



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, December 15, 2015

1:00 PM

Council Chambers

Special 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

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.

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.

1. [15-808](#) AUTHORIZATION TO ENTER INTO A LINE EXTENSION AGREEMENT WITH TOHONO O'ODHAM GAMING ENTERPRISE
Staff Contact: Michael D. Bailey, City Attorney

Attachments: [Draft Line Extension Agreement 12.14.15](#)

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 #: 15-808, **Version:** 1

AUTHORIZATION TO ENTER INTO A LINE EXTENSION AGREEMENT WITH TOHONO O'ODHAM GAMING ENTERPRISE

Staff Contact: Michael D. Bailey, City Attorney

Purpose and Recommended Action

This is a request for City Council to authorize the City Manager to enter into a Line Extension Agreement with the Tohono O'odham Gaming Enterprise in order to provide water and wastewater services ("Requested Services") for 9431 West Northern Avenue and surrounding property (aka 9305 West Northern Avenue) located in the city of Glendale. This is also a request for City Council to authorize the City Attorney to make final changes consistent with the intent of the Line Extension Agreement.

Background

The Tohono O'odham Gaming Enterprise has requested for water and wastewater services for 9431 West Northern Avenue and surrounding property (aka 9305 West Northern Avenue) located in the City of Glendale. In order for the City to provide those requested services a Line Extensions must be constructed.

Budget and Financial Impacts

The Gaming Enterprise will pay for the cost of construction of the required Line Extensions in order for the City to provide those requested services.

**LINE EXTENSION AGREEMENT
BETWEEN THE CITY OF GLENDALE AND
THE TOHONO O'ODHAM GAMING ENTERPRISE**

This LINE EXTENSION AGREEMENT (this "Agreement") is made and entered into as of the _____ day of _____, 2015 ("Effective Date") by and between Tohono O'Odham Gaming Enterprise ("Gaming Enterprise"), and City of Glendale, an Arizona municipal corporation ("City").

RECITALS: certain terms used, but not defined, in these recitals are defined in Section 1 of this Agreement.

- A. The Gaming Enterprise is an enterprise chartered by legislative act of the Tohono O'odham Nation (the "Nation"), a federally recognized Indian tribe, which represents that it has the authority under its Charter and tribal laws to enter into this Agreement; and
- B. The City is an Arizona municipal corporation which provides municipal services, including the provision of public safety, water and wastewater, convention and visitor services; and
- C. The Nation owns property contiguous to the City; and has assigned use of such property to the Gaming Enterprise.
- D. The Nation intends to develop, in multiple phases, and the Gaming Enterprise intends to operate a destination gaming facility and related development on lands held both in trust by the United States and held in fee; and
- E. The Gaming Enterprise has requested water and wastewater service for 9431 West Northern Avenue, Glendale, AZ 85305 and surrounding property (aka 9305 West Northern Avenue Glendale, AZ 85305) ("Requested Services").
- F. In order for City to be able to provide the Requested Services, certain Line Extensions ("Extensions") must be constructed, as more fully described in **Exhibit A**.
- G. The Gaming Enterprise will pay for the cost of construction of new infrastructure required to provide the Requested Services to the Gaming Enterprise's West Valley Project now and in the future, except that the City will pay for or offset the design and construction costs to the extent the City has requested the design and/or construction additions to facilitate the City's future provision of services on the Gaming Enterprise site, for other customers beyond the boundaries of the property owned by the Nation. The Gaming Enterprise upon completion of each phase of the new infrastructure intends to convey that new infrastructure to the City in accordance to the terms of this Agreement.
- H. "Water Point of Delivery" Means that point at which Treated Water is delivered to the Gaming Enterprise by City. The planned Water Point of Delivery is located at the discharge side of the water meter.

