION OF SIDEWALKS AT THE INTERSECTIONS ALONG PARADISE LANE BETWEEN 55TH AND 59TH AVENUE IN GLENDALE, ARIZONA.

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

SECTION 1. That it is deemed in the best interest of the City of Glendale and the citizens thereof that the Intergovernmental Agreement between the City of Glendale and the Arizona Department of Transportation (IGA/JPA No. 16-0005853-I) for the design and construction of sidewalks at the intersections along Paradise Lane between 55th and 59th Avenue in Glendale, Arizona 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 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

iga_transit_paradise.doc

ADOT File No.: IGA/JPA 16-0005853-I
AG Contract No.: P001 2016 001648
Project Name: Paradise Lane - 55th Ave. to 59th Ave.
Project Location: Paradise Lane: 55th Ave. to 59th Ave.
Federal-aid No.: GLN-0(256)T
ADOT Project No.: T0070 01D/01C
TIP/STIP No.: GLN18-441 & GLN19-741
CFDA No.: 20.205 - Highway Planning and Construction
Budget Source Item No.: n/a

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF GLENDALE

THIS AGREEMENT is entered into this date _____, 2016, 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, hereinafter referred to as the "Project", consists of the design and construction of sidewalks at the intersections along Paradise Lane between 55th Avenue and 59th Avenue. The State will advertise, bid, award and administer the scoping, design and construction of the Project. The plans, estimates and specifications for the Project will be prepared and, as required, submitted to Federal Highway Administration (FHWA) for 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.

5. The interest of the State in this Project is the acquisition of federal funds for the use and benefit of the City and the authorization of such federal funds for the Project pursuant to federal law and regulations. The State shall be the designated agent for the City for the Project, if the Project is approved by FHWA and funds for the Project are available. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project specifications and terms and conditions.

6. The Parties will perform their responsibilities consistent with this Agreement; 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:

T0070 01D (scoping/design):

Federal-aid funds @ 94.3%	$ 54,694.00
City's match @ 5.7%	$ 3,306.00
Subtotal – Scoping/Design*	**$ 58,000.00**

T0070 01C (construction):

Federal-aid funds @ 94.3% (capped)	$ 223,402.00
City's match @ 5.7%	$ 13,504.00
City's Contribution @ 100%	$ 27,194.00
Subtotal – Construction**	**$ 264,100.00**
TOTAL Estimated Project Cost	**$ 322,100.00**
Total Estimated City's Funds	**$ 44,004.00**
Total Federal Funds	**$ 278,096.00**

* (Includes ADOT Project Management & Design Review (PMDR) Costs)
** (Includes 15% CE (this percentage is subject to change, any change will require concurrence from the City) and 5% Project contingencies)

The Parties acknowledge that the final Project costs may exceed the initial estimate(s) shown above, and in such case, the City is responsible for, and agrees to pay, any and all 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 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. Execute this Agreement, and if the Project is approved by FHWA and funds for the Project are available, be the City's designated agent for the Project.

   b. Execute this Agreement, and prior to performing or authorizing **any** work, invoice the City for the City's share of the Project design costs, estimated at **$3,306.00**. If PMDR costs increase during the development of design, invoice the City in increments of $5,000.00 to cover the City's share of additional PMDR costs. Once the costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual PMDR and design costs.

   c. After receipt of the City's estimated share of the Project design costs, on behalf of the City, prepare and provide all documents pertaining to the design and post-design of the Project,

incorporating comments from the City, as appropriate; and review and approve documents required by FHWA to qualify the Project for and to receive federal funds. Such work may consist of, but is not specifically limited to, preparation of environmental documents; analysis and documentation of environmental categorical exclusion determinations; geologic materials testing and analysis; right-of-way related activities; preparation of reports, design plans, maps, specifications and cost estimates and such other related tasks essential to the achievement of the objectives of this Agreement.

d. Submit all required documentation pertaining to the Project to FHWA with the recommendation that the maximum federal funds programmed for this Project be approved for scoping/design. Upon authorization, proceed to advertise for and enter into contract(s) with the consultant(s) for the design and post design of the Project.

e. After completion of design and prior to bid advertisement, invoice the City for the City's share of the Project construction costs, estimated at **$40,698.00.** Once the Project costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs; and de-obligate or otherwise release any remaining federal funds from the scoping/design phase of the Project.

f. After receipt of the City's estimated share of the Project construction costs, submit all documentation required to FHWA with the recommendation that funding be approved for construction and request the maximum federal funds programmed for the construction of this Project. Should costs exceed the maximum federal funds available, it is understood and agreed that the City will be responsible for any overage.

g. With FHWA authorization, proceed to administer construction, advertise for, receive and open bids, award and enter into a contract with the firm for the construction of the Project. If the bid amounts exceed the construction cost estimate, obtain City concurrence prior to awarding the contract. Once awarded, invoice the City for the difference between estimated and actual costs, if applicable.

h. Be granted, without cost requirements, the right to enter City right-of-way as required to conduct any and all construction and pre-construction related activities for said Project, including without limitation, temporary construction easements or temporary rights of entry on to and over said rights-of-way of the City.

i. Enter into an agreement with the design consultant which states that the design consultant shall provide professional post-design services as required and requested throughout and upon completion of the construction phase of the Project. Upon completion of the construction phase of the Project, provide an electronic version of the record drawings to the City.

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

k. 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. Designate the State as the City's authorized agent for the Project.

b. Within 30 days of receipt of an invoice from the State pay the City's Project design costs, estimated at **$3,306.00**. If, during the development of design, additional funding to cover PMDR costs is required, pay the invoiced amount to the State within 30 days of receipt. Be responsible for any difference between the estimated and actual PMDR and design costs of the Project.

c. Review design plans, specifications, cost estimates and other such documents 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. After completion of design, within 30 days of receipt of an invoice from the State and prior to bid advertisement, pay to the State, the City's Project construction costs, estimated at **$40,698.00.** Once the Project costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs; de-obligate or otherwise release any remaining federal funds from the scoping/design phase of the Project.

e. Be responsible for all costs incurred in performing and accomplishing the work as set forth under this Agreement, that are 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 30 days of receipt of an invoice from the State.

f. Certify that all necessary rights-of-way have been or will be acquired prior to advertisement for bid and that all obstructions or unauthorized encroachments of any 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, 9.06 Monitoring Process and 9.07 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.

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

h. 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, temporary construction easements or temporary rights of entry to accomplish among other things, soil and foundation investigations.

i. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase Project costs. Be responsible for the cost of any City requested changes to the scope of work of the Project, such changes will require State and FHWA approval. Be responsible for any contractor claims for additional compensation caused by Project delay attributable to the City. Payment for these costs will be made to the State within 30 days of receipt of an invoice from the State.

j. Upon notification of Project completion, agree to accept, maintain and assume full responsibility of the Project and all Project components in writing.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of the Project and all related deposits and/or reimbursements are made. Any provisions for maintenance shall be perpetual, unless assumed by another competent entity. This Agreement may be cancelled at any time prior to the award of the Project construction contract, upon 30 days written notice to the other party. It is understood and agreed that, in the event the City terminates this Agreement, the City will be responsible for all costs incurred by the State up to the time of termination. It is further understood and agreed that in the event the City terminates this Agreement, the State shall not be obligated to complete and/or maintain the Project.

2. The City shall indemnify, defend, and hold harmless the State, any of its departments, agencies, officers or employees (collectively referred to in this paragraph as the "State") from any and all claims, demands, suits, actions, proceedings, loss, cost and damages of every kind and description, including reasonable attorneys' fees and/or litigation expenses (collectively referred to in this paragraph as the "Claims"), which may be brought or made against or incurred by the State on account of loss of or damage to any property or for injuries to or death of any person, to the extent caused by, arising out of, or contributed to, by reasons of any alleged act, omission, professional error, fault, mistake, or negligence of the City, its employees, officers, directors, agents, representatives, or contractors, their employees, agents, or representatives in connection with or incident to the performance of this Agreement. The City's obligations under this paragraph shall not extend to any Claims to the extent caused by the negligence of the State, except the obligation does apply to any negligence of the City which may be legally imputed to the State by virtue of the State's ownership or possession of land. The City's obligations under this paragraph shall survive the termination of this Agreement.

3. The State shall include Section 107.13 of the 2008 version of the Arizona Department of Transportation Standard Specifications for Road and Bridge Construction, incorporated to this Agreement by reference, in the State's contract with any and all contractors, of which the City shall be specifically named as a third-party beneficiary. This provision may not be amended without the approval of the City.

4. The cost of scoping, design, construction and construction engineering work under this Agreement is to be covered by the maximum available amount of federal funds programmed for this Project. The City acknowledges that the actual costs may exceed the maximum available amount of federal funds, or that certain costs may not be accepted by the federal government as eligible for federal funds. Therefore, the City agrees to pay the difference between actual Project costs and the federal funds received.

5. Should the federal funding related to this Project be terminated or reduced by the federal government, or 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.

6. The cost of the Project under this Agreement includes indirect costs approved by FHWA, as applicable.

7. 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.

8. The City acknowledges compliance with federal laws and regulations and may be subject to the Office of Management and Budget (OMB), Single Audit, Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations). Entities that expend $500,000.00 or more (prior to

12/26/14) and $750,000.00 or more (on or after 12/26/14) of federal assistance (federal funds, federal grants, or federal awards) are required to comply by having an independent audit. Either an electronic or hardcopy of the Single Audit is to be sent to Arizona Department of Transportation Financial Management Services within the required deadline of nine (9) months of the sub recipient fiscal year end.

ADOT – FMS
Attn: Cost Accounting Administrator
206 S 17th Ave. Mail Drop 204B
Phoenix, AZ 85007
SingleAudit@azdot.gov

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

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

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

12. 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".

13. 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.

14. 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.

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

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

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

For Agreement Administration:

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

City of Glendale
Attn: Purab Adabala
6210 W Myrtle Avenue, Suite 112
Glendale, AZ 85301
(623) 930-2926
padabala@glendaleaz.com

For Project Administration:

Arizona Department of Transportation
Multi Modal Planning
1615 W Jackson St.
Phoenix, AZ 85007
(602)712-4428

City of Glendale
Attn: Purab Adabala
6210 W Myrtle Avenue, Suite 112
Glendale, AZ 85301
(623) 930-2926
padabala@glendaleaz.com

For Financial Administration:

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

City of Glendale
Attn: Vicki Rios
5850 W Glendale Ave.
Glendale, AZ 85301
(623) 930-2480

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

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

CITY OF GLENDALE

By _____
KEVIN R. PHELPS
City Manager

ATTEST:

By _____
PAMELA HANNA
City Clerk

STATE OF ARIZONA
Department of Transportation

By _____
STEVE BOSCHEN, P.E.
IDO Assistant Director

IGA/JPA 16-0005853-I

ATTORNEY APPROVAL FORM FOR THE CITY OF GLENDALE

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY OF GLENDALE, an agreement 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 _____ day of _____, 2016.

_____

City Attorney


Paradise Lane Sidewalk
on the north side from 55th Avenue to 59th Avenue
Legend
Paradise Lane
N
N 59th Ave
N 55th Ave
W Bell Rd
W Talavi Blvd
N 56th Ave
N 57th Ave
W Aire Libre Ave
N 54th Ave
Kings Ave
W Beverly Ln
W Paradise Ln
Google earth
© 2016 Google
1000 ft

File #: 16-327, **Version:** 1

RESOLUTION 5133: AUTHORIZATION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR DESIGN AND CONSTRUCTION OF PEDESTRIAN IMPROVEMENTS ALONG 67TH AVENUE BETWEEN GLENDALE AND ORANGEWOOD AVENUES AND ALONG ORANGEWOOD AVENUE BETWEEN 67TH AND GRAND AVENUES

Staff Contact: Jack Friedline, Director, Public Works

Purpose and Recommended Action

This is a request for City Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into an Intergovernmental Agreement (IGA) with the Arizona Department of Transportation (ADOT) for the design and construction of a sidewalk along 67th Avenue between Glendale and Orangewood Avenues, and Orangewood Avenue between 67th and Grand Avenues.

Background

The 67th Avenue is an arterial street that connects Glendale and Orangewood Avenues. There are multiple locations with missing curb, gutter, sidewalk, and Americans with Disabilities Act (ADA) approved curb ramps between Glendale and Orangewood avenues.

Orangewood Avenue is a half-mile collector street that connects 67th and Grand Avenues. There are multiple locations with missing curb, gutter, sidewalk, and ADA approved curb ramps between 67th and Grand Avenues.

Installation of curb, gutter, sidewalks, and ADA approved curb ramps on these two sections of city streets will allow for enhanced access for school children and other pedestrians to an adjacent commercial and residential area as well as other nearby destinations.

Analysis

Glendale standards for arterial and collector streets include pedestrian facilities along both sides of the roadway. Federal Congestion Mitigation and Air Quality funds for design and construction of these needed improvements were secured during the last Maricopa Association of Governments programming cycle. Design funds were programmed for federal Fiscal Year (FY) 2016 and construction funds are included in federal FY 2020.

Under the terms of the IGA, ADOT will advertise, bid, award, and administer the scoping, design, and construction of the project. The city will be required to provide a 5.7% match of the capped federal funding and 100% of all costs that exceed the cap.

The total estimated design cost of the project is $195,000 of which $183,885 is available through federal funding. The required city match of $11,115 is available in the city's Fiscal Year (FY) 2016-17 Capital Improvement Plan Sidewalk and Curb Improvements project budget.

The total estimated construction cost of the project is $1,244,300 of which a capped amount of $1,097,275 is available through federal funding. The required city match of $147,025 is available in the FY 2019-20 Capital Improvement Plan Sidewalk and Curb Improvements project budget, contingent upon Council Budget approval.

Community Benefit/Public Involvement

Access to alternative modes of transportation is a direct quality-of-life benefit. Adding a sidewalk along 67th and Orangewood Avenues will provide connectivity between numerous homes, schools, businesses, and other nearby destinations. Providing options for all modes of transportation including convenient, continuous sidewalks helps to promote alternative transportation usage, which can lead to decreased traffic congestion and contribute to cleaner air.

The Citizen Bicycle Advisory Committee at their January 4, 2016 meeting and the Citizens Transportation Oversight Commission at their January 7, 2016 meeting were informed of and approve of this project.

Budget and Financial Impacts

Funding is available in the Fiscal Year 2016-17 and FY 2019-20 Capital Improvement Plan budget. City expenditures with ADOT are estimated at $158,140, contingent upon Council Budget approval.

While staff does not anticipate additional project costs, should this project exceed the estimate outlined in the IGA, the City will be responsible for the additional costs. Since the funds listed in the IGA are estimates, staff requests flexibility in spending up to 10 percent of the total project cost in additional funds for design and construction cost overruns. Budgeting of future ongoing maintenance would occur for the year of anticipated operation through the typical budget process.

Cost	Fund-Department-Account
$158,140	**2210-65101-551200, Sidewalk and Curb Improvements**

Capital Expense? Yes

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from?

RESOLUTION NO. 5133 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 ARIZONA DEPARTMENT OF TRANSPORTATION (IGA/JPA 16-0005854-I) FOR THE CONSTRUCTION OF SIDEWALKS, CURBS AND GUTTERS AT THE INTERSECTIONS ALONG 67TH AVENUE BETWEEN GLENDALE AND ORANGEWOOD AVENUES.

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

SECTION 1. That it is deemed in the best interest of the City of Glendale and the citizens thereof that the Intergovernmental Agreement between the Arizona Department of Transportation and the City of Glendale for the construction of sidewalks, curbs and gutters at the intersections along 67th Avenue between Glendale and Orangewood Avenues (IGA/JPA 16-0005854-I) be entered into, which agreement is now on file in the office of the City Clerk of the City of Glendale.

SECTION 2. That the Mayor or City Manager and the City Clerk be authorized and directed to execute and deliver any and all documents necessary to effectuate 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

iga_transit_67.doc

ADOT File No.: IGA/JPA 16-0005854-I
AG Contract No.: P001 2016 001638
Project Name: 67th Ave. - Glendale Ave. to Orangewood Ave.
Project Location: 67th Ave.: Glendale Ave. to Orangewood Ave.
Federal-aid No.: GLN-0(257)T
ADOT Project No.: T0071 01D/01C
TIP/STIP No.: GLN18-440 & GLN20-740
CFDA No.: 20.205 - Highway Planning and Construction
Budget Source Item No.: n/a

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF GLENDALE

THIS AGREEMENT is entered into this date _____, 2016, 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, hereinafter referred to as the "Project", consists of the design and construction of sidewalks, curbs and gutters at the intersections along 67th Avenue between Glendale Avenue and Orangewood Avenue. The State will advertise, bid, award and administer the scoping, design and construction of the Project. The plans, estimates and specifications for the Project will be prepared and, as required, submitted to Federal Highway Administration (FHWA) for 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.

5. The interest of the State in this Project is the acquisition of federal funds for the use and benefit of the City and the authorization of such federal funds for the Project pursuant to federal law and regulations. The State shall be the designated agent for the City for the Project, if the Project is approved by FHWA and funds for the Project are available. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project specifications and terms and conditions.

6. The Parties will perform their responsibilities consistent with this Agreement; 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:

T0071 01D (scoping/design):

Federal-aid funds @ 94.3%	$ 183,885.00
City's match @ 5.7%	$ 11,115.00
Subtotal – Scoping/Design*	**$ 195,000.00**

T0071 01C (construction):

Federal-aid funds @ 94.3% (capped)	$ 1,097,275.00
City's match @ 5.7%	$ 66,325.00
City's contribution @ 100%	$ 80,700.00
Subtotal – Construction**	**$ 1,244,300.00**
TOTAL Estimated Project Cost	**$ 1,439,300.00**
Total Estimated City's Funds	**$ 158,140.00**
Total Federal Funds	**$ 1,281,160.00**

* (Includes ADOT Project Management & Design Review (PMDR) Costs)
** (Includes 15% CE (this percentage is subject to change, any change will require concurrence from the City) and 5% Project contingencies)

The Parties acknowledge that the final Project costs may exceed the initial estimate(s) shown above, and in such case, the City is responsible for, and agrees to pay, any and all 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 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. Execute this Agreement, and if the Project is approved by FHWA and funds for the Project are available, be the City's designated agent for the Project.

   b. Execute this Agreement, and prior to performing or authorizing **any** work, invoice the City for the City's share of the Project design costs, estimated at **$11,115.00**. If PMDR costs increase during the development of design, invoice the City in increments of $5,000.00 to cover the City's share of additional PMDR costs. Once the costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual PMDR and design costs.

c. After receipt of the City's estimated share of the Project design costs, on behalf of the City, prepare and provide all documents pertaining to the design and post-design of the Project, incorporating comments from the City, as appropriate; and review and approve documents required by FHWA to qualify the Project for and to receive federal funds. Such work may consist of, but is not specifically limited to, preparation of environmental documents; analysis and documentation of environmental categorical exclusion determinations; geologic materials testing and analysis; right-of-way related activities; preparation of reports, design plans, maps, specifications and cost estimates and such other related tasks essential to the achievement of the objectives of this Agreement.

d. Submit all required documentation pertaining to the Project to FHWA with the recommendation that the maximum federal funds programmed for this Project be approved for scoping/design. Upon authorization, proceed to advertise for and enter into contract(s) with the consultant(s) for the design and post design of the Project.

e. After completion of design and prior to bid advertisement, invoice the City for the City's share of the Project construction costs, estimated at **$147,025.00.** Once the Project costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs; and de-obligate or otherwise release any remaining federal funds from the scoping/design phase of the Project.

f. After receipt of the City's estimated share of the Project construction costs, submit all documentation required to FHWA with the recommendation that funding be approved for construction and request the maximum federal funds programmed for the construction of this Project. Should costs exceed the maximum federal funds available, it is understood and agreed that the City will be responsible for any overage.

g. With FHWA authorization, proceed to administer construction, advertise for, receive and open bids, award and enter into a contract with the firm for the construction of the Project. If the bid amounts exceed the construction cost estimate, obtain City concurrence prior to awarding the contract. Once awarded, invoice the City for the difference between estimated and actual costs, if applicable.

h. Be granted, without cost requirements, the right to enter City right-of-way as required to conduct any and all construction and pre-construction related activities for said Project, including without limitation, temporary construction easements or temporary rights of entry on to and over said rights-of-way of the City.

i. Enter into an agreement with the design consultant which states that the design consultant shall provide professional post-design services as required and requested throughout and upon completion of the construction phase of the Project. Upon completion of the construction phase of the Project, provide an electronic version of the record drawings to the City.

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

k. 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. Designate the State as the City's authorized agent for the Project.

   b. Within 30 days of receipt of an invoice from the State pay the City's Project design costs, estimated at **$11,115.00**. If, during the development of design, additional funding to cover PMDR costs is required, pay the invoiced amount to the State within 30 days of receipt. Be responsible for any difference between the estimated and actual PMDR and design costs of the Project.

   c. Review design plans, specifications, cost estimates and other such documents 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. After completion of design, within 30 days of receipt of an invoice from the State and prior to bid advertisement, pay to the State, the City's Project construction costs, estimated at **$147,025.00.** Once the Project costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs; de-obligate or otherwise release any remaining federal funds from the scoping/design phase of the Project.

   e. Be responsible for all costs incurred in performing and accomplishing the work as set forth under this Agreement, that are 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 30 days of receipt of an invoice from the State.

   f. Certify that all necessary rights-of-way have been or will be acquired prior to advertisement for bid and that all obstructions or unauthorized encroachments of any 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, 9.06 Monitoring Process and 9.07 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.

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

   h. 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, temporary construction easements or temporary rights of entry to accomplish among other things, soil and foundation investigations.

   i. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase Project costs. Be responsible for the cost of any City requested changes to the scope of work of the Project, such changes will require State and FHWA approval. Be responsible for any contractor claims for additional compensation caused by Project delay attributable to the City. Payment for these costs will be made to the State within 30 days of receipt of an invoice from the State.

j. Upon notification of Project completion, agree to accept, maintain and assume full responsibility of the Project and all Project components in writing.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of the Project and all related deposits and/or reimbursements are made. Any provisions for maintenance shall be perpetual, unless assumed by another competent entity. This Agreement may be cancelled at any time prior to the award of the Project construction contract, upon 30 days written notice to the other party. It is understood and agreed that, in the event the City terminates this Agreement, the City will be responsible for all costs incurred by the State up to the time of termination. It is further understood and agreed that in the event the City terminates this Agreement, the State shall not be obligated to complete and/or maintain the Project.

2. The City shall indemnify, defend, and hold harmless the State, any of its departments, agencies, officers or employees (collectively referred to in this paragraph as the "State") from any and all claims, demands, suits, actions, proceedings, loss, cost and damages of every kind and description, including reasonable attorneys' fees and/or litigation expenses (collectively referred to in this paragraph as the "Claims"), which may be brought or made against or incurred by the State on account of loss of or damage to any property or for injuries to or death of any person, to the extent caused by, arising out of, or contributed to, by reasons of any alleged act, omission, professional error, fault, mistake, or negligence of the City, its employees, officers, directors, agents, representatives, or contractors, their employees, agents, or representatives in connection with or incident to the performance of this Agreement. The City's obligations under this paragraph shall not extend to any Claims to the extent caused by the negligence of the State, except the obligation does apply to any negligence of the City which may be legally imputed to the State by virtue of the State's ownership or possession of land. The City's obligations under this paragraph shall survive the termination of this Agreement.

3. The State shall include Section 107.13 of the 2008 version of the Arizona Department of Transportation Standard Specifications for Road and Bridge Construction, incorporated to this Agreement by reference, in the State's contract with any and all contractors, of which the City shall be specifically named as a third-party beneficiary. This provision may not be amended without the approval of the City.

4. The cost of scoping, design, construction and construction engineering work under this Agreement is to be covered by the maximum available amount of federal funds programmed for this Project. The City acknowledges that the actual costs may exceed the maximum available amount of federal funds, or that certain costs may not be accepted by the federal government as eligible for federal funds. Therefore, the City agrees to pay the difference between actual Project costs and the federal funds received.

5. Should the federal funding related to this Project be terminated or reduced by the federal government, or 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.
6. The cost of the Project under this Agreement includes indirect costs approved by FHWA, as applicable.

7. 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.

8. The City acknowledges compliance with federal laws and regulations and may be subject to the Office of Management and Budget (OMB), Single Audit, Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations). Entities that expend $500,000.00 or more (prior to 12/26/14) and $750,000.00 or more (on or after 12/26/14) of federal assistance (federal funds, federal grants, or federal awards) are required to comply by having an independent audit. Either an electronic or hardcopy of the Single Audit is to be sent to Arizona Department of Transportation Financial Management Services within the required deadline of nine (9) months of the sub recipient fiscal year end.

   ADOT – FMS
   Attn: Cost Accounting Administrator
   206 S 17th Ave. Mail Drop 204B
   Phoenix, AZ 85007
   SingleAudit@azdot.gov

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

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

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

12. 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".

13. 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.

14. 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.

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

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

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

For Agreement Administration:

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

City of Glendale
Attn: Purab Adabala
6210 W Myrtle Avenue, Suite 112
Glendale, AZ 85301
(623) 930-926
padabala@glendaleaz.com

For Project Administration:

Arizona Department of Transportation
Phoenix, AZ 85007
(602)712-4428

City of Glendale
Attn: Purab Adabala
6210 W Myrtle Avenue, Suite 112
Glendale, AZ 85301
(623) 930-926
padabala@glendaleaz.com

For Financial Administration:

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

City of Glendale
Attn: Vicki Rios
5850 W Glendale Ave.
Glendale, AZ 85301
(623) 930-2480

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

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

CITY OF GLENDALE

By _____
KEVIN R. PHELPS
City Manager

ATTEST:

By _____
PAMELA HANNA
City Clerk

STATE OF ARIZONA
Department of Transportation

By _____
STEVE BOSCHEN, P.E.
IDO Assistant Director

IGA/JPA 16-0005854-I

ATTORNEY APPROVAL FORM FOR THE CITY OF GLENDALE

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY OF GLENDALE, an agreement 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 _____ day of _____, 2016.

