

CITY COUNCIL AGENDA

CITY COUNCIL CHAMBERS . 11465 WEST CIVIC CENTER DRIVE . AVONDALE, AZ 85323

REGULAR MEETING
September 19, 2011
7:00 PM

CALL TO ORDER BY MAYOR ROGERS
PLEDGE OF ALLEGIANCE
MOMENT OF REFLECTION

1 ROLL CALL AND STATEMENT OF PARTICIPATION BY THE CITY CLERK

2 UNSCHEDULED PUBLIC APPEARANCES

(Limit three minutes per person. Please state your name.)

3 CONSENT AGENDA

Items on the consent agenda are of a routine nature or have been previously studied by the City Council at a work session. They are intended to be acted upon in one motion. Council members may pull items from consent if they would like them considered separately.

a. APPROVAL OF MINUTES

1. Work Session of September 6, 2011
2. Regular Meeting of September 6, 2011

b. CONTRACT AWARD - KLOSS SERVICES FOR TEMPORARY LABOR AT THE CRYSTAL GARDENS WETLANDS AND RECHARGE FACILITY

City Council will consider a request to award a contract to Kloss Services for the purpose of providing temporary labor to assist City staff with the aesthetics and functionality of the Crystal Gardens Wetlands and Recharge Facility and authorize the Mayor or City Manager and the City Clerk to execute the necessary documents. The Council will take appropriate action.

c. CONSTRUCTION CONTRACT AWARD - AUGUST BUILDING COMPANY - WESTERN AVENUE BUSINESS RENOVATION PROGRAM

City Council will consider a request to award a construction contract to August Building Company, LLC in the amount of \$123,582 to complete improvements to the exterior of businesses as part of the Western Avenue Business Renovation Program and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

d. PROFESSIONAL SERVICES AGREEMENT - BROWN AND CALDWELL

City Council will consider a request to approve a Professional Services Agreement with Brown and Caldwell in an amount not to exceed \$97,474.00 to perform Programmable Logic Controller and Supervisory Controls and Data Acquisition programming work at the Charles M. Wolf Water Resource Center, approve the necessary transfer of funds from the Wastewater Operating Budget Contingency Fund and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

e. **COOPERATIVE PURCHASING AGREEMENT - DELL MARKETING LIMITED PARTNERSHIP**

City Council will consider a request to approve a three-year agreement with Dell, Inc. for the purchase of replacement and special-use computers for all City departments in the amount of \$901,050 for the term of the contract and authorize the Mayor or City Manager or City Clerk to execute the necessary documents. The Council will take appropriate action.

f. **FIRST AMENDMENT TO PURCHASE AGREEMENT - LIFE, INC. FOR THE AVONDALE TAXI SUBSIDY PROGRAM**

City Council will consider a request to approve the first amendment to the Purchase Agreement with Life, Inc. to provide subsidized taxi service to residents for medical and dialysis treatments extending the term of the agreement and adding a renewal provision in an annual amount not to exceed \$70,000 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

g. **RESOLUTION 3003-911 - ENERGY, ENVIRONMENT AND NATURAL RESOURCES COMMISSION BYLAWS**

City Council will consider a resolution approving the renaming of the Environmental Affairs Commission to the Energy, Environment and Natural Resources Commission and amending the Commission's bylaws to reduce the number of members, standardize the format and update and clarify the language as needed. The Council will take appropriate action.

h. **RESOLUTION 3004-911 - INTERGOVERNMENTAL AGREEMENT WITH REGIONAL PUBLIC TRANSIT AUTHORITY FOR ADA SERVICES**

City Council will consider a resolution approving the third amendment to the Intergovernmental Agreement with the Regional Public Transit Authority for FY 2012 Paratransit Services and authorizing the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

i. **RESOLUTION 3005-911 AND ORDINANCE 1469-911 - ADOPTING THE 2010-11 AMENDMENTS TO THE TAX CODE OF THE CITY OF AVONDALE**

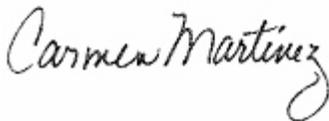
City Council will consider a resolution declaring as a public record the 2010-11 Amendments to the Tax Code of the City of Avondale and an ordinance relating to the Privilege License Tax, adopting the amendments by reference, establishing an effective date and providing for severability and penalties for violations. The Council will take appropriate action.

4 **PROPOSAL FOR NEW MURALS IN THE PIONEER CEMETERY**

City Council will review a proposal from the Ballet Folklórico Nueva Esperanza for the installation of three murals at the Pioneer Cemetery. For information, discussion and direction.

5 **ADJOURNMENT**

Respectfully submitted,



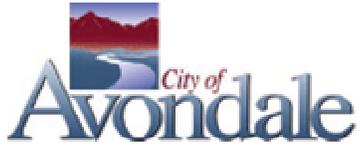
Carmen Martinez
City Clerk

Individuals with special accessibility needs, including sight or hearing impaired, large print, or interpreter, should contact the City Clerk at 623-333-1200 or TDD 623-333-0010 at least two business days prior to the Council Meeting.

Personas con necesidades especiales de accesibilidad, incluyendo personas con impedimentos de vista u oído, o con necesidad de impresión grande o interprete, deben comunicarse con la Secretaria de la Ciudad at 623-333-1200 o TDD 623-333-0010 cuando menos dos días hábiles antes de la junta del Concejo.

Notice is hereby given that pursuant to A.R.S. § 1-602.A.9, subject to certain specified statutory exceptions, parents have a right to consent before the State or any of its political subdivisions make a video or audio recording of a minor child. Meetings of the City Council may be audio and/or video recorded and, as a result, proceedings in which children are present may be subject to such recording. Parents, in order to exercise their rights may either file written consent with the City Clerk to such recording, or take personal action to ensure that their child or children are not present when a recording may be made. If a child is present at the time a recording is made, the City will assume that the rights afforded parents pursuant to A.R.S. § 1-602.A.9 have been waived.

De acuerdo con la ley A.R.S. § 1-602.A.9, y sujeto a ciertas excepciones legales, se da aviso que los padres tienen derecho a dar su consentimiento antes de que el Estado o cualquier otra entidad política haga grabaciones de video o audio de un menor de edad. Las juntas del Concejo de la Ciudad pueden ser grabadas y por consecuencia, existe la posibilidad de que si hay menores de edad presentes éstos aparezcan en estos videos o grabaciones de audio. Los padres puedan ejercitar su derecho si presentan su consentimiento por escrito a la Secretaria de la Ciudad, o pueden asegurarse que los niños no estén presentes durante la grabación de la junta. Si hay algún menor de edad presente durante la grabación, la Ciudad dará por entendido que los padres han renunciado sus derechos de acuerdo a la ley contenida A.R.S. § 1-602.A.9.



CITY COUNCIL REPORT

SUBJECT:
APPROVAL OF MINUTES

MEETING DATE:
September 19, 2011

TO: Mayor and Council
FROM: Carmen Martinez, City Clerk (623) 333-1214
THROUGH: Charlie McClendon, City Manager

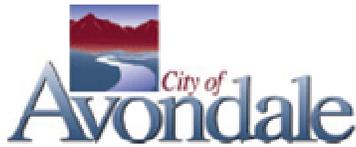
PURPOSE:

1. Work Session of September 6, 2011
2. Regular Meeting of September 6, 2011

ATTACHMENTS:

[Click to download](#)

No Attachments Available



CITY COUNCIL REPORT

SUBJECT:

Contract Award - Klass Services for Temporary Labor at the Crystal Gardens Wetlands and Recharge Facility

MEETING DATE:

September 19, 2011

TO: Mayor and Council

FROM: Wayne Janis, PE, Public Works Director (623) 333-4444

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council award a contract to Klass Services for the purpose of providing temporary labor to assist City staff with the aesthetics and functionality of the Crystal Gardens Wetlands and Recharge Facility and authorize the Mayor or City Manager and the City Clerk to execute the necessary documents.

BACKGROUND:

The Crystal Gardens Wetlands and Recharge Facility are subject to environmental and seasonal challenges such as monsoon storms and spill events. In the past the City has employed a temporary part time person to assist full time permanent staff with these challenges. After budget cuts last year, the Public Works Department began to use contract labor to provide assistance on an as needed basis.

Additionally, the Recharge Facility must undergo periodic basin grading. City staff has handled the minor grading activities and a contractor is typically employed to provide the heavy basin disking. The heavier disking takes place at least annually to maintain infiltration rates at the facility and remove vegetation. The contract will allow for labor to be utilized in the basin grading and include the annual basin disking.

DISCUSSION:

The contract allows for up to two (2) contract employees for up to forty (40) hours per week. This affords the ability to have a minimum of two (2) employees at all times for safety purposes and extra assistance for those heavy seasons such as clean-up after a monsoon storm or wetland planting in the spring.

The contract also provides for an equipment operator and large tractor with disks for annual basin grading and vegetation removal at the Recharge Facility.

The contract services could cost in excess of \$80,000, historically the City expends less than \$10,000 for these services. Staff estimates the need for temporary labor plus basin grading activities to be in the amount of \$10,000 for FY11/12.

The bid announcement for this contract was advertised in the West Valley View and the Arizona Business Gazette on August 12 and 16, 2011. Through coordination with the City's Procurement Officer, it was placed on the e-procurement site as well. Only one contractor submitted a bid for this project.

There are no unresolved complaints on record against Klass Services and staff has contacted the list of references provided by the contractor, and found no reason to disqualify Klass Services.

BUDGETARY IMPACT:

Funding for this project is available in the Water Resources Department 11/12 Operating Budget (501-9119-00-6180).

RECOMMENDATION:

Staff recommends that the City Council award a contract to Klass Services for the purpose of providing temporary labor for the maintenance and operation of the Crystal Gardens Wetlands and Recharge Facility and authorize the Mayor or City Manager and the City Clerk to execute the necessary documents.

ATTACHMENTS:

Click to download

 [Contract - Klass Services](#)



INVITATION FOR BID

City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323

Solicitation Number: **PW 12-002**

Solicitation Title: **Temporary Services Wetland Shoreline and Recharge Maintenance**

Release Date: **August 12, 2011**

Prospective Bidders' Conference: **NOT APPLICABLE TO THIS SOLICITATION**

Final Date for Inquiries: **August 16, 2011**

Bid Deadline: **August 29, 2011**
3:00 p.m. (local-time, Phoenix, Arizona)

Bid Opening: **August 29, 2011**
3:00 PM (local-time, Phoenix, Arizona)

Department Representative: **Barbara Chappell** **bchappell@avondale.org**
623-333-4428

Procurement Representative: **Loretta Browning** **lbrowning@avondale.org**
623-333-2029

In accordance with the City of Avondale Procurement Code, competitive sealed Bids for the Materials specified herein will be received by the City Clerk at the City Clerk's Office at the above-referenced location until the date and time cited below (the "Bid Deadline"). Bids received by the Bid Deadline shall be publicly opened and the Bid Price read. Bids shall be in the actual possession of the City Clerk on, or prior to, the Bid Deadline Date. Late Bids shall not be considered except as provided in the City Procurement Code. Bids shall be submitted in a sealed envelope with the Solicitation Number and the Bidder's name and address clearly indicated on the front of the envelope.

* The City of Avondale reserves the right to amend the solicitation schedule as necessary.

**CITY OF AVONDALE
PUBLIC WORKS DEPARTMENT
PW 12-002**

OFFER

The undersigned (the "Bidder") hereby offers this Bid (the "Offer") and certifies that Bidder has read, understands and agrees to fully comply with all terms and conditions as set forth in this Contract (as defined below), and any amendments thereto, together with the Scope of Work, Specifications, Exhibits and other documents included as part of this Contract.

BY SIGNING THIS PAGE THE SUBMITTING BIDDER CERTIFIES THAT BIDDER HAS REVIEWED THIS CONTRACT AND ALL CORRESPONDING IFB TERMS AND CONDITIONS AND AGREES TO BE CONTRACTUALLY BOUND BY THEM.

<p>Arizona Transaction (Sales) Privilege Tax License Number: <u>07057409L</u></p> <p>Federal Employer Identification Number: <u>86-1041053</u> <u>KLASS Services, Inc</u> Contractor Name</p> <p><u>250 S. Sarival</u> Address</p> <p><u>Goodyear</u> <u>AZ</u> <u>85338</u> City State Zip Code</p>	<p>For Clarification of this Bid contact:</p> <p>Name: <u>Adam Sheppard</u></p> <p>Telephone: <u>423-764-4348</u></p> <p>Facsimile: <u>423-932-5377</u></p> <p>Email: <u>adam@klassservicesinc.com</u></p> <p style="text-align: center;"><u><i>Adam Sheppard</i></u> Authorized Signature for Contractor</p> <p style="text-align: center;"><u>Adam Sheppard</u> Printed Name</p> <p style="text-align: center;"><u>Project manager</u> Title</p>
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ACCEPTANCE OF OFFER AND NOTICE OF AWARD (FOR CITY OF AVONDALE USE ONLY)

Effective Date: _____ Contract No. _____ Official File: _____

Entire Bid Award: Multiple Award: (see attached documentation)
Line Item Award: (see attached documentation)

CITY OF AVONDALE, an Arizona municipal corporation

Charles P. McClendon, City Manager

ATTEST:

APPROVED AS TO FORM:

Carmen Martinez, City Clerk

Andrew J. McGuire, City Attorney

ARTICLE I - DEFINITIONS

For purposes of this Invitation for Bids, the following definitions shall apply:

“Bid” or “Offer” means a responsive bid or quotation submitted by a Bidder in response to this IFB.

“Bid Deadline” means the date and time set forth on the cover of this IFB for the City Clerk to be in actual possession of the sealed Bids.

“Bid Opening” means the date and time set forth on the cover of this IFB for opening of sealed bids.

“Bidder” means any person or firm submitting a competitive Bid in response to this IFB.

“Days” means calendar days unless otherwise specified.

“City” means the City of Avondale, an Arizona municipal corporation.

“Confidential Information” means that portion of a Bid, proposal, Offer, specification or protest that contains information that the person submitting the information believes should be withheld, provided (i) such person submits a written statement advising the City of this fact at the time of the submission and (ii) the information shall be so identified wherever it appears.

“Contract” means, collectively, the (i) the Offer, (ii) Article I - Definitions, (iii) Article II – Bid Process; Bid Award, (iv) Article III - General Terms & Conditions, (v) Article IV – Special Conditions, if any, (vi) the Scope of Work, attached hereto as Exhibit A, (vii) the Price Sheet, attached hereto as Exhibit B, (viii) the Licenses; DBE/WBE Status Sheet, if any, attached hereto as Exhibit C, (ix) References, attached hereto as Exhibit D, (x) Acknowledgement of Addenda Received attached hereto as Exhibit E, (xi) the Notice of Award, (xii) the Notice to Proceed, (xiii) any approved Change Order or Amendment, (xiv) the Contractor’s Certificates of Insurance and a copy of the Declarations Page(s) of the insurance policies and (xv) Bid, Performance and Payment Bonds, if any.

“Contractor” means the individual, partnership, or corporation who has submitted a Bid in response to this IFB and who, as a result of the competitive bidding process, is awarded a contract for Materials or Services by the City.

“Invitation for Bids” or “IFB” means this request by the City for participation in the competitive bidding process according to all documents, including those attached or incorporated herein by reference, utilized for soliciting Bids for the Materials and/or Services in compliance with the City’s Procurement Code.

“Materials” means any personal property, including equipment, materials and supplies provided by the Contractor in conjunction with the Contract and shall include, in addition to materials incorporated in the Project, equipment and other material used and/or consumed in the performance of Services or Work.

“Multiple Award” means an award of an indefinite quantity contract for one or more similar products, commodities or services to more than one Bidder.

“Price” means the total expenditure for a defined quantity of a commodity or service.

“Procurement Agent” means the City Manager or authorized designee.

“Procurement Code” means the City of Avondale Procurement Code, as amended from time to time.

“Procurement Representative” or “Department Representative” means a City employee who has specifically been designated to act as a contact person to the Bidders and/or Contractor, and who is responsible for monitoring and overseeing the Contractor’s performance under the Contract.

“Project” means the purpose and work described as set forth in Section 2.1 of this IFB.

“Services” means the furnishing of labor, time or effort by a Contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance and as further defined in the Contract. This term does not include “professional and technical services” as defined in the Procurement Code.

“Specification” means any description of the physical characteristics, functional characteristics, or the nature of a commodity, product, supply or services. The term may include a description of any requirements for inspecting, testing, or preparing a supply or service item for delivery.

“Subcontractor” means those persons or groups of persons having a direct contract with the Contractor to perform a portion of the Work and those who furnish Materials according to the plans and/or Specifications required by this Contract.

“Work” means all labor, materials and equipment incorporated or to be incorporated in the Project that are necessary to accomplish the services required by this Contract.

ARTICLE II – BID PROCESS; BID AWARD

2.1 Purpose/Scope of Work. The purpose of this IFB is to secure a qualified licensed, bonded and insured Contractor to provide maintenance services at (A) the Crystal Gardens Wetlands treatment facility, located at 107th Avenue and Crystal Gardens Parkway, between McDowell and Thomas and (B) the Avondale Recharge facility, located at 120th Avenue and McDowell Road (collectively, “the Services”), as more particularly described in the Scope of Work, attached hereto as Exhibit A and incorporated herein by reference. Bidders must submit Bids encompassing the entire Project, inclusive of any related specifications. Failure to do so may result in a determination that the Bid is non-responsive.