- I. "Wastewater Point of Delivery" Means that point at which Untreated Sewage is delivered to the City by the Gaming Enterprise. The planned Wastewater Point of Delivery is located at the point identified as such on the attached **Exhibit B**.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the parties, each intending to be legally bound by this Agreement, hereby agree as follows:

1 EXTENSIONS

- 1.1 The Gaming Enterprise will design, construct and install, in multiple phases, or cause to be designed, constructed or installed, in multiple phases, the Extensions as approved by City in accordance to the terms of this Agreement.
- 1.2 The Gaming Enterprise will pay all of the costs of permitting, constructing, installing, and connecting the Extensions including, but not limited to, the costs of start-up services, construction water, material testing, and construction inspection, engineering, materials, labor, transportation, equipment, permits and approvals, easements, testing, corrections, insurance and bonds.
- 1.3 The Gaming Enterprise agrees that the completion of the Extensions will be timed so as to enable City to provide the Requested Services as such service is requested. The Gaming Enterprise understands and agrees that City's provision of the Requested Services is conditioned upon City's Final Acceptance of each phase of the Extensions to be used in connection with such service.
- 1.4 To the extent the City has proposed design and construction changes in the Extensions in order to facilitate the ability of the City to provide similar services to properties beyond those held by the Nation, the City shall pay the cost of the construction modifications or in the alternative the City will offset said costs by providing credits against future services delivered to the Gaming Enterprise. Examples of proposed construction changes by City staff are: costs for changes to pipe sizing and lift station capacity in order to provide wastewater services to other adjacent property owners in the future.

2 WATER TREATMENT AND DELIVERY SERVICES BY CITY

- 2.1 City shall provide the Gaming Enterprise treated water to the Water Point of Delivery in an amount to meet the potable water demand within the service area described in **Exhibit B**.
- 2.2 City makes no representations or warranties regarding the quality of the water delivery to Gaming Enterprise under this Agreement other than the representation that the quality of water delivered to the Point of Delivery will be of the generally same quality of water that City transports within its municipal water system and meets all federal and state water quality standards.

- 2.3 Gaming Enterprise acknowledges the existence of grandfathered irrigation rights owned by the Nation that are attached to the property. As consideration for the delivery of potable water by the City, the Gaming Enterprise agrees not to utilize or seek to transfer the grandfathered irrigation rights associated with the Property so long as the City provides potable water, except TOGE may use irrigation water for future construction activities (e.g. dust suppression, weed control and similar activities related to future construction).

3 WASTEWATER DELIVERY BY THE GAMING ENTERPRISE TO THE CITY FOR TREATMENT

- 3.1 The Gaming Enterprise shall deliver waste water (sewage) to the Wastewater Point of Delivery in amounts produced by the Gaming Enterprises uses within the service area described in **Exhibit B**.

4 PLAN REVIEW AND APPROVAL

- 4.1 The Gaming Enterprise will submit the following items to City for its review and approval:
- 4.1.1 Plans and specifications for the Extensions;
 - 4.1.2 Estimated number and size of domestic water meters , landscape meters, and cooling tower meter(s), and services, that will be required for the Requested Services; and
 - 4.1.3 Other items reasonably requested by City including but not limited to a drainage report for the fully developed site.
- 4.2 City will review the plans and specifications for the Extensions. City will promptly approve the plans and specifications in writing, or provide the Gaming Enterprise written review comments indicating items that need to be corrected or modified. City will not unreasonably withhold or delay its approval. If the plans and specifications are not approved by City, the Gaming Enterprise will correct or modify the plans and specifications to address City's review comments and resubmit the plans and specifications for City's review and approval.

5 CONSTRUCTION REQUIREMENTS

- 5.1 With respect to the Main Extensions, the Gaming Enterprise estimated a construction start date of May 11, 2015 and a construction completion date of October 30, 2015.
- 5.2 The Gaming Enterprise will not commence construction of the Main Extensions, other than as stipulated in 5.6 below, until the following conditions

are satisfied:

- 5.2.1 City has approved the plans and specifications in accordance with Section 2.2 of this Agreement;
- 5.2.2 This Agreement is approved by the Gaming Enterprise;
- 5.2.3 This Agreement is approved by the City.
- 5.3 All plans, specifications, new construction and installation of the Extensions shall be in accordance with sound utility and engineering practices, the rules, regulations and requirements of MCBSD, City's 2015 Design and Construction Standards, and MAG Standards and details, and the requirements of all other governmental agencies having jurisdiction over the construction and Extensions or the Requested Services.
- 5.4 The Gaming Enterprise will install a reduced pressure backflow preventer immediately adjacent to the Point of Delivery. The design of the device shall be approved by the City. It shall be maintained by the Gaming Enterprise at the Gaming Enterprises' sole cost.
- 5.5 The Gaming Enterprise shall provide on-site storm water retention in accordance with City of Glendale design standards..
- 5.6 If the Gaming Enterprise begins construction of any of the Extensions before all of the conditions set forth in Paragraph 5.2 are satisfied, such construction will be at the Gaming Enterprise's sole risk and subject to repair, alteration or reconstruction at Gaming Enterprise's expense as directed by City.
- 5.7 No portion of the Extensions will be used to provide the Requested Services to the public until Final Acceptance of such portion has occurred. City specifically reserves the right to withhold Final Acceptance of all or any portion of the Extensions unless such facilities have been constructed in accordance with the terms of this Agreement and are satisfactory to City upon inspection and testing. Notwithstanding the foregoing, the City will cooperate with the Gaming Enterprise to allow the use of the water and wastewater extensions, once substantially complete and deemed safe for human usage, to be able to test, commission, and/or "burn-in" the building mechanical, plumbing and other systems.
- 5.8 The Gaming Enterprise will comply with City's inspection and testing requirements for the Extensions. The Gaming Enterprise will provide City two business days' prior notice when the Extensions are under construction, and when any portion of the Extensions are ready for inspection and testing. City will then promptly inspect and test the Extensions to determine if such Extensions have been constructed in accordance with the approved plans and specifications. As a result of City's inspection and testing, City may provide

written notification to the Gaming Enterprise of punch list items that require correction and the Gaming Enterprise agrees to promptly correct all defects and deficiencies in construction, materials and workmanship. Upon mutual agreement by the affected parties the foregoing inspection services may be performed by a designated third party inspector reporting to and coordinating with the City, the Gaming Enterprise and designated "or" mutually agreed upon public safety agencies

6 REQUESTED SERVICES AND FINAL ACCEPTANCE

- 6.1 City will provide the Requested Services (water & wastewater services) upon the filing of a written request by the Gaming Enterprise either by the filing of a Service Application on forms provided by the City or by providing a letter that requests the commencement of the services on a specific date for all or the applicable portion(s) of the Extensions.
- 6.2 City will notify the Gaming Enterprise of the City's Final Acceptance of all or the applicable portion(s) of the Extensions within ten (10) days after satisfaction of all of the following conditions:
 - 6.2.1 The Gaming Enterprise has corrected all punch list items identified by City or mutually agreed upon third party inspector;
 - 6.2.2 The Gaming Enterprise has paid all fees required by this Agreement and by the terms of City's then-current and applicable fees and rates related to the Requested Services;
 - 6.2.3 The Gaming Enterprise has delivered to City all of the following:
 - 6.2.3.1 Lien waivers and releases from contractors, subcontractors and vendors for materials, equipment, supplies and construction included in the Extensions; and
 - 6.2.3.2 Mutually agreeable evidence of payment in full by the Gaming Enterprise to all contractors, subcontractors and vendors for all materials, equipment, supplies, labor and other costs of construction of the Extensions; and
 - 6.2.3.3 One set of "as-built" drawings on full-size bond paper, certified as to correctness by an engineer registered in the State of Arizona and showing the locations, materials, and respective sizes, and pertinent construction details for all Extensions; and
 - 6.2.3.4 CAD files and PDF files of the signed and sealed "as-built" drawings on CD, in accordance with City's specifications.

- 6.3 Within 30 days of Final Acceptance by the City, the Gaming Enterprise shall provide to the City a Service Line Agreement in substantially the form as set out in **Exhibit "C"** approved by the Gaming Enterprise and the Nation permitting the City to enter upon the Nation's lands in order to maintain and service the Extensions.
- 6.4 The Gaming Enterprise shall be liable for any damage resulting from City's inability to accurately mark the location of any of the Extensions due to any inaccuracies in the Gaming Enterprise's "as built" drawings for the Extensions.
- 6.5 For two years after City's written Final Acceptance of any Extension, the Gaming Enterprise will, upon City's reasonable request, promptly correct any and all defects and deficiencies in construction, materials and workmanship in that Extension discovered by City.