_____

City Attorney


67th Avenue & Orangewood Avenue
Sidewalk, curb, gutter and ADA ramps
N
1000 ft
W Morten Ave
W Vista Ave
W Orangewood Ave
W Gardenia Ave
W State Ave
W Northview Ave
W Myrtle Ave
W Palmaire Ave
W Glenn Dr
W Glendale Ave
W Lamar Rd
W Nicolet Ave
W Flynn Ln
N 64th Dr
N 67th Dr
N 62nd Ave
N 61st Dr
N 59th Ln
60
NW Grand Ave
Phoenix-Wickenburg
N 59th Dr
N 63rd Dr
Mobile Home Park
N 66th Dr
N 68th Ave
N 66th Ave
N 65th Ave
N 64th Ave
N 67th Ave
N 60th Ave
N 61st Ave
N 63rd Ave
Google earth
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File #: 16-328, **Version:** 1

RESOLUTION 5134: AUTHORIZATION TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR DESIGN AND CONSTRUCTION OF PEDESTRIAN IMPROVEMENTS ALONG CAMELBACK ROAD BETWEEN 79TH AND 83RD AVENUES

Staff Contact: Jack Friedline, Director, Public Works

Purpose and Recommended Action

This is a request for City Council to waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into an Intergovernmental Agreement (IGA) with the Arizona Department of Transportation (ADOT) for the design and construction of a sidewalk along the north side of Camelback Road between 79th and 83rd Avenues.

Background

Camelback Road is an arterial street that connects 79th and 83rd Avenues. While there is curb and gutter on the north side of Camelback Road between 79th and 83rd Avenues, there are only sections of sidewalk. Completing the installation of sidewalk and associated Americans with Disabilities Act (ADA) approved curb ramps will allow for enhanced access for school children and other pedestrians to an adjacent commercial and residential area as well as a nearby park.

Analysis

Glendale standards for arterial streets include pedestrian facilities along both sides of the roadway. Federal Congestion Mitigation and Air Quality funds for design and construction of these needed improvements were secured during the last Maricopa Association of Governments programming cycle. Design funds were programmed for federal Fiscal Year (FY) 2016 and construction funds are included in federal FY 2018.

Under the terms of the IGA, ADOT will advertise, bid, award, and administer the scoping, design, and construction of the project. The city will be required to provide a 5.7% match of the capped federal funding and 100% of all costs that exceed the cap.

The total estimated design cost of the project is $89,000 of which $83,927 is available through federal funding. The required city match of $5,073 is available in the city's FY 2016-17 Capital Improvement Plan Sidewalk and Curb Improvements project budget.

The total estimated construction cost of the project is $300,000 of which a capped amount of $257,156 is available through federal funding. The required city match of $42,844 is available in the FY 2017-18 Capital Improvement Plan Sidewalk and Curb Improvements project budget, contingent upon Council Budget approval.

Community Benefit/Public Involvement

Access to alternative modes of transportation is a direct quality-of-life benefit. Completing the sidewalk along the north side of Camelback Road will provide connectivity between numerous homes, schools and other nearby destinations. Providing options for all modes of transportation including convenient, continuous sidewalks helps to promote alternative transportation usage, which can lead to decreased traffic congestion and contribute to cleaner air.

The Citizen Bicycle Advisory Committee at their January 4, 2016 meeting and the Citizens Transportation Oversight Commission at their January 7, 2016 meeting were informed of and approve of this project.

Budget and Financial Impacts

Funding is available in the Fiscal Year 2016-17 and FY 2017-18 Capital Improvement Plan budget. City expenditures with ADOT are estimated at $47,917, contingent upon Council Budget approval.

While staff does not anticipate additional project costs, should this project exceed the estimate outlined in the IGA, the City will be responsible for the additional costs. Since the funds listed in the IGA are estimates, staff requests flexibility in spending up to 10 percent of the total project cost in additional funds for design and construction cost overruns. Budgeting of future ongoing maintenance would occur for the year of anticipated operation through the typical budget process.

Cost	Fund-Department-Account
$47,917	**2210-65101-551200, Sidewalk and Curb Improvements**

Capital Expense? Yes

Budgeted? Yes

Requesting Budget or Appropriation Transfer? No

If yes, where will the transfer be taken from?

RESOLUTION NO. 5134 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 ARIZONA DEPARTMENT OF TRANSPORTATION (IGA/JPA 16-0005852-I) FOR THE CONSTRUCTION OF SIDEWALKS ALONG CAMELBACK ROAD BETWEEN 79TH AND 83RD AVENUES.

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

SECTION 1. That it is deemed in the best interest of the City of Glendale and the citizens thereof that the Intergovernmental Agreement between the Arizona Department of Transportation and the City of Glendale for the construction of sidewalks along Camelback Road between 79th and 83rd Avenues (IGA/JPA 16-0005852-I) be entered into, which agreement is now on file in the office of the City Clerk of the City of Glendale.

SECTION 2. That the Mayor or City Manager and the City Clerk be authorized and directed to execute and deliver any and all documents necessary to effectuate 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

iga_transit_79 83.doc

ADOT File No.: IGA/JPA 16-0005852-I
AG Contract No.: P001 2016 001491
Project Name: Camelback Rd - 79th Ave. to 83rd Ave.
Project Location: Camelback Rd: 79th Ave. to 83rd Ave.
Federal-aid No.: GLN-0(255)T
ADOT Project No.: T0069 01D/01C
TIP/STIP No.: GLN18-460D & GLN18-460
CFDA No.: 20.205 - Highway Planning and Construction
Budget Source Item No.: n/a

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF GLENDALE

THIS AGREEMENT is entered into this date _____, 2016, 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, hereinafter referred to as the "Project", consists of design and construction of sidewalks along Camelback Road between 79th Avenue and 83rd Avenue. The State will advertise, bid, award and administer the scoping, design and construction of the Project. The plans, estimates and specifications for the Project will be prepared and, as required, submitted to Federal Highway Administration (FHWA) for 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.

5. The interest of the State in this Project is the acquisition of federal funds for the use and benefit of the City and the authorization of such federal funds for the Project pursuant to federal law and regulations. The State shall be the designated agent for the City for the Project, if the Project is approved by FHWA and funds for the Project are available. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project specifications and terms and conditions.

6. The Parties will perform their responsibilities consistent with this Agreement; 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:

T0069 01D (scoping/design):

Federal-aid funds @ 94.3%	$ 83,927.00
City's match @ 5.7%	$ 5,073.00
Subtotal – Scoping/Design*	**$ 89,000.00**

T0069 01C (construction):

Federal-aid funds @ 94.3% (capped)	$ 257,156.00
City's match @ 5.7%	$ 15,544.00
City's contribution @ 100%	$ 27,300.00
Subtotal – Construction**	**$ 300,000.00**
TOTAL Estimated Project Cost	**$ 389,000.00**
Total Estimated City's Funds	**$ 47,917.00**
Total Federal Funds	**$ 341,083.00**

* (Includes ADOT Project Management & Design Review (PMDR) Costs)
** (Includes 15% CE (this percentage is subject to change, any change will require concurrence from the City) and 5% Project contingencies)

The Parties acknowledge that the final Project costs may exceed the initial estimate(s) shown above, and in such case, the City is responsible for, and agrees to pay, any and all 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 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. Execute this Agreement, and if the Project is approved by FHWA and funds for the Project are available, be the City's designated agent for the Project.

b. Execute this Agreement, and prior to performing or authorizing **any** work, invoice the City for the City's share of the Project design costs, estimated at **$5,073**. If PMDR costs increase during the development of design, invoice the City in increments of $5,000.00 to cover the City's share of additional PMDR costs. Once the costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual PMDR and design costs.

c. After receipt of the City's estimated share of the Project design costs, on behalf of the City, prepare and provide all documents pertaining to the design and post-design of the Project, incorporating comments from the City, as appropriate; and review and approve documents required by FHWA to qualify the Project for and to receive federal funds. Such work may consist of, but is not specifically limited to,

preparation of environmental documents; analysis and documentation of environmental categorical exclusion determinations; geologic materials testing and analysis; right-of-way related activities; preparation of reports, design plans, maps, specifications and cost estimates and such other related tasks essential to the achievement of the objectives of this Agreement.

d. Submit all required documentation pertaining to the Project to FHWA with the recommendation that the maximum federal funds programmed for this Project be approved for scoping/design. Upon authorization, proceed to advertise for and enter into contract(s) with the consultant(s) for the design and post design of the Project.

e. After completion of design and prior to bid advertisement, invoice the City for the City's share of the Project construction costs, estimated at **$42,844.00.** Once the Project costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs; and de-obligate or otherwise release any remaining federal funds from the scoping/design phase of the Project.

f. After receipt of the City's estimated share of the Project construction costs, submit all documentation required to FHWA with the recommendation that funding be approved for construction and request the maximum federal funds programmed for the construction of this Project. Should costs exceed the maximum federal funds available, it is understood and agreed that the City will be responsible for any overage.

g. With FHWA authorization, proceed to administer construction, advertise for, receive and open bids, award and enter into a contract with the firm for the construction of the Project. If the bid amounts exceed the construction cost estimate, obtain City concurrence prior to awarding the contract. Once awarded, invoice the City for the difference between estimated and actual costs, if applicable.

h. Be granted, without cost requirements, the right to enter City right-of-way as required to conduct any and all construction and pre-construction related activities for said Project, including without limitation, temporary construction easements or temporary rights of entry on to and over said rights-of-way of the City.

i. Enter into an agreement with the design consultant which states that the design consultant shall provide professional post-design services as required and requested throughout and upon completion of the construction phase of the Project. Upon completion of the construction phase of the Project, provide an electronic version of the record drawings to the City.

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

k. 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. Designate the State as the City's authorized agent for the Project.

b. Within 30 days of receipt of an invoice from the State pay the City's Project design costs, estimated at **$5,073.00**. If, during the development of design, additional funding to cover PMDR costs is required, pay the invoiced amount to the State within 30 days of receipt. Be responsible for any difference between the estimated and actual PMDR and design costs of the Project.

c. Review design plans, specifications, cost estimates and other such documents 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. After completion of design, within 30 days of receipt of an invoice from the State and prior to bid advertisement, pay to the State, the City's Project construction costs, estimated at **$42,844.00.** Once the Project costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs; de-obligate or otherwise release any remaining federal funds from the scoping/design phase of the Project.

e. Be responsible for all costs incurred in performing and accomplishing the work as set forth under this Agreement, that are 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 30 days of receipt of an invoice from the State.

f. Certify that all necessary rights-of-way have been or will be acquired prior to advertisement for bid and that all obstructions or unauthorized encroachments of any 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, 9.06 Monitoring Process and 9.07 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.

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

h. 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, temporary construction easements or temporary rights of entry to accomplish among other things, soil and foundation investigations.

Be obligated to incur any expenditure should unforeseen conditions or circumstances increase Project costs. Be responsible for the cost of any City requested changes to the scope of work of the Project, such changes will require State and FHWA approval. Be responsible for any contractor claims for additional compensation caused by Project delay attributable to the City. Payment for these costs will be made to the State within 30 days of receipt of an invoice from the State.

i. Upon notification by the State of Project completion, agree to accept, maintain and assume full responsibility of the Project in writing.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of the Project and all related deposits and/or reimbursements are made. Any provisions for maintenance shall be perpetual, unless assumed by another competent entity. This Agreement may be cancelled at any time prior to the award of the Project construction contract, upon 30 days written notice to the other party. It is understood and agreed that, in the event the City terminates this Agreement, the City will be responsible for all costs incurred by the State up to the time of termination. It is further understood and agreed that in the event the City terminates this Agreement, the State shall not be obligated to complete and/or maintain the Project.

2. The City shall indemnify, defend, and hold harmless the State, any of its departments, agencies, officers or employees (collectively referred to in this paragraph as the "State") from any and all claims, demands, suits, actions, proceedings, loss, cost and damages of every kind and description, including reasonable attorneys' fees and/or litigation expenses (collectively referred to in this paragraph as the "Claims"), which may be brought or made against or incurred by the State on account of loss of or damage to any property or for injuries to or death of any person, to the extent caused by, arising out of, or contributed to, by reasons of any alleged act, omission, professional error, fault, mistake, or negligence of the City, its employees, officers, directors, agents, representatives, or contractors, their employees, agents, or representatives in connection with or incident to the performance of this Agreement. The City's obligations under this paragraph shall not extend to any Claims to the extent caused by the negligence of the State, except the obligation does apply to any negligence of the City which may be legally imputed to the State by virtue of the State's ownership or possession of land. The City's obligations under this paragraph shall survive the termination of this Agreement.

3. The State shall include Section 107.13 of the 2008 version of the Arizona Department of Transportation Standard Specifications for Road and Bridge Construction, incorporated to this Agreement by reference, in the State's contract with any and all contractors, of which the City shall be specifically named as a third-party beneficiary. This provision may not be amended without the approval of the City.

4. The cost of scoping, design, construction and construction engineering work under this Agreement is to be covered by the maximum available amount of federal funds programmed for this Project. The City acknowledges that the actual costs may exceed the maximum available amount of federal funds, or that certain costs may not be accepted by the federal government as eligible for federal funds. Therefore, the City agrees to pay the difference between actual Project costs and the federal funds received.

5. Should the federal funding related to this Project be terminated or reduced by the federal government, or 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.

6. The cost of the Project under this Agreement includes indirect costs approved by FHWA, as applicable.

7. 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.

8. The City acknowledges compliance with federal laws and regulations and may be subject to the Office of Management and Budget (OMB), Single Audit, Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations). Entities that expend $500,000.00 or more (prior to 12/26/14) and $750,000.00 or more (on or after 12/26/14) of federal assistance (federal funds, federal grants, or federal awards) are required to comply by having an independent audit. Either an electronic or hardcopy of the Single Audit is to be sent to Arizona Department of Transportation Financial Management Services within the required deadline of nine (9) months of the sub recipient fiscal year end.

ADOT – FMS
Attn: Cost Accounting Administrator
206 S 17th Ave. Mail Drop 204B
Phoenix, AZ 85007
SingleAudit@azdot.gov

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

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

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

12. 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".

13. 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.

14. 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.

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

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

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

For Agreement Administration:

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

City of Glendale
Attn: Purab Adabala
6210 W Myrtle Ave., Suite 12
Glendale, AZ 85301
(623) 930-2926
padabala@glendaleaz.com

For Project Administration:

Arizona Department of Transportation
Multi Modal Planning
1615 W Jackson St.
Phoenix, AZ 85007
(602)712-4428

City of Glendale
Attn: Purab Adabala
6210 W Myrtle Ave., Suite 12
Glendale, AZ 85301
(623) 930-2926
padabala@glendaleaz.com

For Financial Administration:

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

City of Glendale
Attn: Vicki Rios
5850 W Glendale Ave.
Glendale, AZ 85301
(623) 930-2480

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

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

CITY OF GLENDALE

By _____
KEVIN R. PHELPS
City Manager

ATTEST:

By _____
PAMELA HANNA
City Clerk

STATE OF ARIZONA
Department of Transportation

By _____
STEVE BOSCHEN, P.E.
IDO Assistant Director

IGA/JPA 16-0005852-I

ATTORNEY APPROVAL FORM FOR THE CITY OF GLENDALE

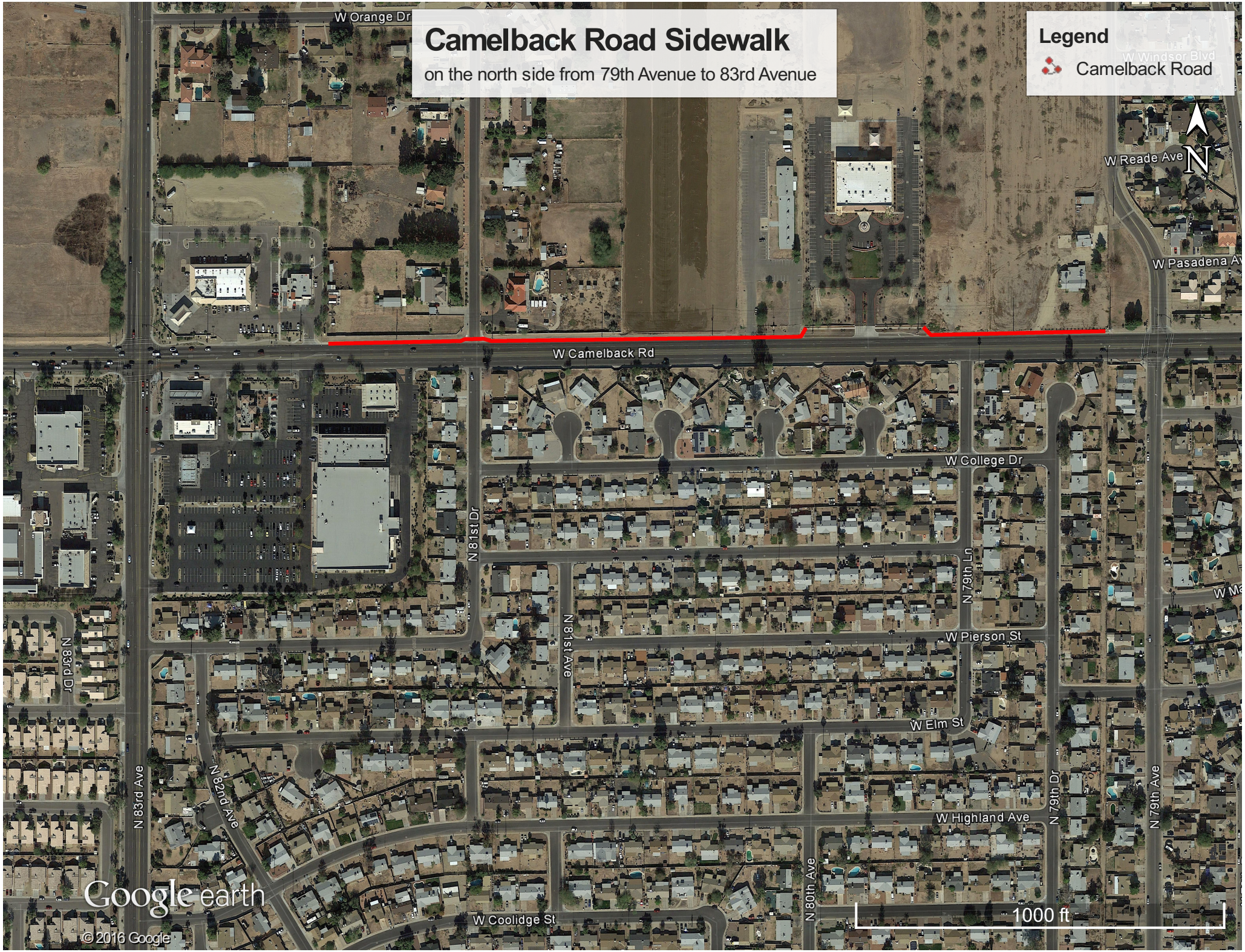
I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY OF GLENDALE, an agreement among public agencies which, has been reviewed pursuant to Arizona Revised Statutes §§ 11-951 through 11-954 and 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 _____ day of _____, 2016.

_____

City Attorney


Camelback Road Sidewalk
on the north side from 79th Avenue to 83rd Avenue
Legend
Camelback Road
N
W Orange Dr
W Windsor Blvd
W Reade Ave
W Pasadena Av
W Camelback Rd
W College Dr
N 81st Dr
N 79th Ln
N 81st Ave
W Pierson St
N 83rd Dr
W Elm St
N 83rd Ave
N 82nd Ave
N 79th Dr
N 79th Ave
W Highland Ave
N 80th Ave
W Coolidge St
1000 ft
Google earth
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File #: 16-305, **Version:** 1

RESOLUTION 5135: ADOPT A RESOLUTION AUTHORIZING THE CITY OF GLENDALE TO RECEIVE AND ACCEPT ANY PROCEEDS FROM THE SALE/RECOVERY OF BIOGAS AT THE JOINTLY OWNED 91ST AVENUE WASTEWATER TREATMENT PLANT

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

Purpose and Recommended Action

This is a request for City Council to waive reading beyond the title and adopt a resolution authorizing the City of Glendale to receive and accept any proceeds from the sale/recovery of biogas at the jointly owned 91st Avenue Wastewater Treatment Plant (WWTP).

The proposed agreements provide an opportunity to sell excess digester gas as a renewable green energy commodity for beneficial use and to create a positive revenue stream for the SROG members. The 91st Avenue Wastewater Treatment Plant (WWTP) generates digester gas as a byproduct of treating wastewater. A small portion of the gas produced is used in the treatment process as boiler fuel to heat the digesters. The excess gas produced is currently burned in flares at the WWTP.

Background

The 91st Avenue WWTP is owned by a partnership of cities that include Mesa, Glendale, Phoenix, Scottsdale, and Tempe, jointly referred to as SROG. The digester gas produced at the plant is a result of the natural breakdown of organic matter in the wastewater treatment process and captured in the anaerobic digesters. Current quantities of gas produced at the plant are 600,000 million British Thermal Units (Btu) or enough to meet approximately 6,700 household's annual consumption.

Ameresco proposes to lease a small area of City of Phoenix land at the WWTP to process the excess biogas. Gas processing will include removal of moisture, removal of selected contaminants, and pressurization of the product gas to interstate gas transportation pipeline pressures. A component of the project is a new pipeline from the gas processing facility to the Kinder-Morgan Pipeline, which is about three miles west of the WWTP.

Benefits of this program to the SROG members include reduction of digester gas wasted by flaring to the atmosphere, reduction in the amount of air pollution emitted, potential future use of cleaned gas on-site for emergency power, and receipt of revenue from the sale of the renewable green energy. Ameresco will pay for all capital costs for installing the equipment and pipeline and all costs for operating and maintaining the gas processing facility.

Analysis

The biogas in question is currently being burned in a flare at the 91st Avenue WWTP. The City of Phoenix, on

behalf of the SROG partners, put out a request for proposals to energy developers to see what options existed to beneficially utilize this wasted resource. Proposals were received and a selection committee consisting of representatives from the five SROG cities selected Ameresco as the winning proposer.

Previous Related Council Action

At the June 21, 2016 Council Workshop, the Water Services Department presented information on this item.

Community Benefit/Public Involvement

Benefits of this program to the SROG member communities include reduction of digester gas wasted by flaring to the atmosphere, reduction in the amount of air pollution emitted, reduced carbon footprint, potential future use of cleaned gas on-site for emergency power, and receipt of revenue from the sale of the renewable green energy.

Budget and Financial Impacts

The developer is funding the capital and operational costs of this project. The total revenues to be received by SROG are estimated to range from $1.2M to $2.0M per year over a 20-year project time frame. The total revenue projected over the 20-year project is estimated to be $32.2M. Since the City of Glendale's share of this revenue is about 6.5%, the revenue would range from $79,000 to $130,000 per year over the 20-year project time frame. The total revenue Glendale is expected to receive over the 20-year project is $2.1M.

RESOLUTION NO. 5135 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE CITY MANAGER TO RECEIVE AND ACCEPT ANY PROCEEDS FROM THE SALE/RECOVERY OF BIOGAS (METHANE) AT THE JOINTLY OWNED 91ST AVENUE WASTEWATER TREATMENT PLANT ("WWTP") ON BEHALF OF THE CITY OF GLENDALE.

WHEREAS, the 91st Avenue Waste Water Treatment Plant ("WWTP") is owned by a partnership of cities that include Mesa, Glendale, Phoenix, Scottsdale, and Tempe, jointly referred to as SROG (Sub-Regional Operation Group); and

WHEREAS, the City of Phoenix put out a request for proposals to energy developers to see what options existed to beneficially utilize wasted resources from WWTP; and

WHEREAS, once proposals were received, a selection committee consisting of representatives from the five SROG cities selected Ameresco as the winning proposer; and

WHEREAS, Ameresco, through its wholly-owned entity Ninety-First Avenue Renewable Biogas LLC, proposes to lease a small area of City of Phoenix land at the WWTP to process excess biogas; and

WHEREAS, the City of Phoenix and Ninety-First Avenue Renewable Biogas LLC (Ameresco) have entered into a project agreement to recover and process currently burned-off waste gases; and

WHEREAS, the City of Glendale is not a party, nor is it a third-party beneficiary of the Phoenix-Biogass LLC agreement; and

WHEREAS, through its membership in SROG, the City of Glendale is entitled to its pro rata share of proceeds from the sale of recovered biogas (if any) in accordance with the revenue projections developed by the City of Phoenix on behalf of all SROG members;

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

SECTION 1. That the City of Glendale is authorized to receive and accept any proceeds from the sale/recovery of biogas (methane) at the WWTP on behalf of the City of Glendale through its SROG membership.

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
r_water_biogas.doc

Legislation Description

File #: 16-313, **Version:** 1

ORDINANCE 2994: AMENDMENTS TO CHAPTER 18 - GARBAGE AND TRASH; AND DECLARING AN EMERGENCY (ORDINANCE) (PUBLIC HEARING REQUIRED)
Staff Contact: Jack Friedline, Director, Public Works

Purpose and Recommended Action

This is a request for City Council to conduct a public hearing, waive reading beyond the title and adopt an ordinance amending Chapter 18 - Garbage and Trash; and declaring an emergency to provide for the changes to be effective July 1, 2016.

Background

Senate Bill 1079, signed by the Governor on April 1, 2015, made changes to the state statutes regarding private enterprise recycling and solid waste management (A.R.S. §49-746). Specifically, by prohibiting municipalities from restraining private enterprises from delivering recycling or solid waste management services to commercial, industrial and multifamily residential properties within or to the municipality, private trash and recycling companies can now compete with cities and towns for this business. The bill defined multifamily residential properties as "any real property that has one or more structures and that contains five or more dwelling units for rent or lease…." The changes take effect on July 1, 2016.

Analysis

Under current city code, Chapter 18 - Garbage and Trash, refuse collection and recycling services for all residential properties, including multifamily properties, are provided by the city's Public Works Department. Business establishments have the option of being serviced by the city solid waste service or by a contractor. To be consistent with the changes to state law, the city code must be revised to allow third party commercial solid waste service providers the opportunity to solicit business from multifamily residential properties.

While making these changes to Chapter 18, staff recognized the need to comprehensively update the Chapter consistent with the City's current solid waste and recycling practices. This ordinance will therefore revise nearly every section of Chapter to be consistent with the City's current best management practices and with the language in other chapters of the City Code. Examples of the updates/revisions include: updating the definitions of bulk trash, generator, hazardous waste, medical waste, recycling, solid waste, and solid waste management for consistency with state and federal law; adopting language to identify and abate environmental nuisances; removal of references to manual household collection; and removal of references to development impact fees.

Previous Related Council Action

On March 24, 2016, Council adopted a resolution adjusting the rates for multiple front load bins for solid waste collection service in anticipation of this code revision. A comprehensive revision of this Chapter appears to have last occurred on October 26, 1999 (Ordinance No. 2106).