2.2 Authority; Amendment of IFB. This IFB and resultant Contract is issued under the authority of the City. No alteration hereof may be made without the express written approval of the City in the form of an official IFB or Contract amendment. Any attempt to alter this IFB/Contract without such approval is subject to the legal and contractual remedies available to the City including, but not limited to, Contract cancellation and suspension and/or debarment of the Bidder or Contractor.

2.3 Preparation/Submission of Bid. Bidders are invited to participate in the competitive bidding process for the Services specified in this IFB. Bidders shall review their Bid submissions to ensure the following requirements are met.

A. Irregular/Non-responsive Bids. The City will consider as “irregular” or “non-responsive” and may reject any Bid not prepared and submitted in accordance with the IFB and the Scope of Work, or any Bid lacking sufficient information to enable the City to make a reasonable determination of compliance to the specifications outlined in the Scope of Work. Unauthorized exceptions, conditions, limitations, or provisions shall be cause for rejection. Bids may be deemed non-responsive at any time during the evaluation process if, in the sole opinion of the City:

1. Bidder does not meet the minimum required skill, experience or requirements to perform the Work or provide the Services.

**CITY OF AVONDALE
PUBLIC WORKS DEPARTMENT
PW 12-002**

2. Bidder has a past record of failing to fully perform or fulfill contractual obligations.

3. Bidder cannot demonstrate financial stability.

4. Bid submission contains false, inaccurate or misleading statements that, in the opinion of the City Manager or authorized designee, is intended to mislead the City in its evaluation of the Bid.

C. Specification Minimums. Bidders are reminded that the specifications stated in the Scope of Work as part of this IFB are the minimum levels required and that Bids submitted must be for products or services that meet or exceed the minimum level of all features specifically listed in this IFB. Bids offering less than the minimums specified are not responsive and should not be submitted. It shall be the Bidder's responsibility to carefully examine each item listed in the Scope of Work.

D. Required Submittal. Bidders shall provide **one** complete, fully executed **original** of this IFB, signed in ink by a person authorized to bind the Bidder, together with all completed, required attachments as specified below, to be considered a responsive Bid:

1. Offer
2. Price Sheet
3. Licenses; /DBE & MBE Status
4. References
5. Acknowledgement for each Addendum received, if any

E. Bidder Responsibilities. All Bidders shall (1) examine the entire Bid package, (2) seek clarification of any item or requirement that may not be clear, (3) check all responses for accuracy before submitting a Bid and (4) submit the entire, completed Bid package by the official Bid Deadline. Late Bids shall not be considered. Bids not submitted with an **original, signed** Offer page by a person authorized to bind the Bidder shall be considered non-responsive. Negligence in preparing a Bid confers no right of withdrawal after the Bid Opening.

F. Sealed Bids. All Bids shall be sealed and clearly marked with the IFB title and number on the lower left hand corner of the mailing envelope. A return address must also appear on the outside of the sealed Bid.

G. Address. All Bids shall be directed to the following address: City Clerk, 11465 West Civic Center Drive, Suite 200, Avondale, Arizona 85323, or hand-delivered to the City Clerk's office.

H. Bid Forms. All Bids shall be on the forms provided in this IFB. It is permissible to copy these forms if required. Telegraphic (facsimile), electronic (email) or mailgram Bids will not be considered.

I. Modifications. Erasures, interlineations, or other modifications in the Bid shall be initialed in original ink by the authorized person signing the Bid.

J. Withdrawal. At any time prior to the specified Bid Opening, a Bidder (or designated representative) may amend or withdraw its Bid. Facsimile, electronic (email) or mailgram Bid amendments or withdrawals will not be considered. No Bid shall be altered, amended or withdrawn after the specified Bid Deadline unless otherwise permitted pursuant to the City Procurement Code.

K. Prices. Prices shall be submitted on a per unit basis by line item, when applicable. In the event of a disparity between the unit price and extended price, the unit price shall prevail unless obviously in error.

2.4 Inquiries; Interpretation of Scope of Work/Specifications.

A. Inquiries. Any question related to the IFB, including any part of the Scope of Work, specifications or other Contract documents, shall be directed to the Department Representative or Procurement Representative whose name appears on the cover page of this IFB. Questions shall be submitted in writing by the date indicated on the cover page of this IFB; the City will not respond to any questions submitted later than the Final Date for Inquiries. The Bidder submitting such inquiry will be responsible for its prompt delivery to the City. Any correspondence related to the IFB shall refer to the title and number, page and paragraph. However, the Bidder shall not place the IFB number and title on the outside of any envelope containing questions, because such an envelope may be identified as a sealed Bid and may not be opened until the Bid Opening. Any interpretations or corrections of the proposed Contract documents will be made only by addenda duly approved and issued by the City. The City will not be responsible for any other explanations or interpretations of the Contract documents.

B. Addenda. It shall be the Bidder's responsibility to check for addenda issued to this IFB. Any addendum issued by the City with respect to this IFB will be available at:

City of Avondale City Hall, 11465 West Civic Center Drive, Avondale, Arizona 85323.
Buyhub Website at www.buyhub.com
City of Avondale website at www.avondale.org/procurement

C. Proposal Quantities. It is expressly understood and agreed by the parties hereto that the quantities of the various classes of Services or materials to be furnished under this Contract, which have been estimated as stated in the Bidders' Offer, are only approximate and are to be used solely for the purpose of comparing, on a consistent basis, the Bidders' Offers for this Contract. The Contractor further agrees that the City shall not be held responsible if any of the quantities shall be found to be incorrect and the Contractor will not make any claim for damages or for loss of profits because of a difference between the quantities of the various classes of Services or materials as estimated and the Services or materials actually provided. If any error, omission or misstatement is found to occur in the estimated quantities, the same shall not (1) invalidate this Contract or the whole or any part of the Scope of Work or specifications in accordance herewith and for the prices herein agreed upon and fixed therefore, (2) excuse Contractor from any of the obligations or liabilities hereunder or (3) entitle Contractor to any damage or compensation except as may be provided in this Contract.

2.5 Prospective Bidders' Conference. A prospective bidders' conference may be held. If scheduled, the date and time of this conference will be indicated on the cover page of this IFB. This conference may be designated as mandatory or non-mandatory on the cover of this IFB. Bids shall not be accepted from Bidders who do not attend a mandatory prospective bidders' conference. Bidders are strongly encouraged to attend those prospective bidder's conferences designated as non-mandatory. The purpose of this conference will be to clarify the contents of this IFB in order to prevent any misunderstanding of the City's requirements. Any doubt as to the requirements of this IFB or any apparent omission or discrepancy should be presented to the City at this conference. The City will then determine if any action is necessary and may issue a written amendment or addendum to the IFB. Oral statements or instructions will not constitute an amendment or addendum to this IFB.

2.6 New Materials. All materials to be utilized by the Contractor and included in the Bid shall be new, unless otherwise stated in the Scope of Work or specifications.

2.7 Pricing. All Services shall be provided at the prices as set forth in the Price Sheet attached hereto as Exhibit B and incorporated herein by reference.

2.8 Payment; Discounts. Any Bid that requires payment in less than 30 calendar days shall not be considered. Payment discounts of 30 calendar days or less will be deducted from the Bid Price in determining

**CITY OF AVONDALE
PUBLIC WORKS DEPARTMENT
PW 12-002**

the low Bid. The City shall be entitled to take advantage of any payment discount offered, provided payment is made within the discount period. Payment discounts shall be indicated on Price Sheet.

2.9 Taxes. The City is exempt from Federal Excise Tax, including the Federal Transportation Tax. Sales tax, if any, shall be indicated as a separate item. It is the sole responsibility of the Bidder to determine any applicable State tax rates and calculate the Bid accordingly. Failure to accurately tabulate and applicable taxes may result in a determination that a Bid is non-responsive. The Bidder shall not rely on, and shall independently verify, any tax information provided by the City.

2.10 Federal Funding. It is the responsibility of the Bidder to verify with the Department Representative if federal wage rates or other federal requirements apply to the work (the "Federal Requirements"). It is also the responsibility of the Bidder to incorporate any necessary amounts in the Bid to accommodate for required federal record keeping, necessary pay structures or other matters related to the Federal Requirements, if any.

2.11 Cost of Bid/Proposal Preparation. Bids submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner. The City does not reimburse the cost of developing, presenting or providing any response to this solicitation; the Bidder is responsible for all costs incurred in responding to this IFB. All materials and documents submitted in response to this IFB become the property of the City and will not be returned.

2.12 Public Record. All Bids shall become the property of the City and shall become a matter of public record available for review subsequent to the award notification, in accordance with the City's Procurement Code.

2.13 Confidential Information. If a Bidder believes that a Bid, Scope of Work, specification or protest contains information that should be withheld from the public record, a statement advising the Procurement Representative of this fact shall accompany the submission and the information shall be identified. The information identified by the Bidder as confidential shall not be disclosed until the Procurement Representative makes a written determination. The Procurement Representative shall review the statement and information and shall determine in writing whether the information shall be withheld. If the Procurement Representative determines to disclose the information, the Procurement Representative shall inform the Bidder in writing of such determination.

2.14 Vendor Licensing and Registration. Prior to the award of the Contract, the successful Bidder shall (A) be licensed with the Arizona Corporation Commission to do business in Arizona and (B) have a completed Request for Vendor Number on file with the City Financial Services Department. The Bidder shall provide licensure information with the Bid. Corporations and partnerships shall be able to provide a Certificate of Good Standing from the Arizona Corporation Commission.

2.15 Certification. By submitting a Bid, the Bidder certifies:

A. No Collusion. The submission of the Bid did not involve collusion or other anti-competitive practices.

B. No Discrimination. It shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11456.

C. No Gratuity. It 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 City employee, officer, agent or elected official in connection with the submitted Bid or a resultant Contract. In the event that the resultant Contract is cancelled pursuant to this provision, the City shall be entitled, in addition

to any other rights and remedies, to recover and withhold from the Contractor an amount equal to 150% of the gratuity.

D. Financial Stability. It is financially stable, solvent and has adequate cash reserves to meet all financial obligations including any potential costs resulting from an award of the Contract.

E. No Signature/False Statement. Failure to sign the Bid, or signing it with a false statement, shall void the submitted Bid and any resulting Contract and the Bidder may be debarred from further bidding in the City.

2.16 Award of Contract.

A. Multiple Award. The City may, at its sole discretion, accept Bidder's Offer as part of a Multiple Award.

B. Line Item Option. Unless the Bidder's Offer states otherwise, or unless specifically provided within this Contract, the City reserves the right to award by individual line item, by group of line items, or as a total, whichever is deemed most advantageous to the City. The City's flexibility with respect to the method of award also includes any items bid as alternates, which may be accepted or rejected, in whole or in part, at the City's sole discretion.

C. Evaluation. The evaluation of this Bid will be based on, but not limited to, the following: (1) compliance with Scope of Work and specifications, (2) Price and (3) Bidder qualifications to provide the Services.

D. Waiver; Rejection; Reissuance. Notwithstanding any other provision of this IFB, the City expressly reserves the right to: (1) waive any immaterial defect or informality, (2) reject any or all Bids or portions thereof and (3) reissue an IFB.

E. Offer. A Bid is a binding offer to contract with the City based upon the terms, conditions and specifications contained in this IFB and the Bidder's responsive Bid, unless any of the terms, conditions, or specifications is modified by a written addendum or contract amendment. Bids become binding Contracts when the Acceptance of Offer and Notice of Award is executed in writing by the City. Bidder Offers shall be valid and irrevocable for 90 days after the Bid Opening.

F. Protests. Any Bidder may protest this IFB issued by the City, the proposed award of a Contract, or the actual award of a Contract. All protests will be considered in accordance with the City Procurement Code.

ARTICLE III – GENERAL TERMS AND CONDITIONS

3.1 Term. This Contract shall be effective from the date it is fully executed by the City and remain in full force and effect for one year thereafter (the "Initial Term"), unless terminated as otherwise provided herein. After the expiration of the Initial Term, this Contract may be renewed for up to four successive one-year terms (each a "Renewal Term") if (A) it is deemed in the best interests of the City, subject to availability and appropriation of funds for renewal in each subsequent year, (B) at least 30 days prior to the end of the then-current term of the Contract, the Contractor requests, in writing, to extend the Contract for an additional one-year term and (C) the City approves the additional one-year term in writing (including any price adjustments approved as part of this Contract), as evidenced by the City Manager's signature thereon, which approval may be withheld by the City for any reason. The Contractor failure to seek a renewal of this Contract will cause the Contract to terminate at the end of the then-current term of the Contract. The Initial Term and any Renewal Terms are collectively referred to herein as the "Term." Upon renewal, the terms and conditions of this Contract shall remain in full force and effect.

**CITY OF AVONDALE
PUBLIC WORKS DEPARTMENT
PW 12-002**

3.2 Scope of Work. Contractor shall provide the Services on an as-required basis as more particularly set forth in the Scope of Work, attached hereto as Exhibit A and incorporated herein by reference.

3.3 Compensation. The City shall pay Contractor for the Services at the rates as set forth in the Price Sheet, attached hereto as Exhibit B and incorporated herein by reference.

3.4 Payments. The City shall pay the Contractor monthly, based upon work performed and completed to date, and upon submission and approval of invoices. All invoices shall document and itemize all work completed to date. The invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment.

3.5 Documents. All documents prepared and submitted to the City pursuant to this Contract shall be the property of the City.

3.6 Contractor Personnel. Contractor shall provide adequate, experienced personnel, capable of and devoted to the successful completion of the Services to be performed under this Contract. Contractor agrees to assign specific individuals to key positions. If deemed qualified, the Contractor is encouraged to hire City residents to fill vacant positions at all levels. Contractor agrees that, upon commencement of the Services to be performed under this Contract, key personnel shall not be removed or replaced without prior written notice to the City. If key personnel are not available to perform the Services for a continuous period exceeding 30 calendar days, or are expected to devote substantially less effort to the Services than initially anticipated, Contractor shall immediately notify the City of same and shall, subject to the concurrence of the City, replace such personnel with personnel of substantially equal ability and qualifications.

3.7 Inspection; Acceptance. All work shall be subject to inspection and acceptance by the City at reasonable times during Contractor's performance. The Contractor shall provide and maintain a self-inspection system that is acceptable to the City.

3.8 Licenses; Materials. 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. The City has no obligation to provide Contractor, its employees or subcontractors any business registrations or licenses required to perform the specific services set forth in this Contract. The City has no obligation to provide tools, equipment or material to Contractor.

3.9 Performance Warranty. Contractor warrants that the Services rendered will conform to the requirements of this Contract and to the highest professional standards in the field.

3.10 Indemnification. To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the City and each council member, officer, employee or agent thereof (the City and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims"), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions, in connection with the work or services of the Contractor, its officers, employees, agents, or any tier of subcontractor in the performance of this Contract. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

3.11 Insurance.

A. General.

1. Insurer Qualifications. Without limiting any obligations or liabilities of Contractor, Contractor shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to ARIZ. REV. STAT. § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Contract at the City's option.

2. No Representation of Coverage Adequacy. By requiring insurance herein, the City does not represent that coverage and limits will be adequate to protect Contractor. The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Contract but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Contract or failure to identify any insurance deficiency shall not relieve Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Contract.

3. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Contract, the City, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Contract.

4. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Contract are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Contract.

5. Primary Insurance. Contractor's insurance shall be primary insurance with respect to performance of this Contract and in the protection of the City as an Additional Insured.

6. Waiver. All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Contractor. Contractor shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

7. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. Contractor shall be solely responsible for any such deductible or self-insured retention amount.

8. Use of Subcontractors. If any work under this Contract is subcontracted in any way, Contractor shall execute written agreement(s) with its subcontractors containing the indemnification provisions set forth in this subsection and insurance requirements set forth herein protecting the City and Contractor. Contractor shall be responsible for executing any agreements with its subcontractor and obtaining certificates of insurance verifying the insurance requirements.

9. Evidence of Insurance. Prior to commencing any work or services under this Contract, Contractor will provide the City with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Contract, issued by Contractor's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein

and provide the required coverages, conditions and limits of coverage specified in this Contract and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Contract. The City shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Contract. In the event any insurance policy required by this Contract is written on a "claims made" basis, coverage shall extend for two years past completion of the services and the City's acceptance of the Contractor's materials or services and as evidenced by annual certificates of insurance. If any of the policies required by this Contract expire during the life of this Contract, it shall be Contractor's responsibility to forward renewal certificates and declaration page(s) to the City 30 days prior to the expiration date. All certificates of insurance and declarations required by this Contract shall be identified by referencing this Contract. A \$25.00 administrative fee shall be assessed for all certificates or declarations received without a reference to this Contract. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing this Contract will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

a. The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

(i) Commercial General Liability - Under Insurance Services Office, Inc., ("ISO") Form CG 20 10 03 97 or equivalent.

(ii) Auto Liability - Under ISO Form CA 20 48 or equivalent.

(iii) Excess Liability - Follow Form to underlying insurance.

b. Contractor's insurance shall be primary insurance as respects performance of the Contract.

c. All policies, except for Professional Liability, including Workers' Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of Work or Services performed by Contractor under this Contract.

d. A 30-day advance notice cancellation provision. If ACORD certificate of insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

B. Required Insurance Coverage.

1. Commercial General Liability. Contractor shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Contract, the City, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization

shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you." If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

2. Vehicle Liability. [INTENTIONALLY OMITTED]

3. Professional Liability. If this Contract is the subject of any professional services or work, or if the Contractor engages in any professional services or work adjunct or residual to performing the work under this Contract, the Contractor shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Contractor, or anyone employed by the Contractor, or anyone for whose negligent acts, mistakes, errors and omissions the Contractor is legally liable, with an unimpaired liability insurance limit of \$2,000,000 each claim and \$2,000,000 annual aggregate. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of the Services, and the Contractor shall be required to submit certificates of insurance and a copy of the declaration page(s) of the insurance policies evidencing proper coverage is in effect as required above.