7 RATES, FEES AND REFUNDS:

- 7.1 The Gaming Enterprise will pay in accordance with the terms of City's then-current water and wastewater rates for outside city limit commercial retail customers as established by resolution, all applicable fees as specified in those rates, including, if applicable, a hook-up fee, for all water meters based on the estimated quantity and size to be installed for the Requested Services. City may from time to time perform audits to confirm quantity and size of meters actually installed. The audit may result in a true-up payment occurring from City to the Gaming Enterprise because of overpayment or by the Gaming Enterprise to City because of underpayment.
- 7.2 The Gaming Enterprise shall submit a written request for services on a form provided by the City at which time the billing for services provided by the City shall commence.
- 7.3 In the event any delinquent bill is not paid within the timeframe as established in Section 33 within the City's municipal code then City shall have the right, without liability of any kind, to cease the treatment of delivery water services pursuant to this Agreement, and to refuse such treatment and delivery water service so long as the said amount remains unpaid or to terminate this Agreement.

8 SHUTDOWNS

- 8.1 City shall have the right to shut-down the transportation and treatment water services provided herein for the purposes of routine maintenance and repair. City shall also have the right to shut-down the transportation and treatment services provided herein in the event of an emergency. In an emergency, such advance notice of such a shutdown will be provided as practicable. City, by virtue of this Agreement, shall not be liable to Nation or to any other person, firm or corporation for any claim, demand, loss or damage of any nature or

character whatsoever due to or arising out of, any failure, diminution or interruption of any of the treatment and transportation services provided hereunder due to routine maintenance and repair shutdowns or emergency shut-downs.

9 ACCESS

- 9.1 The Gaming Enterprise shall provide 24/7 unrestricted access to City forces and contractors for the purpose of maintenance, repair, inspection and testing of water and wastewater delivery systems.

10 GENERAL PROVISIONS

- 10.1 City shall, upon Final Acceptance provide the Requested Services in accordance with the applicable rates, charges and conditions. Such rates, charges and tariffs are subject to change from time to time upon approval by the City Council of the City of Glendale. City has no obligation to provide the Requested Services until such Final Acceptance has occurred and all applicable fees or costs have been paid in full by the Gaming Enterprise.
- 10.2 The Gaming Enterprise acknowledges that City has the right to, and may in the future; connect its existing or future water and wastewater systems to the Extensions. Prior to doing so, the City will coordinate with the Gaming Enterprise to ensure the Gaming Enterprise's then current and future beneficial use of the Extensions is not negatively impacted. The City further agrees to reasonably minimize disturbances to the existing improvements on the property and the Gaming Enterprise's operations of the facility during any future construction.
- 10.3 City does not guarantee a continuous supply of service. City is not liable for damages occasioned by interruptions or failure to commence service or unsatisfactory service or any act or failure to act arising out of this Agreement caused by an act of God or the public enemy, accident, fire, explosions, strikes, riots, war, delay in receiving shipments of required material, order of any court or judge granted in any bona fide adverse legal proceedings or action, or any order of any commission or tribunal having jurisdiction in the premises; or without limitation by the preceding enumeration, any other act or thing reasonably beyond its control or incident to interruptions necessary for repairs or changes in City's production, storage, transmission, distribution, collection, and other related facilities.
- 10.4 City does warrant, guarantee and represent that any water services it provides to the Water Point of Delivery will comply with any fire-protection requirements of the City of Glendale Fire Department.
- 10.5 The Gaming Enterprise will, indemnify and hold harmless City, its officers, directors, agents, and employees from and against any and all claims, damages,

judgments, fines, penalties, assessments, costs and expenses, including attorneys' fees and court costs, to which they or any of them may be subjected by reason of injury, death, loss, claim, penalty, assessment or damage caused or contributed to by the active or passive negligence or willful misconduct of the Gaming Enterprise, its agents, servants, employees, contractors or subcontractors in the execution of, or failure to execute, the Gaming Enterprises's obligations under this Agreement; provided, however, that the Gaming Enterprise shall not be required to indemnify City to the extent of any negligent or wrongful acts of City, its officers, directors, agents or employees.

10.6 The failure of either party to this Agreement to enforce any of the provisions of this Agreement or the waiver by either party of any of its rights under this Agreement in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision but the same shall, nevertheless, be and remain in full force and effect.

10.7 Communications under or relating to this Agreement shall be sent to City addressed as follows:

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

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

Or to such other address or addresses as City may advise the Gaming Enterprise in writing, and to the Gaming Enterprise at:

Chief Executive Officer
Tohono O'odham Gaming Enterprise
Post Office Box 22230
Tucson, AZ 85734

General Counsel
Tohono O'odham Gaming Enterprise
Post Office Box 22230
Tucson, AZ 85734

10.8 Nothing in this Agreement shall at any time be construed so as to create a relationship of employer and employee, partnership, principal and agent, or joint venture as between City and the Gaming Enterprise or to authorize or enable either party to incur any costs or expenses on behalf of the other party. The Gaming Enterprise shall be solely responsible for the means, methods, techniques, sequences and procedures it utilizes in connection with the design, construction and installation of the Main Extensions.