Community Benefit/Public Involvement

As a municipal corporation, the City of Glendale is required to comply with revisions to the Arizona Revised Statutes.

Budget and Financial Impacts

The code revisions will represent a negative revenue impact to the Sanitation Enterprise Fund.

ORDINANCE NO. 2994 NEW SERIES

AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AMENDING CITY CODE CHAPTER 18 – GARBAGE AND TRASH; AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to Arizona Revised Statutes Section 9-511.03, the City may provide waste or garbage collection services, landfill, services and recycling collection services to residential properties within the City's boundaries, and to residential or commercial customers within or outside its jurisdictional boundaries in certain circumstances; and

WHEREAS, pursuant to Arizona Revised Statutes Section 49-704, the City may adopt and enforce any ordinance, resolution or other policy relating to solid waste regulation or solid waste services if such policy is otherwise authorized by statute or charter and is not in conflict with state law or any rule or regulation of state law; and

WHEREAS, Arizona Revised Statutes Section 49-746 has been amended to prohibit municipalities from unreasonably restraining a private enterprise from delivering recycling or solid waste management services to commercial, industrial or multi-family residential properties within the municipality; and

WHEREAS, the amendments to Arizona Revised Statutes Section 49-746 require the City to prescribe rules for the delivery of recycling and solid waste management services for commercial, industrial and multi-family residential properties that promote the availability and competition in the delivery of these services; and

WHEREAS, the amendments to Arizona Revised Statutes Section 49-746 take effect July 1, 2016.

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

SECTION 1. That Chapter 18 – Garbage and Trash – of the City Code is hereby amended as provided in Exhibit A.

SECTION 2. Whereas the immediate operation of the provisions of this Ordinance is necessary for the preservation of the public peace, health, and safety of the City of Glendale, an emergency is hereby declared to exist, and this Ordinance shall be in full force and effect on July 1, 2016 and it is hereby exempt from the referendum provisions of the Constitution and laws of the State of Arizona.

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
o_public works_chapter 18.doc

[Additions are indicated by underline; deletions by ~~strikeout.~~]

EXHIBIT A

Chapter 18 - GARBAGE AND TRASH
FOOTNOTE(S):

--- (**1**) ---

Cross reference— Weeds, debris, etc., constituting a nuisance, § 25-21 et seq.; removal of construction debris, § 30-116 et seq.; water, sewers and sewage disposal, Ch. 33.

ARTICLE I. - IN GENERAL

Sec. 18-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Administrator~~: The~~ means the public works ~~administrator~~director or his delegate.

Animal waste~~: Waste~~ means waste from stables, kennels, pet pens, chicken coops, veterinary establishments and others of a similar nature and household pet waste.

Ashes~~: All~~ mean all solid residue from the burning of combustible ~~material~~waste.

Bin~~: A~~ means a container~~,~~ that can hold one ~~(1) through~~ half (0.5) to forty (40) cubic yards ~~in capacity, for containing~~of refuse or recyclable material.

Bulk trash means solid waste that is too large to be contained in a bin. "Bulk trash" may include, but is not limited to, oversize or overweight refuse not capable of being disposed of in a bin or container, such as tree limbs, branches, palm fronds, hedge clippings, shrubs, scrap metal, pipes less than one (1) inch in diameter, appliances, furniture, cardboard boxes or other items exceeding five (5) feet in length,

Business establishment~~: Any~~ means any public or private place, building or ~~enterprise~~structure utilized ~~for the~~to conduct ~~of~~a business, commercial or industrial enterprise~~, but shall not include any residential or multifamily dwelling units. Hotels~~. Business establishments may include hotels, motels, motor inns, and other ~~like establishments providing~~buildings or structures that provide lodging for travelers and long term care facility/nursing homes ~~are business establishments.~~as defined in this chapter. "Business establishment" shall not include any "residential property" as defined elsewhere in this article.

Combustible waste~~: Miscellaneous burnable materials, or~~ means solid waste or refuse that is susceptible to catching fire or burns at ordinary incinerator operating temperatures. Combustible waste may also include the organic component of refuse.

Commercial sanitation service~~: Refuse~~ means refuse collection or recycling service provided to any business establishment.

Compactor bin~~: A~~ means a metal container ~~varying in size~~ attached to a stationary refuse compaction unit.

Construction and demolition wastes~~: All waste building materials, rubble and spoils resulting~~ means solid waste derived from the construction, repair, remodeling, ~~repair and~~ destruction or demolition ~~operations on any building or structure.~~

~~Contractor: Any person engaged in the business of collecting, hauling, or transporting refuse including recyclable material, or any other types of waste including hazardous and medical, in the city for disposal, salvage, recycling or any~~ of buildings or other ~~purpose~~structures.

Customer Account means the account established by the City to bill and collect fees for sanitation service. A customer may establish a residential or commercial account,

Dispose or disposal~~: Discarding~~ means discarding, abandoning, dumping, spilling, injecting, leaking, depositing, placing or discharging solid waste into or on land or water.

Garbage~~: All~~ means all putrescible animal and vegetable wastes resulting from preparation or handling of food, including discarded food stuff and food packaging material.

~~Hazardous waste: Any chemical, compound, mixture, substance or article which is designated by the U.S. Environmental Protection Agency, or appropriate agency of the state, to be hazardous, as that term is defined by or pursuant to federal or state law.~~

Generator means a person who, by virtue of ownership, management or control, is responsible for causing or allowing to be caused the creation of solid waste.

Hazardous waste means garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, or other discarded materials, including solid, liquid, semisolid or contained gaseous material, resulting from industrial, commercial, mining and agricultural operations or from community activities which because of its quantity, concentration or physical, chemical or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or pose a substantial present or potential hazard to human health or the environment if improperly treated, stored, transported, disposed of or otherwise managed or any waste identified as hazardous pursuant to A.R.S. section 49-922.

Long term care facility/nursing home~~: Any~~ means any business establishment licensed by the State of Arizona as a long term care facility or nursing home to provide ~~long term care, including food, shelter~~housing, assisted living and/or other long term medical treatment or personal care to elderly, sick or disabled residents. "Care" may include providing food, shelter, assistance with personal hygiene or other daily needs, and skilled nursing care.

~~Manual collection: A contained refuse collection system in which containers are manually emptied into collection vehicles.~~

~~Mechanical collection: A contained refuse or recyclable material collection system utilizing city provided containers in which containers are mechanically lifted and emptied into collection vehicles.~~

~~Mechanized collection container: A container owned by the city, made available to residents for their use as part of the city's mechanized refuse collection system.~~

~~Medical waste: Consists of~~*Medical waste* means any solid waste which is generated in the diagnosis, treatment or immunization of a human being or animal or in any research relating to that diagnosis, treatment or immunization, or in the production or testing of biologicals, and includes discarded drugs but does not include hazardous waste as defined in section 49-921 other than conditionally exempt small quantity generator waste. "Medical waste" may include human or animal tissue, any part of a human or animal body that has been removed by surgery, and any contaminated material such as facial tissues, bandages, and hypodermic needles.

~~Noncombustible~~*Multi-family residential properties* means any real property that has one or more structures and that contains five or more dwelling units for rent or lease that are subject to title 33, chapter 10 of the Arizona Revised Statutes.

Non-combustible waste~~: Consists of miscellaneous~~ means solid waste or refuse ~~materials that are unburnable~~that is not susceptible to catching fire or otherwise does not burn at ordinary incinerator operating temperatures~~ or~~. Non-combustible waste may also include the inorganic component of refuse.

~~Nonhazardous~~*Non-hazardous liquid waste*~~: All~~ means all liquid waste not defined as ~~non-~~a hazardous ~~liquid~~ waste by ~~the~~ state ~~department of health services.~~or federal statute, law or regulation.

Plastic bag: ~~A~~means a disposable bag manufactured either from polyethylene or ethylene copolymer resin of an approved thickness, used for the purpose of containing household refuse.

~~Recyclable~~*Person* means any public or private corporation, company, partnership, firm, association or society of persons, the federal government and any of its departments or agencies, this state or any of its agencies, departments, political subdivisions, counties, towns or municipal corporations, as well as a natural person.

Recycling means the process of collecting, separating, cleansing, treating and reconstituting post-consumer materials that would otherwise become solid or liquid waste and returning them to the economic stream in the form of raw material ~~(liquid): Any~~for reconstituted products which meet the quality standards required for use in the marketplace, but does not include incineration or other similar processes (A.R.S. § 49-831).

Recyclable material means both liquid and solid recyclable material.

Recyclable material (liquid) means any liquid refuse produced by ~~the community~~a generator which can be reused through a recycling process.

Recyclable material (solid~~): Any~~) means any solid refuse produced by ~~the community~~a generator which can be reused through a recycling process.

Recycling container~~: A~~ means a container, bin, can or box ~~specifically~~approved by the Administrator that can be used in a recycling or waste reduction program on public or private property~~, and approved by~~ within the ~~administrator~~City of Glendale.

Refuse~~: All~~ means all solid waste produced by ~~the community~~a generator, including putrescible and ~~nonputrescible~~non-putrescible wastes, organic and inorganic wastes, combustible and noncombustible wastes, recyclable material being discarded by the producer, and liquid

nonhazardous wastes, but does not ~~including~~include hazardous waste, medical waste or human body waste from sources other than septic tanks or chemical toilets.

Refuse container~~: A~~ means a bin, can, mechanized collection container, bag, or cardboard box as specified herein.

Residential property~~: Any~~ means any property used as a ~~nontransient~~non-transient residential dwelling unit or units, including any single-family dwelling, duplex, triplex, quad-plex, condominium, cooperative, townhouse, mobile home park, trailer park, rooming house, or boarding house~~, and multifamily unit such as an apartment, condominium or townhouse complex, but excluding any~~ . *Residential property* excludes any "multi-family residential properties" as defined elsewhere in this ~~section~~article and any building or structure defined elsewhere in this article as a "business establishment."

Residential sanitation service~~: Refuse~~ means refuse collection or ~~recycling~~recyclable material collection service provided to all residential properties.

Sanitation fee~~: A~~ means a fee or service charge assessed for any sanitation services provided.

Sanitation inspector~~: A city~~ means a City employee or authorized representative who has been assigned responsibility for the inspection of public and private properties so that compliance with the provisions, rules and regulations of this chapter may be ~~enforced~~assured.

Sanitation service means refuse collection or recyclable material collection service provided to residential properties or business establishments.

Solid waste means any garbage, trash, rubbish, waste tire, refuse, sludge from a waste treatment plant, water supply treatment plant or pollution control facility, and other discarded material, including solid, liquid, semisolid or contained gaseous material (A.R.S. § 49-701.01).

Solid waste management means the systematic administration of activities that provide for the collection, source separation, storage, transportation, transfer, processing, treatment or disposal of solid waste in a manner that protects public health, public safety and the environment and prevents environmental nuisances, as defined in A.R.S. § 49-701.

Store or *Storage* means the holding of a solid waste for a temporary period at the end of which the waste is treated, disposed of or stored elsewhere.

Third party commercial sanitation service means refuse collection or recyclable material collection service provided to any business establishment by a person other than the City.

Trash~~: All nonputrescible~~ means all non-putrescible wastes consisting of both combustible and ~~noncombustible~~non-combustible solid waste material, excluding ashes.

~~Uncontained refuse: Oversize or overweight refuse which may not be practicably containerized, such as tree limbs, branches, palm fronds, light metal, pipe less than one (1) inch in diameter, with no object exceeding six (6) feet in length, hedge clippings, cardboard boxes, discarded appliances, furniture, and bagged or boxed plant cuttings.~~

~~Uncontained trash collection: Refuse collection service for oversize and overweight waste materials that cannot practicably be containerized.~~

Treat or *Treatment* means any method, technique or process used to change the physical, chemical or biological character of solid waste so as to render that waste safer for transport, amenable for processing, amenable for storage or reduced in volume

(Ord. No. 1325, § 1(13-2), 12-4-84; Ord. No. 1434, § 1, 6-24-86; Ord. No. 1479, § 1, 2-3-87; Ord. No. 1562, § 1, 9-13-88; Ord. No. 1570, § 2, 11-8-88; Ord. No. 1796, § 1, 1-11-94; Ord. No. 2106, § 1, 10-26-99; Ord. No. 2186, § 2, 2-27-01)

Sec. 18-2. - Purpose; interpretation.

The Council for the City of Glendale hereby determines that the regulations contained in this chapter are necessary and appropriate to achieve the stated purposes and to protect the health, safety and welfare of the citizens of the City of Glendale.

(a) The purposes of this article are as follows:

(1) To preserve the health, safety and welfare of the citizens of Glendale by providing minimum standards for the safe and sanitary collection, storage, transportation and disposal of garbage, trash, refuse and other solid wastes generated within the cityCity. Whenever this chapter conflicts with any other portion of this Code, this chapter shall prevail with respect to any matters relating to solid waste management and sanitation; and

(2) To promote competition in the delivery and availability of recycling services and commercial or industrial waste management services within the City of Glendale consistent with A.R.S. § 49-746.

~~The council for the City of Glendale hereby determines that the regulations contained in this chapter are necessary and appropriate to achieve the stated purposes and to protect the health, safety and welfare of the citizens of the City of Glendale.~~

(b) Nothing in this chapter is intended or shall be construed so as to impinge uponsupersede or supplantinterfere with the authority of the county health department, state department of health servicesenvironmental quality, the United States Environmental Protection Agency or any other public agency asthat may have prior jurisdiction over the subject matter of this chapter.

(Ord. No. 1325, § 1(13-1, 13-3), 12-4-84; Ord. No. 1562, § 1, 9-13-88)

Sec. 18-3. - Powers and duties of administratorAdministrator.

(a) The administrator inIn order to protect the health and safety of the people of the cityCity, the Administrator, is authorized and directed to adopt any reasonably necessary ordinance, resolution, rule, procedure, policy or practice to establish, implement and enforceensure compliance with the provisions of this chapter and to control the storage, collection, disposal and salvaging of refuse including solid waste and recyclable material within the cityCity. The administratorAdministrator is further authorized to provide public refuse disposal sites for refuse originating within the city,City and to provide and/or approve of recyclable material collection sites, so that the usual type and quantity of refuse and approved recyclable materials may be safely and expeditiously handled, andcollected, managed, treated, stored, disposed of and/or recycled. The Administrator is

also authorized to regulate the development, construction, maintenance, and operation and closure of such sites.

(b) The ~~administrator~~Administrator may ~~impose operational regulations on~~adopt rules for the collection, management, treatment, storage, recycling and disposal processes, such as determining types of wastes that may be disposed of, routing of traffic and designating time and location that dumping may occur ~~on landfills.~~ in landfills. Additionally, the Administrator may prescribe rules for the delivery of recycling services and commercial or industrial solid waste management services, to promote the availability of such services, and to provide competition in the delivery of such services within the City in accordance with A.R.S. § 49-746.

(Ord. No. 1325, § 1(13-3), 12-4-84; Ord. No. 1562, § 1, 9-13-88; Ord. No. 2106, § 2, 10-26-99)

Sec. 18-4. - Additional ~~rules and regulations.~~ authorities; Environmental Nuisances.

(a) ~~The city shall have the authority to make administratively such other reasonable rules and regulations concerning the keeping, accumulation, storage, collection, disposal, salvaging, and hauling of refuse, other wastes, and recyclable materials, by the city, residents, contractors, or any other person engaged in the keeping, accumulation, storage, collection, disposal, salvaging, and hauling of same. The city shall have the authority to make administratively such other reasonable rules and regulations relating to the operation of a transfer station, disposal site, recycling site, recycling or waste reduction program or similar activities or other similar facilities as may be deemed necessary.~~The City shall have the authority to adopt any reasonably necessary ordinance, resolution, rule, procedure, policy or practice to establish, implement and ensure compliance with minimum standards for storing, collecting, transporting, disposing and reclaiming solid waste, including garbage, trash, rubbish, manure and other objectionable wastes. These provisions shall provide for inspecting premises, containers, processes, equipment and vehicles, and for abating as environmental nuisances any premises, containers, processes, equipment or vehicles that do not comply with the minimum standards of these provisions.

(b) The City may adopt any reasonably necessary ordinance or resolution or the Administrator may implement any rule, procedure, policy or practice to prevent, mitigate or take action to abate any environmental nuisance and to ensure it does not recur. As used in this section, an "environmental nuisance" is the creation or maintenance of a condition in the soil, air or water that causes or threatens to cause harm to the public health or the environment and that is not otherwise subject to regulation under the City Code or this chapter. For purposes of this chapter, the following conditions may constitute environmental nuisances:

(1) A condition or place in populated areas which constitutes a breeding place for flies, rodents, mosquitoes and other insects which are capable of carrying and transmitting disease-causing organisms to any person or persons.

(2) A place, condition or building which is controlled or operated by any governmental agency, state or local, and which is not maintained in a sanitary condition.

(3) Sewage, human excreta, wastewater, garbage or other organic wastes deposited, stored, discharged or exposed so as to be a potential instrument or medium in the transmission of disease to or between any person or persons.

(4) A vehicle or container which is used in the transportation of garbage or human excreta and which is defective and allows leakage or spillage of contents.

(5) The maintenance of an overflowing septic tank or cesspool, the contents of which may be accessible to flies.

(6) The pollution or contamination of any domestic waters.

(7) The use of the contents of privies, cesspools, or septic tanks or the use of sewage or sewage plant effluents for fertilizing or irrigation purposes for crops or gardens except by specific approval of the department of health services or the department of environmental quality.

(8) The storage, collection, transportation, disposal and reclamation of garbage, trash, rubbish, manure and other objectionable wastes other than as provided and authorized by law and rule.

(9) Water, other than that used by irrigation, industrial or similar systems for non-potable purposes, which is sold to the public, distributed to the public or used in production, processing, storing, handling, servicing or transportation of food and drink and which is unwholesome, poisonous or contains deleterious or foreign substances or filth or disease-causing substances or organisms.

(Ord. No. 1325, § 1 (13-4), 12-4-84; Ord. No. 1562, § 1, 9-13-88; Ord. No. 2106, § 2, 10-26-99)

Sec. 18-5. ~~- Suspension or~~ – Modification, suspension, revocation or termination of permits.

(a) In addition to ~~the sanctions provided~~any penalties or relief in section 18-7, the ~~city~~City may modify, suspend ~~or~~, revoke or terminate any permit authorized or required by this chapter, or suspend ~~or~~, revoke ~~any collection, recycling~~ or ~~disposal~~terminate any solid waste management services provided by the ~~city~~City, or ~~by a contractor~~suspend, revoke or terminate any license or permit of any person providing third party commercial sanitation service within the City's jurisdictional boundaries, whenever ~~it is found that the holder of such permit, or user of such collection, recycling, or disposal services,~~a person commits a serious or repeated violation of ~~the laws of the state, the county,~~ this chapter~~,~~ or any ~~rules and regulations~~ordinance, resolution, rule, procedure, policy or practice promulgated hereunder~~, or fails~~.

(b) Any person who violates this chapter or any ordinance, resolution, rule, procedure, policy or practice promulgated consistent with it may also be required to fully reimburse the ~~city~~

~~its~~City for any costs ~~associated with the remedying of~~incurred to remedy any violation of ~~any applicable health codes and ordinances of the city, county, state, and federal government.~~ this chapter or to prevent, mitigate or take action to abate any environmental nuisance and to ensure it does not recur.

(c) ~~(b) A contractor~~Any person whose permit is revoked or terminated for a violation of this chapter may not re-apply for a permit under this chapter for thirty-six (36) months after the effective date of the revocation~~.~~ or termination.

(Ord. No. 1325, § 1(13-48), 12-4-84; Ord. No. 1479, § 1, 2-3-87; Ord. No. 1562, § 1, 9-13-88; Ord. No. 2106, § 2, 10-26-99)

Sec. 18-6. - Appeals.

(a) Any person ~~aggrieved~~whose permit is modified suspended, revoked, or terminated by a determination by the ~~administrator~~Administrator made in accordance with Section 18-5 of this chapter shall have the right to appeal such action to the ~~city manager, who shall have~~City Manager.

(b) The City Manager has the authority to confirm, modify, or ~~revoke any such~~ reject the Administrator's determination. An appeal of the action taken pursuant to ~~the notice of suspension or revocation of a permit~~ Section 18-5 must be submitted in writing to the ~~city manager~~City Manager within fourteen (14) calendar days of receipt of the notice from the ~~administrator.~~Administrator. The decision of the ~~city manager~~City Manager shall be final.

(c) The permittee may continue collecting, transporting, and/or disposing of refuse or other wastes until the ~~city manager has rendered his decision.~~City Manager has rendered his decision, unless the Administrator has determined that such continuance would cause the City to violate a federal or state law, regulation or permit or cause or continue a public or environmental nuisance.

(Ord. No. 1325, § 1(13-5), 12-4-84; Ord. No. 1562, § 1, 9-13-88)

Sec. 18-7. - Violations.

(a) A violation of any provision of this chapter shall be deemed a public nuisance and be punishable as a misdemeanor. The fine for each occurrence shall not be less than one thousand dollars ($1,000.00~~).~~) for a first offense and less than two thousand five hundred dollars ($2,500.00) for any subsequent offense.

(b) Any police officer, code enforcement officer or designated sanitation official who observed a violation of any provision of this chapter is empowered to issue a citation or seek a complaint. Prior to issuing a citation or seeking a complaint, the officer or official may, in his sole, unreviewable discretion, issue a written notice of violation allowing the violator seven (7) days to remedy the violation. If the violation is not remedied in seven (7) days, a citation or complaint will be issued.

(c) ~~Any bins~~No person may place any bin or recycling ~~containers placed~~container on public or private property within the ~~city~~City by ~~a contractor or person who does not have~~without first obtaining a valid permit to service customers or the public at large

~~within~~from the ~~city may be~~City. Any violation of this provision may result in the bin or container being seized by the ~~city~~City and ~~subject to~~the assessment of a one hundred dollar ($100.00) return fee.

(Ord. No. 1325, § 1, (13-46, 13-49), 12-4-84; Ord. No. 1433, § 1, 6-24-86; Ord. No. 1570, § 2, 11-8-88; Ord. No. 2106, § 2, 10-26-99)

Sec. 18-8. - Compliance responsibility.

The ~~primary responsibility for proper keeping, accumulation, storage, salvaging,~~owner, operator and ~~disposal~~occupant of ~~refuse, including~~ property on which solid waste or recyclable materials~~,~~ are kept, accumulated, stored, salvaged, managed, treated, processed recycled or disposed of shall be jointly and severally responsible for ensuring the material is properly managed in accordance with ~~the provisions of this chapter shall be that of the producer thereof. Should such producer refuse, neglect, or fail to provide for proper keeping, accumulation, storage, salvaging, and disposal of refuse, including recyclable materials, the owner of the premises on which the same has been produced shall keep, accumulate, store, salvage,~~federal and ~~dispose of it in accordance with the~~state law and all provisions of this chapter.

(Ord. No. 1325, § 1(13-45), 12-4-84; Ord. No. 2106, § 2, 10-26-99)

Sec. 18-9. - Unauthorized accumulation or disposal; violators liable for cost of removal.

(a) No owner, ~~tenant, lessee~~operator, or ~~other occupier or user~~occupant of property shall allow garbage, trash, refuse, other ~~wastes~~solid waste, or recyclable ~~materials~~material to accumulate or ~~exist~~remain on ~~his~~its property, including any street, sidewalk, alley, right-of-way, unless ~~the same~~such material is ~~kept~~managed in ~~covered bins or other proper containers for collection which are approved by~~in accordance all applicable health codes, ordinances, and rules and regulations of the ~~administrator, city~~Administrator, City, county, state and federal government~~, or is set out for collection in accordance with all administrative rules, regulations, and provisions of this chapter.~~. However, leaves, grass, clippings and ~~the like~~similar organic yard waste may be ~~permitted~~accumulated and stored for the purpose of composting under such circumstances ~~and~~, conditions and/or rules as may be established by the ~~administrator.~~Administrator. A property being used as a multi-material recycling center, sorting facility, composting facility, materials recovery facility, ~~and the like~~or for a similar recycling purpose is exempt from this subsection ~~as long as~~provided all recyclable materials are ~~kept~~properly managed on the property, ~~and~~ the property and business operations are properly zoned ~~and permitted by the city, county or state. (b) No person shall keep, accumulate, store, discard or otherwise dispose of any garbage, trash, refuse, recyclable materials, or other wastes, upon any street, sidewalk, alley, right-of-way or other city~~, and property or ~~any private property, except~~ business establishment has obtained and is in ~~proper containers or covered bins which are approved for the accumulation and collection of such materials by this chapter, or are expressly approved by the administrator, or except when set out for collection in accordance with procedures established under section 18-3.~~compliance with all permits required by the City, county, state or federal government.

~~(c) If a violator of section 18-9(a) does not remedy the~~ (b) In addition to being subject to any penalties for a violation of this chapter as provided in Section 18-7, any person who fails to remedy the violation within twenty-four (24) hours after a citation has been issued to him~~, the city may remedy the violation itself and charge the violator~~ pursuant to Section 18-7(c) may be charged double the rate ~~established by council resolution~~ for commercial ~~loose~~bulk trash collection established by resolution of the City Council. If the violator has a ~~municipal service~~customer account with the ~~city~~City, such ~~costs~~penalties shall be charged to that account.

~~(d) If~~ (c) Nothing in this Section prohibits the City from remedying the violation itself or ordering the violator to abate an environmental nuisance in accordance with Section 18-4. The City may remedy any ~~person commits a~~ violation of ~~section 18-9(b),~~this chapter without first giving the ~~city may~~violator notice and an opportunity to cure or remedy the violation ~~itself or request the violator to remedy the violation within one (1) hour after actual receipt of city's request to remedy the violation. If the violator fails to remedy the violation as requested, the city may remedy the violation. If the city~~. If the City remedies any violation of ~~section 18-9(b), with or without prior request to remedy being delivered to the violator, the city~~this chapter, the City may charge the violator double the rate ~~established by council resolution~~ for commercial ~~loose~~bulk trash collection~~.~~ established by resolution of the City Council. If the violator has a ~~refuse collection~~customer account with ~~city~~City, such costs shall be charged to that account.

(Ord. No. 1325, § 1(13-9, 13-40), 12-4-84; Ord. No. 1433, § 1, 6-24-86; Ord. No. 1562, § 1, 9-13-88; Ord. No. 2106, § 2, 10-26-99)

State Law reference— Authority of ~~city~~City to prevent the throwing of offensive materials on streets, A.R.S. § 9-276(A)(7).