4. Workers' Compensation Insurance. Contractor shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Contractor's employees engaged in the performance of work or services under this Contract and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

C. Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or materially changed without 30 days' prior written notice to the City.

3.12 Applicable Law; Venue. This Contract shall be governed by the laws of the State of Arizona and suit pertaining to this Contract may be brought only in courts in the State of Arizona.

3.13 Termination; Cancellation.

A. For City's Convenience. This Contract is for the convenience of the City and, as such, may be terminated without cause after receipt by Contractor of written notice by the City. Upon termination for convenience, Contractor shall be paid for all undisputed materials delivered and Services performed to the termination date.

B. For Cause. This Contract may be terminated by either party upon 30 days' written notice should the other party fail to substantially perform in accordance with this Contract's terms, through no fault of the party initiating the termination. In the event of such termination for cause, payment shall be made by the City to the Contractor for the undisputed portion of its fee due as of the termination date.

C. Due to Work Stoppage. This Contract may be terminated by the City upon 30 days' written notice to Contractor in the event that the Services are permanently abandoned. In the event of such termination due to work stoppage, payment shall be made by the City to the Contractor for the undisputed portion of its fee due as of the termination date.

D. Conflict of Interest. This Contract is subject to the provisions of ARIZ. REV. STAT. § 38-511. The City may cancel this Contract without penalty or further obligations by the City or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Contract on behalf of the City or any of its departments or agencies is, at any time while the Contract or any extension of the Contract is in effect, an employee of any other party to the Contract in any capacity or a Contractor to any other party of the Contract with respect to the subject matter of the Contract.

**CITY OF AVONDALE
PUBLIC WORKS DEPARTMENT
PW 12-002**

E. Gratuities. The City may, by written notice to the Contractor, cancel this Contract if it is found by the City that gratuities, in the form of economic opportunity, future employment, entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor to any officer, agent or employee of the City for the purpose of securing this Contract. In the event this Contract is cancelled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor an amount equal to 150% of the gratuity.

F. Contract Subject to Appropriation. This Contract is subject to the provisions of ARIZ. CONST. ART. IX, § 5 and ARIZ. REV. STAT. § 42-17106. The provisions of this Contract for payment of funds by the City shall be effective when funds are appropriated for purposes of this Contract and are actually available for payment. The City shall be the sole judge and authority in determining the availability of funds under this Contract and the City shall keep the Contractor fully informed as to the availability of funds for the Contract. The obligation of the City to make any payment pursuant to this Contract is a current expense of the City, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of the City. If the City Council fails to appropriate money sufficient to pay the amounts as set forth in this Contract during any immediately succeeding fiscal year, this Contract shall terminate at the end of then-current fiscal year and the City and the Contractor shall be relieved of any subsequent obligation under this Contract.

3.14 Miscellaneous.

A. Independent Contractor. The Contractor acknowledges and agrees that the Services provided under this Contract are being provided as an independent contractor, not as an employee or agent of the City. Contractor, its employees and subcontractors are not entitled to workers' compensation benefits from the City. The City does not have the authority to supervise or control the actual work of Contractor, its employees or subcontractors. The Contractor, and not the City, shall determine the time of its performance of the Services provided under this Contract so long as Contractor meets the requirements of its agreed Scope of Work as set forth in Section 3.2 above. Contractor is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere. City and Contractor do not intend to nor will they combine business operations under this Contract.

B. Laws and Regulations. The Contractor shall keep fully informed and shall at all times during the performance of its duties under this Contract ensure that it and any person for whom the Contractor is responsible remains in compliance with all rules, regulations, ordinances, statutes or laws affecting the Services, including, but not limited to, the following: (1) existing and future City and County ordinances and regulations, (2) existing and future state and federal laws and (3) existing and future Occupational Safety and Health Administration standards.

C. Amendments. This Contract may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the City and the Contractor.

D. Provisions Required by Law. Each and every provision of law and any clause required by law to be in the Contract will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Contract will promptly be physically amended to make such insertion or correction.

E. Severability. The provisions of this Contract are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of the Contract which may remain in effect without the invalid provision or application.

F. Relationship of the Parties. It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for

**CITY OF AVONDALE
PUBLIC WORKS DEPARTMENT
PW 12-002**

any purpose whatsoever. The Contractor is advised that taxes or Social Security payments will not be withheld from any City payments issued hereunder and Contractor agrees to be fully and solely responsible for the payment of such taxes or any other tax applicable to this Contract.

G. Entire Agreement; Interpretation; Parol Evidence. This Contract represents the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Contract are hereby revoked and superseded by this Contract. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Contract. This Contract shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting the Contract. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Contract.

H. Assignment. No right or interest in this Contract shall be assigned by Contractor without prior, written permission of the City signed by the City Manager and no delegation of any duty of Contractor shall be made without prior, written permission of the City signed by the City Manager. Any attempted assignment or delegation by Contractor in violation of this provision shall be a breach of this Contract by Contractor.

I. Subcontracts. No subcontract shall be entered into by the Contractor with any other party to furnish any of the material or services specified herein without the prior written approval of the City. The Contractor is responsible for performance under this Contract whether or not subcontractors are used.

J. Rights and Remedies. No provision in this Contract shall be construed, expressly or by implication, as waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Contract. The failure of the City to insist upon the strict performance of any term or condition of this Contract or to exercise or delay the exercise of any right or remedy provided in this Contract, or by law, or the City's acceptance of and payment for services, shall not release the Contractor from any responsibilities or obligations imposed by this Contract or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of this Contract.

K. Attorneys' Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Contract or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

L. Liens. All materials or Services shall be free of all liens and, if the City requests, a formal release of all liens shall be delivered to the City.

M. Offset.

1. Offset for Damages. In addition to all other remedies at law or equity, the City may offset from any money due to the Contractor any amounts Contractor owes to the City for damages resulting from breach or deficiencies in performance or breach of any obligation under this Contract.

2. Offset for Delinquent Fees or Taxes. The City may offset from any money due to the Contractor any amounts Contractor owes to the City for delinquent fees, transaction privilege taxes and property taxes, including any interest or penalties.

N. Notices and Requests. Any notice or other communication required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if (1) delivered to the

**CITY OF AVONDALE
PUBLIC WORKS DEPARTMENT
PW 12-002**

party at the address set forth below, (2) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, (3) given to a recognized and reputable overnight delivery service, to the address set forth below or (4) delivered by facsimile transmission to the number set forth below:

If to the City: City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323
Facsimile: (623) 333-0100
Attn: Charles P. McClendon, City Manager

With copy to: GUST ROSENFELD, P.L.C.
One East Washington Street, Suite 1600
Phoenix, Arizona 85004-2553
Facsimile: (602) 254-4878
Attn: Andrew J. McGuire, Esq.

If to Contractor: KLASS Services, Inc
250 S. Sarival
Goodyear, AZ 85338
Facsimile: 623-932-5377
Attn: Adam

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (1) when delivered to the party, (2) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage, (3) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day, or (4) when received by facsimile transmission during the normal business hours of the recipient. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

O. Confidentiality of Records. The Contractor shall establish and maintain procedures and controls that are acceptable to the City for the purpose of ensuring that information contained in its records or obtained from the City or from others in carrying out its obligations under this Contract shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform Contractor's duties under this Contract. Persons requesting such information should be referred to the City. Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Contractor as needed for the performance of duties under this Contract.

P. Records and Audit Rights. Contractor's and its subcontractor's books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Contract, including the papers of any Contractor and its subcontractors' employees who perform any work or services pursuant to this Contract to ensure that the Contractor and its subcontractors are complying with the warranty under subsection 3.14(Q) below (all of the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the City, to the extent necessary to adequately permit (1) evaluation and verification of any invoices, payments or claims based on Contractor's and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Contract and (2) evaluation of the Contractor's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in

subsection 3.14(Q) below. To the extent necessary for the City to audit Records as set forth in this subsection, Contractor and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the City shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of this Contract for the duration of the work and until three years after the date of final payment by the City to Contractor pursuant to this Contract. Contractor and its subcontractors shall provide the City with adequate and appropriate workspace so that the City can conduct audits in compliance with the provisions of this subsection. The City shall give Contractor or its subcontractors reasonable advance notice of intended audits. Contractor shall require its subcontractors to comply with the provisions of this subsection by insertion of the requirements hereof in any subcontract pursuant to this Contract.

Q. E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Contractor and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Contractor's or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Contract and may result in the termination of this Contract by the City.

R. Scrutinized Business Operations. Pursuant to ARIZ. REV. STAT. §§ 35-391.06 and 35-393.06, the Contractor certifies that it does not have scrutinized business operations in Sudan or Iran. For the purpose of this subsection the term "scrutinized business operations" shall have the meanings set forth in ARIZ. REV. STAT. § 35-391 or 35-393, as applicable. If the City determines that the Contractor submitted a false certification, the City may impose remedies as provided by law including terminating this Contract pursuant to subsection 3.13(B) above.

S. Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Contract, the IFB, Scope of Work, the Price Sheet and the Contractor's Bid, the documents shall govern in the order listed herein.

T. Non-Exclusive Contract. This Contract is entered into with the understanding and agreement that it is for the sole convenience of the City. The City reserves the right to obtain like goods and services from another source when necessary.

U. Cooperative Purchasing. Specific eligible political subdivisions and nonprofit educational or public health institutions ("Eligible Procurement Unit(s)") are permitted to utilize procurement agreements developed by the City, at their discretion and with the agreement of the awarded Contractor. Contractor may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Services at the prices and under the terms and conditions of this Contract, in such quantities and configurations as may be agreed upon between the parties. All cooperative procurements under this Contract shall be transacted solely between the requesting Eligible Procurement Unit and Contractor. Payment for such purchases will be the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The City assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Contract. The City shall not be responsible for any disputes arising out of transactions made by others.

EXHIBIT A
TO
INVITATION FOR BID NO. PW 12-002

[Scope of Work]

See following pages.

SCOPE OF WORK
TEMPORARY SERVICES WETLAND SHORELINE AND RECHARGE MAINTENANCE
PW 12-002

I. Contractor Responsibilities.

A. Upon request of the City's Contract Administrator, Contractor shall provide up to two (2) contract employees ("Personnel") for up to forty (40) hours per week to provide assistance to City staff with the monitoring and operation of the Crystal Gardens Wetlands for the delivery of renewable water supplies. Personnel will assist City staff with maintenance of aesthetics and functionality of the Wetlands, and water quality data and management of the Wetlands Treatment and Recharge Facilities.

B. Contractor shall provide adequate, experienced Personnel trained in the appropriate methods and procedures in order to properly and satisfactorily perform the Services. Personnel shall have the skills and ability to efficiently and safely use tools and equipment including, but not limited to, generators, tractors with ganon and discs, utility carts, motor powered boat, rakes, pitchfork, waders, battery charger and various hand tools. Depending on the assignment, most Services will be provided during scheduled work days which are subject to the seasonal schedules as noted:

Summer hours from April 1st to September 30th, 5:00 a.m. to 3:30 p.m.

Winter hours from October 1st to March 31st, 6:00 a.m. to 4:30 p.m.

Personnel will be scheduled on an as-needed basis.

C. Contractor shall provide a Personnel Representative who shall be responsible for the performance of the Contract and remain the Contractor's contact person for the duration of the Contract. The Personnel Representative shall establish a routine for communications with the City's Contract Administrator to provide a prompt and timely response to any concerns or problems that may arise. Time and frequency of direct meetings may vary as determined by the Contract Administrator. The Personnel Representative shall contact the Contract Administrator to schedule performance of the Services, review overall performance, receive special instructions, or discuss other pertinent items regarding the Contract and the Contractor's performance.

D. Contractor's Personnel will perform the following tasks:

- (i) Maintain aesthetics of wetland shorelines and open water by using a utility cart.
- (ii) Remove floating debris and dead fish.
- (iii) Observe and report changes in water conditions, pick up trash along trail ways, and remove or report graffiti in or around the Wetlands area.
- (iv) Provide customer service to City residents and address resident concerns, if possible. If not, Contractor's Personnel will refer questions and concerns to City's Contract Administrator.
- (v) Remove or thin unwanted vegetation using a boat and manual tools. Adjust water levels to promote viable emergent growth, maintain nursery and replant islands as required.
- (vi) Assist in daily water sampling using field test equipment and record results.

(vii) Assist in the vector control program by set-up and collection of mosquito traps. Conduct routine inspections of surrounding cells for over-irrigation and standing water.

(viii) Assist with maintenance activities at the Avondale Recharge Facility, including vegetation removal and basin grading.

C. Contractor shall provide equipment as necessary for discs recharge basins.

3. City Responsibilities.

A. For the purposes of this Contract, the City's Senior Wetlands Operator will serve as the City's Contract Administrator. Services will be provided on an as-required basis as deemed necessary or desirable by the City's Contract Representative.

B. The Contract Administrator will provide requests for Services to the Personnel Representative no less than forty-eight (48) hours in advance of the scheduled start date and time, including the Personnel needs, assignment details, location and reporting instructions.

EXHIBIT B
TO
INVITATION FOR BID NO. PW 12-002

[Price Sheet]

See following page.

EXHIBIT C
TO
INVITATION FOR BID NO. PW 12-002

[Licenses; DBE/WBE Status]

See following page.

LICENSE; DBE/WBE STATUS
TEMPORARY SERVICES WETLAND SHORELINE AND RECHARGE MAINTENANCE
PW 12-002

Attach a copy of your Business License to your bid submittal.

* Business License must be either a City of Avondale Privilege Tax Business License or an Arizona Transaction Tax (sales) Privilege Tax License

Has your firm been certified by any jurisdiction in Arizona as a minority or woman owned business enterprise? Yes _____, No X_____.

If yes, please provide details and documentation of the certification.



11465 W. Civic Center Drive, #270
Avondale, AZ 85323-6808

LICENSE NO:11381

THIS NONTRANSFERABLE PRIVILEGE TAX/BUSINESS LICENSE IS ISSUED IN ACCORDANCE THE WITH CITY OF AVONDALE TAX CODE AND IS VALID ONLY WHILE OPERATING UNDER THE HEREIN SPECIFIED NAME AND LOCATION UNTIL EXPIRATION DATE. BUSINESS ACTIVITY MUST BE CONDUCTED IN COMPLIANCE WITH ALL BUILDING, FIRE AND ZONING CODES.

BUSINESS NAME: K.L.A.S.S. SERVICES, INC.

EXPIRES:12/31/11

BUSINESS LOCATION: LOCATION OUTSIDE AVONDALE

THIS LICENSE MUST BE DISPLAYED IN A CONSPICUOUS PLACE

K.L.A.S.S. SERVICES, INC.
250 S SARIVAL
GOODYEAR, AZ 85338

ISSUED BY: Kevin H. Artz
City of Avondale
11465 W Civic Center Dr. #270
Avondale, AZ. 85323

EXHIBIT D
TO
INVITATION FOR BID NO. PW 12-002

[References]

See following page.

REFERENCES
TEMPORARY SERVICES WETLAND SHORELINE AND RECHARGE MAINTENANCE
PW 12-002

Provide the following information for three (3) clients for whom Bidder has provided materials or services of similar size and/or scope with the past (36) months. These references will be checked, so make sure all information is accurate and current. Failure to provide three (3) accurate or suitable references may result in disqualification.

1. Company: Jaetam Contracting
Address: 12709 W. Georgia
City/State/Zip Code: Litchfield Pk, AZ 85340
Contact: Tammy Billman
Telephone Number: 623-1095-1378
Date of Contract Initiation: 3/7/11

Project Description:
(Include Final Costs) Install new septic, landscaping (tree removal, fence relocation), + utilities conduit. \$8745.00
2. Company: Stepping Stones Pediatric Therapy
Address: 1505 N. Alma School Rd #2
City/State/Zip Code: Chandler, AZ 85224
Contact: Jonathan Carner
Telephone Number: 480-206-5101
Date of Contract Initiation: 5/2011

Project Description:
(Include Final Costs) Landscape, hardscape (grade + pave parking lot). \$8875.00
3. Company: Corner Brook Farms
Address: 31309 N. 161st Pl
City/State/Zip Code: Scottsdale, AZ 85262
Contact: John Bauer
Telephone Number: 602-743-3349
Date of Contract Initiation: 7/2011

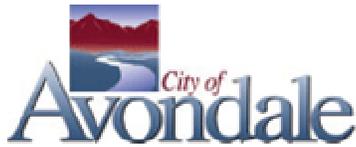
Project Description:
(Include Final Costs) Install concrete driveway, finish grade \$12,659.00

EXHIBIT E
TO
INVITATION FOR BID NO. PW 12-002

[Acknowledgement of Addenda received, if any]

See following page(s).

*All Addenda, if any, together with original, signed acknowledgments, issued for this IFB are to be attached by Bidder as this Exhibit E and submitted with the sealed Bid.



CITY COUNCIL REPORT

SUBJECT:

Construction Contract Award - August Building Company - Western Avenue Business Renovation Program

MEETING DATE:

September 19, 2011

TO: Mayor and Council

FROM: Sue McDermott, P.E., Development Services Director /City Engineer, (623) 333-4211

THROUGH: Charlie McClendon, City Manager

PURPOSE:

City Council approval is sought to enter into a contract with August Building Company, LLC in the amount of \$123,582 to complete improvements to the exterior of Western Avenue businesses. The work consists of construction and installation of signage, lighting, awnings, tilework and door/window repair or replacement. The purpose of the project is to improve the visual appearance of buildings along Western Avenue while preserving their unique and original Old Town main street character.