10.9 This Agreement is governed by and construed in accordance with the laws of the State of Arizona, without giving effect to its conflicts of laws provisions, and its performance shall be subject to regulation by Arizona and federal regulatory agencies with jurisdiction.

10.10 This Agreement represents the entire understanding between the parties with respect to its subject matter, superseding all prior communications,

understandings and agreements of or between the parties with respect to such subject matter. There are no oral or collateral agreements between the parties with respect to such subject matter. All changes or amendments to, and any termination of, this Agreement must be in writing and signed by City and the Gaming Enterprise.

- 10.11 This Agreement shall be binding upon and inure to the benefit of City and the Gaming Enterprise and their respective legal representatives, successors and assigns. City or the Gaming Enterprise shall not assign its rights, obligations or interest in this Agreement without the prior written consent of the other party, and any attempted assignment without such consent shall be void and of no effect. There are no third-party beneficiaries under this Agreement.
- 10.12 All agreements with the City are subject to cancellation for conflicts of interest under the provision of A.R.S. § 38-511.

[Signatures follow on next page]

IN WITNESS WHEREOF, this Agreement has been executed and approved by the parties and persons whose signatures appear below.

TOHONO O'ODHAM GAMING
ENTERPRISE

CITY OF GLENDALE, a political
subdivision of the State of Arizona

By: _____

Tohono O'odham Gaming
Enterprise

Date: _____

By: _____

Richard A. Bowers
Acting City Manager

Date: _____

ATTEST:

By: _____

Pam Hanna
City Clerk

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____

Laura Berglan
Acting Attorney General
Tohono O'odham Gaming
Enterprise

By: _____

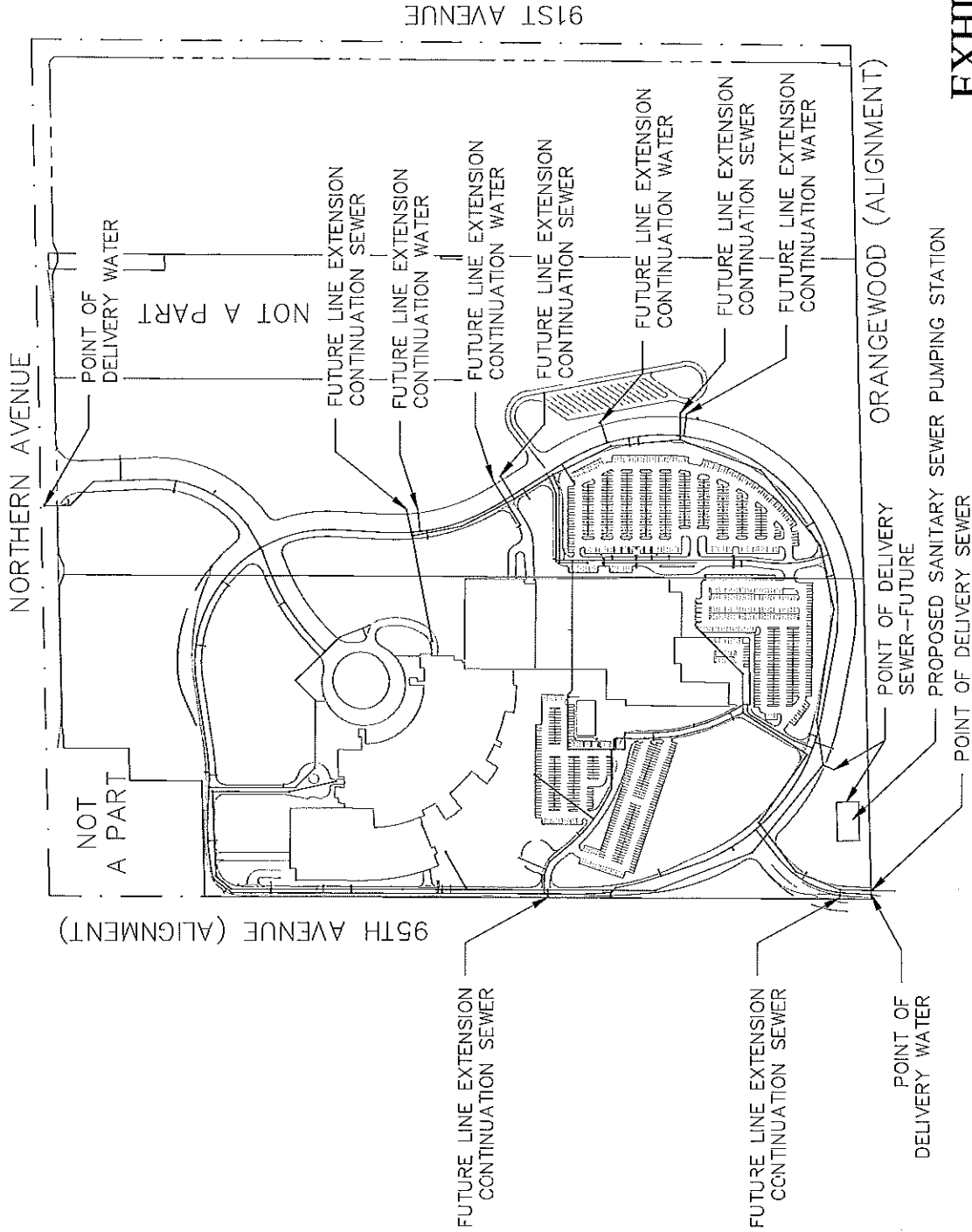
Michael D. Bailey
City Attorney
City of Glendale