Sec. 18-10. - Avoiding sanitation fees and regulations.

No person shall place any of his own garbage, refuse, trash, recyclable material, or any other solid wastes with that of any other person, residential property or business establishment, for the purpose of avoiding payment of sanitation, recycling or landfill fees or service charges, or for the purpose of evading any regulation or limitation on collection, disposal or recycling service, or for any other reason~~, shall place any of their own refuse material, recyclable materials, or any other wastes with that of any other dwelling unit or business establishment, or in a refuse or recycling container of the occupant of any other premises or in front of any other premises, or in a refuse or recycling container not obtained from the city; nor shall any person identify refuse, including recyclable materials from other sources, as their own. Residents~~. Customers receiving residential sanitation services shall not place out for collection any garbage, refuse, trash, or other solid waste or recyclable ~~materials or other wastes~~material that originated from a ~~commercial~~ business ~~enterprise, along with their own residential garbage, refuse, trash, recyclable materials or other wastes.~~establishment. Customers receiving commercial sanitation service may share bins upon approval by the ~~city~~City or the ~~contractor providing~~third party commercial sanitation service provider. The ~~city~~City reserves the right to determine the source of any refuse, solid waste or recyclable ~~materials~~material, or any other wastes, so ~~as to properly~~the City can accept or reject

such wastes for collection, management or disposal, ~~or assign~~and charge the appropriate fees ~~as necessary~~in accordance with this chapter.

(Ord. No. 1325, § 1(13-52), 12-4-84; Ord. No. 1562, § 1, 9-13-88; Ord. No. 2106, § 2, 10-26-99)

Sec. 18-11. - Refuse containment in transit.

(a) No person shall collect, transport or receive any garbage, trash, refuse, ~~recyclable materials,~~ or any other ~~wastes~~solid or liquid waste or recyclable material, within ~~or upon any public or private streets in~~ the ~~city, or anywhere in the city~~City, except in ~~leakproof~~ containers or vehicles ~~so~~ that are leak-proof or constructed so that no garbage, refuse, ~~recyclable materials~~trash, or any other ~~wastes can leak~~solid or ~~sift through, fall out,~~liquid waste or recyclable material, can be ~~blown~~released or emitted from such container or vehicle.

(b) Any person collecting or transporting any garbage, trash, refuse, ~~recyclable materials,~~ or any other ~~wastes~~solid or liquid waste or recyclable material, shall immediately ~~pick up~~collect all garbage, trash, refuse, or any other solid or liquid waste or recyclable ~~materials, or any other wastes~~material, which ~~drops, spills, leaks,~~escapes or is ~~blown~~released or emitted from the collecting or transporting container or vehicle, and ~~shall otherwise clean the place onto which any~~take such ~~refuse, recyclable materials, or any other wastes was so dropped, spilled, blown or leaked.~~ as actions as the City deems appropriate to remedy such a release.

(Ord. No. 1325, § 1 (13-26), 12-4-84; Ord. No. 1562, § 1, 9-13-88; Ord. No. 2106, § 2, 10-26-99)

Sec. 18-12. – Landfills and Recycling Facilities.

(a) No person other than the ~~city~~City shall establish, maintain, or operate any dump or disposal grounds or facility in the ~~city~~City for the keeping, accumulation, or disposal of any garbage, trash, refuse ~~of any kind~~, or any other solid or liquid waste or recyclable material unless so authorized by a permit of the county, state ~~department of health services~~ or the federal government and approved by the ~~city~~City.

(b) Payment of any dumping ~~fees or payment of any~~, annual licenses or ~~permits are~~permit fees is subject to the conditions of this chapter, and the schedule of fees as established herein and approved by the City Council.

(c) Persons who own, operate or occupy residential property within the City may either:

(1) use the City's curbside sanitation services for the collection and disposal ~~fees.~~ of garbage, trash, refuse or other solid waste and the collection and processing recyclable material, provided they pay all applicable fees, as set by the City Council; or

(2) ~~(c) City residents of single-family dwellings and duplexes and residents of areas for which~~ if special arrangements are made with the ~~city~~City by formal agreement ~~may themselves~~, collect, manage and dispose of their own ~~refuse~~ garbage, trash, refuse or other solid waste and collect and manage their recyclable material themselves.

(d) Persons who own, operate or occupy residential property as defined in this article within the City may deliver and dispose of garbage, trash, refuse or other solid waste at the City's landfill at no charge ~~until~~, provided the net ~~refuse~~weight of a load ~~weight~~ of such material does not exceed two thousand (2,000) pounds. Once the weight of a load of such material exceeds two thousand (2,000) pounds, ~~at which time~~ applicable disposal fees shall be charged. Residents of the ~~city~~City may be required to display ~~their~~a driver's license ~~as~~or other suitable proof of ~~residency~~identification in order to qualify for ~~free usage. Residents of any other area to be~~ the fee waiver. Persons other than owners, operators or occupants of residential property within the City may also qualify for such a fee waiver if they are served through an agreement ~~may be required to display~~with the City and have obtained an approved use permit. All applicable fees shall be charged to any ~~residential user unable to demonstrate residency within the city or within a special service area pursuant to agreement, with the current use permit~~who does not qualify for a fee waiver or provide proof of residency or eligibility.

(~~d~~e) Business establishments~~, mobile home parks, trailer parks, rooming houses, boarding houses~~ may:

(1) use the City's commercial sanitation service for the collection and ~~multifamily units may dispose of their~~disposal of garbage, trash, refuse ~~themselves, except that they must pay any~~ or other solid waste and the collection and recycling of recyclable material, provided these customers pay all applicable fees~~. Any business establishment, mobile home park, trailer park, rooming house, boarding house or multifamily unit disposing of wastes resulting from contracted work must also~~, as set by the City Council; or

(2) collect, transport and dispose of garbage, trash, refuse or other solid waste themselves, provided they pay all applicable fees~~.~~, as set by the City Council, and such self-collection, management and disposal does not violate any provision of this chapter; or

(3) ~~(~~euse a duly-permitted third party commercial sanitation service.

(f) All business establishments~~, mobile home parks, trailer parks, rooming house, boarding houses and multifamily units must pay all~~ that use the City's sanitation services or collect, transport and dispose of their garbage, trash, refuse or other solid waste themselves must pay all applicable sanitation and landfill fees with cash or establish a ~~charge~~customer account. Business establishments~~, mobile home parks, trailer parks, rooming houses, boarding houses and multifamily units who~~ that wish to establish a ~~charge~~customer account for landfill usage shall submit a payment guaranty deposit to the ~~city upon establishment of an account. The permit fee may be prorated. In addition, a payment guaranty deposit shall be submitted to the city~~City upon establishment of an account. The permit fee may be pro-rated. At the end of each permit year thereafter, ~~an~~a customer account shall remain active only if the user maintains a deposit equal to the average monthly billing of the previous year. Deposits shall not be interest earning. If any business establishment~~, mobile home park, trailer park, rooming house, boarding house or~~

~~multifamily unit which has posted a deposit~~ fails to pay the landfill fees by the last day of the billing month, the ~~administrator~~Administrator may ~~refuse to allow~~:

(1) consider the ~~firm~~account delinquent;

(2) decline to ~~charge~~extend credit;

(3) prohibit the business establishment from accruing any ~~further~~additional landfill fees~~,~~; and ~~may~~ /or

(4) deduct all delinquent fees from the payment guaranty deposit.

(~~f~~g) The ~~administrator~~Administrator may require any user to return to the scales for verification of the tare weight of any vehicle. Loads may be estimated with a known tare weight when the scales are inoperative.

(~~g~~h) All bulk disposal loads of liquid waste are prohibited except with the express written approval of the ~~administrator.~~Administrator. The ~~city~~City shall have the right to take samples of any ~~approved~~bulk liquid waste loads for the purpose of lab testing to determine if hazardous waste is present in the bulk liquid waste.

(~~h~~i) Surcharges are added to the schedule of the disposal fees for "hard to handle" waste materials. Surcharge ~~to the prevailing per ton fee~~ shall be charged for wire and tires and other hard to bury materials which are defined as "hard to handle" wastes at the prevailing market rate.

(~~i~~j) The schedule of disposal fees, guaranty deposit and "hard to handle" waste surcharge fee shall be established by resolution of the ~~council~~Council.

(~~j~~k) Bills shall become due and payable when a statement is ~~rendered~~generated by the ~~city~~City and shall become delinquent twenty (20) days after ~~rendered. A~~it is transmitted to the customer account holder. Any delinquent balance contained in a bill ~~shall~~may be subject to interest, a penalty~~, established~~ and late fees, as provided in the fee schedule approved by the ~~city, on any outstanding unpaid balance~~City Council.

(Ord. No. 1386, § 1, 10-22-85; Ord. No. 1479, § 1, 2-3-87; Ord. No. 1536, § 1, 4-12-88; Ord. No. 1547, § 1, 6-14-88; Ord. No. 1570, § 2, 11-8-88; Ord. No. 2106, § 2, 10-26-99)

Sec. 18-13. - Burning of refuse.

All burning of garbage, trash, refuse or other solid or liquid waste or recyclable material is prohibited except ~~in incinerators~~ as may be permitted by the ~~county~~City, the County, the State and the ~~city.~~federal government. Any burning of garbage, trash, refuse or other solid or liquid waste or recyclable material must comply with ~~the~~ any and all applicable laws, statutes, rules and regulations ~~established~~of the City, County, State and federal government, including those administered by the Maricopa County Environmental Services Department, the Arizona Department of ~~Health Services~~ Environmental Quality and the U.S. Environmental Protection Agency.

(Ord. No. 1325, § 1(13-43), 12-4-84)

Sec. 18-14. - Ownership of ~~refuse~~Recyclable Material.

~~(a) —~~Any person who sets out ~~for collection by the city, or deposits in the city landfill, any refuse material deemed acceptable for disposal, thereby agrees that the ownership of the refuse material shall become the sole property of the city when it is taken into the actual or constructive possession of the city. (b) — Any person who sets out for collection by the city~~ any recyclable material~~, thereby~~ for collection by the City agrees that the ownership of the recyclable material shall ~~become the property of the city when it is set out for~~transfer upon its actual collection by the City.

(Ord. No. 1325, § 1(13-27), 12-4-84; Ord. No. 2106, § 3, 10-26-99)

Sec. 18-15. ~~- Sanitation-~~ Solid Waste collection fund-Created.

A fund is hereby established for the funding and payment~~, as hereinafter provided,~~ of expenses associated with sanitation services provided by the ~~city~~City. The fund shall be known as the "~~sanitation~~Solid Waste Collection fund."

(Ord. No. 1451, § 1, 9-23-86; Ord. No. 1570, § 2, 11-8-88)

Sec. 18-16. ~~- Same -~~ Solid Waste collection fund —Purpose.

The purpose of the ~~sanitation~~Solid Waste collection fund is to accumulate all revenues and earnings received for sanitation services, to accumulate all interest earnings thereon, pay all administrative, operational and maintenance expenses, direct or indirect, of ~~same~~sanitation services, and accumulate contingency funds as an operational fund reserve to the sanitation fund. The sanitation fund shall be a separate and protected fund, to be used for no other purpose than expenses associated with sanitation services.

(Ord. No. 1451, § 1, 9-23-86; Ord. No. 1570, § 2, 11-8-88)

Sec. 18-17. ~~- Same -~~ Solid Waste collection fund—Procedure.

Commencing on the effective date of this section, all revenues derived from sanitation services shall be deposited within the ~~sanitation~~Solid Waste collection fund. All revenues in excess of the projected annual expenditures, for administrative, operational and maintenance expenses, direct or indirect, for the sanitation services, shall be placed in an operational fund reserve within the ~~sanitation~~Solid Waste collection fund. The funds ~~within~~placed in the operational fund reserve shall be maintained in one or more interest bearing accounts pursuant to the ~~city's~~City's investment policy. All interest earned thereon shall be accumulated with the principal sum. The operational fund reserve shall only be used for those purposes set forth in section 18-16.

(Ord. No. 1451, § 1, 9-23-86; Ord. No. 1570, § 2, 11-8-88)

Sec. 18-18. - Landfill enterprise fund-Created.

An enterprise fund is hereby established for the funding and payment~~, as hereinafter provided,~~ of expenses associated with the disposal of solid wastes. The enterprise fund shall be known as the "Landfill Enterprise Fund."

(Ord. No. 1440, § 1, 7-22-86)

Editor's note— Ord. No. 1440, § 1, adopted July 22, 1986, added new provisions designated as §§ 18-15—18-17. In order to avoid duplication of section numbers assigned by Ord. No. 1451, these provisions have been ~~redesignated~~re-designated as §§ 18-18—18-20, at the discretion of the editor.

Sec. 18-19. ~~- Same~~ Landfill enterprise fund—Purpose.

The purpose of the landfill enterprise fund is to accumulate all revenues and interest earnings associated with the ~~city~~City landfill, to pay all administrative, operational and maintenance expenses, direct or indirect, of same, and to accumulate a contingency reserve for future solid waste disposal related improvements in a solid waste facility account within the landfill enterprise fund. The landfill enterprise fund shall be a separate and protected fund, to be used for no other purpose than for expenses associated with solid waste disposal. The solid waste facility account within the landfill enterprise fund shall be a separate and protected account to be used for no other purposes than for capital improvements associated with the establishment, improvement, or closure of ~~city~~City landfills or other solid waste handling facilities, and the acquisition of land therefor, major equipment purchases for which funds are required in excess of the landfill operation funding and emergency purposes.

(Ord. No. 1440, § 1, 7-22-86)

Note— See the editor's note following § 18-18.

Sec. 18-20. ~~- Same~~ Landfill enterprise fund—Procedure.

Commencing July 1, 1986, all revenues derived from the ~~city~~City landfill shall be deposited within the landfill enterprise fund. All revenues in excess of the projected annual expenditures plus an operational fund reserve, to be determined annually ~~in concert~~ with the ~~city~~City budget process, shall be placed in the solid waste facility account within the landfill enterprise fund ~~which will maintain such~~. Such funds, including interest earnings, shall be used for such purposes as stated in section 18-19; except that revenues received as a result of providing commercial sanitation services or intergovernmental agreements may be placed in the City's general fund if the costs of providing such sanitation services to those customers do not significantly increase the City's overall administrative, operational and maintenance expenses of providing sanitation services.

(Ord. No. 1440, § 1, 7-22-86)

Note— See the editor's note following § 18-18.

Secs. 18-21—18-30. - Reserved.

ARTICLE II. - CONTAINERS AND ~~PRECOLLECTION~~PRE-COLLECTION PRACTICES

DIVISION 1. - GENERALLY

Sec. 18-31. - Rules and regulations.

The ~~administrator~~Administrator shall have the authority to establish and enforce rules and regulations requiring garbage, ashes, trash, refuse and recyclable material to be placed and maintained in separate containers.

(Ord. No. 1325, § 1(13-6), 12-4-84; Ord. No. 2106, § 3, 10-26-99)

Sec. 18-32. - Containers generally.

(a) For customers with City sanitation service:

~~(1) Refuse containers used for the manual collection system may be either metal or plastic cans, plastic bags, or cardboard boxes as specifically set forth in this chapter for refuse containers. These containers shall be provided by the owner or occupant of the premises. Containers shall be maintained in good condition. Any container that does not conform to the provisions of this chapter or that may have ragged or sharp edges or any other defect liable to hamper or injure the person collecting the contents thereof shall be promptly replaced. The administrator shall have the authority to deny collection service for failure to comply herewith.~~

~~(2) Individually assigned~~(1) All residential properties within the City of Glendale shall only use the City's curbside sanitation services for the collection and disposal of garbage, trash, refuse or other solid waste and for collection of recyclable material unless special arrangements have been made with the City by formal agreement in accordance with Section 18-12(c)(2). Residential properties within the City of Glendale shall not use any third party commercial sanitation service for solid waste management or recyclable material services.

(2) All residential properties within the City of Glendale shall be provided with refuse and recycling containers used for the residential sanitation service ~~mechanized collection system~~. These containers shall only be provided ~~only~~ by the ~~city~~City and shall be used for no other purpose than ~~as garbage and trash or recycling containers. One (1) container is issued per single-family dwelling unit and~~ the collection of refuse and recyclable material. Any containers provided by the City for residential sanitation service shall remain the property of the ~~city; however, the owner, landlord and/or tenant~~City. The City shall ~~be responsible to~~ replace any container ~~which~~that is damaged beyond use, lost or stolen. Additional containers may be obtained only from the ~~city, and by paying~~City if the customer pays a delivery fee and an additional monthly service fee to the ~~city~~City for each additional container~~, as established by the council by resolution.~~. The ~~city~~City shall maintain ~~city~~ City-owned containers in good condition, except for cleaning. ~~The city shall be responsible for cleaning containers and bins placed in alleys for single-family residential use. Bins owned and serviced by the city commercial sanitation service at other locations are cleaned by the city once per year at no charge to the customer. The~~

(3) The customer shall be responsible for ~~additional cleanings ordered by the administrator. Additional cleanings by the city shall be on a fee basis to the~~ maintaining the containers in a safe and clean manner. If the Administrator determines the container is not being maintained in a safe and clean manner, he may order the residential property owner or occupant to clean the container or the Administrator may replace it. Any cleaning or replacement that is caused by the failure or neglect of the residential customer~~. Residents shall be responsible for cleaning the individual containers assigned to their respective properties. The administrator or~~ may result in the City imposing a fee on the customer account. The Administrator or his designee shall determine the size and number of containers issued to a residential property or customer ~~or to residents~~, and the location where the containers will be placed. Containers not obtained from the ~~city for mechanized collection~~City will not be serviced~~.~~

~~(3) Refuse containers provided by the owner or occupant of the premises shall be of a type approved by the administrator and shall be kept in a clean, neat and sanitary condition at all times. Cans shall be either metal or plastic; maximum thirty-two gallon size. They shall be equipped with suitable handles, have tight fitting covers, be water tight, and shall not exceed sixty (60) pounds when loaded.~~

~~(4) Plastic bags shall be heavy polyethylene or ethylene copolymer resin, a minimum 1.7 mils thick; maximum thirty-three gallon size. Bags shall be securely tied, shall not exceed sixty (60) pounds fully loaded, and shall comply with material and performance specifications on file with the administrator.~~

~~(5) Cardboard boxes are accepted for trash only. They are not acceptable for household waste, may not exceed three (3) cubic feet in size, and shall not weigh more than sixty (60) pounds when loaded.~~ by the City.

(b) ~~Non-city~~For customers using third party commercial sanitation service:

~~(1) The owner, tenant, lessee or operator of a business establishment not served by the city~~(1) Business establishments shall have sufficient containers to ~~meet their needs~~collect, store, accumulate or otherwise contain refuse awaiting transport and disposal to an appropriate waste management facility, and to maintain a clean and sanitary condition on the premises. All containers or bins shall have a lid and be equipped with suitable handles, plates, or sleeves ~~for manual or mechanical lifting.~~. Containers or bins shall be kept in good repair and shall be repaired or replaced when no longer serviceable. Containers or bins shall be cleaned at least once per year or more frequently if so ordered by the ~~administrator~~Administrator.

(2) Containers or bins determined by the ~~administrator~~Administrator to be unsafe, unserviceable or in an unsanitary condition, shall be removed from further use. The ~~city~~City may periodically inspect business establishments to ensure compliance with requirements relative to refuse containers and the sanitary containment of refuse.

(Ord. No. 1325, § 1(13-7, 13-8), 12-4-84; Ord. No. 1562, § 1, 9-13-88; Ord. No. 1570, § 2, 11-8-88; Ord. No. 2106, § 3, 10-26-99)

Sec. 18-33. - Special handling of certain items placed for collection; items ~~city~~City will not collect.

Various types of refuse shall be contained and placed for collection as follows:

(a) Ashes or sawdust~~ no~~. No hot ashes, hot cinders or any burning matter shall be placed or kept in a refuse container. Ashes shall be soaked with water and placed in a plastic bag before being placed in a container used for refuse. Sawdust shall be placed in a closed bag before placement in a container used for refuse.

(b) All boxes, cartons and crates shall be collapsed or cut up prior to placement in containers~~, or bundled. Bundles of wastepaper, boxes, cartons, crates and similar materials shall be securely tied and not exceed thirty (30) pounds.~~ .

(c) ~~Clippings and leaves~~ Yard waste, such as grass ~~and weed~~ clippings, weeds and leaves shall be ~~contained~~cut to lengths of 5 feet or less, be no more than 12 inches in diameter, and be bagged and placed in containers ~~for garbage and household trash.~~as directed by the City. Uncontained ~~plant clippings or leaves~~yard waste shall not be collected. ~~If mechanized collection is provided to a residence, the grass and weed clippings, and leaves, shall be placed in a mechanized collection container. No such materials may be left loose or placed in containers not issued by or purchased from the city, if mechanized collection is provided.~~

(d) Cactus plants and/or trimmings or pruning from shrubs, bushes, trees (including palm trees), cut to lengths greater than 5 feet or having a diameter greater than 12 inches shall be separated from ~~same shall be placed in small cardboard boxes for manual~~all other refuse ~~collection. For mechanized collection, such materials shall~~ and be ~~cut up and placed in the container. Only Yucca, Century Plants and Ocotillos may be placed out with uncontained trash.~~ collected as bulk trash.

(e) Medical waste shall be contained and disposed of in a manner approved by the ~~administrator~~Administrator and the state department of health services.

(f) Wastes from small animals or pets shall be placed in a refuse bag, securely tied and then placed in the regular containers used for garbage. ~~Wastes from larger animals, such as horses, may be placed out for collection, provided the waste is dry and is placed in an approved plastic bag as described herein. The bag shall be securely tied and placed in the regular containers used for garbage.~~

(g) Highly inflammable or explosive materials shall not be placed in containers for regular collection but shall be disposed of as directed by the ~~administrator~~Administrator or public safety authorities at the expense of the owner or possessor thereof.

(h) Acids, caustics, rapid oxidizers, or any hazardous waste shall not be disposed of in refuse containers. Residents shall contact the state department of health services for instructions to dispose of such materials.

(i) Construction and demolition waste-special arrangements shall be made for the collection of construction and demolition wastes, and they shall not be placed with other refuse for collection. The builder, permittee, or owner, shall insure that all such wastes are removed

promptly, and not be stored in any location where they may be blown about or otherwise dispersed beyond the construction site.

(Ord. No. 1325, § 1(13-9), 12-4-84; Ord. No. 1562, § 1, 9-13-88)

Sec. 18-34. - Placement in containers.

No refuse shall be so compacted, placed or accumulated in any container in a manner which does not allow the contents of the container to fall out, by its own weight, upon the container being lifted and turned upside down. All refuse before being deposited for collection shall be drained of liquids.

(Ord. No. 1325, § 1(13-10), 12-4-84)

Sec. 18-35. ~~- Use of another's container~~- Inspection of containers; notice of violation.

~~It is unlawful for any owner, occupant, tenant, or lessee, using or occupying a building, structure, or other premises as a separate unit, to utilize the refuse containers or receptacles used by any other owner, occupant, tenant, or lessee for the disposal of the person's own refuse, without the approval of the administrator, if the city is providing sanitation service, or without the approval of the contractor, if sanitation is being provided by a contractor.~~

~~(Ord. No.1325, § 1(13-11), 12-4-84; Ord. No. 1562, § 1, 9-13-88)~~

~~Sec. 18-36. - Disallowance of container.~~

~~Any container which does not conform with the provisions of this chapter be disallowed for future use by the administrator. Such disallowance shall be by attaching a tag advising the resident of such action.~~

~~(Ord. No. 1325, § 1(13-12), 12-4-84)~~

~~Sec. 18-37. - Replacement of containers.~~

~~The city accepts no responsibility for replacement of any privately owned containers that may be damaged while being serviced in the normal manner or deteriorate through normal wear and tear.~~

~~(Ord. No. 1325, § 1(13-13), 12-4-84)~~

~~Sec. 18-38. - Inspection of containers; notice of violation.~~

~~Provision shall be made for~~ The City may conduct regular inspections ~~by the city~~ to ~~secure~~ ensure compliance with ~~this chapter with reference to containment of refuse and maintenance of containers.~~the provisions of this Article. Notification of violations shall be given by the ~~administrator~~Administrator or designee, to the owner or occupants of the property upon which such violations occur. Notification may consist of ~~tagging the containers~~affixing a tag, sticker or other label to the container that ~~present~~presents a health or safety hazard ~~with tags, with the violations indicated on the tag, or by delivering~~or serving a notice in person or by certified mail to the owner or occupant~~. With permission,~~ of the ~~administrator~~property. The Administrator or designee shall have the right to enter commercial, industrial and institutional establishments for inspection purposes~~. If action necessary to remedy a health~~, after proving the owner or ~~safety hazard~~occupant with reasonable notice. If violation is not ~~taken~~corrected within three (3) days

after receipt of notification, the ~~administrator~~Administrator or designee shall have the right to remove the container, to discontinue sanitation service, and ~~dispose of it, and may~~to collect from any ~~person found guilty of such violation, the impounding~~ costs and expenses the City incurs in addressing the violation, in addition to any penalty which may be imposed pursuant to City Code for a violation of this chapter.

(Ord. No. 1325, § 1(13-47), 12-4-84; Ord. No. 1562, § 1, 9-13-88)

Sec. 18-~~39~~36. - Container repair.

Any expense to the ~~city~~City for the repair or replacement of damaged, stolen, or misused refuse containers or bins, shall be charged against and collected from the person or persons who caused the expense.

(Ord. No. 1325, § 1(13-61), 12-4-84)

Sec. 18-~~40~~37. - Recycling containers for public use.

(a) ~~Recycling~~All recycling containers shall not be placed within the ~~city~~City for use by the general public~~, and whether operated for profit or not, are subject to~~ without the express approval of the ~~administrator.~~Administrator.

(b) All recycling containers in use shall be ~~painted and~~ maintained in a clean, neat and sanitary manner at all times. The recycling container shall have the name and current telephone number of the servicing contractor as well as the owner of the container identified legibly thereon.

(c) Owners of recycling containers shall ~~first~~ obtain a permit from the ~~administrator~~Administrator prior to locating any recycling container within the ~~city~~City. General public use recycling permit regulations are established by the ~~administrator.~~Administrator. Recycling permit fees are established by the ~~council~~Council by resolution. ~~Violations may subject the owner to the revocation of a permit as well as removal, and after ten (10) days, disposal of recycling containers.~~

(d) Locations for recycling containers shall be subject to the approval of the ~~administrator~~Administrator upon submission of a permit request. No recycling container shall be placed on ~~city~~City right-of-way. If placed on private property, written permission from the property owner must be submitted to the ~~administrator~~Administrator.