BACKGROUND:

Through the Western Avenue Business Renovation Program, the City of Avondale is providing grants to owners of 7 businesses along Western Avenue to improve the building exteriors and correct code violations. Participating business owners were required to prepare business plans, be current on taxes, have a business license and be in compliance with City codes. Circle West Architects was contracted to design improvements and supervise construction. The grants will be forgiven over a five-year period contingent upon continued maintenance of the building and secured by a lien on the property. Construction was partially completed by Renovation Solutions Group, which declared bankruptcy in March, 2011. This contract award is for completion of the remaining work.

Neighborhood & Family Services, Development Services and Finance departments conducted an Invitation for Bids process through which August Building Company was determined to be the lowest qualified bidder.

DISCUSSION:

Staff worked with Circle West architects and participating property/business owners to prepare design concepts for exterior renovations. The improvements will support public and private investments made along Western Avenue.

BID PROCESS:

The Invitation for Bid (IFB) notice was published in the West Valley View on August 5 and 12, 2011 and in the Arizona Business Gazette on August 4, 2011. A pre-bid conference was held on August 11, 2011. The bid opening was held on Thursday, September 1, 2011. At that time, August Building Company was the only bidder who submitted a bid package with a total amount of \$123,582. See the attached Bid Tabulation Sheet for a detailed, bid item breakdown of each submitted bid.

August Building Company met the bid requirements and was determined to have a responsible and qualified bid. Staff contacted references and believes August Building Company to be competent and qualified for this project. August Building Company has successfully completed similar work for

other local government agencies. In addition, the company is in good standing with the Arizona Corporation Commission and the Arizona Registrar of Contractors.

BUDGETARY IMPACT:

The total of \$123,582 is available in the Community Development Block Grant (CDBG) portion of the Neighborhood & Family Services Department budget for this program.

RECOMMENDATION:

Staff recommends that the City Council approve a contract with August Building Company, LLC in the amount of \$123,582 to complete improvements to the exterior of Western Avenue businesses.

ATTACHMENTS:

Click to download

 [Bid Tabulation](#)

**CITY OF AVONDALE
 BID TABULATION
 EN12-003 Western Avenue Business Renovation Project
 BID DATE: September 1, 2011**

410 E. Western Avenue Façade Improvements (Keepsake Trophy)

Item	Description of Material and/or Services	Unit	Quantity	Unit Price	Extended Price
1	General Conditions	LUMP SUM	1	\$2,868.00	\$2,868.00
2	Signage				
	Exterior Signage	LUMP SUM	1	\$2,572.00	\$2,572.00
	Exterior Graphics	LUMP SUM	1	\$675.00	\$675.00
	Exterior Signage (Address)	LUMP SUM	1	\$195.00	\$195.00
3	Lighting				
	New Decorative Lighting	LUMP SUM	1	\$1,700.00	\$1,700.00
4	Miscellaneous				\$0.00
	Decorative Gate	LUMP SUM	1	\$3,750.00	\$3,750.00
5	Estimated Permit Fees	ALLOWANCE	1	\$100.00	\$100.00
6	Contingency	ALLOWANCE	1	\$3,000.00	\$3,000.00
				SUBTOTAL	\$14,860.00
				TAXES (As Applicable)	\$947.00
				TOTAL BID AMOUNT	\$15,807.00
				Is the Contract Complete?	Yes
				Is Contract Properly Signed?	Yes
				Addendum 1 Signed, Complete and Attached?	Yes
				Bid Bond Attached?	Yes
				Contractor License Attached?	Yes
				Business License Attached?	Yes
				References Attached & Complete?	Yes
				Exceptions to Specifications?	No

**CITY OF AVONDALE
 BID TABULATION
 EN12-003 Western Avenue Business Renovation Project
 BID DATE: September 1, 2011**

707 E. Western Avenue Façade Improvements (Michelle's Bridal)

Item	Description of Material and/or Services	Unit	Quantity	Unit Price	Extended Price
1	General Conditions	LUMP SUM	1	\$6,502.00	\$6,502.00
2	Signage Exterior Signage	LUMP SUM	1	\$5,042.00	\$5,042.00
3	Awnings New Metal Awnings	LUMP SUM	1	\$9,198.00	\$9,198.00
4	Lighting New Decorative Lighting	LUMP SUM	1	\$1,500.00	\$1,500.00
5	Miscellaneous Exterior Tiles	LUMP SUM	1	\$4,515.00	\$4,515.00
6	Estimated Permit Fees	ALLOWANCE	1	\$100.00	\$100.00
7	Contingency	ALLOWANCE	1	\$2,000.00	\$2,000.00
				SUBTOTAL	\$28,857.00
				TAXES (As Applicable)	\$1,838.00
				TOTAL BID AMOUNT	\$30,695.00
				Is the Contract Complete?	Yes
				Is Contract Properly Signed?	Yes
				Addendum 1 Signed, Complete and Attached?	Yes
				Bid Bond Attached?	Yes
				Contractor License Attached?	Yes
				Business License Attached?	Yes
				References Attached & Complete?	Yes
				Exceptions to Specifications?	No

**CITY OF AVONDALE
 BID TABULATION
 EN12-003 Western Avenue Business Renovation Project
 BID DATE: September 1, 2011**

701 E. Western Avenue Façade Improvements (Lovejoy - Suite A)

Item	Description of Material and/or Services	Unit	Quantity	Unit Price	Extended Price
1	General Conditions	LUMP SUM	1	\$4,720.00	\$4,720.00
2	Signage	LUMP SUM	1	\$330.00	\$330.00
3	Awnings New Metal Awnings	LUMP SUM	1	\$13,383.00	\$13,383.00
4	Lighting New Decorative Lighting	LUMP SUM	1	\$1,000.00	\$1,000.00
5	Estimated Permit Fees	ALLOWANCE	1	\$100.00	\$100.00
6	Contingency	ALLOWANCE	1	\$2,000.00	\$2,000.00
				SUBTOTAL	\$21,533.00
				TAXES (As Applicable)	\$1,372.00
				TOTAL BID AMOUNT	\$22,905.00
				Is the Contract Complete?	Yes
				Is Contract Properly Signed?	Yes
				Addendum 1 Signed, Complete and Attached?	Yes
				Bid Bond Attached?	Yes
				Contractor License Attached?	Yes
				Business License Attached?	Yes
				References Attached & Complete?	Yes
				Exceptions to Specifications?	No

**CITY OF AVONDALE
 BID TABULATION
 EN12-003 Western Avenue Business Renovation Project
 BID DATE: September 1, 2011**

701 E. Western Avenue Façade Improvements (Lovejoy - Suite B)

Item	Description of Material and/or Services	Unit	Quantity	Unit Price	Extended Price
1	General Conditions	LUMP SUM	1	\$3,449.00	\$3,449.00
2	Doors and Window Repair				
	New Standard Aluminum Entry Door & Hardware	LUMP SUM	2	\$2,750.00	\$5,500.00
3	Signage	LUMP SUM	1	\$399.00	\$399.00
4	Lighting				
	New Decorative Lighting	LUMP SUM	1	\$1,583.00	\$1,583.00
5	Miscellaneous				
	Metal Mesh Screen	LUMP SUM	2	\$1,596.50	\$3,193.00
6	Estimated Permit Fees	ALLOWANCE	1	\$100.00	\$100.00
7	Contingency	ALLOWANCE	1	\$2,000.00	\$2,000.00
				SUBTOTAL	\$16,224.00
				TAXES (As Applicable)	\$1,033.00
				TOTAL BID AMOUNT	\$17,257.00
				Is the Contract Complete?	Yes
				Is Contract Properly Signed?	Yes
				Addendum 1 Signed, Complete and Attached?	Yes
				Bid Bond Attached?	Yes
				Contractor License Attached?	Yes
				Business License Attached?	Yes
				References Attached & Complete?	Yes
				Exceptions to Specifications?	No

**CITY OF AVONDALE
 BID TABULATION
 EN12-003 Western Avenue Business Renovation Project
 BID DATE: September 1, 2011**

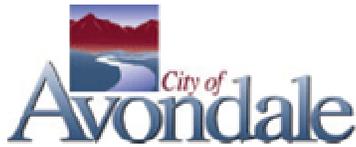
701 E. Western Avenue Façade Improvements (Lovejoy - Suite C)

Item	Description of Material and/or Services	Unit	Quantity	Unit Price	Extended Price
1	General Conditions	LUMP SUM	1	\$2,522.00	\$2,522.00
2	Doors and Window Repair				
	New Standard Aluminum Entry Door & Hardware	LUMP SUM	1	\$5,500.00	\$5,500.00
3	Painting				
	Exterior Painting	LUMP SUM	1	\$333.00	\$333.00
4	Signage	LUMP SUM	1	\$399.00	\$399.00
5	Lighting				
	New Decorative Lighting	LUMP SUM	1	\$1,583.00	\$1,583.00
6	Estimated Permit Fees	LUMP SUM	1	\$100.00	\$100.00
7	Contingency	ALLOWANCE	1	\$2,000.00	\$2,000.00
				SUBTOTAL	\$12,437.00
				TAXES (As Applicable)	\$792.00
				TOTAL BID AMOUNT	\$13,229.00
				Is the Contract Complete?	Yes
				Is Contract Properly Signed?	Yes
				Addendum 1 Signed, Complete and Attached?	Yes
				Bid Bond Attached?	Yes
				Contractor License Attached?	Yes
				Business License Attached?	Yes
				References Attached & Complete?	Yes
				Exceptions to Specifications?	No

**CITY OF AVONDALE
 BID TABULATION
 EN12-003 Western Avenue Business Renovation Project
 BID DATE: September 1, 2011**

16 E. Western Avenue Façade Improvements (Theater Building)

Item	Description of Material and/or Services	Unit	Quantity	Unit Price	Extended Price
1	General Conditions	LUMP SUM	1	\$4,673.00	\$4,673.00
2	Signage				
	Exterior Signage (Tenate)	LUMP SUM	1	\$6,358.00	\$6,358.00
	Exterior Graphics (Building)	LUMP SUM	1	\$4,476.00	\$4,476.00
	Exterior Signage (Address)	LUMP SUM	1	\$330.00	\$330.00
3	Lighting				
	New Decorative Lighting	LUMP SUM	1	\$3,333.00	\$3,333.00
4	Estimated Permit Fees	ALLOWANCE	1	\$100.00	\$100.00
5	Contingency	ALLOWANCE	1	\$3,000.00	\$3,000.00
				SUBTOTAL	\$22,270.00
				TAXES (As Applicable)	\$1,419.00
				TOTAL BID AMOUNT	\$23,689.00
				Is the Contract Complete?	Yes
				Is Contract Properly Signed?	Yes
				Addendum 1 Signed, Complete and Attached?	Yes
				Bid Bond Attached?	Yes
				Contractor License Attached?	Yes
				Business License Attached?	Yes
				References Attached & Complete?	Yes
				Exceptions to Specifications?	No



CITY COUNCIL REPORT

SUBJECT:

Professional Services Agreement - Brown and Caldwell

MEETING DATE:

September 19, 2011

TO: Mayor and Council

FROM: Wayne Janis, PE, Public Works Director, (623) 333-4444

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting City Council approve the Professional Service Agreement (PSA) with Brown and Caldwell to perform Programmable Logic Controller (PLC) and Supervisory Controls and Data Acquisition (SCADA) programming work at the Charles M. Wolf Water Resource Center to bring non-expansion programming up to the standard of the expansion programming, and approve the transfer of the necessary funding from the Wastewater Operating Budget Contingency Fund. The amount of the agreement is not to exceed \$97,474.00.

BACKGROUND:

The Public Works Department relies on PLCs to operate equipment. As an example, a PLC may tell a valve when to open or close or command a pump to start or stop. The SCADA system sends and receives data with multiple PLCs. The SCADA system is used to operate, control and monitor equipment.

Approximately, a year-and-a-half ago an expansion to the Water Resource Center was completed. The expansion project updated PLC and SCADA programming for the expansion areas. No changes were made to the existing plant. Today, the SCADA system at the Water Resource Center looks and operates as if there were two SCADA systems. The goals of this project is for Brown and Caldwell to bring the non-expansion PLCs and SCADA up to the expansion standards, remove programming for equipment removed during the expansion, and make the SCADA system run and operate as one system. Public Works and Information Technology staff have reviewed the PSA and concur it effectively covers the City's needs.

DISCUSSION:

On May 9, 2011 three firms from the Engineering on-call list for SCADA and Electric were selected. The firms were asked to provide a list of recently related projects, updated resumes and a brief project proposal. All three firms submitted a supplemental packet by the May 19th deadline.

A consultant selection committee met on June 1, 2011, to review each firm's statement of qualification (SOQ) and supplemental packet. The committee members gave number ratings to the firms based on several criteria, such as personnel qualification, number of projects award this fiscal year, and previous municipal experience similar to this project. The scores from the three committee members were totaled and the highest score went to Brown and Caldwell.

It is anticipated that issues not listed in the scope of work will need to be resolved in order to successfully complete this project. As an example, programming to automate equipment previously operated in a manual mode. For this reason, the scope of work contains a \$23,680 custom programming allowance. Staff will submit change requests in writing to Brown and Caldwell.

BUDGETARY IMPACT:

This is an unexpected expense and staff requests approval to transfer the necessary funding for this Professional Services agreement from the Wastewater Operating Budget's Contingency Fund (503-9210-00-9900).

RECOMMENDATION:

Staff recommends City Council approve the professional service agreement with Brown and Caldwell to perform Programmable Logic Controller (PLC) and Supervisory Controls and Data Acquisition (SCADA) programming work at the Charles M. Wolf Water Reclamation Center to bring the non-expansion programming up to the standards of the expansion programming, approve the transfer of the necessary funding from the Wastewater Operating Budget Contingency Fund, and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The professional service agreement shall not exceed \$97,474.00.

ATTACHMENTS:

Click to download

 [PSA](#)

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
BROWN AND CALDWELL, INC.**

THIS PROFESSIONAL SERVICES AGREEMENT (this “Agreement”) is entered into as of September 19, 2011, between the City of Avondale, an Arizona municipal corporation (the “City”) and Brown and Caldwell, Inc., an Arizona corporation (the “Consultant”).

RECITALS

A. The City issued a Request for Qualifications, EN 10-057 “FY 2010/2011 Professional Consultants Selection List” and amended on April 6, 2010, by that certain Addendum No. 1 (collectively the “RFQ”), a copy of which is attached hereto as Exhibit A and incorporated herein by reference, seeking statements of qualifications from vendors for professional consulting services.

B. The Consultant submitted a Statement of Qualifications (the “SOQ”) in response to the RFQ, attached hereto as Exhibit B and incorporated herein by reference, and the City desires to enter into an Agreement with the Consultant to perform programmable logic controller, supervisory controls and data acquisition programming at the City’s Charles M. Wolf Water Resources Center (the “Services”).

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 City and the Consultant hereby agree as follows:

1. Term of Agreement. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until June 19, 2011.
2. Scope of Work. Consultant shall provide the Services as set forth in the Scope of Work, attached hereto as Exhibit C and incorporated herein by reference.
3. Compensation. The City shall pay Consultant an amount not to exceed \$97,474.00 for the Services at the rates as set forth in the Fee Proposal, attached hereto as Exhibit D and incorporated herein by reference.
4. Payments. The City shall pay the Consultant monthly, based upon work performed and completed to date, and upon submission and approval of invoices. All invoices shall document and itemize all work completed to date. The invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment.

5. Documents. All documents prepared and submitted to the City pursuant to this Agreement shall be the property of the City.

6. Consultant Personnel. Consultant shall provide adequate, experienced personnel, capable of and devoted to the successful completion of the Services to be performed under this Agreement. Consultant agrees to assign specific individuals to key positions. If deemed qualified, the Consultant is encouraged to hire City residents to fill vacant positions at all levels. Consultant agrees that, upon commencement of the Services to be performed under this Agreement, key personnel shall not be removed or replaced without prior written notice to the City. If key personnel are not available to perform the Services for a continuous period exceeding 30 calendar days, or are expected to devote substantially less effort to the Services than initially anticipated, Consultant shall immediately notify the City of same and shall, subject to the concurrence of the City, replace such personnel with personnel of substantially equal ability and qualifications.

7. Inspection; Acceptance. All work shall be subject to inspection and acceptance by the City at reasonable times during Consultant's performance. The Consultant shall provide and maintain a self-inspection system that is acceptable to the City.

8. Licenses; Materials. Consultant shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the Consultant. The City has no obligation to provide Consultant, its employees or subcontractors any business registrations or licenses required to perform the specific services set forth in this Agreement. The City has no obligation to provide tools, equipment or material to Consultant.

9. Performance Warranty. Consultant shall perform its services in accordance with generally accepted standards and practices customarily utilized by competent engineering firms in effect at the time Consultant's services are rendered. Consultant does not expressly or impliedly warrant or guarantee its services.