EXHIBIT A

DRAFT

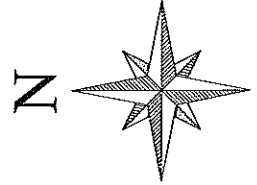
EXHIBIT B

DRAFT



EXHIBIT

PUBLIC WATER & SEWER EXHIBIT
 WEST VALLEY RESORT
 09-10-2015
 WP#093437.86
 PAGE 1 OF 1
 NOT TO SCALE
 T:20091093437/EXHIBIT13437E31.DWG



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EXHIBIT C

DRAFT

SERVICE LINE AGREEMENT

WHEREAS, the City Of Glendale, an Arizona Municipal Corporation, its successors and assigns, hereinafter termed "APPLICANT", has been requested by the Tohono O'odham Gaming Enterprise and the Tohono O'odham Nation to extend water and sewer service to THE TOHONO O'ODHAM GAMING ENTERPRISE, hereinafter termed "AUTHORIZED OCCUPANT" of a tract of TRIBAL land located on the TOHONO O'ODHAM NATION'S GILA BEND INDIAN RESERVATION and described as a portion of:

THE WEST HALF OF THE WEST HALF OF THE NORTHEAST QUARTER
AND THE WEST HALF OF THE EAST HALF OF THE WEST HALF OF THE
NORTHEAST QUARTER OF SECTION 4, TOWNSHIP 2 NORTH, RANGE 1
EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA
COUNTY, ARIZONA; and

WHEREAS, the location of the service line required to serve the above described property, and its extent, is more particularly shown and delineated on the attached Exhibit A, and is referenced as _____.

Applicant agrees to comply with all the applicable requirements of 25 CFR 169.22

Now, therefore, it is hereby agreed that in consideration of the applicant furnishing water and sewer service to the described property, the AUTHORIZED OCCUPANT hereby grants permission to Applicant to operate and maintain a service line on and across said property, with the right of ingress and egress without the payment of any monetary compensation for damages.

The receipt of water and sewer services by AUTHORIZED OCCUPANT, its successors and assigns, shall be subject to and be governed and controlled by APPLICANT'S _____, as approved by _____ and on file with the _____.

IN WITNESS WHEREOF, this agreement was executed this ____ day of _____ 201__.

APPLICANT:

AUTHORIZED OCCUPANT:

CITY OF GLENDALE, an ARIZONA MUNICIPAL CORPORATION TOHONO O'ODHAM GAMING ENTERPRISE

By: _____

By: _____

Name & Title

Name & Title

Owner- TOHONO O'ODHAM NATION

By: _____

Name & Title

ATTEST:

Filed with the Superintendent or other officer in charge

of the Papago Agency on _____, 201_.