(e) Recycling containers placed within the ~~city~~City shall be serviced regularly to prevent an environmental nuisance as defined in this chapter, including, but not limited to, overflowing and the subsequent discharge of recyclable materials and other wastes upon any street, sidewalk, right-of-way, or other ~~city~~City property, or any private property. Service schedules ~~by contractors~~of providers shall be provided to the ~~administrator~~Administrator upon demand. If containers are not serviced at a frequency to prevent ~~the overaccumulation of materials, and overflowing and discharge occurs, the administrator~~an environmental nuisance, the Administrator shall have the authority to suspend or revoke a recycling permit, and remove ~~and after~~such recycling containers. If the City removes the recycling containers for such a violation, the owner must reclaim the

containers within ten (10) days, ~~dispose~~or such containers may be disposed of by the ~~container~~City at the owner's expense.

~~(f) Recycling container permits may be revoked if the container states that all or a portion of the revenue from the sale of recyclables placed in the container inures to a nonprofit organization, and in fact does not. The permittee shall provide written verification from an officer of the nonprofit organization at time of permit application.~~

(f) Violations of this section may subject the owner of the recycling containers to the revocation of a permit as well as removal of such containers.

(Ord. No. 2106, § 4, 10-26-99)

Secs. 18-~~41~~38—18-50. - Reserved.

DIVISION 2. ~~- SINGLE FAMILY DWELLING UNITS AND DUPLEXES -~~ RESIDENTIAL PROPERTIES

Sec. 18-51. - Scope.

This division shall apply to ~~single family~~ residential ~~dwelling units and to residential duplexes~~properties as defined in Section 18-1.

Sec. 18-52. - Container storage.

All moveable refuse containers shall be ~~kept~~located on private property except on collection day, when they may be placed upon the edge of the alley or street for collection. Following collection, they shall be returned to private property within 24 hours.

(Ord. No. 1325, § 1(13-14), 12-4-84)

Sec. 18-53. - Container service location.

(a) Containers may be placed out for collection after 6:00 p.m. on the day before collection, but no later than 6:00 a.m. on the day of collection, and shall be returned to private property by 6:00 a.m. of the day after collection.

(b) ~~When there is an alley in the rear or side of the property, privately owned containers may be placed on the property at the edge of the alley, or on the edge of the alley adjacent to the property line if there is manual collection. If placed in the alley, they shall be removed on the same day in which the refuse is collected. When there is mechanized collection in the alleys, city-owned containers~~Containers shall remain at the edge of the alley at locations designated by the ~~administrator.~~Administrator.

(c) ~~Where there is a side entrance opening upon a public street but there is no alley, the containers shall be placed on the premises and adjacent to the property line on which the side entrance is located.~~

~~(d) In locations where there is neither alley nor side entrance, containers~~Containers shall be placed in the street in front of the house to which containers are assigned with the wheels against the curb, and the lid opening facing the street. In locations where there is no curb, the container should be placed at the edge of the property within two (2) feet of the street

or improved surface. Containers must not be placed within ~~fifteen~~ten (10) feet of a vehicle, mailbox, or other obstruction as may be determined by the ~~administrator~~Administrator. Containers must not be placed on arterial streets for service; rather, they should be placed on the property at the edge of the curb with the lid opening facing the street or in a location selected by the ~~administrator.~~Administrator. Containers should not block or impede access to the sidewalk.

(~~e~~d) When it is not possible to place a container on a street, the container should be placed on the driveway adjacent to the sidewalk unless otherwise directed by the ~~administrator~~Administrator.

(~~f~~e) Refuse and recycling containers that are placed out for service must be at least three (3) feet apart to allow proper service. Lids for containers must be entirely closed.

(Ord. No. 1325, § 1(13-15), 12-4-84; Ord. No. 1570, § 2, 11-8-88; Ord. No. 2861, § 1, 9-24-13)

Secs. 18-54—18-65. - Reserved.

DIVISION 3. ~~- MULTIPLE DWELLING UNITS AND -~~ BUSINESS ESTABLISHMENTS SERVED BY CITY

Sec. 18-66. - Scope; service contracts.

(a) This division shall apply to business establishments as defined in Section 18-1 which are serviced by the ~~city and multiple-family dwelling units, mobile home parks, rooming houses and boarding houses~~City.

(b) The ~~administrator~~Administrator or his designee is hereby authorized to execute any contracts for providing commercial sanitation service to business establishments ~~or multiple-family dwelling units, mobile home parks, rooming houses and boarding houses.~~.

(Ord. No. 1562, § 1, 9-13-88)

Sec. 18-67. - Bin placement.

~~(a)~~ Each bin shall be placed on ~~or adjacent to~~ the property of the ~~authorized user~~business establishment at a location approved by the ~~administrator.~~Administrator. This requirement may be waived by the ~~administrator~~Administrator if necessary for the provision of commercial sanitation service, however, in no case shall the placement of such bin interfere with vehicular or pedestrian traffic.

~~(b) Where there is an alley to the rear of the premises, bins shall be placed on one side of the alley and located such that vehicular passage is not obstructed. The administrator may temporarily waive this requirement when conditions warrant.~~

~~(c) Where there is no alley but there is a side entrance opening upon a public street, the bin shall be placed on the premises and adjacent to the property line on which the side entrance is located, as approved by the administrator.~~

~~(d) Where there is no alley and where collection vehicles cannot enter private property to empty bins, commercial type bins may be placed at the front or side of the property, in a location approved by the administrator.~~

(Ord. No. 1325, § 1(13-16), 12-4-84)

Sec. 18-68. - Enclosures.

All enclosures shall conform to ~~city~~City specifications and shall be subject to approval by the ~~administrator~~Administrator. Enclosures shall not be constructed, stationed, or maintained upon any public right-of-way. City collection service may be suspended, a citation issued, and the provisions of section 18-9(c) may be initiated, if the enclosure area is not maintained in such a manner as to prevent the uncontained accumulation of refuse.

(Ord. No. 1325, § 1(13-17), 12-4-84; Ord. No. 1562, § 1, 9-13-88)

Sec. 18-69. - Accessibility of bins.

If a bin is inaccessible to a collection vehicle, ~~it is~~ the ~~owner's~~owner, operator or ~~occupant's responsibility to~~occupant of the business establishment shall move the bin to an accessible and approved location ~~for~~so that it can be accessed by the collection vehicle. Bins shall be placed at the approved location no later than 6:00 a.m. of the day of the collection.

(Ord. No. 1325, § 1(13-18), 12-4-84)

DIVISION 4. - BUSINESS ESTABLISHMENTS SERVICED BY ~~CONTRACTORS~~ THIRD PARTY COMMERCIAL SANITATION SERVICE PROVIDERS

Sec. 18-70. - Scope.

This division shall apply to all business establishments serviced by ~~contractors.~~third party commercial sanitation service providers.

(Ord. No. 1562, § 1, 9-13-88)

Sec. 18-71. - Bin placement.

~~(a)~~ Each bin, compactor bin or container used to collect the refuse of a business establishment shall be placed on ~~or adjacent to~~ the property of the ~~authorized user~~business establishment at a location approved by the ~~administrator.~~Administrator. This requirement may be waived by the ~~administrator~~Administrator if necessary for the provision of commercial sanitation service; however, in no case shall the placement of such bin interfere with vehicular or pedestrian traffic.

~~(b) Where there is an alley to the rear of the premises, bins shall be placed on one side of the alley and located such that vehicular passage is not obstructed. The administrator may temporarily waive this requirement when conditions warrant.~~

~~(c) Where there is no alley but there is a side entrance opening upon a public street, the bin shall be placed on the premises and adjacent to the property line on which the side entrance is located, as approved by the administrator.~~

~~(d) Where there is no alley and where collection vehicles cannot enter private property to empty bins, commercial type bins may be placed at the front or side of the property, in a location approved by the administrator.~~

(Ord. No. 1562, § 1, 9-13-88)

Sec. 18-72. - Enclosures.

All enclosures used to house bins for the collection of the refuse of a business establishment shall conform to ~~city~~City specifications and shall be subject to approval by the ~~administrator~~Administrator. Enclosures shall not be constructed, stationed or maintained upon any public right-of-way. If the enclosure area is not maintained in such a manner as to prevent the uncontained accumulation of refuse, the owner, operator or occupant of the business establishment may be subject to the enforcement of the provisions of this chapter, including, but not limited to, section 18-9(c~~) may be initiated.~~). Bins shall be placed and maintained within the enclosure.

(Ord. No. 1562, § 1, 9-13-88)

Sec. 18-73. ~~- Containers~~Bins.

(a) Containers, bins or ~~compactors~~compactor bins supplied by a ~~contractor~~third party commercial sanitation service provider, or used by an owner, ~~tenant, lessee or~~ operator~~,~~, or occupant of a business establishment to collect the refuse of the business establishment, are subject to approval by the ~~administrator.~~Administrator.

(b) Business establishments being serviced by a ~~contractor~~third party commercial sanitation service provider may have standard refuse containers, roll-off bodies, bins and ~~refuse compactors~~/or compactor bins supplied by the ~~contractor.~~third party sanitation service provider. All containers, roll-off bodies, bins and ~~refuse compactors~~compactor bins shall be painted and maintained in a clean, neat and sanitary manner at all times and shall have the name of the ~~contractor~~third party sanitation service provider identified legibly thereon.

(c) ~~It shall be the joint responsibility of both the contractor~~The third party commercial sanitation service provider and the owner, ~~occupant,~~ operator~~, tenant,~~ or ~~lessee~~occupant of the business establishment ~~to keep~~shall be jointly and ~~maintain at such place~~severally responsible for keeping and maintaining a sufficient ~~standard~~number of bins and containers, as may be determined by the ~~administrator~~Administrator, to accommodate the ~~disposal~~accumulation and collection needs of the business establishment.

(d) All ~~commercial~~ refuse generated by a business establishment shall be placed in approved containers, bins or ~~compactors which shall be located at the approved location(s) using any enclosure(s) which were constructed for this purpose. Containers shall be relocated if so directed by the city~~compactor bins in accordance with ~~city requirements.~~ this Article.

(Ord. No. 1562, § 1, 9-13-88)

Secs. 18-74—18-100. - Reserved.

ARTICLE III. - COLLECTION AND DISPOSAL

DIVISION 1. - GENERALLY

Sec. 18-101. - Necessity.

The orderly and regular collection of refuse, including garbage, trash, and other ~~refuse~~solid and liquid wastes, is necessary to prevent the spread of disease, the creation of health menaces and fire and other public safety hazards and public nuisances.

(Ord. No. 1325, § 1(13-19), 12-4-84)

Sec. 18-102. – Frequency of contained refuse collection; hours.

(a) The frequency of contained refuse collection shall at a minimum be in accordance with state ~~department of health services~~ and/or county regulations, but in no case shall be less than once per week for bins ten (10) cubic yards or less in size.

(b) Hours of collection from business establishments shall be regulated by the ~~administrator.~~Administrator. However, refuse or recyclable materials shall not be removed from any bin or recycling container located at a business establishment or at any recycling location, when the bin or recycling container is located within two hundred (200) feet of the property line of residential property, between the hours of 7:00 p.m. and 6:00 a.m.

(Ord. No. 1325, § 1(13-20), 12-4-84; Ord. No. 1562, § 1, 9-13-88; Ord. No. 2106, § 5, 10-26-99)

Sec. 18-103. - Obstructions prohibited.

It shall be unlawful for any person to park a vehicle which obstructs access to a refuse or ~~recycling~~recyclable material container or bin placed out for collection service or to obstruct the refuse collection or recycling operations in any other manner.

(Ord. No. 1325, § 1(13-21), 12-4-84; Ord. No. 2106, § 5, 10-26-99)

Sec. 18-104. - Authorized refuse and recyclable ~~materials~~material collectors; permits.

(a) Except as otherwise provided in this chapter, no person, other than the ~~city or a contractor authorized by permit pursuant to the provisions of this chapter~~City shall ~~collect, remove, salvage, transport or dispose of~~conduct any ~~refuse, recyclable materials or any other wastes of any kind produced, kept or accumulated within or upon any business establishment or residential property within the city.~~

~~(b) Contractors, before collecting refuse or other wastes from business establishments within the city and before collecting~~ solid ~~recyclable materials from~~waste management or recycling services for residential properties within the ~~city, shall obtain applicable permits(s) from the administrator to collect refuse, recyclable materials or other wastes.~~City.

~~(c)~~ (b) Except as otherwise provided in this chapter, no person, other than the City or a duly-permitted third party commercial sanitation services provider shall conduct any solid waste management or recycling services for any business establishment within the City.

(c) All third party commercial sanitation services providers must obtain applicable permits(s) from the Administrator prior to conducting or providing any solid waste management or recycling services for business establishments within the City.

(d) This chapter shall not prohibit the ~~actual producers~~generators of refuse, or the owners of premises upon which refuse has accumulated, from personally salvaging, collecting, conveying and disposing of such refuse without a permit, provided such ~~producers or owners~~persons comply with the provisions of this chapter and with any other governing law or ordinances.

~~(d) Every person engaging~~ (e) Nothing in ~~the business of contracting, except refuse collection,~~ this chapter is ~~authorized~~intended to ~~personally collect, remove and dispose of wastes incidental to such contracting business without a permit.~~

~~(e) This chapter shall not~~ prohibit ~~collectors of refuse from outside of the city~~ any person from hauling ~~such~~ refuse over ~~city~~City streets, provided such ~~collectors~~ persons obtain any applicable permits and comply with the provisions of such permits, this chapter and with any other governing law or ordinances.

~~(f) No contractor shall collect, remove, salvage, transport, or dispose of any refuse or other waste of any kind produced, kept or accumulated within or upon any residential property except for the collection of solid recyclable materials pursuant to subsection (h) of this section.~~

~~(g)~~ (f) All contracts for service executed by a ~~contractor~~third party commercial sanitation service provider shall contain a clause subjecting the contract to cancellation by the customer in the event the ~~contractor~~provider does not have a valid permit to service customers within the ~~city~~City.

~~(h) Recycling companies are permitted to~~(g) Third party commercial sanitation service providers may contract with business establishments to collect solid and liquid recyclable materials ~~emanating~~ from the business establishment after obtaining a permit required by sections 18-40 and 18-113, provided the recyclable materials are source separated and are not mixed with ~~nonrecyclable~~non-recyclables or other refuse~~. Recycling companies~~ or solid waste. Such providers shall not be permitted to collect, remove, salvage, transport or dispose of any recyclable ~~materials~~material, medical waste or hazardous waste from residential properties.

(Ord. No. 1325, § 1(13-22-13-25, 13-36), 12-4-84; Ord. No. 1562, § 1, 9-13-88; Ord. No. 1570, § 2, 11-8-88; Ord. No. 1796, § 2, 1-11-94; Ord. No. 2106, § 5, 10-26-99)

Sec. 18-105. - Types of sanitation services.

~~(a) Refuse collection services provided to single-family residences and multiple dwellings, including apartments, condominiums, townhouses, mobile home parks, trailer parks, rooming houses and boarding houses, are twice weekly contained refuse collection. Uncontained refuse collection shall be set by the administrator. Residents served by a manual collection system provide their own approved refuse containers as described herein to be manually emptied into collection vehicles. Residents served by a mechanized~~

~~collection system are either provided containers for their individual use and curbside collection, or for alley collection service may be assigned the use of bins located in the alley generally adjacent to their property.~~(a) Refuse collection services will be provided to residential properties at the frequency proscribed in Section 18-102, on the schedule set by the Administrator. The City shall service two containers per residential property unless arrangements are made for service of additional containers in accordance with Section 18-32.

(b) Business establishments are provided with refuse collection service as required by state, county and ~~city~~City regulations and, if served by ~~city~~City sanitation service, as agreed upon with the ~~city~~City. The ~~city~~City owns and provides all bins used in the ~~city's mechanized~~City's sanitation collection service. If the business establishment is serviced by a ~~contractor~~third party commercial sanitation service provider, the service schedule shall be set by the ~~contractor and~~ provider, subject to approval by the ~~administrator~~Administrator, and provided such schedule does not interfere with the City's sanitation service or otherwise cause or contribute to any public or environmental nuisance.

(Ord. No. 1325, § 1(13-28), 12-4-84; Ord. No. 1562, § 1, 9-13-88; Ord. No. 1570, § 2, 11-8-88)

Sec. 18-106. ~~- Duplexes.~~

~~Each unit of a duplex shall be deemed to be a single dwelling unit for the purpose of this chapter, except that the owners of said units may arrange for service to their units as one parcel if they pay any and all costs for that service.~~

~~(Ord. No. 1325, § 1(13-29), 12-4-84)~~

~~Sec. 18-107. - Multiple dwelling units.~~

~~Multiple dwelling units with more than two (2) dwelling units on one (1) parcel of property shall be required to provide refuse bin service, rather than individual refuse containers, unless otherwise permitted by the administrator or his designee.~~

~~(Ord. No. 1325, § 1(13-30), 12-4-84; Ord. No. 1570, § 2, 11-8-88)~~

~~Sec. 18-108. -~~ Volume required for roll-off service.

When a combined volume of refuse at one (1) site~~, primarily nonputrescible wastes and nonresidential customer,~~ exceeds twenty (20) cubic yards per week, roll-off bin service may be required whenever practicable.

(Ord. No. 1325, § 1(13-31), 12-4-84; Ord. No. 1570, § 2, 11-8-88)

Sec. 18-~~109~~107. - Disposal of dead animals.

No person shall place the body of any dead animal in any street, park or in any refuse container or bin. The bodies of dead animals shall be removed or collected as provided in Section 18-33 of this chapter or as otherwise directed by the ~~city~~City.

(Ord. No. 1325, § 1(13-32), 12-4-84)

Sec. 18-~~110~~108. - Uncontained refuse and Bulk trash collection.

(a) Uncontained refuse and bulk trash collection shall be offered in accordance with a schedule and level of service approved by ~~city council~~City Council.

(b) ~~Residents~~Owners or occupants of residential properties shall place uncontained refuse in neat stacks and bulk trash in a location parallel to the street or alley adjacent to their property line. No object placed out for collection shall exceed ~~four (4~~five (5) feet in length, except for bulk trash and palm fronds. The ~~administrator~~Administrator shall determine whether street or alley service shall be provided. Uncontained refuse and bulk trash shall not be placed within two (2) feet of ~~city~~City-owned containers or bins, water meters, cable ~~t.v.~~television, or telephone boxes, etc., or in any manner ~~as to interfere~~that interferes with or ~~be hazardous~~poses a safety hazard to pedestrians, bicyclists, equestrians or motorists. ~~Refuse unacceptable~~The occupant or owner of the residential property shall transport and disposed of any refuse that does not meet the City's criteria for ~~city~~ collection ~~shall be disposed of~~ at the ~~city~~City landfill ~~by the occupant or owner of the premises.~~or other appropriate facility.

(c) No ~~resident~~owner or occupant of a residential property shall place uncontained refuse out for collection earlier than Thursday of the week preceding the scheduled pick up week.

(d) ~~If~~ Any owner or occupant of a ~~resident~~residential property who violates section 18-110(C) must remove the uncontained refuse or bulk trash from the street or alley adjacent to his property within 24 hours of a notice of violation issued by the City. Any violator who does not remove the uncontained refuse or bulk trash within the twenty-four (24) ~~hours after the city issues notice of the violation, the city~~hour period may ~~remove the uncontained trash and~~be subject to a reasonable charge for the ~~resident~~City's cost of removing the ~~one hour rate for off-route loose~~uncontained refuse or bulk trash ~~service.~~. If the ~~resident~~owner or occupant of the residential property has a ~~municipal service~~customer account with the ~~city~~City, such costs shall be charged to that account.

(Ord. No. 1325, § 1(13-33), § 12-4-84; Ord. No. 1570, § 2, 11-8-88; Ord. No. 2113, § 1, 12-14-99; Ord. No. 2345, § 1, 9-23-03; Ord. No. 2345, § 1, 10-14-03)

Sec. 18-~~111~~109. - Inability of ~~city~~City to provide service.

Where it is impossible or impracticable for ~~city~~City trucks to operate due to impassable terrain or other conditions, the ~~administrator~~Administrator or designee may substitute another means of collection or require the person to seek service from another source.

(Ord. No. 1325, § 1(13-34), 12-4-84)

Sec. 18-~~112~~110. - Collection and fees for areas outside ~~city~~City.

(a) Refuse services may be rendered by the ~~city~~City to areas ~~outside~~beyond the ~~city~~jurisdictional boundaries of the City, at the option of the ~~city~~City, and subject to termination at any time.

(b) The fees for collection ~~outside the city~~beyond the jurisdictional boundaries the City shall be ~~one and one-fourth (1-1/4) times~~charged a premium above the fee for similar service

rendered within the ~~city.~~ City. Such premium shall be established based on the current market rate and approved by the City Council.

(Ord. No. 1562, § 1, 9-13-88)

Sec. 18-~~113~~111. - Business establishment refuse collection permit.

Permits for collection of refuse or other waste from business establishments within the ~~city~~City shall be issued by the ~~city~~City under the following conditions:

(a) ~~Contractor~~Third party commercial sanitation service provider must supply evidence satisfactory to the ~~administrator~~Administrator that the ~~contractor~~provider possesses the necessary equipment and qualifications to ~~collect, transport and dispose of~~provide commercial ~~refuse or any other wastes~~sanitation services in a manner satisfactory to the ~~city~~City and in conformity with all applicable federal, state, county and ~~city~~City laws, rules and regulations.

~~(b) The contractor must submit an application, on a form provided by the city, to the city with a cash permit surety of two thousand dollars ($2,000.00) and an annual per-vehicle license fee of one thousand dollars ($1,000.00) per vehicle used in the collection of refuse within the City of Glendale. Any contractor with a current, valid permit found to be collecting refuse within the City of Glendale with a nonlicensed vehicle shall forfeit the cash permit surety and the contractor's permit shall be suspended until such time as the permit surety is fully reimbursed and fees for each nonpermitted vehicle are received by the city.~~

~~(c) The contractor's~~(b) The third party commercial sanitation service provider application shall include the name, business addresses and telephone numbers of all owners, partners, general managers and principal officer, as well as emergency telephone numbers, business references and such other information as deemed necessary.

~~(d) Except in an emergency or other situations approved by the administrator or his designee, the contractor shall provide the city~~(c) The third party commercial sanitation service provider must submit an application, on a form provided by the City, to the City with a cash permit surety of two thousand dollars ($2,000.00). This surety shall be conditioned upon the payment of any charges incurred by the City in correcting any failure by the contractor to perform in accordance with the requirements of this chapter. An annual per-vehicle license fee of one thousand dollars ($1,000.00) for each vehicle to be used to provide commercial sanitation services within the City of Glendale shall also be paid to the City prior to the issuance of the permit and commencement of commercial sanitation service.

(d) Once the permit is approved and issued by the City, the third party commercial sanitation service provider shall inform the City of any changes in the number of vehicles it has providing commercial sanitation services within the City. If the provider fails to report any such change, or any applicable fee is not paid for any vehicle performing such services for the provider within the City, the City may suspend the third party commercial sanitation service provider’s permit to conduct commercial sanitation services within the

City until such fees are paid in full or cause the cash permit surety held by the City to be forfeited in whole or in part.

(e) Unless otherwise approved by the Administrator or his designee, the third party commercial sanitation service provider shall provide the City with written notice of intent to service any business establishment at least thirty (30) days before commencing service. Such notice shall include the name and address of the establishment, number and size of standard refuse containers, roll-off bodies, bins or ~~compactors~~compactor bins, and the ~~intended days of~~proposed schedule for collection. The ~~contractor~~third party commercial sanitation service provider shall also provide the ~~city~~City and the business establishment ~~with~~ thirty (30) ~~days~~days' written notice ~~before~~prior to any discontinuance of or material change in service. The ~~administrator~~Administrator may waive the ~~time~~notice requirements in this paragraph, in his discretion, to facilitate transfer of service.

(~~e~~f) Permits issued pursuant to this section shall be ~~nontransferable~~non-transferable. The permits shall be issued for one (1) year commencing July 1 and ending June 30. Applications for renewal shall be made at least forty-five (45) days prior to expiration of current permit. Applicable fees may be ~~prorated~~pro-rated monthly on permits issued during the fiscal year.

~~(f) Each licensed vehicle operating within the City of Glendale shall display two (2) decals, provided by the city, affixed permanently and clearly visible on the driver's side and on the rear of the vehicle.~~

~~(g) Before issuing a permit under the provisions of this section, the city shall require the applicant, as a condition to the issuance of the permit, to post a cash performance surety in the amount of two thousand dollars ($2,000.00). This surety shall be conditioned upon the payment of any charges incurred by the city in correcting any failure by the contractor to perform in accordance with the requirements of this chapter.~~

~~(h) The permit fee, sureties and insurance requirements of this section may be waived by the administrator for any charitable or philanthropic organization engaged in salvaging or recycling; provided, no part of the revenue from the operation inures to the personal benefit of any person.~~

~~(i) Contractors~~ (g) All third party commercial sanitation service providers must obtain, keep in force and maintain public liability and property damage insurance in the sum of one million dollars ($1,000,000.00) for personal injury or death to any one (1) person, one million dollars ($1,000,000.00) for personal injuries or death sustained by all persons in any one (1) accident and five hundred thousand dollars ($500,000.00) for property damage arising from any single occurrence, arising from any error, omission or act, negligent or intentional, by the ~~contractor~~provider or its employees or ~~agents~~agent in collection, hauling and/or disposal activities within the ~~city~~City. The ~~city~~City shall be named a co-insured. A certificate of insurance shall be furnished to the ~~city~~City at the time of permit application, and at any time during a permit year when requested by the ~~city~~City. The form and coverage shall be subject to ~~city~~City approval.

(h) The permit fee, sureties and insurance requirements of this section may be waived by the Administrator for any charitable or philanthropic organization engaged in salvaging or recycling; provided, no part of the revenue from the operation inures to the personal benefit of any person.

(Ord. No. 1562, § 1, 9-13-88; Ord. No. 1570, § 2, 11-8-88)

Sec. 18-~~114~~112. - (Reserved).

Editor's note— Ordinance No. 2106, § 6, adopted October 26, 1999, deleted former § 18-114, relative to residential property recyclable material permits, which derived from Ord. No. 1562, § 1, 9-13-88, and Ord. No. 1796, § 3, 1-11-4.