10. Indemnification. To the fullest extent permitted by law, the Consultant shall indemnify, defend and hold harmless the City and each council member, officer, employee or agent thereof (the City and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims"), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions, in connection with the work or services of the Consultant, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

11. Insurance.

11.1 General.

a. Insurer Qualifications. Without limiting any obligations or liabilities of Consultant, Consultant shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to ARIZ. REV. STAT. § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.

b. No Representation of Coverage Adequacy. By requiring insurance herein, the City does not represent that coverage and limits will be adequate to protect Consultant. The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Consultant from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

c. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.

d. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.

e. Primary Insurance. Consultant's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of the City as an Additional Insured.

f. Waiver. All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Consultant. Consultant shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

g. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. Consultant shall be solely responsible for any such deductible or self-insured retention amount.

h. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Consultant shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Section and insurance requirements set forth herein protecting the City and Consultant. Consultant shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

i. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Consultant will provide the City with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Consultant's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The City shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. In the event any insurance policy required by this Agreement is written on a "claims made" basis, coverage shall extend for two years past completion of the Services and the City's acceptance of the Consultant's work or services and as evidenced by annual certificates of insurance. If any of the policies required by this Agreement expire during the life of this Agreement, it shall be Consultant's responsibility to forward renewal certificates and declaration page(s) to the City 30 days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing the RFQ number and title or this Agreement. A \$25.00 administrative fee shall be assessed for all certificates or declarations received without the appropriate RFQ number and title or a reference to this Agreement, as applicable. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing the appropriate RFQ number and title or a reference to this Agreement, as applicable, will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

(1) The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

(a) Commercial General Liability – Under Insurance Services Office, Inc., ("ISO") Form CG 20 10 03 97 or equivalent.

(b) Auto Liability – Under ISO Form CA 20 48 or equivalent.

(c) Excess Liability – Follow Form to underlying insurance.

(2) Consultant's insurance shall be primary insurance as respects performance of the Agreement.

(3) All policies, except for Professional Liability, including Workers' Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Consultant under this Agreement.

(4) A 30-day advance notice cancellation provision. If ACORD certificate of insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

11.2 Required Insurance Coverage.

a. Commercial General Liability. Consultant shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you." If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

b. Vehicle Liability. Consultant shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Consultant's owned, hired and non-owned vehicles assigned to or used in the performance of the Consultant's work or services under this Agreement. Coverage will be at least as broad as ISO coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

c. Professional Liability. If this Agreement is the subject of any professional services or work, or if the Consultant engages in any professional services or work adjunct or residual to performing the work under this Agreement, the Consultant shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the

Services performed by the Consultant, or anyone employed by the Consultant, or anyone for whose negligent acts, mistakes, errors and omissions the Consultant is legally liable, with an unimpaired liability insurance limit of \$2,000,000 each claim and \$2,000,000 annual aggregate. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of the Services, and the Consultant shall be required to submit certificates of insurance and a copy of the declaration page(s) of the insurance policies evidencing proper coverage is in effect as required above.

d. Workers' Compensation Insurance. Consultant shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Consultant's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

11.3 Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or materially changed without 30 days' prior written notice to the City.

12. Applicable Law; Venue. In the performance of this Agreement, Consultant shall abide by and conform to any and all laws of the United States, the State of Arizona and the City of Avondale, including, but not limited to, federal and state executive orders providing for equal employment and procurement opportunities, the Federal Occupational Safety and Health Act and any other federal or state laws applicable to this Agreement. This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts in the State of Arizona.

13. Termination; Cancellation.

13.1 For City's Convenience. This Agreement is for the convenience of the City and, as such, may be terminated without cause after receipt by Consultant of written notice by the City. Upon termination for convenience, Consultant shall be paid for all undisputed services performed to the termination date.

13.2 For Cause. This Agreement may be terminated by either party upon 30 days' written notice should the other party fail to substantially perform in accordance with this Agreement's terms, through no fault of the party initiating the termination. In the event of such termination for cause, payment shall be made by the City to the Consultant for the undisputed portion of its fee due as of the termination date.

13.3 Due to Work Stoppage. This Agreement may be terminated by the City upon 30 days' written notice to Consultant in the event that the Services are permanently abandoned. In the event of such termination due to work stoppage, payment shall be made by the City to the Consultant for the undisputed portion of its fee due as of the termination date.

13.4 Conflict of Interest. This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511. The City may cancel this Agreement without penalty or further obligations by the City or any of its departments or agencies if any person significantly involved

in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City or any of its departments or agencies is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a consultant to any other party of the Agreement with respect to the subject matter of the Agreement.

13.5 Gratuities. The City may, by written notice to the Consultant, cancel this Agreement if it is found by the City that gratuities, in the form of economic opportunity, future employment, entertainment, gifts or otherwise, were offered or given by the Consultant or any agent or representative of the Consultant to any officer, agent or employee of the City for the purpose of securing this Agreement. In the event this Agreement is cancelled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Consultant an amount equal to 150% of the gratuity.

13.6 Agreement Subject to Appropriation. This Agreement is subject to the provisions of ARIZ. CONST. Art. IX, § 5 and ARIZ. REV. STAT. § 42-17106. The provisions of this Agreement for payment of funds by the City shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. The City shall be the sole judge and authority in determining the availability of funds under this Agreement and the City shall keep the Consultant fully informed as to the availability of funds for the Agreement. The obligation of the City to make any payment pursuant to this Agreement is a current expense of the City, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of the City. If the City Council fails to appropriate money sufficient to pay the amounts 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 Consultant shall be relieved of any subsequent obligation under this Agreement.

14. Miscellaneous.

14.1 Independent Contractor. The Consultant acknowledges and agrees that the Services provided under this Agreement are being provided as an independent contractor, not as an employee or agent of the City. Consultant, its employees and subcontractors are not entitled to workers' compensation benefits from the City. The City does not have the authority to supervise or control the actual work of Consultant, its employees or subcontractors. The Consultant, and not the City, shall determine the time of its performance of the services provided under this Agreement so long as Consultant meets the requirements of its agreed Scope of Work as set forth in Section 2 above. Consultant is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere. City and Consultant do not intend to nor will they combine business operations under this Agreement.

14.2 Laws and Regulations. The Consultant shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom the Consultant is responsible remains in compliance with all rules, regulations, ordinances, statutes or laws affecting the Services, including the following: (a) existing and future City and County ordinances and regulations, (b) existing and future state and federal laws and (c) existing and future Occupational Safety and Health Administration ("OSHA") standards.

14.3 Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the City and the Consultant.

14.4 Provisions Required by Law. Each and every provision of law and any clause required by law to be in the Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Agreement will promptly be physically amended to make such insertion or correction.

14.5 Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of the Agreement which may remain in effect without the invalid provision or application.

14.6 Relationship of the Parties. It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Consultant is advised that taxes or Social Security payments will not be withheld from any City payments issued hereunder and Consultant agrees to be fully and solely responsible for the payment of such taxes or any other tax applicable to this Agreement.

14.7 Entire Agreement; Interpretation; Parol Evidence. This Agreement represents the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting the Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.

14.8 Assignment. No right or interest in this Agreement shall be assigned by Consultant without prior, written permission of the City signed by the City Manager and no delegation of any duty of Consultant shall be made without prior, written permission of the City signed by the City Manager. Any attempted assignment or delegation by Consultant in violation of this provision shall be a breach of this Agreement by Consultant.

14.9 Subcontracts. No subcontract shall be entered into by the Consultant with any other party to furnish any of the material or services specified herein without the prior written approval of the City. The Consultant is responsible for performance under this Agreement whether or not subcontractors are used.

14.10 Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as waiver by the City of any existing or future right and/or remedy

available by law in the event of any claim of default or breach of this Agreement. The failure of the City to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the City's acceptance of and payment for services, shall not release the Consultant from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of this Agreement.

14.11 Attorneys' Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

14.12 Liens. All materials or services shall be free of all liens and, if the City requests, a formal release of all liens shall be delivered to the City.

14.13 Offset.

a. Offset for Damages. In addition to all other remedies at law or equity, the City may offset from any money due to the Consultant any amounts Consultant owes to the City for damages resulting from breach or deficiencies in performance or breach of any obligation under this Agreement.

b. Offset for Delinquent Fees or Taxes. The City may offset from any money due to the Consultant any amounts Consultant owes to the City for delinquent fees, transaction privilege taxes and property taxes, including any interest or penalties.

14.14 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the City: City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323
Attn: Charles P. McClendon, City Manager

With copy to: GUST ROSENFELD, P.L.C.
One East Washington Street, Suite 1600
Phoenix, Arizona 85004-2553
Attn: Andrew J. McGuire, Esq.

If to Consultant: Brown and Caldwell, Inc.
201 East Washington Street, Suite 500
Phoenix, Arizona 85004
Attn: Paul Conrow

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

14.15 Confidentiality of Records. The Consultant shall establish and maintain procedures and controls that are acceptable to the City for the purpose of ensuring that information contained in its records or obtained from the City or from others in carrying out its obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform Consultant's duties under this Agreement. Persons requesting such information should be referred to the City. Consultant also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Consultant as needed for the performance of duties under this Agreement.

14.16 Records and Audit Rights. Consultant's and its subcontractor's books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any Consultant and its subcontractors' employees who perform any work or services pursuant to this Agreement to ensure that the Consultant and its subcontractors are complying with the warranty under subsection 14.17 below (all of the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the City, to the extent necessary to adequately permit (A) evaluation and verification of any invoices, payments or claims based on Consultant's and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (B) evaluation of the Consultant's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in subsection 14.17 below. To the extent necessary for the City to audit Records as set forth in this subsection, Consultant and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the City shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the City to Consultant pursuant to this Agreement. Consultant and its subcontractors shall provide the City with adequate and appropriate workspace so that the City can conduct audits in compliance with the provisions of this subsection. The City shall give Consultant or its subcontractors reasonable advance notice of intended audits. Consultant shall

require its subcontractors to comply with the provisions of this subsection by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

14.17 E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Consultant and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Consultant's or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

14.18 Scrutinized Business Operations. Pursuant to ARIZ. REV. STAT. §§ 35-391.06 and 35-393.06, the Consultant certifies that it does not have scrutinized business operations in Sudan or Iran. For the purpose of this subsection the term "scrutinized business operations" shall have the meanings set forth in ARIZ. REV. STAT. § 35-391 or 35-393, as applicable. If the City determines that the Consultant submitted a false certification, the City may impose remedies as provided by law including terminating this Agreement pursuant to subsection 13.2 above.

14.19 Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of the Agreement, the Scope of Work, the Fee Proposal, the RFQ and the Consultant's SOQ, the documents shall govern in the order listed herein.

14.20 Non-Exclusive Contract. This Agreement is entered into with the understanding and agreement that it is for the sole convenience of the City. The City reserves the right to obtain like goods and services from another source when necessary.

14.21 Cooperative Purchasing. This Agreement shall be for the use of the City. In addition, specific eligible political subdivisions and nonprofit educational or public health institutions may also participate, at their discretion and with the agreement of the awarded Consultant. In order to participate in this Agreement, a political subdivision or nonprofit educational or public health institution must agree to the terms and conditions in the solicitation and the Consultant must be in agreement with the cooperative transaction. Any orders placed to the successful Consultant will be placed by the specific agencies participating in this purchase. Payment for purchases made under this Agreement will be the sole responsibility of each participating agency. The City shall not be responsible for any disputes arising out of transactions made by others.

[SIGNATURES ON FOLLOWING PAGES]

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

“City”

CITY OF AVONDALE, an Arizona
municipal corporation

Charles P. McClendon, City Manager

ATTEST:

Carmen Martinez, City Clerk

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on _____, 2011,
by Charles P. McClendon, the City Manager of the CITY OF AVONDALE, an Arizona
municipal corporation, on behalf of the City of Avondale.

Notary Public in and for the State of Arizona

(affix notary seal here)

EXHIBIT A
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
BROWN AND CALDWELL, INC.

[RFQ]

See following pages.

EXHIBIT B
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
BROWN AND CALDWELL, INC.

[Consultant's SOQ]

See following pages.

EXHIBIT C
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
BROWN AND CALDWELL, INC.

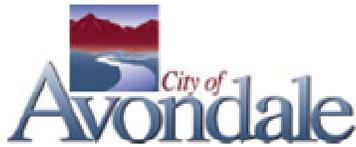
[Scope of Work]

See following pages.

EXHIBIT D
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
BROWN AND CALDWELL, INC.

[Fee Proposal]

See following page.



CITY COUNCIL REPORT

SUBJECT:

Cooperative Purchasing Agreement - Dell
Marketing Limited Partnership

MEETING DATE:

September 19, 2011

TO: Mayor and Council

FROM: Rob Lloyd, Chief Information Officer (623) 333-5011

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council approve a three-year agreement with Dell, Inc. for the purchase of replacement and special-use computers for all City departments in the amount of \$901,050 for the term of the contract and authorize the Mayor or City Manager or City Clerk to execute the necessary documents.

BACKGROUND:

The City's Technology Equipment Replacement funds support replacement of desktop and laptop computing equipment used by staff on a defined four-year lifecycle. Replacements are approved by Council as part of the City's budget. Fiscal Year 2011-12 replacements are detailed on pages 243-246 of the City's 2012 Annual Budget and Financial Plan. The requested purchase agreement will allow the Finance and Information Technology Departments to procure scheduled replacements and special use computers during the fiscal year.

DISCUSSION:

This purchase agreement will be used to execute the Technology Equipment Replacement Schedule as approved in the City's annual budget and as permitted by the availability of funds. For Fiscal Year 2011-12, replacements and carryovers from Fiscal Year 2010-11 total 351 desktop and laptop computers at a total of \$501,430. Fiscal Years 2012-13 and 2013-14 total \$254,560 and \$55,060, respectively. Additionally, staff requests approval of up to \$30,000 per year to handle unplanned requests from departments for specialized computers. Computers purchased outside of the Replacement Schedule are typically funded by the requesting department, or by grants. The City uses WSCA multi-state contract for advantageous pricing.

This request is for approval of a three year purchase agreement to match the approved budget plan for the duration of the Western States Contracting Alliance (WSCA) contract. The Finance and Information Technology departments work together to facilitate all computer purchases made by departments. Requests are held to the City's IT and procurement procedures for purchasing, asset tracking, and compatibility.

BUDGETARY IMPACT:

For Fiscal Year 2011-12 through 2013-14, annual expenditures amount to \$531,430, \$284,560, and \$85,060, respectively. The three-year total for desktop and laptop purchases is \$901,050. Expenditures will depend on allocation of funds by Council in the City's budget process and on supporting revenues existing to make purchases.

Fund	Division	Object	Project #	2012	2013	2014
530	5120	7085	IT5120	\$19,860	\$4,800	\$1,200
531	5120	7085	IT5120	\$10,800	\$2,400	-
532	5120	7085	IT5120	\$1,200	\$2,400	-
603	5120	7085	IT5120	\$208,870	\$163,200	\$14,400
				\$240,730	\$172,800	\$15,600
530	5120	7085	IT5120	\$11,160	-	\$3,720
531	5120	7085	IT5120	-	\$1,200	-
603	5120	7085	IT5120	\$104,240	\$72,960	\$16,740
				\$115,400	\$74,160	\$20,460
530	5120	7085	IT5120	\$57,000	\$7,600	-
531	5120	7085	IT5120	\$7,600	-	-
532	5120	7085	IT5120	\$7,600	-	-
603	5120	7085	IT5120	\$73,100	-	\$19,000
				\$145,300	\$7,600	\$19,000

	2012	2013	2014
Technology Equip. Replacements	\$501,430	\$254,560	\$55,060
Departmental Requests	\$30,000	\$30,000	\$30,000
Total by Year	\$531,430	\$284,560	\$85,060

3-Year Total	\$901,050
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RECOMMENDATION:

Staff recommends that City Council approve a three-year purchase agreement with Dell for the annual purchase of replacement and specialized computers for departments not to exceed a total of \$901,050, and authorize the Mayor or City Manager and City Clerk to execute the agreement.

ATTACHMENTS:

Click to download

[PA](#)

**COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
DELL MARKETING LIMITED PARTNERSHIP**

THIS COOPERATIVE PURCHASING AGREEMENT (this "Agreement") is entered into as of September 19, 2011, between the City of Avondale, an Arizona municipal corporation (the "City") and Dell Marketing Limited Partnership, a Texas limited partnership (the "Vendor").

RECITALS

A. After a competitive procurement process, the State of Minnesota entered into Contract Number B27160 with the Vendor to purchase computing system products and services (the "Minnesota Contract"). The Minnesota Contract is attached hereto as Exhibit A and incorporated herein by reference.

B. The State of Arizona entered into a Participating Addendum, Contract Number ADSPO10-00000010 with the Vendor to purchase computing system products and services on the terms and conditions of the Minnesota Contract (the "State Addendum"). The State Addendum is attached hereto as Exhibit B and incorporated herein by reference.

C. The City has determined that computing system products and services are required to replace outdated City computer equipment (the "Replacement Equipment").

D. The City is permitted, pursuant to Section 25-24 of the City Code, to purchase such materials under the Minnesota Contract and State Addendum, at its discretion and with the agreement of the awarded Vendor, and the Minnesota Contract and State Addendum permit its cooperative use by other public entities including the City.

E. The City and the Vendor desire to enter into this Agreement for the purpose of (i) acknowledging a cooperative contractual relationship under the Minnesota Contract and State Addendum, (ii) establishing the terms and conditions by which the Vendor may provide the City with the Replacement Equipment, as more particularly set forth in Section 2 below on an "as-required" basis and (iii) setting the maximum aggregate amount to be expended pursuant to this Agreement related to the Replacement Equipment.

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 City and the Vendor hereby agree as follows:

1. Term of Agreement. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until August 31, 2012 (the "Initial Term"), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement

or the Minnesota Contract and State Addendum. After the expiration of the Initial Term, this Agreement may be renewed for up to two successive one-year terms (each a “Renewal Term”) if (i) it is deemed in the best interests of the City, subject to availability and appropriation of funds for renewal in each subsequent year, (ii) the term of the Minnesota Contract and State Addendum has been extended pursuant to its renewal options, (iii) at least 30 days prior to the end of the then-current term of the Agreement, the Vendor requests, in writing, to extend the Agreement for an additional one-year term and (iv) the City approves the additional one-year term in writing (including any price adjustments approved as part of the Minnesota Contract and State Addendum), as evidenced by the City Manager’s signature thereon, which approval may be withheld by the City for any reason. The Vendor’s failure to seek a renewal of this Agreement shall cause the Agreement to terminate at the end of the then-current term of this Agreement; provided, however, that the City may, at its discretion and with the agreement of the Vendor, elect to waive this requirement and renew this Agreement. The Initial Term and any Renewal Term(s) are collectively referred to herein as the “Term.” Upon renewal, the terms and conditions of this Agreement shall remain in full force and effect.

2. Purchase of Replacement Equipment. This is an indefinite quantity and indefinite delivery Agreement for Replacement Equipment under the terms and conditions of the Minnesota Contract and State Addendum. The City does not guarantee any minimum or maximum number of purchases will be made pursuant to this Agreement. Purchases will only be made when the City identifies a need and proper authorization and documentation have been approved. For purchase(s) determined by the City to be appropriate for this Agreement, the Vendor shall provide the Replacement Equipment to the City in such quantities and configurations as may be agreed upon between the parties in writing, in the form of a written invoice, quote, work order or other form of written agreement between the parties describing the materials to be delivered (each, a “Equipment Order”). Each Equipment Order approved and accepted by the parties pursuant to this Agreement shall (i) contain a reference to this Agreement and the Minnesota Contract and State Addendum and (ii) be attached hereto as Exhibit B and incorporated herein by reference. Equipment Orders submitted without referencing this Agreement and the Minnesota Contract and State Addendum will be subject to rejection. By signing this Agreement, Vendor acknowledges and agrees that Equipment Order(s) containing unauthorized exceptions, conditions, limitations, or provisions in conflict with the terms of this Agreement or the Minnesota Contract and State Addendum, other than City’s project-specific requirements, are hereby expressly declared void and shall be of no force and effect.

2.1 Inspection; Acceptance. Replacement Equipment is subject to final inspection and acceptance by the City. Replacement Equipment failing to conform to the requirements of this Agreement and/or the Minnesota Contract and/or State Addendum will be held at Vendor’s risk and may be returned to the Vendor. If so returned, all costs are the responsibility of the Vendor. Upon discovery of non-conforming Replacement Equipment, the City may elect to do any or either of the following by written notice to the Vendor: (i) waive the non-conformance or (ii) bring Replacement Equipment into compliance and withhold the cost of same from any payments due to the Vendor.

2.2 Cancellation. The City reserves the right to cancel any Equipment Order(s) within a reasonable period of time after issuance. Should an Equipment Order be canceled, the City agrees to reimburse the Vendor but only for actual and documentable costs

incurred by the Vendor due to and after issuance of the Equipment Order. The City will not reimburse the Vendor for any costs incurred after receipt of City notice of cancellation, or for lost profits, shipment of product prior to issuance of Equipment Order, etc.

3. Compensation. The City shall pay Vendor an aggregate amount not to exceed \$530,000.00 during the City's Fiscal Year 2012, \$280,000.00 for Fiscal Year 2013 and \$100,000.00 for Fiscal Year 2014 for the Replacement Equipment at the unit rates as set forth in Minnesota Contract and State Addendum. The maximum aggregate amount for this Agreement shall not exceed \$910,000.00.

4. Payments. The City shall pay the Vendor monthly, based upon acceptance and delivery of Replacement Equipment, and upon submission and approval of invoices. Each invoice shall (i) contain a reference to this Agreement and the Minnesota Contract and the State Addendum and (ii) document and itemize all Replacement Equipment delivered and accepted to date. The invoice statement shall include a record of materials delivered, time expended and work performed in sufficient detail to justify payment. Additionally, invoices submitted without referencing this Agreement and the Minnesota Contract and the State Addendum will be subject to rejection and may be returned.

5. Scrutinized Business Operations. Pursuant to ARIZ. REV. STAT. §§ 35-391.06 and 35-393.06, the Vendor certifies that it does not have scrutinized business operations in Sudan or Iran. For the purpose of this subsection the term "scrutinized business operations" shall have the meanings set forth in ARIZ. REV. STAT. § 35-391 or 35-393, as applicable. If the City determines that the Vendor submitted a false certification, the City may impose remedies as provided by law including terminating this Agreement.

6. Conflict of Interest. This Agreement may be cancelled by the City pursuant to ARIZ. REV. STAT. § 38-511.

7. Applicable Law; Venue. In the performance of this Agreement, Vendor shall abide by and conform to any and all laws of the United States, the State of Arizona and the City of Avondale, including, but not limited to, federal and state executive orders providing for equal employment and procurement opportunities, the Federal Occupational Safety and Health Act and any other federal or state laws applicable to this Agreement. This Agreement shall be governed by the laws of the State of Arizona and a suit pertaining to this Agreement may be brought only in courts in Maricopa County, Arizona.

8. Agreement Subject to Appropriation. This Agreement is subject to the provisions of ARIZ. CONST. ART. IX, § 5 and ARIZ. REV. STAT. § 42-17106. The provisions of this Agreement for payment of funds by the City shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. The City shall be the sole judge and authority in determining the availability of funds under this Agreement and the City shall keep the Vendor fully informed as to the availability of funds for this Agreement. The obligation of the City to make any payment pursuant to this Agreement is a current expense of the City, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of the City. If the City Council fails to appropriate money sufficient to pay the amounts 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 Vendor shall be relieved of any subsequent obligation under this Agreement.

9. Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement, any City-approved Equipment Orders, invoices and the Minnesota Contract and the State Addendum, the documents shall govern in the order listed herein. Notwithstanding the foregoing, and in conformity with Section 2 above, unauthorized exceptions, conditions, limitations or provisions in conflict with the terms of this Agreement or the Minnesota Contract or the State Addendum (collectively, the “Unauthorized Conditions”), other than the City’s project-specific requirements, are expressly declared void and shall be of no force and effect. Acceptance by the City of any Equipment Order or invoice containing any such Unauthorized Conditions or failure to demand full compliance with the terms or conditions set forth in this Agreement or under the Minnesota Contract or the State Addendum or to exercise or delay the exercise of any right or remedy provided in this Agreement, the Minnesota Contract, State Addendum, or by law, or the City’s acceptance of and payment for Replacement Equipment shall not alter or relieve Vendor from, nor be construed or deemed a waiver of, its requirements and obligations imposed by this Agreement, the Minnesota Contract, State Addendum or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of this Agreement.

10. Indemnification; Insurance. The City shall be afforded all of the rights, privileges and indemnifications afforded to the Lead State, Participating Entities and its agencies and employees under the Minnesota Contract or to the State of Arizona under the State Addendum, and such rights, privileges and indemnifications shall accrue and apply with equal effect to the City under this Agreement including, but not limited to, the Contractor’s obligation to provide indemnification and insurance.

[SIGNATURES ON FOLLOWING PAGES]

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

“City”

CITY OF AVONDALE, an Arizona
municipal corporation

Charles P. McClendon, City Manager

ATTEST:

Carmen Martinez, City Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on _____, 2011,
by Charles P. McClendon, the City Manager of the CITY OF AVONDALE, an Arizona
municipal corporation, on behalf of the City of Avondale.

Notary Public in and for the State of Arizona

(affix notary seal here)

EXHIBIT A
TO
COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
DELL MARKETING LIMITED PARTNERSHIP

[Minnesota Contract]

See following pages.

WESTERN STATES CONTRACTING ALLIANCE
MASTER PRICE AGREEMENT
for
COMPUTER EQUIPMENT, PERIPHERALS, AND RELATED SERVICES

Number B27160

This Agreement is made and entered into by Dell Marketing L.P., One Dell Way, Mailstop 8708, Round Rock, TX 78682 ("Contractor") and the State of Minnesota, Department of Administration ("State") on behalf of the State of Minnesota, participating members of the National Association of State Procurement officials (NASPO), members of the Western States Contracting Alliance (WSCA) and other authorized Purchasing Entities.

RECITALS

WHEREAS, the State has the need to purchase and the Contractor desire to sell; and,

WHEREAS, the State has the authority to offer contracts to CPV members of the State of Minnesota and to other states.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

INTENT AND PURPOSE

The intent and purpose of this Agreement is to establish a contractual relationship with equipment manufacturers to provide, warrant, and offer maintenance services on **ALL** products proposed in their response to the RFP issued by the State of Minnesota. Delivery, support, warranty, and maintenance may be provided by the Contractor using subcontractors. The Contractor agrees to take responsibility for the warranty and maintenance of all products furnished under this Agreement. The Contractor is responsible for the timeliness and quality of all services provided by individual subcontractors. Subcontractor participation will be governed by individual Participating Entities, who have the sole discretion to determine if they will accept services from a subcontractor.

Individual Purchasing Entities may enter in to lease agreements for the products covered in this Master Price Agreement, if they have the legal authority to enter into these types of agreements without going through a competitive process. The Contractor submitted copies of its lease agreements with its response to the RFP. The lease agreements were not reviewed

or evaluated as part of the RFP evaluation process. The agreement is located in Exhibit D, Leasing.

The Agreement is **NOT** for the purchase of major, large hardware or hardware and software offerings. In general, individual units/configurations for servers and storage (SANs, etc.) should not exceed \$300,000 each. Desktop per unit/configuration costs should not exceed \$100,000. Printers of all types and monitors per unit/configuration costs should not exceed \$50,000 each. It is the expressed intent of some of the Participating States to set this level at not to exceed \$25,000 each, or \$50,000. Contractors must be willing to comply with these restrictions by agreeing to supply products in those price ranges only. This **IS NOT** a restriction on how many units/configurations can be purchased, but on the value of each individual unit/configuration. Individual Participating States and Participating Entities may set specific limits in a participating addendum above these limits, with the prior approval of the WSCA Directors; or may set specific limits in a participating addendum below these limits.

Contractors may offer, but participating states and entities do not have to accept, limited professional services related **ONLY** to the equipment and configuration of the equipment purchased through the Agreement.

1. Definitions

“Announced Promotional Price” are prices offered nationally to specific categories of customers (Consumer, Business or government) for defined time periods under predefined terms and conditions.

“Consumables” those items that are required for the operation of the Equipment offered or supplied which are consumed over time with the purchaser's use of the equipment are included – printer cartridges, batteries, projector bulbs, etc. Consumables such as magnetic media, paper and generally available office supplies are excluded.

“Configuration” in most instances in this document means a total system configuration. This may include more than one model or part number (or SKU), or a combination of hardware, software, and configuring of the system to make the system work.

“Contract” means a binding agreement for the procurement of items of tangible personal property or services. Contract and Master Price Agreement are used interchangeably in this document.

“Contractor” means the successful Responder who enters into a binding Master Price Agreement. The Contractor is responsible for all sales, support, warranty, and maintenance services for the products included in this Agreement. The Contractor must manufacture or take direct, non-assignable, legal responsibility for the manufacture of the equipment and warranty thereof. For the purposes of this Contract, the term Contractor and Contract Vendor are synonymous.

“CPV Member” is any governmental unit having independent policy making and appropriating authority, that is a member of Minnesota’s Cooperative Purchasing Venture (CPV) program.

“CPV Program.” The Cooperative Purchasing Venture (CPV) program, as established by Minn. Stat. § 16C.03, subd. 10, authorizes the commissioner of Administration to “enter into a cooperative purchasing agreement for the provision of goods, services, and utilities with [governmental entities] ..., as described in section 471.59, subdivision 1.” Based on this authority, the commissioner of Administration, through the Materials Management Division (MMD), enters into a joint powers agreement that designates MMD as the authorized purchasing agent for the governmental entity. It is not legal for governmental entities that are not members of the CPV program to purchase from a State contract. Vendors are free to respond to other solicitations with the same prices they offer under a contract, but that is not considered use of the “State contract price.”

“Cumulative Volume Discount” means a contractual, cumulative, permanent volume discount based on dollars resulting from the cumulative purchases by all governmental purchasers for the duration of the Master Price Agreement.

“Documentation” refers to manuals, handbooks, and other publications listed in the PSS, or supplied with products listed in the PSS, or supplied in connection with services. Documentation may be provided on magnetic media or may be downloaded from the Contractor’s web site.

“E-Rate” is a program sponsored by the Federal Communications Commission whereby educational and other qualifying institutions may purchase authorized technology at reduced prices.

“Educational Discount Price” means the price offered in a nationally announced promotion, which is limited to educational customers only.

“Equipment” means workstations, desktop, laptop (includes Tablet PC’s), handheld (PDA) devices, projectors, servers, printers, monitors, computing hardware, including upgrade components such as memory, storage drives, and spare parts. AUDIO VISUAL PRODUCTS (digital cameras, televisions, whiteboards, etc.) are NOT included in this RFP or subsequent contracts. The exception to this definition is whiteboards, which can be sold as part of the Instructional Bundles, but not as a stand-alone item.

“FCC” means the Federal Communications Commission or successor federal agency. In the event of deregulation, this term applies to one or more state regulatory agencies or other governing bodies charged to perform the same, or similar, role.

“General Price Reduction Price” means the Contractor retail price reduction offered to consumer, business or governmental purchasers. General Price reduction prices will be reflected in the PSS as soon as practical.

“Lead State” means the State conducting this cooperative solicitation and centrally administering any resulting Master Price Agreement(s). For this Master Price Agreement, the Lead State is Minnesota.

“Mandatory” The terms “must” and “shall” identify a mandatory item or factor.

“Manufacturer” means a company that, as its primary business function, designs, assembles, owns the trademark/patent and markets computer equipment including workstations, desktop computers, laptop (includes Tablet PC’s) computers, handheld (PDA) devices, servers, printers, and storage solutions/auxiliary storage devices. The manufacturer must provide direct un-infringed unlimited USA OEM warranties on the products. The manufacturer’s name(s) shall appear on the computer equipment. The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.

“Master Price Agreement” means the contract that MMD will approve that contains the foundation terms and conditions for the acquisition of the Contractor’s products and/or services by Purchasing Entities. The “Master Price Agreement” is a permissive price agreement. In order for a Purchase Entity to participate in a Master Price Agreement, the appropriate state procurement official or other designated procurement official must be a Participating State or Participating Entity.

“Materials Management Division” or “MMD” means the procurement official for the State of Minnesota or a designated representative.

“NASPO” means the National Association of State Procurement Officials

“Participating Addendum” or “Participating Addenda” means a bilateral agreement executed by the Contractor and a Participating State or political subdivision of a State that clarifies the operation of the price agreement for the State or political subdivision concerned, e.g. ordering procedures specific to a State or political subdivision and other specific language or other requirements. Terms and conditions contained in a Participating Addendum shall take precedence over the corresponding terms in the master price agreement. Additional terms and conditions, including but not limited to payment terms, may be added via the Participating Addendum. However, a Participating Addendum may not alter the scope of this Agreement or any other Participating Addendum. ***Unless otherwise specified, the Participating Addendum shall renew consecutively with the Master Price Agreement.*** One digitally formatted, executed copy of the Participating Addendum must be submitted to the WSCA/NASPO Contract Administrator PRIOR to any orders being processed.

“Participating State” or “Participating Entity” means a member of NASPO (Participating State) or a political subdivision of a NASPO member (Participating Entity) who has indicated its intent to participate by signing an Intent to Participate, where required, or another state or political subdivision of another state authorized by the WSCA Directors to be a party to the resulting Master Price Agreement.

“PDA” means a Personal Digital Assistant and refers to a wide variety of handheld and palm-size PCs, and electronic organizers. PDA's usually can store phone numbers, appointments, and to-do lists. PDA's can have a small keyboard, and/or have only a special pen that is used for input and output. The PDA can also have a wireless fax modem. Files can be created on a PDA which is later entered into a larger computer. NOTE: For this procurement, all Tablet PC's are NOT considered PDA's. The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.

“Peripherals” means any product that can be attached to, added within, or networked with personal computers or servers, including but not limited to storage, printers (including multifunction network printers), scanners, monitors, keyboards, projectors, uninterruptible power supplies and accessories. Software, as defined in the RFP, is not considered a peripheral. Adaptive/Assistive technology devices are included as well as configurations for education. Peripherals may be manufactured by a third party, however, Contractor shall not offer any peripherals manufactured by another contractor holding a Master Price Agreement without the prior approval of the WSCA/NASPO Contract Administrator. AUDIO VISUAL PRODUCTS (digital cameras, televisions, whiteboards, etc.) are NOT included in the contract. The exception to this definition is whiteboards, which can be sold as part of the Instructional Bundles, but not as a stand-alone item. The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.

“Permissive Price Agreement” means that placement of orders through the Price Agreement is discretionary with Purchasing Entities. They may satisfy their requirements through the Price Agreement without using statutory or regulatory procedures (e.g., invitations for bids) to solicit competitive bids or proposals. Purchasing Entities may, however, satisfy requirements without using the Price Agreement as long as applicable procurement statutes and rules are followed.

“Per Transaction Multiple Unit Discount” means a contractual volume discount based on dollars in a single purchase order or combination of purchase orders submitted at one time by a Purchasing Entity or multiple entities conducting a cooperative purchase.

“Political Subdivision” means local public governmental subdivisions of a state, as defined by that state's statutes, including instrumentalities and institutions thereof. Political subdivisions include cities, counties, courts, public schools and institutions of higher education.