Sec. 18-~~115~~113. - Vehicle requirements.

All vehicles use for the collection, hauling or transportation of any refuse, recyclable materials or other wastes by a ~~contractor~~ third party commercial sanitation service provider within the ~~city~~City must be inspected at the time of initial permit application and at the time of each permit renewal, be approved by the ~~city~~City and meet the following requirements:

(a) All vehicles must be in good condition and repair.

(b) Vehicles shall be maintained and operated in a clean and neat manner so as to prevent refuse from spilling, leaking and blowing from the vehicle.

(c) ~~The outside of each vehicle must be clearly identified~~Each licensed vehicle operating within the City of Glendale shall display two (2) decals, provided by the City, affixed permanently and clearly visible on the driver's side and on the rear of the vehicle.

(d) The name and telephone number of the ~~contractor operating the~~third party commercial sanitation service provider operating the vehicle must be clearly visible of the exterior of each vehicle.

(~~d~~e) Any open-top roll-off container being transported on the vehicle must have a cover which prevents refuse or ~~contents~~recyclable materials from spilling ~~or~~, flowing or otherwise being emitted into the air or onto the roadway.

(~~e~~f) When driven and operated by one (1) person, front loading refuse packers ~~used in the collection, transportation, and disposal of refuse~~ shall be equipped with an approved backup protection device. Audible backup alarms do not meet this requirement.

(~~f~~g) No vehicle shall be painted or identified in such a manner which may lead an ordinarily observant person to confuse such equipment with equipment of ~~the city sanitation~~any City department or division.

(Ord. No. 1796, § 1, 1-11-94)

Secs. 18-~~116~~114—18-125. - Reserved.

DIVISION 2. - SALVAGE, TRANSFER AND HANDLING

Sec. 18-126. - Transfer station.

The ~~city~~City or a ~~contractor~~third party commercial sanitation service provider with a permit issued pursuant to this chapter may, in conjunction with its ~~refuse collection and disposal~~sanitation service operations, transfer ~~wastes~~refuse or recyclable material from collection to disposal vehicles through the use of a transfer station. ~~No other such transfer~~Transfer of refuse by private persons shall be permitted. A transfer station shall not be established unless approved by the ~~city~~City.

(Ord. No. 1325, § 1(13-37), 12-4-84; Ord. No. 1562, § 1, 9-13-88)

Sec. 18-127. - Tampering with containers prohibited.

No person, other than the owner, operator or other authorized representative thereof, or ~~his agents or employees, or~~ an ~~officer or~~ employee or authorized representative of the ~~city or a person holding a permit or franchise from this city for the collection, disposal, or salvage of refuse~~City, shall tamper with any refuse ~~or,~~ trash or recycling container or bin, or the contents thereof, or remove the contents of any refuse ~~or,~~ trash or recycling container or bin, or remove any such refuse ~~or,~~ trash or recycling container or bin from the location where same has been placed.

(Ord. No. 1325, § 1(13-38), 12-4-84; Ord. No. 1570, § 2, 11-8-88)

Secs. 18-128, 18-129. - Reserved.

Editor's note— Ord. No. 1562, § 1, adopted Sept. 13, 1988, deleted §§ 18-128 and 18-129, concerning salvage or scavenging permits and collection fees, as derived from Ord. No. 1325, § 1(13-39), adopted Dec. 4, 1984, and Ord. No. 1479, § 2, adopted Feb. 3, 1987.

Secs. 18-130—18-140. - Reserved.

DIVISION 3. - FEES

FOOTNOTE(S):

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State Law reference— User fees for solid waste collection activities authorized, A.R.S. § 49-742.

Sec. 18-141. - Necessity.

~~In order to provide for the continuance of sanitation services and protection for the public health, safety and welfare, a~~A schedule of services and fees ~~for the collection and disposal of refuse and ancillary services by the city~~ shall be established by resolution by the ~~city council~~City Council for the City providing sanitation services to residential properties and business establishments.

(Ord. No. 1325, § 1(13-51), 12-4-84; Ord. No. 1479, § 2, 2-3-87; Ord. No. 1562, § 1, 9-13-88)

Sec. 18-142. - Liability for fees.

The owner of ~~any dwelling or premises~~residential property and the owner of real property on which a business establishment is located shall have ultimate liability for ~~sanitation~~all fees and charges incurred under this chapter, including any penalties or fines, assessed by the City for ~~collection services provided. The owner shall be liable to the city for all unpaid fees and service charges.~~violations. Nothing in this section is intended to prevent ~~an~~ such owner from making any arrangement or ~~the continuance of an existing arrangement,~~entering into any contractual agreement under which payments for ~~collection~~sanitation service ~~are~~may be made by ~~a tenant~~an operator, occupant or ~~tenants or any~~ other authorized agent~~, on behalf~~ assumes such payment obligations. The City may agree to establish a customer account in the name of someone other than the owner~~, upon approval by~~ of the ~~city.~~property based on such arrangements or agreements. Any such arrangement shall not affect the owner's ultimate payment obligation as provided herein. If any delinquency occurs under such an arrangement, the ~~city~~City may ~~in the future~~, but is not required to, bill the owner of the ~~dwelling~~residential property or ~~premises~~owner of the real property on which business establishment is located directly.

(Ord. No. 1325, § 1(13-58), 12-4-84)

Sec. 18-143. ~~- Residential sanitation collection development fee.~~

~~(a) In order to provide mechanized sanitation collection service to residential developments, there is hereby levied, for the purpose of defraying the cost of acquiring and providing mechanized collection equipment required for the new residential development, a sanitation collection development fee upon persons constructing single-family or duplex dwelling units within the city. The amount of this fee shall be established by a resolution of the council for each single-family or duplex dwelling unit hereinafter constructed within the city, and shall not exceed the actual costs incurred by the city of providing such equipment.~~

~~(b) The sanitation collection development fee shall be collected by the development services center director and shall be paid prior to the issuance of a building permit for the construction of any single-family or duplex dwelling unit within the city. The director shall not issue a building permit until the fee required by this section has been collected by the city.~~

~~(c) All funds collected by the city pursuant to this section shall be separately accounted for in the sanitation fund, curb service account, to be used for residential sanitation collection.~~

~~(Ord. No. 2073, § 1, 3-23-99)~~

~~Sec. 18-144. - Single-family and duplex service and fees.~~

~~(a) Sanitation service and sanitation fees for single-family dwellings and duplexes, which meet all requirements for refuse collection service, shall commence with city water service and terminate when city water service is stopped. As long as city water service is provided to the premises and billings are rendered therefor, said charges shall accrue and it shall be presumed that the services provided for herein have been rendered. The city may bill and collect all special charges and all charges which are billed to a person other~~

~~than the person in whose name the water meter is connected. The sanitation fee shall not be waived for single-family dwellings and duplexes not wishing to use the city's collection service.~~

~~(b) Residents may request additional mechanized collection containers. Additional containers may be obtained only from the city and by paying a delivery fee and an additional monthly service fee to the city for each additional container, as established by the council by resolution.~~

~~(c) Refuse collection fees are billed on a monthly basis as part of the water and sewer utility bill. Nonpayment may result in a delinquent penalty, and in the termination of not only the collection service, but also of city water service to the premises until all charges have been paid.~~

~~(Ord. No. 1325, § 1(13-53-13-55), 12-4-84; Ord. No. 1479, § 2, 2-3-87; Ord. No. 1562, § 1, 9-13-88; Ord. No. 1570, § 2, 11-8-88; Ord. No. 2106, § 7, 10-26-99)~~

~~Sec. 18-145. - Sanitation service and fees for business establishments serviced by city and multiple dwelling units, etc.~~

~~(a) Service and fees described by this division for business establishments serviced by the city, and multiple dwelling units (apartments, condominiums and townhouse complexes), mobile home parks, trailer parks, rooming houses and boarding houses, shall commence and terminate upon such dates as agreed upon by the user and the city.~~

~~(b) Billing for refuse collection service is on a monthly basis. If a bill is not paid within twenty (20) days of the billing date, it shall be considered delinquent. In addition to the applicable monthly rate, a delinquent bill shall be subject to a penalty of any outstanding unpaid balance as established by the administrator. A notice of delinquency requesting payment of the total past due amount will be made by the city to the customer of record. If the total past due amount, including any assessed delinquent charges, is not paid within twenty (20) days after the notice of delinquency has been given, the administrator may suspend collection service and water service and may deduct the total unpaid balance from any deposit held by the city.~~

~~(Ord. No. 1325, § 1(13-56, 13-60), 12-4-84; Ord. No. 1479, § 2, 2-3-87; Ord. No. 1562, § 1, 9-13-88; Ord. No. 1570, § 2, 11-8-88)~~

~~Sec. 18-146. -~~ Roll-off service.

~~Due to extraordinary costs in providing rolloff containers to customers, a~~ A minimum ~~bill~~charge equivalent to one servicing fee will be ~~charged~~billed to all customers utilizing ~~rolloff~~roll-off bin service. The minimum ~~bill~~charge shall be for one servicing ~~for the~~fee per billing period, regardless whether the customer requested or received the collection service. Customers receiving roll-off bin service more than once during each billing period shall be charged for the actual costs associated with providing such service.

(Ord. No. 1325, § 1(13-59), 12-4-84)

Secs. 18-~~147~~144—18-150. - Reserved.

ARTICLE IV. - HAZARDOUS AND MEDICAL WASTES

Sec. 18-151. - Disposal.

(a) It is unlawful for any person to cause, allow or permit the disposal of hazardous ~~material~~wastes or medical wastes within the ~~city~~City, except as provided hereunder.

(b) Medical wastes~~.~~ may include:

(1) Sickroom waste: Sickroom waste shall include facial tissues, bandages and other contaminated material, except hypodermic needles and other sharp objects. Residential sickroom waste shall be placed in plastic bags, tied securely, and disposed of in the same manner as regular refuse. Pathogenic sickroom waste from hospitals, doctor offices, clinics, and nursing homes shall be placed in plastic bags, tied securely and disposed of in a pathogenic waste incinerator approved by the Arizona Department of Health Services or autoclaved and disposed of in the same manner as regular refuse.

(2) Surgical waste: Surgical waste shall include human or animal tissue, any part of a human or animal body that has been removed, bandages and other contaminated material. Surgical refuse shall be placed in plastic bags, tied securely and disposed of in a pathogenic waste incinerator approved by the Arizona Department of Health Services.

(3) Institutional pathogenic waste: Institutional pathogenic or infectious waste shall include facial tissues, bandages and other contaminated material, except hypodermic needles and other sharp objects, ~~and~~that is generated by hospital, clinic and doctor office activities. Pathogenic or infectious waste shall be placed in plastic bags or wet-strength bags, tied securely and disposed of in a pathogenic waste incinerator approved by the Arizona Department of Health Services.

(4) Sharps: Shall include any waste capable of producing injury, but not limited to, needles, syringes, scalpels, and disposal instruments. All sharps from sickrooms, hospitals, doctors' offices, clinics, veterinarians' offices or animal hospitals shall be contained in the original or similar container, placed in plastic or wet-strength paper bag, tied securely, and disposed of in pathogenic waste incinerator approved by the Arizona Department of Health Services.

(Ord. No. 1434, § 2, 6-24-86; Ord. No. 1479, § 3, 2-3-87)

Sec. 18-152. - Storage.

No person shall store hazardous or medical waste within or upon any property or place within the ~~city~~City unless such storage complies with any applicable federal or state law, including, but not limited to, the Federal Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., Arizona Revised Statutes Title 36, chapter 28, section 36-2821 et seq., and Title 49, chapter 5, section 49-901 et. seq. and any applicable statutes and rules and regulations promulgated by the department of health services ~~or~~of Maricopa County.

(Ord. No. 1434, § 2, 6-24-86; Ord. No. 1479, § 3, 2-3-87)

Sec. 18-153. - Removal by ~~city~~City; violators liable for costs.

(a) The ~~city~~City may remove any hazardous or medical waste ~~materials,~~ which ~~have~~has been disposed of generated, stored or transported in violation of this article~~,~~ without prior notification to the violator.

(b) Any person who generates, handles, stores, transports, treats or disposes of or contracts for the ~~disposal of hazardous or medical waste material~~same in violation of this article shall be liable for all costs incurred by the ~~city~~City to properly manage, remove or clean up such hazardous or medical waste ~~material~~l, in addition to being subject to the suspension or revocation of collection or disposal services as provided for in article I, section 18-5.

(Ord. No. 1434, § 2, 6-24-86; Ord. No. 1479, § 3, 2-3-87)

Sec. 18-154. - Hazardous and medical waste ~~contractors~~providers.

~~Contractors~~Any person providing collection and/or disposal services of hazardous or medical wastes shall submit an application for a hazardous/medical wastes permit in accordance with requirements for a refuse permit together with an annual per vehicle license fee of two hundred dollars ($200.00) for each vehicle used in the collection of hazardous or medical wastes within the City of Glendale. Vehicles licensed under this section must be used and operated within the ~~city~~City solely for the collection, transportation, and disposal of hazardous and/or medical wastes. No sureties are required for ~~contractors~~providers who conduct only collection and/or disposal services of hazardous or medical wastes.

(Ord. No. 1562, § 1, 9-13-88)

Secs. 18-155—18-159. - Reserved.

ARTICLE V. - RESIDENTIAL AND BUSINESS ESTABLISHMENT RECYCLING PROGRAMS

DIVISION 1. - RESIDENTIAL PROPERTIES

Sec. 18-160. - Collection of residential recyclable materials.

(a) The collection of recyclable materials from residential properties by ~~a~~any person ~~or contractor~~ other than the ~~city~~City is prohibited~~.~~

~~(b) Under~~ unless special arrangements have been made with the ~~residential sanitation service~~City by formal agreement in accordance with Section 18-12(c)(2).

(b) Participation in the City's recycling program~~, the city~~ is optional. The recycling program costs shall be paid by all residential customers whether participating in the recycling program or not.

(c) For residential properties wishing to participate in the City's recycling program, the City will provide residential customers ~~a second clearly identified~~one or more recycling ~~container~~containers in which to place specified residential recyclable materials. The

~~recycling container~~containers will be clearly marked as "recycling containers" remain the property of the ~~city~~City.

(~~c~~d) The~~ specified residential~~ recyclable materials ~~are approved by city council~~that can be placed in these containers and collected as part of the City's recycling program may change from time to time. Changes in the recyclable materials collected by the City will only occur after notification has been given to all residential customers and such changes have been approved by the City Council. No person shall deposit or cause to be deposited, in any recycling container, anything other than the approved ~~specified~~ recyclable materials.

~~(d) Residential customers participating in the residential sanitation service recycling program shall receive from the city once-per-week collection of residential recyclable materials placed into recycling containers, and once-per-week collection of nonrecyclable materials placed into refuse containers. The administrator will designate specific collection days each week, including holidays.~~

(e) Residential recyclable materials placed inside a recycling container shall not be bagged or contained and should conform to all residential recycling program guidelines developed consistent with this article.

~~(f) Residential customers participating in the residential recycling program shall bag and securely tie their refuse and place it inside a refuse container.~~

(Ord. No. 2106, § 8, 10-26-99)

Sec. 18-161. – Frequency of recyclable material collection; hours.

(a) The frequency of contained refuse collection shall at a minimum be in accordance with state and/or county regulations, but in no case shall be less than once per week.

(b) Hours of collection of recyclable material shall be regulated by the Administrator. The Administrator will designate specific collection days each week, including holidays.

(Ord. No. 2106, § 8, 10-26-99)

Sec. 18-162. - Recycling program nonparticipants.

(a) A ~~nonparticipant shall~~residential customer who chooses not to participate in the City's recycling program shall not receive nor retain ~~a~~any recycling ~~container,~~containers. Instead, such customer shall receive ~~twice-per-week~~additional or more frequent refuse collection~~,~~ and ~~an extra~~a fee ~~will be charged. The city will assess this fee on a monthly basis~~ in addition to the regular monthly service fee~~. The entire regular monthly service fee which includes recycling program costs shall be paid by~~ charged to all residential customers ~~whether participating in the recycling program or not~~will be charged for the additional or more frequent refuse collection service. The City will assess this additional fee on a monthly basis.

(b) Residential customers ~~not complying~~who fail to comply with the requirements of this article will be notified in writing by the ~~city~~City of their ~~status as nonparticipants~~non-compliance. After a minimum of two (2) such notifications have been given ~~explaining~~

~~their lack of compliance with this article~~to the residential customer, the recycling container will be retrieved by the ~~city.~~City and the additional charges identified in Section 18-162 will be assessed.

(1) The ~~city~~City may make such notification based upon a determination that a violation of this article has occurred, including any of the following actions:

~~(A)~~i. Placing anything other than the ~~specified~~approved residential recyclable materials into a recycling container.

~~(B)~~ii. Placing dangerous or hazardous waste in a recycling container.

~~(C)~~iii. Depositing ~~specified~~approved residential recyclable materials into a refuse container.

(2) The ~~administrator~~Administrator or designee may ~~deliver~~furnish twice-per-week collection to any residential customer, subject to the appropriate additional monthly service fee, if in the ~~administrator's~~Administrator's judgment a health hazard or public or environmental nuisance exists or is threatened.

(Ord. No. 2106, § 8, 10-26-99)

Sec. 18-~~162. - Re-entry as a participant.~~ 163. - Resumption of residential recycling service.

(a) Residential customers ~~determined by the city to be nonparticipants may notify the city that they desire to re-enter the residential sanitation service~~whose recycling program~~.~~ ~~Such notification~~ participation was terminated due to non-compliance with the programs' requirements as provided in Section 18-163 may petition the City for reinstatement as a recycling program participant. Reinstatement may occur no earlier than three (3) months after being designated by the ~~city~~City as ~~a nonparticipant~~non-compliant. The ~~administrator~~Administrator may waive this three (3) month period upon a determination that special circumstances exist and that it would be in the best interest of the ~~city~~City to allow ~~re-entry~~reinstatement sooner.

(b) The ~~city~~City also may ~~designate~~ requirement payment of a fee to recover any costs associated with distributing recycling containers and information by ~~city~~City personnel to residents ~~re-entering~~ being reinstated to the recycling program.

(Ord. No. 2106, § 8, 10-26-99)

Sec. 18-~~163~~164. - Appeal process.

Any person ~~who~~whom the Administrator has been ~~designated by the city as a nonparticipant~~determined has violated the requirements of the recycling program may file~~,~~ a written request to appeal such determination. The request for an appeal must be filed with the Administrator within seven (7) calendar days after receipt of notice from the ~~city of such designation, in the administrator's office a written request for a hearing before the administrator. Such request~~City of such determination. The appeal shall contain the name and address of the person, ~~together with~~ and a brief statement as to why such ~~designation~~determination should be reversed. The decision of the ~~administrator~~Administrator is final.

(Ord. No. 2106, § 8, 10-26-99)

Secs. 18-~~164~~165—18-167. - Reserved.

DIVISION 2. - BUSINESS ESTABLISHMENTS

Sec. 18-168. - Business recycling program.

~~At the option of the city,~~The City may provide recycling services ~~may be rendered~~ to business establishments ~~who contract with the city for refuse~~as part of its commercial sanitation services, subject to the following provisions:

(a) The size, color and type of ~~city~~City-owned recycling containers provided to ~~participants in the~~ business ~~recycling program~~establishments shall be determined by the ~~administrator~~Administrator.

(b) Participants in the business recycling program shall be subject to the rules and regulations set forth by the ~~administrator~~Administrator, consistent with the provisions of this chapter.

(c) The fees associated with the business recycling program shall be based on the cost to the ~~city~~City of providing the service, and shall be established by ~~council by~~ resolution of the City Council.

(Ord. No. 2106, § 8, 10-26-99)

File #: 16-310, **Version:** 1

ORDINANCE 2995: SALT RIVER PROJECT IRRIGATION EASEMENT ALONG THUNDERBIRD ROAD BETWEEN 65TH AND 67TH AVENUES

Staff Contact: Jack Friedline, Director, Public Works

Purpose and Recommended Action

This is a request for City Council to waive reading beyond the title and adopt an ordinance granting a new irrigation easement in favor of Salt River Project Agricultural Improvement and Power District (SRP) along Thunderbird Road between 65th and 67th Avenues

Background

Legacy Traditional School-Glendale, the owner of the new Legacy School currently under construction at 13901 North 67th Avenue, is constructing a new parking lot with driveway access to Thunderbird Road. As a condition to construct this access, Salt River Project Agricultural Improvement and Power District (SRP) is requiring the owner to pipe an existing open irrigation channel along the north side of Thunderbird Road between 65th and 67th Avenues. SRP is requesting an irrigation easement from the city in order to pipe the open channel.

Analysis

Staff recommends granting the irrigation easement. There will be no impact on city departments, staff or service levels as a result of this action.

Budget and Financial Impacts

There are no costs incurred to the city for this action.

ORDINANCE NO. 2995 NEW SERIES

AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE EXECUTION OF AN IRRIGATION EASEMENT IN FAVOR OF SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT LOCATED ON THUNDERBIRD AVENUE BETWEEN 65TH AVENUE AND 67TH AVENUE AND DIRECTING THE CITY CLERK TO RECORD A CERTIFIED COPY OF THIS ORDINANCE.

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

SECTION 1. That the City Council hereby approves an easement and all terms and conditions thereto and directs that the City Manager for the City of Glendale execute said document granting Salt River Project Agricultural Improvement and Power District an irrigation easement upon, across, over and under the surface of certain property located within existing City property, in the form attached hereto as Exhibit A. The legal description is contained in the Easement.

SECTION 2. That the City hereby reserves the right to use the easement premises in any manner that will not prevent or interfere with the exercise by said property owner of the rights granted hereunder; provided, however, that the City shall not obstruct, or permit to be obstructed, the easement premises at any time whatsoever without the express prior written consent of the property owner.

SECTION 3. That the City Clerk is instructed and authorized to forward a certified copy of this ordinance and its attachments for recording to the Maricopa County Recorder's Office.

SECTION 4. That the provisions of this ordinance shall become effective thirty (30) days after passage of this ordinance by the Glendale City Council.

[Signatures on the following page.]

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
o_eng_legacy.doc

EXHIBIT A

WHEN RECORDED MAIL TO:

SALT RIVER PROJECT
Land Department/PAB348
P. O. Box 52025
Phoenix, Arizona 85072-2025

IRRIGATION EASEMENT

Maricopa County

R/W # 54 Agt. DJK
Job # LJ61522
W DJK C PJH

KNOW ALL MEN BY THESE PRESENTS:

That

CITY OF GLENDALE, ("Grantor"),
an Arizona municipal corporation

FOR AND IN CONSIDERATION OF THE SUM of One Dollar, and other valuable consideration, receipt of which is hereby acknowledged, does hereby grant to the **SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT**, ("Grantee"), an agricultural improvement district organized and existing under the laws of the State of Arizona, its successors and assigns, for itself and on behalf of the United States of America and as manager of the federal Salt River Reclamation Project, the right, easement and privilege to construct, reconstruct, operate and maintain an irrigation pipeline and irrigation turnout structure together with all the necessary and appurtenant facilities through, over, under and across the following described property:

Exhibit "A" attached hereto and made by reference a part hereof.

Grantor shall not convey any easements or grant any permits within the easement areas in which the facilities do not comply with the specifications shown in Exhibit B attached hereto and by this reference made a part hereof.

Grantor shall not erect, construct or permit to be erected or constructed any building or other structure, plant any trees, drill any well, install swimming pools, or alter ground level by cut or fill, within the limits of said rights of way, which do not comply with said Exhibit B.

Grantee shall have the right, but not the obligation, to erect, maintain and use gates in all fences which now cross said rights of way and to trim, cut and clear away trees or brush whenever in its judgment the same shall be necessary for the convenient and safe exercise of the rights hereby granted.

The Grantee shall at all times have the right of full and free ingress and egress to said easement for the purpose heretofore specified.

Grantor and Grantee acknowledge that from time to time Grantee may find it necessary to construct, reconstruct, operate and maintain irrigation facilities and appurtenant conveniences lying within the easement areas.

Grantor shall pay Grantee all costs and expenses of any relocation of the irrigation facilities requested by Grantor, including but not limited to, the relocation of the facilities into the easement area described above.

In the event the right, privilege and easement herein granted shall be abandoned and permanently cease to be used for the purpose herein granted, all rights herein granted shall cease and revert to the Grantors, their heirs or assigns.

The covenants and agreements herein set forth shall extend and inure in favor and to the benefit of and shall be binding on the heirs, successors in ownership and estate, assigns and lessees of the respective parties hereto.

Notwithstanding any of the aforesaid provisions, the easement rights granted herein shall be further subject to the following covenants, restrictions and conditions:

1. Grantor reserves the right to construct, install, operate, maintain, repair, replace and reinstall surface parking areas, driveways, roadways, sidewalks, curbs and gutters, landscaping, irrigation lines and street lighting on the surface of the easement areas.

2. Grantor reserves the right to construct and install public utilities, and to grant easements and permits for public utility purposes, in, upon, under, over and across the easement areas. subject to compliance with the specifications shown in Exhibit B attached hereto and by this reference made a part hereof.

3. In the event that any repair, maintenance, replacement or installation of the irrigation facilities and appurtenant conveniences will cause a disturbance or a disruption of any public street or paved roadway, Grantee shall notify Grantor, pursuant to existing practices, before Grantee undertakes any such action. In the event of an emergency, Grantee shall have use of any public street or paved roadway as it reasonably deems necessary and appropriate to correct, repair, replace or reconstruct irrigation facilities affected by the emergency and notify Grantor, pursuant to existing practices, as soon as practical after responding to the emergency. Grantee shall provide for advance warning signs, barricades, flagmen, flares, and other devices when necessary to protect the roadway user as set forth in the "Manual on Uniform Traffic Control Devices" and any amendments and/or revisions thereto.

4. Grantor shall warrant and defend the rights, easements and privileges hereby granted and the priority of this easement against all persons whomsoever.

IN WITNESS WHEREOF, **THE CITY OF GLENDALE,** an Arizona municipal corporation, has caused its name to be executed by its duly authorized representative(s) this _____ day of _____, _____.

THE CITY OF GLENDALE,
an Arizona municipal corporation

By: _____

Its: _____

APPROVED AS TO FORM:

_____
City Attorney for the City of Glendale

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, _____, before me, the undersigned, personally appeared _____, as _____, of **THE CITY OF GLENDALE**, an Arizona municipal corporation, and such authorized representative acknowledged that this document was executed on behalf of the corporation for the purposes therein contained.