“Price Agreement/Master Price Agreement” means an indefinite quantity contract that requires the Contractor to furnish products or services to a Purchasing Entity that issues a valid Purchase Order.

“Procurement Manager” means the person or designee authorized by MMD to manage the relationships with WSCA, NASPO, and Participating States/Participating

Entities.

“Product(s)” means personal computer equipment, peripherals, LAN hardware, pre-loaded Software, and Network Storage devices, but not unrelated services. The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.

“Products and Services Schedule Prices” or **“PSS”** refers to a complete list, grouped by major product and/or service categories, of the Products and services provided by the contractor that consists of an item number, item description and the Purchasing Entity's price for each Product or Service. All such Products and services shall be approved by the WSCA/NASPO Contract Administrator prior to being listed on a Contractor-supplied web site accessed via a URL. The Contractor(s) shall provide the warranty service and maintenance for all equipment listed on the PSS on a Master Price Agreement as well as a Takeback Program.

“Purchase Order” means an electronic or paper document issued by the Purchasing Entity that directs the Contractor to deliver Products or Services pursuant to a Price Agreement.

“Purchasing Entity” means a Participating State or another legal entity, such as a political subdivision, properly authorized by a Participating State to enter into a contract for the purchase of goods described in this solicitation. Unless otherwise limited by statute, in this solicitation or in a Participating Addendum, political subdivisions of Participating States are Purchasing Entities and authorized to purchase the goods and/or services described in this solicitation.

“Refurbished Products” are products that may have been powered on or used by another customer that have been fully retested, defective parts replaced, and repackaged to meet original factory specifications.

“Services” are broadly classed as installation/de-installation, maintenance, support, training, migration, and optimization of products offered or supplied under the Master Price Agreement. These types of services may include, but are not limited to: warranty services, maintenance, installation, de-installation, factory integration (software or equipment components), asset management, recycling/disposal, training and certification, pre-implementation design, disaster recovery planning and support, service desk/helpdesk, and any other directly related technical support service required for the effective operation of a product offered or supplied. General consulting and all forms of application development and programming services are excluded.

“Servicing Subcontractor/Subcontractor/Reseller Agent” means a Contractor authorized and state-approved subcontractor who may provide local marketing support or other authorized services on behalf of the Contractor in accordance with the terms and conditions of the Contractor's Master Price Agreement. A wholly owned subsidiary or other company providing warranty or other technical support services qualifies as a Servicing Subcontractor. Local business partners may qualify as Servicing Subcontractors. Servicing Subcontractors may not directly accept Purchase

Orders or payments for Products or Services from Purchasing Entities, unless otherwise provided for in a Participating Addendum. Servicing Subcontractors shall be named individually or by class in the Participating Addendum. **The Contractor(s) actually holding the Master Price Agreement shall be responsible for Servicing Subcontractor's providing products and services, as well as warranty service and maintenance for equipment the subcontractor has provided on a Master Price Agreement as well as the Takeback Program.**

"Standard Configurations" or **"Premium Savings Configurations (Packages)"** means deeply discounted standard configurations that are available to Purchasing Entities using the Master Price Agreement only. Any entity, at any time, that commits to purchasing the Premium Savings Configurations shall receive the same price from the contract awardees. This specification includes a commitment to maintain and upgrade (keep pace with the advance of technology) the standard configurations for a stated period of time or intervals.

"State Procurement Official" means the director of the central purchasing authority of a state.

"Storage Solution/Auxiliary Storage" means the technology and equipment used for storage of large amounts of data or information. This includes technologies such as: Network Attached Storage (NAS) and Storage Area Networks (SAN). **The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.**

"Takeback Program" means the Contractor's process for accepting the return of the equipment or other products at the end of life—as determined by the State utilizing the Master Price Agreement.

"Trade In" refers to the exchange of used Equipment for new Equipment at a price reduced by the value of the used Equipment.

"Travel" means expenses incurred by authorized personnel directly related to the performance of a Service. All such expenses shall be documented in a firm quotation for the Purchasing Entity prior to the issuance and acceptance of a Purchase Order. Travel expenses will be reimbursed in accordance with the purchasing entities allowances, if any, as outlined in the PA.

"Universal Resource Locator" or "URL" means a standardized addressing scheme for accessing hypertext documents and other services using the WWW browser.

"WSCA" means the Western States Contracting Alliance, a cooperative group contracting consortium for state procurement officials, representing departments, institutions, agencies, and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, and Wyoming.

“WSCA/NASPO Contract Administrator” means the person or designee authorized by MMD to manage all actions related to the Master Price Agreements on behalf of the State of Minnesota, the participating NASPO and WSCA members, and other authorized purchasers.

2. Scope of Work

The Contractor, or its approved subcontractor, shall deliver computing system Products and services to Purchasing Entities in accordance with the terms of this agreement. This Agreement is a “Master Price Agreement”. Accordingly, the Contractor shall provide Products or Services only upon the issuance and acceptance by Contractor of valid “Purchase Orders”. Purchase Orders may be issued to purchase the license for software or to purchase products listed on the Contractor’s PSS. A Purchasing Entity may purchase any quantity of Product or Service listed in the Contractor’s PSS at the prices in accordance the Paragraph 13, Price Guarantees. Subcontractor participation is governed by the individual Participating State procurement official.

The Contractor is required to provide and/or agree to take responsibility for the manufacturer’s warranty and maintenance of all proposed equipment, including peripherals. Taking responsibility means the Contractor will provide fulfillment of manufacturer’s warranty and maintenance and will provide warranty and maintenance call numbers, ensure manufacturer accepts, processes and responds to those calls, and Contractor shall take responsibility to fulfill warranty as purchased with product. The Contractor shall offer a Takeback Program for all products covered by this Agreement.

3. Title Passage

The Contractor must pass unencumbered title to any and all products purchased under this Contract upon receipt of product by the State. This obligation on the part of the Contractor to transfer all ownership rights does not apply to proprietary materials owned or licensed by the Contractor or its subsidiaries, subcontractors or licensor, or to unmodified commercial software that is available to the State on the open market. Ownership rights to such materials shall not be affected in any manner by this Agreement

4. Permissive Price Agreement and Quantity Guarantee

This Agreement is not an exclusive agreement. Purchasing Entities may obtain computing system Products and services from other sources during the agreement term. The State of Minnesota, NASPO and WSCA make no express or implied warranties whatsoever that any particular number of Purchase Orders will be issued or that any particular quantity or dollar amount of Products or Services will be procured.

5. Order of Precedence

Each Purchase Order that is accepted by the Contractor shall become a part of the Agreement as to the Products and services listed on the Purchase Order only; no additional terms or conditions will be added to this Agreement as the result of acceptance of a Purchase Order. The Contractor agrees to accept all valid Purchase Orders. In the event of any conflict among these documents, the following order of precedence shall apply:

- A. Executed Participating Addendum(s);
- B. Terms and conditions of this Agreement;
- C. Exhibits and amendments to this Agreement;
- D. The list of products and services contained in the purchase order;
- E. The request for proposals document; and
- F. Contractor's proposal including best and final offer.

6. Payment Provisions

All payments under this Agreement are subject to the following provisions:

A. Acceptance

A Purchasing Entity shall determine whether all Products and services delivered meet the Contractor's published specifications. No payment shall be made for any Products or Services until the Purchasing Entity has accepted the Products or Services. The Purchasing Entity will make every effort to notify the Contractor within fifteen (15) calendar days of non-acceptance of a product or service; otherwise the Products or Services shall be deemed accepted

B. Payment of Invoice

Payments shall be submitted to the Contractor at the address shown on the invoice, as long as the Contractor has exercised due diligence in notifying the State of Minnesota and/or the Purchasing Entity of any changes to that address. Payment shall be made within 30 days following receipt of an invoice. The ordering entity is not required to pay the Contractor for any goods and/or services provided without a written purchase order or other approved ordering document from the appropriate purchasing entity. In addition, all goods and/or services provided must meet all terms, conditions, and specifications of the Contract and other ordering document and be accepted as satisfactory by the ordering entity before payment will be issued. Payments may be made via a Purchasing Entity's "Purchasing Card" at the time of order placement only.

In the event an order is shipped incomplete (partial), the Purchasing Entity shall pay for each shipment as invoiced by the Contractor unless the Purchasing Entity has clearly specified "No Partial Shipments" on each Purchase Order.

C. Payment of Taxes

Payment of taxes for any money received under this agreement shall be the Contractor's sole responsibility and shall be reported under the Contractor's federal and state tax identification numbers. If a Purchasing Entity is not exempt from sales, gross receipts, or local option taxes for the transaction, the Contractor shall be reimbursed by the Purchasing Entity to the extent of any tax liability assessed.

The State of Minnesota State agencies are subject to paying Minnesota sales and use taxes. Taxes for State agencies will be paid directly to the Department of Revenue using Direct Pay Permit #1114.

D. Invoices

Invoices shall be submitted to the Purchasing Entity at the address shown on the Purchase Order. Invoices shall match the total amount for each configuration on the Purchase Order.

7. Agreement Term

Pursuant to Minnesota law, the term of this Agreement shall be effective upon the date of final execution by the State of Minnesota, through August 31, 2012. The Agreement may be mutually renewed for two (2) additional one-year terms, or one additional two-year term, unless terminated pursuant to the terms of this Agreement.

8. Termination

The following provisions are applicable in the event that the agreement is terminated.

A. Termination for Convenience

At any time, the State may terminate this agreement, in whole or in part, by giving the Contractor (30) days written notice; provided, however, neither the State nor a Purchasing Entity has the right to terminate a specific purchase order for convenience after it has been issued if the product is ultimately accepted. At any time, the Contractor may terminate this Agreement, in whole or in part, by giving the WSCA/NASPO Contract Administrator sixty (60) days written notice. Such termination shall not relieve the Contractor of warranty or other Service obligations incurred under the terms of this Agreement. In the event of a cancellation, the Contractor shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed and accepted.

B. Termination for Cause

Either party may terminate this Agreement for cause based upon material breach of this Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice the breaching party has not corrected the breach or, in the case of a breach that cannot be corrected in thirty (30) days, begun and proceeded in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

C. A Purchasing Entity's Rights

In the event this Agreement expires or is terminated for any reason, a Purchasing Entity shall retain its rights in all Products and services accepted

prior to the effective termination date.

D. The Contractor's Rights

In the event this Agreement expires or is terminated for any reason, a Purchasing Entity shall pay the Contractor all amounts due for Products and services ordered and accepted prior to the effective termination date or ordered before the effective termination date and ultimately accepted.

9. Non-Appropriation

The terms of this Agreement and any purchase order issued for multiple years under this Agreement is contingent upon sufficient appropriations being made by the Legislature or other appropriate governing entity. Notwithstanding any language to the contrary in this Agreement or in any purchase order or other document, a Purchasing Entity may terminate its obligations under this Agreement, if sufficient appropriations are not made by the governing entity at a level sufficient to allow for payment of the goods or services due for multiple year agreements, or if operations of the paying entity are being discontinued. The Purchasing Entity's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final and binding.

A Purchasing Entity shall provide sixty (60) days notice, if possible, of its intent to terminate for reason cited above. Such termination shall relieve the Purchasing Entity, its officers and employees from any responsibility or liability for the payment of any further amounts under the relevant Purchase Order.

10. Shipment and Risk of Loss

A. All deliveries shall be F.O.B. destination, prepaid and allowed, with all transportation and handling charges included in the price of the product and paid by the Contractor. Responsibility and liability for loss or damage shall remain with the Contractor as long as the Contractor designates the carrier, until delivery to the identified ship-to address, when responsibility shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations.

B. Whenever a Purchasing Entity does not accept Products due to missing, damaged, defective, incorrect order and returns them to the Contractor, all related documentation furnished by the Contractor shall be returned also. Unless otherwise agreed upon by the Purchasing Entity, the Contractor is responsible for the return shipping cost of returned Products. The Contractor shall bear all risk of loss or damage with respect to returned Products due to missing, damaged, defective and incorrect order, except for loss or damage directly attributable to the negligence of the Purchasing Entity.

C. Unless otherwise arranged between the Purchasing Entity and Contractor, all Products shall be shipped within 14 to 30 days after receipt of a purchase order, by a reliable and insured shipping company.

11. Warranties

A. The Contractor agrees to warrant and assume responsibility for each Product that it licenses, or sells, to the Purchasing Entity under this Agreement. The Contractor agrees to take legal responsibility for the warranty and maintenance of all products furnished through this Agreement. Taking responsibility means the Contractor will provide fulfillment of manufacturer's warranty and maintenance and will provide warranty and maintenance call numbers, ensure manufacturer accepts, processes, and responds to those calls. The Contractor acknowledges that the Uniform Commercial Code applies to this Agreement. In general, the Contractor warrants that:

1. The Product conforms to the specific technical information about the Contractor's products which is published in the Contractor's product manuals or data sheets, or as listed on Contractor's website.
2. The product will meet mandatory specifications provided in writing to the Contractor prior to reliance by the Participating Entity on the Contractor's skill or judgment when it advised the Purchasing Entity about the Product's ability to meet those mandatory specifications.
3. The Product will be suitable for the ordinary purposes for which such Product is intended,
4. The Product has been properly designed and manufactured for its intended use, and
5. The Product is free of significant defects in material and workmanship, or unusual problems about which the Purchasing Entity has not been warned.
6. The warranty on all Products begins on the date of the title transfer as described in Article 10.
7. Exhibit A contains additional warranties in effect as of the date of this Agreement. The warranties will be limited in duration to the time period(s) provided in Exhibit A. The warranties will not apply to use of a Product other than as anticipated and intended by the Contractor, to a problem arising after changes or modifications to the Products or operating system by any party other than the Contractor (unless expressly authorized in writing by the Contractor), or the use of a Product in conjunction or combination with other products or software not authorized by the Contractor. The following is a list of the warranties attached as **Exhibit A**:
 - a) **ProSupport for IT**
 - b) **ProSupport for End Users**
 - c) **CompleteCare**

B. Contractor may modify the warranties described in Exhibit A from time to time with the prior notice of the WSCA/NASPO Contract Administrator.

C. Warranty documents for Products manufactured by a third party shall be

delivered to the Purchasing Entity with the Products as provided by the Manufacturers.

D. The basic warranty offered shall be three year, next business day, as stated in Appendix B of the RFP, for all products included in the Bands listed in Article 14 Products and Services Schedule.

12. Patent, Copyright, Trademark and Trade Secret Indemnification

- A. The Contractor shall defend, at its own expense, the State of Minnesota, Participating and Purchasing Entities and their agencies against any claim that any Contractor Branded Product or Contractor Branded Service provided under this Agreement infringes any patent, copyright or trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against a Purchasing Entity based upon the Contractor's trade secret infringement relating to any Contractor Branded Product or Contractor Branded Service provided under this Agreement, the Contractor agrees to reimburse the Lead State for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the Lead State or Participating or Purchasing Entity shall:
1. Give the Contractor prompt written notice of any claim;
 2. Allow the Contractor to control the defense or settlement of the claim; and
 3. Cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.
- B. If any Products or Service becomes, or in the Contractor's opinion is likely to become the subject of a claim of infringement, the Contractor shall at its option and expense:
1. Provide a Purchasing Entity the right to continue using the Products or Services;
 2. Replace or modify the Products or Services so that it becomes non-infringing; or
 3. Accept the return of the Products or Service and refund an amount equal to the depreciated value of the returned Products or Service, less the unpaid portion of the purchase price and any other amounts, which are due to the contractor. The Contractor's obligation will be void as to any Products or Services modified by the Purchasing Entity to the extent such modification is the cause of the claim.
- C. The Contractor has no obligation for any claim of infringement arising from:
1. The Contractor's compliance with the Purchasing Entity's or by a third party on the Purchasing Entity's behalf designs, specifications, or instructions;

2. The Contractor's use of technical information or technology provided by the Purchasing Entity;
3. Product modifications by the Purchasing Entity or a third party;
4. Product use prohibited by Specifications or related application notes; or
5. Product use with products that are not the Contractor branded.
6. Non-Contractor Branded Product offerings – with respect to any claim that Non-Contractor Branded product(s) infringes upon another person's or entity's patent, copyright, trade secret or other intellectual property rights in the United States. Contractor agrees to pass through to the appropriate Purchasing Entity any rights to indemnification protection for which Contractor currently or subsequently has an agreement in place with the potentially infringing equipment manufacturer/entity.

13. Price Guarantees

The Purchasing Entities shall pay the lower of the prices contained in the PSS or an Announced Promotion Price, Educational Discount Price, General Price Reduction price, Trade-In price, Standard Configuration price or Per Transaction Multiple Unit Discount. Only General Price Reduction price decreases will apply to all subsequent Purchase Orders accepted by Contractor after the date of the issuance of the General Price Reduction prices.

The initial base-line, Cumulative, and Per Transaction Multiple Unit Discounts shall be submitted by the Contractor in a format agreeable to both parties prior to signing the Agreement. Once a cumulative volume has been reached, the increased price discount will apply to all future orders, until the next level of cumulative volume is reached.