_____
Notary Public

My Commission Expires:

_____

_____
Notary Stamp/Seal

Note: This instrument is exempt from the real estate transfer fee and affidavit of legal value required under A.R.S. Sections 11-1132 and 11-1133 pursuant to the exemptions set forth in A.R.S. Sections 11-1134(A)(2) and (A)(3).

EXHIBIT "A"
20' IRRIGATION EASEMENT

BEING A PORTION OF THE SOUTHWEST QUARTER OF SECTION 7, TOWNSHIP 3 NORTH, RANGE 2 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 7, BEING A BRASS CAP IN HANDHOLE FROM WHICH THE SOUTH QUARTER CORNER, BEING A BRASS CAP FLUSH BEARS SOUTH 89°57'18" EAST, FOR A DISTANCE OF 2484.57 FEET;

THENCE SOUTH 89°57'18" EAST, ALONG THE SOUTH OF THE SOUTHWEST QUARTER OF SAID SECTION 7, FOR A DISTANCE OF 460.10 FEET;

THENCE NORTH 00°02'42" EAST, FOR A DISTANCE OF 34.00 FEET, TO A POINT ON A LINE 34 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 7, AND THE **POINT OF BEGINNING;**

THENCE CONTINUING NORTH 00°02'42" EAST, FOR A DISTANCE OF 20.00 FEET, TO A POINT ON A LINE 54 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 7;

THENCE SOUTH 89°57'18" EAST, ALONG SAID PARALLEL LINE, FOR A DISTANCE OF 349.60 FEET;

THENCE SOUTH 00°02'42" WEST, FOR A DISTANCE OF 20.00 FEET, TO A POINT ON A LINE 34 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 7;

THENCE NORTH 89°57'18" WEST, ALONG SAID PARALLEL LINE, FOR A DISTANCE OF 349.60 FEET TO THE **POINT OF BEGINNING;**.

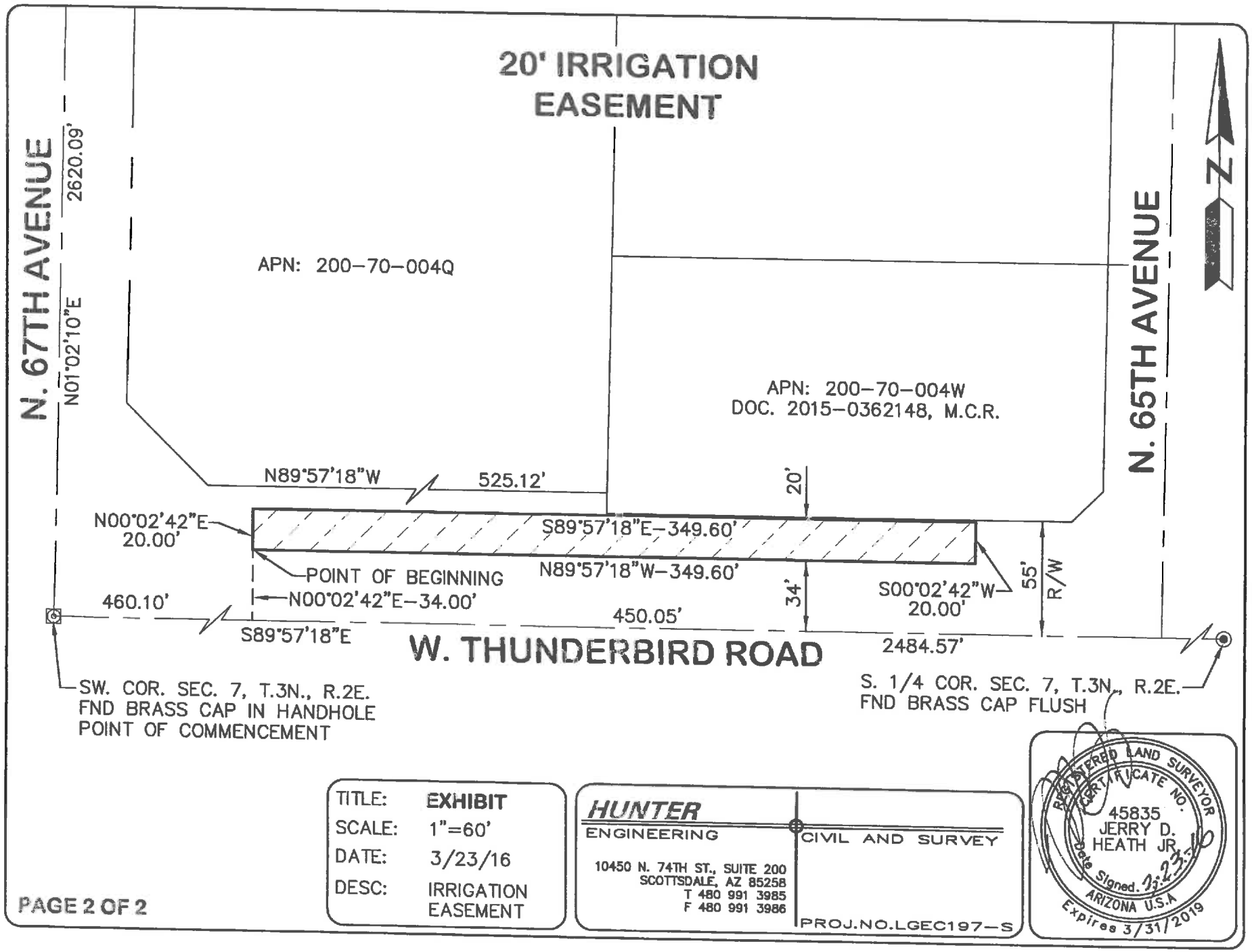
SAID 20 FOOT IRRIGATION EASEMENT CONTAINS 0.161 ACRES (6,992 S.F.) MORE OR LESS

TITLE:	**LEGAL DESC.**
SCALE:	1"=60'
DATE:	3/23/16
DESC:	IRRIGATION EASEMENT

HUNTER ENGINEERING | CIVIL AND SURVEY

10450 N. 74TH ST., SUITE 200
SCOTTSDALE, AZ 85258
T 480 991 3985
F 480 991 3986

PROJ.NO.LGEC197-S



TITLE:	**EXHIBIT**
SCALE:	1"=60'
DATE:	3/23/16
DESC:	IRRIGATION EASEMENT

HUNTER ENGINEERING | CIVIL AND SURVEY

10450 N. 74TH ST., SUITE 200
SCOTTSDALE, AZ 85258
T 480 991 3985
F 480 991 3986

PROJ.NO.LGEC197-S

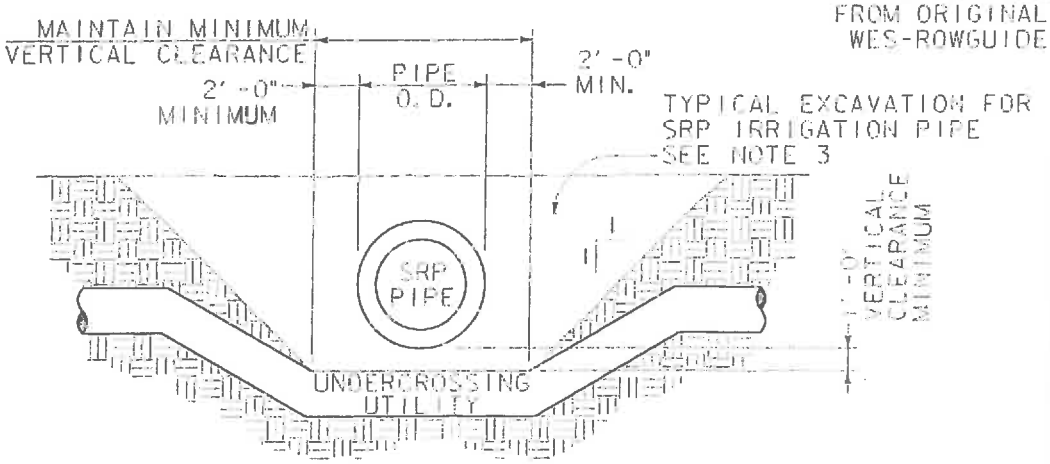
REGISTERED LAND SURVEYOR
CERTIFICATE NO.
45835
JERRY D. HEATH JR.
Date Signed 3-23-16
ARIZONA U.S.A.
Expires 3/31/2019

EXHIBIT B

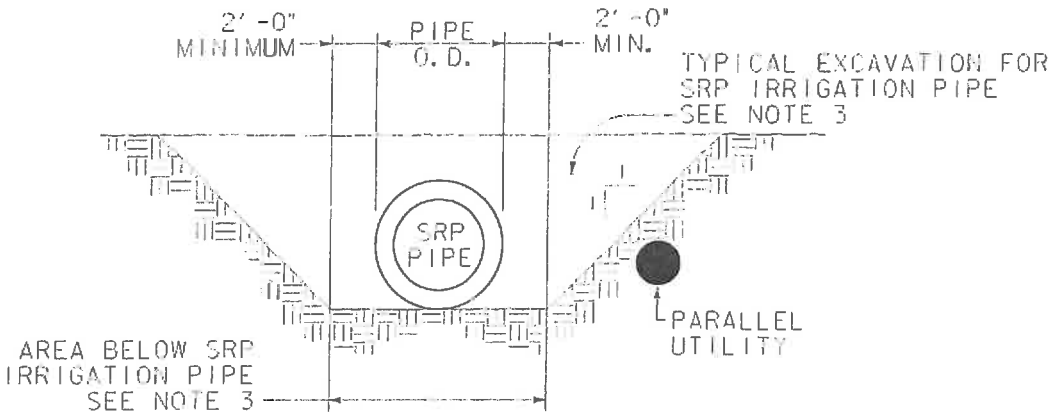
(PAGE 1 OF 2)

REV NO.	DATE
5	06/08/11

DWG REFERENCED FROM ORIGINAL WES-ROWGUIDE



PIPELINE - UTILITY CROSSING



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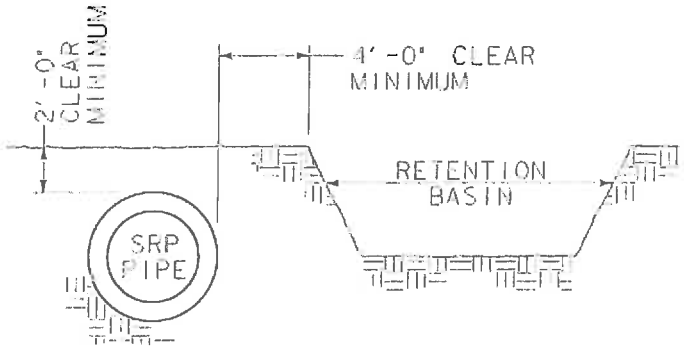


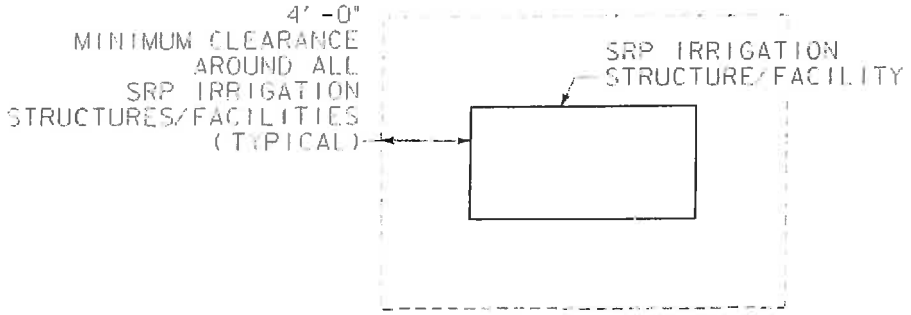
PIPELINES - RETENTION BASIN

EXHIBIT B

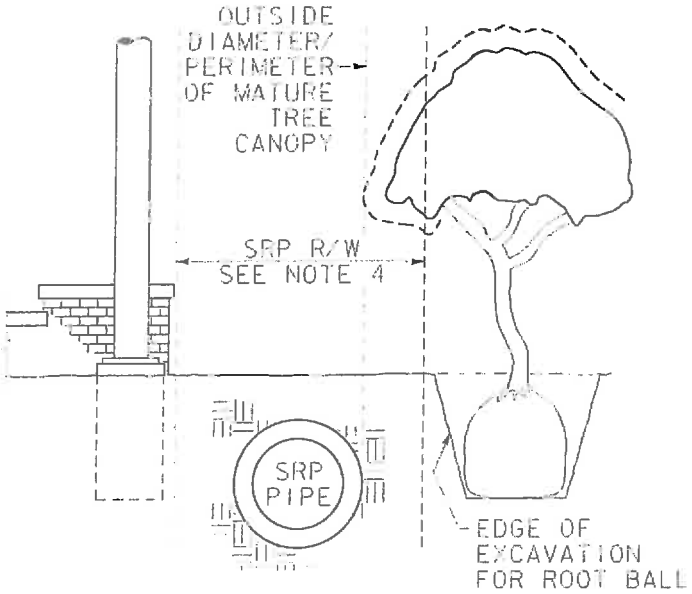
(PAGE 2 OF 2)

REV NO.	DATE
5	06/08/11

DWG REFERENCED FROM ORIGINAL WES-ROWGUIDE



IRRIGATION STRUCTURE/FACILITY CLEARANCE



PIPELINES - LANDSCAPING

NOTES

1. THESE GUIDELINES ARE PROVIDED AS A GENERAL AID TO PLANNING. ACTUAL SRP REQUIREMENTS MAY VARY BASED ON SITE-SPECIFIC CONDITIONS, OPERATIONAL CONSIDERATIONS, ETC.
2. AN SRP LICENSE IS REQUIRED FOR UTILITIES CROSSING/PARALLEL TO SRP IRRIGATION PIPE IN SRP RIGHT-OF-WAY. SRP REQUIRES ENGINEER DESIGNED UTILITY CROSSING/LOCATION AND EXCAVATION PLAN.
3. OTHER UTILITIES ARE NOT PERMITTED IN THESE AREAS.
4. SRP MAY LICENSE LIMITED USES OF ITS RIGHT-OF-WAY SUCH AS PARKING, SIDEWALK, LAWN, ETC. POLES, STRUCTURES AND TREES ARE TYPICALLY NOT PERMITTED IN SRP RIGHT-OF-WAY. INCLUDE DESIGN DRAWINGS FOR PROPOSED USE WHEN SUBMITTING REQUEST TO SRP FOR LICENSE.
5. REQUESTS FOR SRP LICENSES ARE HANDLED ON A CASE-BY-CASE BASIS. CONTACT SRP AT 602-236-5709 REGARDING LICENSES FOR SITES LOCATED NORTH AND SOUTH OF THE SALT RIVER.

WHEN RECORDED MAIL TO:

SALT RIVER PROJECT
Land Department/PAB348
P. O. Box 52025
Phoenix, Arizona 85072-2025

IRRIGATION EASEMENT

Maricopa County

R/W # 54 Agt. DJK
Job # LJ61522
W DJK C PJH

KNOW ALL MEN BY THESE PRESENTS:

That

CITY OF GLENDALE, ("Grantor"),
an Arizona municipal corporation

FOR AND IN CONSIDERATION OF THE SUM of One Dollar, and other valuable consideration, receipt of which is hereby acknowledged, does hereby grant to the **SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT**, ("Grantee"), an agricultural improvement district organized and existing under the laws of the State of Arizona, its successors and assigns, for itself and on behalf of the United States of America and as manager of the federal Salt River Reclamation Project, the right, easement and privilege to construct, reconstruct, operate and maintain an irrigation pipeline and irrigation turnout structure together with all the necessary and appurtenant facilities through, over, under and across the following described property:

Exhibit "A" attached hereto and made by reference a part hereof.

Grantor shall not convey any easements or grant any permits within the easement areas in which the facilities do not comply with the specifications shown in Exhibit B attached hereto and by this reference made a part hereof.

Grantor shall not erect, construct or permit to be erected or constructed any building or other structure, plant any trees, drill any well, install swimming pools, or alter ground level by cut or fill, within the limits of said rights of way, which do not comply with said Exhibit B.

Grantee shall have the right, but not the obligation, to erect, maintain and use gates in all fences which now cross said rights of way and to trim, cut and clear away trees or brush whenever in its judgment the same shall be necessary for the convenient and safe exercise of the rights hereby granted.

The Grantee shall at all times have the right of full and free ingress and egress to said easement for the purpose heretofore specified.

Grantor and Grantee acknowledge that from time to time Grantee may find it necessary to construct, reconstruct, operate and maintain irrigation facilities and appurtenant conveniences lying within the easement areas.

Grantor shall pay Grantee all costs and expenses of any relocation of the irrigation facilities requested by Grantor, including but not limited to, the relocation of the facilities into the easement area described above.

In the event the right, privilege and easement herein granted shall be abandoned and permanently cease to be used for the purpose herein granted, all rights herein granted shall cease and revert to the Grantors, their heirs or assigns.

The covenants and agreements herein set forth shall extend and inure in favor and to the benefit of and shall be binding on the heirs, successors in ownership and estate, assigns and lessees of the respective parties hereto.

Notwithstanding any of the aforesaid provisions, the easement rights granted herein shall be further subject to the following covenants, restrictions and conditions:

1. Grantor reserves the right to construct, install, operate, maintain, repair, replace and reinstall surface parking areas, driveways, roadways, sidewalks, curbs and gutters, landscaping, irrigation lines and street lighting on the surface of the easement areas.

2. Grantor reserves the right to construct and install public utilities, and to grant easements and permits for public utility purposes, in, upon, under, over and across the easement areas. subject to compliance with the specifications shown in Exhibit B attached hereto and by this reference made a part hereof.

3. In the event that any repair, maintenance, replacement or installation of the irrigation facilities and appurtenant conveniences will cause a disturbance or a disruption of any public street or paved roadway, Grantee shall notify Grantor, pursuant to existing practices, before Grantee undertakes any such action. In the event of an emergency, Grantee shall have use of any public street or paved roadway as it reasonably deems necessary and appropriate to correct, repair, replace or reconstruct irrigation facilities affected by the emergency and notify Grantor, pursuant to existing practices, as soon as practical after responding to the emergency. Grantee shall provide for advance warning signs, barricades, flagmen, flares, and other devices when necessary to protect the roadway user as set forth in the "Manual on Uniform Traffic Control Devices" and any amendments and/or revisions thereto.

4. Grantor shall warrant and defend the rights, easements and privileges hereby granted and the priority of this easement against all persons whomsoever.

IN WITNESS WHEREOF, **THE CITY OF GLENDALE,** an Arizona municipal corporation, has caused its name to be executed by its duly authorized representative(s) this _____ day of _____, _____.

THE CITY OF GLENDALE,
an Arizona municipal corporation

By: _____

Its: _____

APPROVED AS TO FORM:

_____
City Attorney for the City of Glendale

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, _____, before me, the undersigned, personally appeared _____, as _____, of **THE CITY OF GLENDALE**, an Arizona municipal corporation, and such authorized representative acknowledged that this document was executed on behalf of the corporation for the purposes therein contained.

_____
Notary Public

My Commission Expires:

_____

_____
Notary Stamp/Seal

Note: This instrument is exempt from the real estate transfer fee and affidavit of legal value required under A.R.S. Sections 11-1132 and 11-1133 pursuant to the exemptions set forth in A.R.S. Sections 11-1134(A)(2) and (A)(3).

EXHIBIT "A"
20' IRRIGATION EASEMENT

BEING A PORTION OF THE SOUTHWEST QUARTER OF SECTION 7, TOWNSHIP 3 NORTH, RANGE 2 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 7, BEING A BRASS CAP IN HANDHOLE FROM WHICH THE SOUTH QUARTER CORNER, BEING A BRASS CAP FLUSH BEARS SOUTH 89°57'18" EAST, FOR A DISTANCE OF 2484.57 FEET;

THENCE SOUTH 89°57'18" EAST, ALONG THE SOUTH OF THE SOUTHWEST QUARTER OF SAID SECTION 7, FOR A DISTANCE OF 460.10 FEET;

THENCE NORTH 00°02'42" EAST, FOR A DISTANCE OF 34.00 FEET, TO A POINT ON A LINE 34 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 7, AND THE **POINT OF BEGINNING;**

THENCE CONTINUING NORTH 00°02'42" EAST, FOR A DISTANCE OF 20.00 FEET, TO A POINT ON A LINE 54 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 7;

THENCE SOUTH 89°57'18" EAST, ALONG SAID PARALLEL LINE, FOR A DISTANCE OF 349.60 FEET;

THENCE SOUTH 00°02'42" WEST, FOR A DISTANCE OF 20.00 FEET, TO A POINT ON A LINE 34 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 7;

THENCE NORTH 89°57'18" WEST, ALONG SAID PARALLEL LINE, FOR A DISTANCE OF 349.60 FEET TO THE **POINT OF BEGINNING;**.

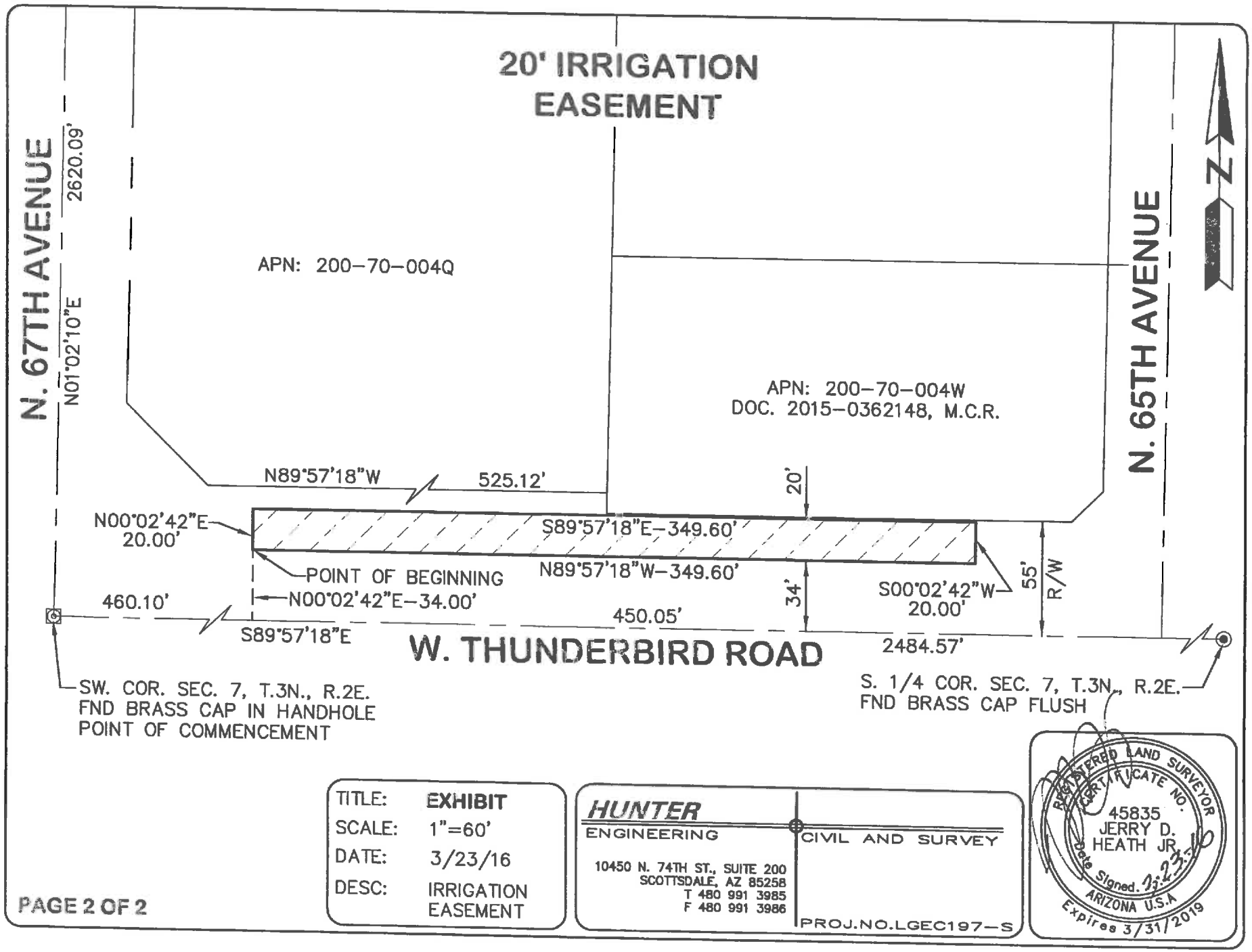
SAID 20 FOOT IRRIGATION EASEMENT CONTAINS 0.161 ACRES (6,992 S.F.) MORE OR LESS

TITLE:	**LEGAL DESC.**
SCALE:	1"=60'
DATE:	3/23/16
DESC:	IRRIGATION EASEMENT

HUNTER ENGINEERING | CIVIL AND SURVEY

10450 N. 74TH ST., SUITE 200
SCOTTSDALE, AZ 85258
T 480 991 3985
F 480 991 3986

PROJ.NO.LGEC197-S



TITLE:	**EXHIBIT**
SCALE:	1"=60'
DATE:	3/23/16
DESC:	IRRIGATION EASEMENT

HUNTER ENGINEERING | CIVIL AND SURVEY

10450 N. 74TH ST., SUITE 200
SCOTTSDALE, AZ 85258
T 480 991 3985
F 480 991 3986

PROJ.NO.LGEC197-S

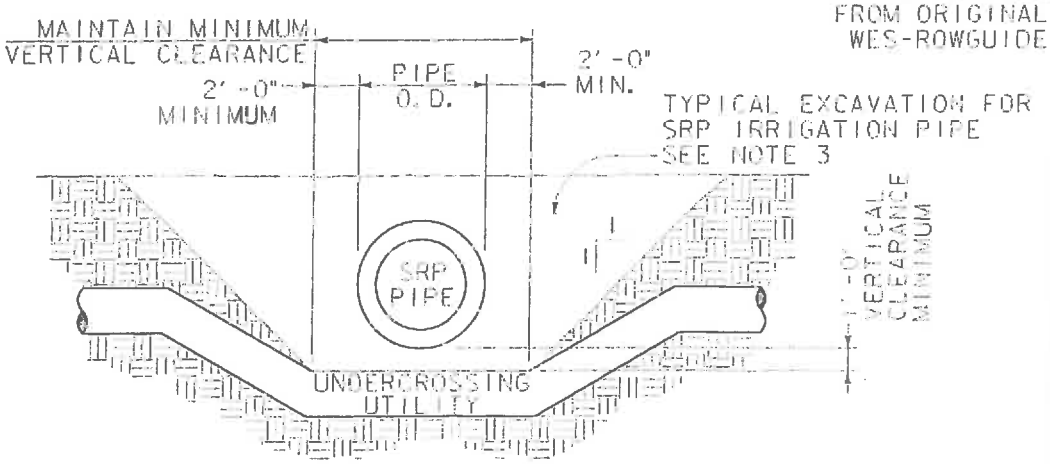
REGISTERED LAND SURVEYOR
CERTIFICATE NO.
45835
JERRY D. HEATH JR.
Date Signed 3-23-16
ARIZONA U.S.A.
Expires 3/31/2019

EXHIBIT B

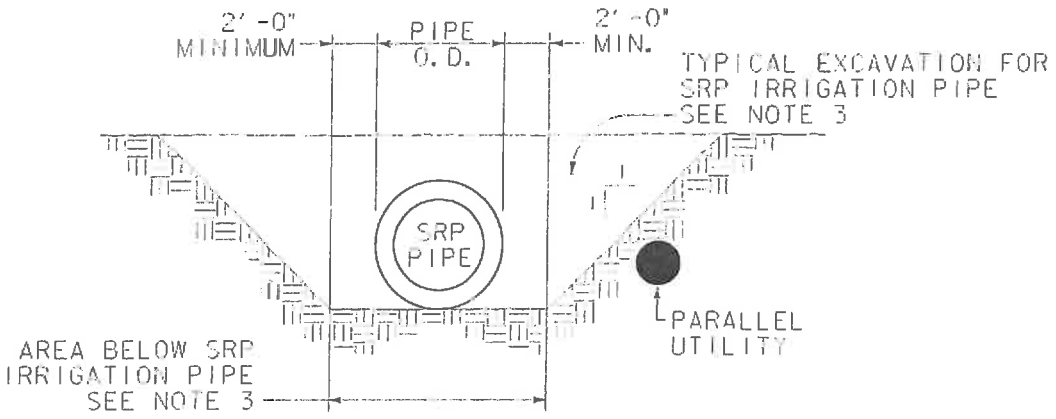
(PAGE 1 OF 2)

REV NO.	DATE
5	06/08/11

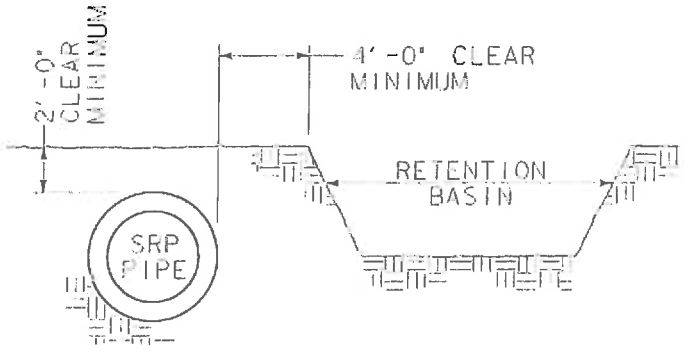
DWG REFERENCED FROM ORIGINAL WES-ROWGUIDE



PIPELINE - UTILITY CROSSING



PIPELINE - PARALLEL UTILITY



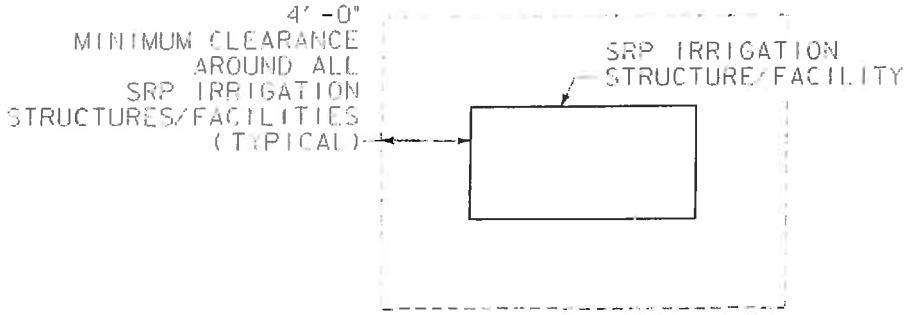
PIPELINES - RETENTION BASIN

EXHIBIT B

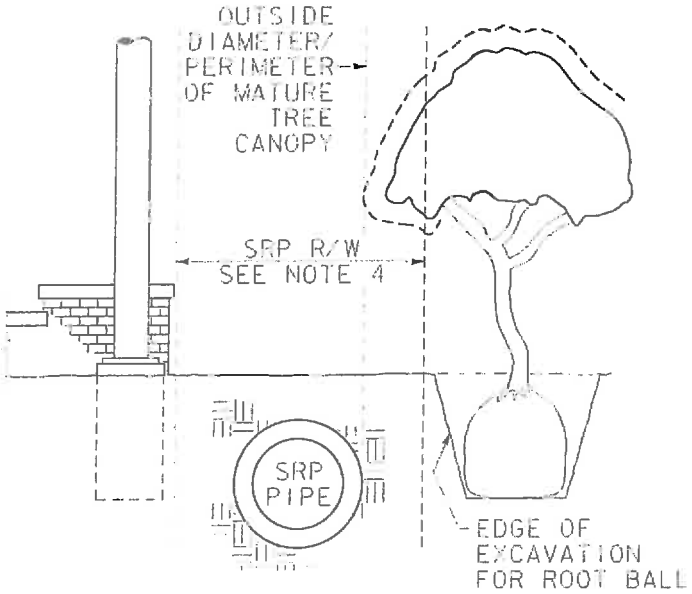
(PAGE 2 OF 2)

REV NO.	DATE
5	06/08/11

DWG REFERENCED FROM ORIGINAL WES-ROWGUIDE



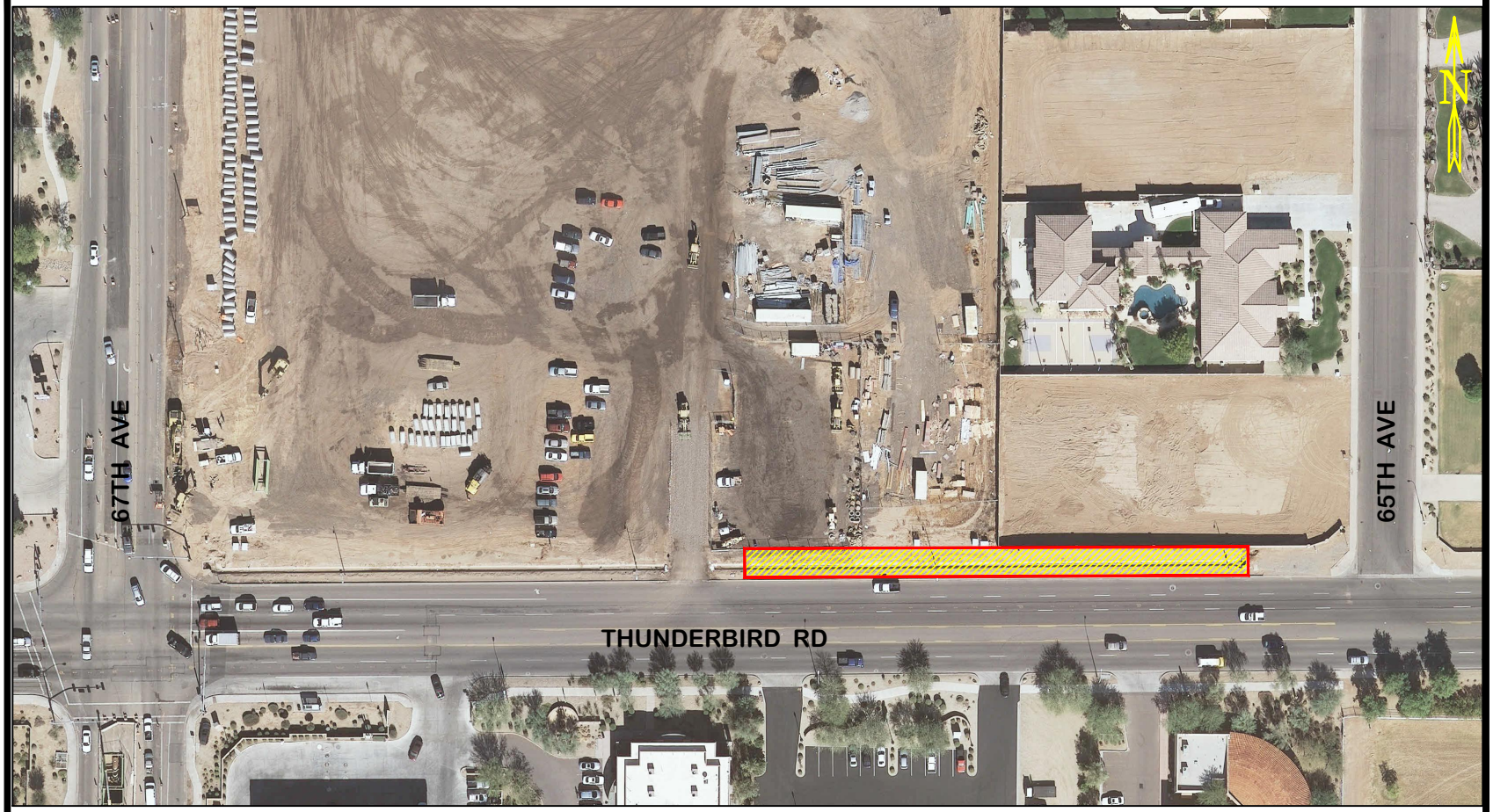
IRRIGATION STRUCTURE/FACILITY CLEARANCE



PIPELINES - LANDSCAPING

NOTES

1. THESE GUIDELINES ARE PROVIDED AS A GENERAL AID TO PLANNING. ACTUAL SRP REQUIREMENTS MAY VARY BASED ON SITE-SPECIFIC CONDITIONS, OPERATIONAL CONSIDERATIONS, ETC.
2. AN SRP LICENSE IS REQUIRED FOR UTILITIES CROSSING/PARALLEL TO SRP IRRIGATION PIPE IN SRP RIGHT-OF-WAY. SRP REQUIRES ENGINEER DESIGNED UTILITY CROSSING/LOCATION AND EXCAVATION PLAN.
3. OTHER UTILITIES ARE NOT PERMITTED IN THESE AREAS.
4. SRP MAY LICENSE LIMITED USES OF ITS RIGHT-OF-WAY SUCH AS PARKING, SIDEWALK, LAWN, ETC. POLES, STRUCTURES AND TREES ARE TYPICALLY NOT PERMITTED IN SRP RIGHT-OF-WAY. INCLUDE DESIGN DRAWINGS FOR PROPOSED USE WHEN SUBMITTING REQUEST TO SRP FOR LICENSE.
5. REQUESTS FOR SRP LICENSES ARE HANDLED ON A CASE-BY-CASE BASIS. CONTACT SRP AT 602-236-5709 REGARDING LICENSES FOR SITES LOCATED NORTH AND SOUTH OF THE SALT RIVER.



SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT IRRIGATION EASEMENT

GLENDALE AZ

File #: 16-321, **Version:** 1

ORDINANCE 2996: ADOPT FISCAL YEAR 2016-2017 PROPERTY TAX LEVY (ORDINANCE)
Staff Contact and Presenter: Vicki Rios, Interim Director, Finance and Technology

Purpose and Policy Recommendation

This is a request for City Council to waive reading beyond the title and adopt an ordinance setting the primary property tax rate at $0.4792 per $100 of assessed valuation for FY2016-2017 (FY16-17) and the secondary property tax rate at $1.6698 per $100 of assessed valuation for FY16-17. The total property tax rate will decrease from $2.1965 to $2.1490.

Background

Arizona state law requires that Council set the property tax levy by the third Monday in August. Arizona's property tax system consists of two tiers - Primary and Secondary. The primary property tax levy has state mandated maximum limits; however, it can be used by a city for any purpose. The primary property tax revenue is included in the General Fund's operating budget. The secondary property tax levy is not limited; however, it can be used only to retire the principal, interest, and related fees on voter authorized bonds used to finance the city's capital improvement plan.

Prior to FY2015-2016 (FY15-16), the primary property tax levy was based on the limited cash value of each property and the secondary property tax levy was based upon the full cash value of the property. Due to the passage of Proposition 117, FY15-16 was the first fiscal year in which the both the primary and the secondary property tax levy are based on the limited property value of Glendale properties.

Analysis

The recommended primary property tax rate for FY16-17 is $0.4792 per $100 of assessed valuation. This is a decrease from $0.4898 per $100 of assessed valuation for FY15-16. At this rate, the primary levy will generate approximately $5,621,452 which will be used to support services paid for by the city's General Fund.

The recommended secondary property tax rate is $1.6698 per $100 of assessed valuation which is a decrease from the $1.7067 rate for FY15-16. This proposed secondary property tax rate would increase the total levy from $19,268,783 million to $19,587,858. The $319,075 increase in the levy amount is due to the value of new construction added to the property tax rolls during the previous year. Funds generated from the secondary property tax levy will be used to pay the principal and interest on the city's general obligation bonds. If approved, the total property tax rate will decrease from $2.1965 to $2.1490 and the total levy, primary and secondary, will total approximately $25,209,310.

Previous Related Council Action

On June 14, 2016 City Council adopted a resolution formally approving the FY16-17 Final Budget and Property Tax Levy. Council also gave notice of the date for the June 28th Property Tax Adoption.

City Council adopted a resolution formally approving the tentative operating, capital, debt, and contingency appropriation budget at the May 24, 2016 voting meeting.

On May 3, 2016 a Budget Workshop was held to discuss follow up items and receive policy guidance on outstanding budget issues.

On April 19 and 21, 2016, Budget Workshops were held to present and review the city's FY16-17 Operating Budget requests. A financial plan for the General Fund and proposed changes to the Capital Improvement Program were also presented.

On March 15, 2016 a Budget Workshop was held to present and review the city's 10-year Capital Improvement Plan. Council guidance was sought on various policy items relative to the FY16-17 budget development.

On February 16, 2016, a Budget Workshop was held reviewing various items including the budget calendar, legal requirements, major budget components, what constitutes a balanced budget, property tax revenue, and future discussion items.

On December 15, 2015, the General Fund and Major Operating Funds Five-Year Financial Forecast was presented at Council Workshop and initiated the FY16-17 budget process.

Community Benefit/Public Involvement

The community benefit of the City's budget process, policy direction, and budgetary decisions demonstrates sound financial decisions are made through a transparent and public process where ultimate budgetary decisions align with the strategic direction of the City and provide the public with information on service provided and Council priorities.

Budget and Financial Impacts

At the recommended rate, the primary levy will generate approximately $5,621,452 which will be used to support general city services paid for by the city's General Fund and the secondary levy will generate approximately $19,587,858 which will be used to pay the principal and interest on the city's general obligation bonds.

ORDINANCE NO. 2996 NEW SERIES

AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, LEVYING UPON THE ASSESSED VALUATION OF THE PROPERTY WITHIN THE CITY OF GLENDALE, SUBJECT TO TAXATION, A CERTAIN SUM UPON EACH ONE HUNDRED DOLLARS ($100.00) OF VALUATION SUFFICIENT TO RAISE THE AMOUNT ESTIMATED TO BE REQUIRED IN THE ANNUAL BUDGET, LESS THE AMOUNT ESTIMATED TO BE RECEIVED FROM OTHER SOURCES OF REVENUE; PROVIDING FUNDS FOR VARIOUS BOND REDEMPTIONS, FOR THE PURPOSE OF PAYING INTEREST UPON BONDED INDEBTEDNESS AND PROVIDING FUNDS FOR GENERAL MUNICIPAL EXPENSES; ALL FOR THE FISCAL YEAR ENDING THE 30TH DAY OF JUNE, 2017; AND DECLARING AN EMERGENCY.

WHEREAS, by the provisions of state law, the ordinance levying taxes for Fiscal Year 2016-2017 is required to be adopted no later than the third Monday in August; and

WHEREAS, the County of Maricopa is the assessing and collecting authority for the City of Glendale, and the Clerk is hereby directed to transmit a certified copy of the ordinance to the County Assessor and the Board of Supervisors of the County of Maricopa, Arizona.

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

SECTION 1. That there is hereby levied on each One Hundred Dollars ($100.00) of the assessed value of all property, both real and personal, within the corporate limits of the City of Glendale, except such property as may be by law exempt from taxation, a primary property tax rate, equal to $0.4792, estimated to raise the sum of Five Million Six Hundred Twenty-One Thousand Four Hundred Fifty-Two Dollars ($5,621,452) for the fiscal year ending on the 30th day of June, 2017. If such sum exceeds the maximum levy allowed by law, the Board of Supervisors of the County of Maricopa is authorized to reduce the levy to the maximum amount allowed by law.

SECTION 2. That in addition to the rate set in Section 1, there is hereby levied on each One Hundred Dollars ($100.00) of assessed valuation of all property, both real and personal, within the corporate limits of Glendale, except such property as may be by law exempt from taxation, a secondary property tax rate, equal to $1.6698, estimated to raise the sum of Nineteen Million Five Hundred Eighty-Seven Thousand Eight Hundred and Fifty-Eight Dollars ($19,587,858) for the purpose of providing a bond interest and redemption fund for the City of Glendale for the fiscal year ending June 30, 2017.

Irregularity in assessments or omissions in the same, or any irregularity in any proceedings shall not invalidate such proceedings or invalidate any title conveyed by any tax deed; failure or neglect of any officer or officers to timely perform any of the duties assigned to him or to them shall not invalidate any proceedings of any deed or sale pursuant thereto, the

validity of the assessment or levy of taxes or of the judgment of sale by which the collection of the same may be enforced shall not affect the lien of the City of Glendale upon such property for the delinquent taxes unpaid thereof; overcharge as to part of the taxes or of costs shall not invalidate any proceedings for the collection of taxes or the foreclosure of the lien therefor or a sale of the property under such foreclosure; and all acts of officers de facto shall be valid as if performed by officers de jure.

SECTION 3. Whereas the immediate operation of the provisions of this Ordinance is necessary for the preservation of the public peace, health, and safety of the City of Glendale, an emergency is hereby declared to exist, and this Ordinance shall be in full force and effect from and after its passage, adoption, and approval by the Mayor and Council of the City of Glendale, and it is hereby exempt from the referendum provisions of the Constitution and laws of the State of Arizona.

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
o_finance_tax levy.doc

Legislation Description

File #: 16-333, **Version:** 1

APPOINTMENT OF CITY CLERK
Staff Contact: Jim Brown, Director, Human Resource and Risk Management
Staff Contact: Michael D. Bailey, City Attorney

Purpose and Recommended Action

This is a request for the City Council to appoint a city clerk and enter into an employment agreement setting forth the terms and conditions of employment. The Mayor will accept a motion or motions, call for a second, and conduct a vote of the Council that shall, by virtue of assent of a majority, appoint a city clerk.

Background

The Glendale City Charter, Article IV, Section 2 provides that the Council shall appoint an officer of the city who shall have the title of city clerk and shall have the powers and perform the duties provided in the charter.

CITY OF GLENDALE

CITY CLERK EMPLOYMENT AGREEMENT

This Employment Agreement ("Agreement") is made and entered into this 29th day of June, 2016 by and between the Mayor and Council of the City of Glendale, Arizona ("City") and Julie K. Bower ("Clerk").

1. Term: The City does hereby agree to employ Clerk as its City Clerk, effective as of July 5, 2016 and shall remain in full force and effect until terminated by either the City Council or Clerk as set forth in Section 7. During the Term of this Agreement, Clerk shall be in the exclusive employ of the City and shall not accept other employment or carry out any other business other than that of the position of City Clerk.

2. Performance Evaluation: The City Council shall meet with Clerk within the first two (2) months of Clerk's employment to discuss and establish mutually agreed-upon goals. The City Council shall thereafter conduct a performance evaluation annually in May of each year or as soon after May as is practical. The Council may use an outside third-party consultant with an area of specialization in public management to assist the Council in performing the annual review. Performance will be evaluated based on achievement of the agreed-upon goals. During the performance evaluation, the Council and Clerk may consider supplementing and/or amending the goals. Changes to base compensation and to all other benefits for Clerk may also be addressed at the time of each annual performance evaluation.

3. Base Compensation: The Base Compensation paid to Clerk shall be the sum of $121,000 for each year of the Term.

4. Benefits: In addition to the Base Compensation, Clerk shall receive all benefits received by all full-time City personnel including, but not limited to, health, life, dental and vision insurance, sick, vacation leave maximum accruals and holiday benefits as set forth in the City's Human Resources Policies and Procedures, subject to the specific provisions of this Agreement. Clerk shall receive a credit of 40 hours of vacation leave upon being appointed.

5. Deferred Compensation: The City shall participate in contributions to the Clerk's enrollment in a Deferred Compensation Plan of Clerk's choice at the rate of $2,500 annually, paid in equal installments during each pay period.

6. Moving Allowance: The City shall pay Clerk a gross lump sum of $5,000 within 30 days of establishment of residency to defer the cost of relocation.

7. Termination of the Agreement: Either party to this Agreement may terminate this Agreement pursuant to the following terms:

a. Should the Clerk desire to terminate this Agreement, Clerk shall provide written notice of intent to terminate at least sixty (60) days prior to the actual date of termination. Council may, by the affirmative vote of four members of the Council, at a regular or special Council meeting, agree to allow the Clerk to terminate the Agreement on less than a sixty (60) day written notice or to relieve the Clerk of further duties at any time during the sixty (60) day period provided, however, that full compensation be paid to the Clerk up to and including the date of termination. The additional compensation set forth in Section 7(b) shall not be paid if Clerk terminates this Agreement pursuant to this Section 7(a).

b. The City Council may, by an affirmative vote of four members of the Council at any regular or special meeting, terminate this Agreement at any time, and shall establish at that meeting a date of termination. In addition to Clerk's Base Compensation, benefits and sick and vacation leave accruals due to Clerk will be paid, subject to Human Resources Policies and Procedures, up to and including the date of termination, plus severance as detailed in 7(c).

c. If terminated under 7(b) Clerk shall be entitled to payment of ninety (90) days base pay; contingent upon Clerk providing the City with a standard release agreement which releases all claims Clerk could bring against the City for termination of her employment. In the event that Clerk is terminated following, or as a result of, conviction of a felony or misdemeanor involving moral turpitude, no severance will be paid.

8. General Provisions:

a. Nothing herein shall prohibit the parties from amending the terms and conditions of this Agreement as long as the amendment is made in writing and is executed by both the City and Clerk.

b. If any provision of this Agreement is held to be unconstitutional, invalid or unenforceable, the remaining portion will remain unaffected and City and Clerk will enter into negotiations to correct the Agreement's defect in order for the intent of the Agreement to be carried out to the fullest extent possible.

c. This Agreement will be interpreted in accordance with the laws of the State of Arizona.

d. City and Clerk have each had the opportunity to consult legal counsel for advice regarding the drafting of this Agreement and the provisions of this Agreement shall not be construed against or in favor of either party.

e. In the event suit is brought (or arbitration instituted) or an attorney is retained by

any party to this Agreement to enforce or interpret the terms of this Agreement, the prevailing part shall be entitled to recover from the non-prevailing party, in addition to any other remedy, reimbursement for reasonable attorney's fees, courts costs, and litigation expenses incurred in connection therewith.

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

CLERK:

Julie K. Bower
City Clerk

CITY:

Jerry P. Weiers
Mayor

ATTEST:

Darcie McCracken, (Seal)
Deputy City Clerk

APPROVED AS TO FORM:

Michael D. Bailey
City Attorney

Legislation Description

File #: 16-336, **Version:** 1

ORDINANCE 2997: ADOPT AN ORDINANCE UPDATING THE CITY'S SIGNATURE AUTHORITY FOR BANKING TRANSACTIONS

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

Purpose and Recommended Action

This is a request for City Council to waive reading beyond the title and adopt an ordinance updating the city's signature authority for banking transactions. The city's banking signature authorizations are updated periodically due to changes in the organization.

Background

It is recommended that the following individuals be authorized signers, effective July 5, 2016:

Name	Position
Kevin R. Phelps	City Manager
Thomas Duensing	Assistant City Manager
Julie K. Bower	City Clerk
Jack Friedline	Director
Vicki L. Rios	Interim Director

Previous Related Council Action

The previous ordinance was taken to Council on January 26, 2016.

ORDINANCE NO. 2997 NEW SERIES

AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, ASSIGNING CERTAIN TITLES TO VARIOUS CITY OFFICIALS; DIRECTING THE CITY'S BANKING PARTNERS TO RECOGNIZE THE SIGNATURES OF SAID OFFICERS ON ELECTRONIC FUND TRANSFERS, CHECKS FOR DEPOSIT AND/OR WITHDRAWAL; AND DECLARING AN EMERGENCY WITH RESPECT TO THIS ORDINANCE.

WHEREAS, it is necessary for the City to authorize certain individuals to use various bank accounts for the day-to-day operations of the City, make withdrawals and deposits in these accounts, and pay the necessary expenses as authorized by the City Council.

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

SECTION 1. That Thomas Duensing is the duly appointed City Treasurer.

SECTION 2. That Jack Friedline is the duly appointed Superintendent of Streets.

SECTION 3. That all banks with whom the City maintains accounts are directed to honor the signatures of the officers named below on all electronic fund transfers, or checks depositing and/or withdrawing the funds placed in those accounts until further notice of the City:

Name	Position	Signature Authorization
Kevin R. Phelps	City Manager	City Manager
Thomas Duensing	Assistant City Manager	City Manager/City Treasurer
Julie K. Bower	City Clerk	City Clerk
Jack Friedline	Director	Superintendent of Streets
Vicki L. Rios	Interim Director	Financial Services

SECTION 4. That all checks drawn on the City of Glendale accounts in the amount of $50,000 or more will require two signatures from the authorized signatories listed in Section 3 above.

SECTION 5. Whereas the immediate operation of the provisions of this Ordinance is necessary for the preservation of the public peace, healthy, and safety of the City of Glendale, an emergency is declared to exist, and this Ordinance is in full force and effect on July 5, 2016, and it is exempt from the referendum provisions of the Constitution and laws of the State of Arizona.

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

o_finance_banking 16.doc

[Additions are indicated by underline; deletions by ~~strikeout.~~]