14. Product and Service Schedule

The Contractor agrees to maintain the PSS in accordance with the following provisions:

- A. The PSS prices for Products and services will conform to the guaranteed prices discount levels on file with WSCA/NASPO Contract Administrator for the following Products:

- Band 1 – Servers
- Band 2 – Workstations
- Band 3 – Printers
- Band 4 – Storage Solutions
- Band 5 – PDAs
- Band 6 – Instructional Packages (Bundles)
- Band 7 – Monitors
- Operating Systems
- Local Area Networks

Digital Projectors

- B. The Contractor may change the price of any Product or Service at any time, based upon documented baseline price changes, but the guaranteed price discount levels shall remain unchanged during the agreed period unless or until prior approval is obtained from the WSCA/NASPO Contract Administrator. The Contractor agrees that the PSS on the State's administration website shall contain a single, uniform WSCA price for configurations and items. Failure to comply with this requirement will be grounds for further action to be taken against the Contractor.
- C. The Contractor may make model changes; add new Products, and Product upgrades or Services to the PSS in accordance with Item 15. Product Substitutions, below. The pricing for these changes shall incorporate, to the extent possible, comparable price discount levels approved by the WSCA/NASPO Contract Administrator for similar Products or Services.
- D. The Contractor agrees to delete obsolete and discontinued Products from the PSS on a timely basis.
- E. The Contractor shall maintain the PSS on a Contractor supplied Internet web site.

15. Product Substitutions

A. Substitution of units/configurations

MMD and the WSCA Directors acknowledge that individual units and configurations may stop being produced during the life of the resulting contracts. Substitution of different units and configurations will be permitted with the prior written approval of the WSCA/NASPO Contract Administrator. This substitution is at the sole discretion of the WSCA/NASPO Contract Administrator, subject only to review and approval of the WSCA/NASPO Contract Administrator.

B. Addition of units/configurations

MMD and the WSCA Directors acknowledge that with the evolution of technology, new, emerging units and configurations will develop. Addition of these new, emerging units may be permitted, with the prior approval of the WSCA/NASPO Contract Administrator and the WSCA Directors. The addition of new, emerging units and configurations is at the sole discretion of the WSCA/NASPO Contract Administrator, subject only to review and approval of the WSCA Directors.

16. Technical Support

The Contractor agrees to maintain a toll-free technical support telephone line. The line shall be accessible to Purchasing Entity personnel who wish to obtain competent technical assistance regarding the installation or operation of Products supplied by the

Contractor during a product warranty period or during a support agreement.

17. Takeback and Other Environmental Programs

The Contractor agrees to maintain for the term of this Agreement, and all renewals/extensions thereof, programs as described in the following paragraphs.

A. Takeback/Recycling of CPUs, servers, monitors, flat panel displays, notebook computers, and printers. Costs are list on the web site.

B. Environment: Compliance with the following standards: Blue Angel, EcoLogo, Energy Star, EPEAT (by level), Green Guard, Nordic Swan, and TCO.

C. Product labeling of compliance with Items B & C above, as well as a identification of such information on the web site.

18. Product Delivery

Contractor agrees to deliver Products to Purchasing Entities within 14-30 days after receipt of a valid Purchase Order, or in accordance with the schedule in the Purchasing Entity's Purchase Order.

19. Force Majeure

Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that performance of any such obligations is prevented or delayed by acts of God, war, riot , industry-wide constraints or other catastrophes beyond the reasonable control (each a "Force Majeure event") of the party unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party not performing due to a Force Majeure event under this provision must provide the other party prompt written notice of the Force Majeure event and take all necessary steps to bring about performance as soon as practicable.

20. Records and Audit

Per Minn. Stat. § 16C.05, Subd. 5, the books, records, documents, and accounting procedures and practices of the Contractor and its employees, agents, or subcontractors relevant to the Contract or transaction must be made available and subject to examination by the contracting agency or its agents, the Legislative Audit and/or the State Auditor for a minimum of six years after the end of the Contract or transaction.

Unless otherwise required by other than Minnesota Purchasing Entity governing law, such records relevant to other Purchasing Entity transactions shall be subject to examination by appropriate government authorities for a period of three years from the date of acceptance of the Purchase Order.

21. Independent Contractor

The Contractor and its agents and employees are independent contractors and are not employees of the State of Minnesota or of any participating entity. The Contractor has

no authorization, express or implied to bind the Lead State, NASPO, WSCA or any participating entity to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for the Lead State, NASPO, WSCA, or participating entity, except as expressly set forth herein. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the Lead State or Participating Entity as a result of this Agreement.

22. Use of Servicing Subcontractors

The Contractor may subcontract services and purchase order fulfillment and/or support in accordance with the following paragraphs. However, the Contractor shall remain solely responsible for the performance of this Agreement.

- A. Reseller Agent, Agent, Service Provider or Servicing Subcontractors shall be identified individually or by class in the applicable Participating Addendum, or as noted in the Participating Addendum on the Purchasing Entities extranet site. The ordering and payment process for Products or Services shall be defined in the Participating Addendum.

23. Payments to Subcontractors

In the event the Contractor hires subcontractors to perform all or some of the duties of this Contract, the Contractor understands that in accordance with Minn. Stat. § 16A.1245 the Contractor shall, within ten (10) days of the Contractor's receipt of payment from the State, pay all subcontractors and suppliers having an interest in the Contract their share of the payment for undisputed services provided by the subcontractors or suppliers. The Contractor is required to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid, undisputed balance of \$100 or more will be \$10. For an unpaid balance of less than \$100, the amount will be the actual penalty due. A subcontract that takes civil action against the Contractor to collect interest penalties and prevails will be entitled to its costs and disbursements, including attorney's fees that were incurred in bringing the action. The Contractor agrees to take all steps necessary to comply with said statute. A consultant is a subcontractor under this Contract. In the event the Contractor fails to make timely payments to a subcontractor, the State may, at its sole option and discretion, pay a subcontractor or supplier any amounts due from the Contractor and deduct said payment from any remaining amounts due the Contractor. Before any such payment is made to a subcontractor or supplier, the State shall provide the Contractor written notice that payment will be made directly to a subcontractor or supplier. If there are not remaining outstanding payments to the Contractor, the State shall have no obligation to pay or to see to the payment of money to a subcontractor except as may otherwise be required by law.

The Contractor shall ensure that the subcontractor transfers all intellectual or industrial

property rights, including but not limited to any copyright it may have in the work performed under this Contract, consistent with the intellectual property rights and ownership sections of this Contract. In the event the Contractor does not obtain the intellectual property rights of the subcontractor consistent with the transfer of rights under this Contract, the State may acquire such rights directly from the subcontractor. Any and all costs associated with such a direct transfer may be deducted from any amount due the Contractor.

24. Indemnification, Hold Harmless and Limitation of Liability

- A. The Contractor shall hold the Lead State, Participating Entities and its agencies and employees harmless and shall indemnify the Lead State, Participating Entities and its agencies and employees against any and all claims, suits, actions, liabilities and costs of any kind, including reasonable attorney's fees for personal injury or damage to real property or tangible personal property arising from the negligent or willful acts or omissions of the Contractor, its agents, officers, employees or subcontractors. The State agrees that the Contractor, its principals, members and employees shall not be liable to the State for any actions, damages, claims, liabilities, costs, expenses, or losses in any way arising out of or relating to the goods provided or services performed hereunder for an aggregate amount in excess of \$2,000,000.
- B. Contractor shall not be liable for damages that are the result of negligence by the Lead State, Participating Entity, or its employees. To the maximum extent permitted by applicable state law, Purchasing Entities agree to be responsible for their own acts, errors, or omissions pertaining to this indemnification provision.
- C. Additional representations

For acquisition of Services, the following additional terms shall apply. To the extent permitted by law, a Participating Entity accepts responsibility for and represents and warrants that: (a) the Participating Entity has obtained the appropriate license, intellectual property rights, or any other permissions required to support any Service Description, SOW, or Technical Specification Form signed by the Parties, or Contractor's performance of the Services, including the right to make any copies or Reproductions of any Participating Entity-provided software, (b) the Participating Entity's representations regarding the existence of an export license or the eligibility for export of software without a license are accurate, or (c) that Contractor shall not be held liable for the effect (if any) on the Participating Entity's third-party product warranties caused by having Contractor perform services on such third-party Products. The Contractor's liability under the contract for any cause whatsoever shall be limited to an aggregate amount of \$2,000,000. The foregoing limitation does not apply to Articles 12 and 24 A through 24 C of this Agreement or to damages resulting from personal injury caused by the Contractor's negligence. In no event shall the Contractor be liable for any indirect, special, punitive, or consequential damages arising out of this Agreement or the use of the Products or Services purchased by the Purchasing Entity hereunder.

25. Amendments

Contract amendments shall be negotiated by the State with the Contractor whenever necessary to address changes in the terms and conditions, costs, timetable, or increased or decreased scope of work. This Agreement shall be amended only by written instrument executed by the parties. An approved Contract amendment means one approved by the authorized signatories of the Contractor and the State as required by law.

26. Scope of Agreement

This Agreement incorporates all of the agreements of the parties concerning the subject matter of this Agreement. No prior agreements, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

27. Severability

If any provision of this Contract, including items incorporated by reference, is found to be illegal, unenforceable, or void, by a court of competent jurisdiction then both the State and the Contractor shall be relieved of all obligations arising under such provision. If the remainder of this Contract is capable of performance, it shall not be affected by such declaration or finding and shall be fully performed.

28. Enforcement of Agreement/Waivers

- A. No covenant, condition, duty, obligation, or undertaking contained in or made a part of this Contract shall be waived except by the written consent of the parties. Forbearance or indulgence in any form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the other party. Until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and undertakings, the other party shall have the right to invoke any remedy available under law or equity, notwithstanding any such forbearance or indulgence.
- B. Waiver of any breach of any provision of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties hereto.
- C. Neither party's failure to exercise any of its rights under this Contract will constitute or be deemed a waiver or forfeiture of those rights.

29. Web Site Maintenance

- A. The Contractor agrees to maintain and support an Internet website linked to the State's administration website for access to the PSS, service selection assistance, problem resolution assistance, billing concerns, configuration assistance, Product descriptions, Product specifications and other aids described in the RFP, and/or in accordance with instructions provided by the WSCA/NASPO Contract Administrator. The Contractor agrees that the

approved PSS on the State's administration website shall contain a single, uniform WSCA price for configurations and items. Failure to comply with this requirement will be grounds for further action to be taken against the Contractor.

- B. The Contractor agrees to maintain and support Participating State and Entity Internet websites for access to the specific Participating Entity PSS, as well as all other items listed in Item 29A. above. The website shall have the ability to hold quotes for 45 days, as well as the ability to change the quote.
- C. The Contractor may provide electronic commerce assistance for the electronic submission of Purchase Orders, purchase order tracking and reports.
- D. Once the website is approved, the Contractor may not make changes to the website without notifying the WSCA/NASPO Contract Administrator and receiving written approval of the changes.

30. Equal Opportunity Compliance

The Contractor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the state in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Contractor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by the contractor under this Agreement. If the Contractor is found to be not in compliance with these requirements during the life of this Agreement, the Contractor agrees to take appropriate steps to correct these deficiencies.

The Contractor certifies that it will remain in compliance with Minn. Stat. § 363.073 during the life of the Contract.

31. Governing Law

This Agreement shall be governed and construed in accordance with the laws of the Lead State. The construction and effect of any Participating Addendum or order against this Agreement shall be governed by and construed in accordance with the laws of the Purchasing Entity's state. Venue for any claim, dispute or action concerning the construction and effect of the Agreement shall be in the Lead State. Venue for any claim, dispute or action concerning an order placed against this Agreement or the effect of a Participating Addendum or shall be in the Purchasing Entity's state.

32. Change in Contractor Representatives

Contractor shall appoint a primary representative to work with the WSCA/NASPO Contract Administrator to maintain, support and market this Agreement. The Contractor shall notify the WSCA/NASPO Contract Administrator of changes in any

Contractor key personnel, in writing, and in advance if possible. The State reserves the right to require a change in Contractor's then-current primary representative if the assigned representative is not, in the opinion of the State, adequately serving the needs of the Lead State and the Participating Entities.

33. Release

The Contractor, upon final payment of the amount due under this Agreement, releases the Lead State and Participating Entities, its officers and employees, from all contractual liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the Lead State or any Participating Entity to any obligation, unless the Contractor has express written authority to do so, and then only within the strict limits of the authority.

34. Data Practices

A. The Contractor and the State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13 (and where applicable, if the state contracting party is part of the judicial branch, with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) as it applies to all data provided by the State to the Contractor and all data provided to the State by the Contractor. In addition, the Minnesota Government Data Practices Act applies to all data created, collected, received, stored, used, maintained or disseminated by the Contractor in accordance with this Contract that is private, nonpublic, protected nonpublic, or confidential as defined by the Minnesota Government Data Practices Act, Ch. 13 (and where applicable, that is not accessible to the public under the Rules of Public Access to Records of the Judicial Branch).

B. In the event the Contractor receives a request to release the data referred to in this article, the Contractor must immediately notify the State. The State will give the Contractor instructions concerning the release of the data to the requesting party before the data is released. The civil remedies of Minn. Stat. § 13.08, apply to the release of the data by either the Contractor or the State.

C. The Contractor agrees to indemnify, save, and hold the State of Minnesota, its agents and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation of any provision of the Minnesota Government Data Practices Act (and where applicable, the Rules of Public Access to Records of the Judicial Branch), including legal fees and disbursements paid or incurred to enforce this provision of the Contract. In the event that the Contractor subcontracts any or all of the work to be performed under the Contract, the Contractor shall retain responsibility under the terms of this paragraph for such work.

35. Organizational Conflicts of Interest

- A. The Contractor warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are not relevant facts or circumstances which could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons:
- a Contractor is unable or potentially unable to render impartial assistance or advice to the State;
 - the Contractor's objectivity in performing the work is or might be otherwise impaired; or
 - the Contractor has an unfair competitive advantage.
- B. The Contractor agrees that if an organizational conflict of interest is discovered after award, an immediate and full disclosure in writing shall be made to the Assistant Director of the Department of Administration's Materials Management Division that shall include a description of the action the Contractor has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the State may, at its discretion, cancel the Contract. In the event the Contractor was aware of an organizational conflict of interest prior to the award of the Contract and did not disclose the conflict to the WSCA/NASPO Contract Administrator, the State may terminate the Contract for default. The provisions of this clause shall be included in all subcontracts for work to be performed, and the terms "Contract," "Contractor," and "WSCA/NASPO Contract Administrator" modified appropriately to preserve the State's rights.

36. Replacement Parts

Unless otherwise restricted in a Participating Addendum or maintenance service agreement, replacement parts may be manufacturer-certified refurbished parts carrying USA OEM warranties.

37. FCC Certification

The Contractor agrees that Equipment supplied by the Contractor meets all applicable FCC Certifications. Improper, falsely claimed or expired FCC certifications are grounds for termination of this Agreement for cause.

38. Site Preparation

A Purchasing Entity shall prepare and maintain its site in accordance with written instructions furnished by the Contractor prior to the scheduled delivery date of any Products and shall bear the costs associated with the site preparation.

39. Assignment

The Contractor shall not sell, transfer, assign, or otherwise dispose of this Contract or

any portion hereof or of any right, title, or interest herein without the prior written consent of the State's authorized agent. Such consent shall not be unreasonably withheld. The Contractor shall give written notice to the State's authorized agent of such a possibility at least 30 days prior to the sale, transfer, assignment, or other disposition of this Contract. Failure to do so may result in the Contractor being held in default. This consent requirement includes reassignment of this Contract due to a change in ownership, merger, or acquisition of the Contractor or its subsidiary or affiliated corporations. This section shall not be construed as prohibiting the Contractor's right to assign this Contract to corporations to provide some of the services hereunder. Notwithstanding the foregoing acknowledgment, the Contractor shall remain solely liable for all performance required and provided under the terms and conditions of this Contract.

40. WSCA/NASPO Contract Administrator

The State shall appoint an WSCA/NASPO Contract Administrator whose duties shall include but not be limited to the following:

- A. The WSCA/NASPO Contract Administrator may provide instructions concerning the contents of the Contractor's website.
- B. The WSCA/NASPO Contract Administrator will facilitate dispute resolution between the Contractor and Purchasing Entities. Unresolved disputes shall be presented to the State for resolution.
- C. The WSCA/NASPO Contract Administrator shall promote and support the use of this Agreement by NASPO members and other Participating Entities.
- D. The WSCA/NASPO Contract Administrator shall advise the State regarding the Contractor's performance under the terms and conditions of this Agreement.
- E. The WSCA/NASPO Contract Administrator shall receive and approve quarterly price agreement utilization reports and the administration fee payments.
- F. The WSCA/NASPO Contract Administrator shall periodically verify the Product and Service prices in the PSS conform to the Contractor's volume price and other guarantees. The WSCA/NASPO Contract Administrator may require the Contractor to perform web site audits to accomplish this task.
- G. The WSCA/NASPO Contract Administrator shall conduct annual Contractor performance reviews.
- H. The WSCA/NASPO Contract Administrator shall maintain an Agreement administration website containing timely and accurate information.

41. Survival

The following rights and duties of the State and Contractor will survive the expiration or cancellation of the resulting Contract. These rights and duties include, but are not limited to Paragraph 12. Patent, Copyright, Trademark and Trade Secret Indemnification; Paragraph 20. Records and Audit; Paragraph 24. Indemnification,

Hold Harmless, and Limitation of Liability; Paragraph 31, Governing Law; Paragraph 34. Data Practices; and Paragraph 52. Right to Publish.

42. Succession

This Agreement shall be entered into and be binding upon the successors and assigns of the parties.

43. Notification

A. If one party is required to give notice to the other under the Contract, such notice shall be in writing and shall be effective upon receipt. Delivery may be by certified United States mail or by hand, in which case a signed receipt shall be obtained. A facsimile transmission shall constitute sufficient notice, provided the receipt of the transmission is confirmed by the receiving party. Either party must notify the other of a change in address for notification purposes. All notices shall be addressed as follows:

To MMD:

Department of Administration
Materials Management Division
Bernadette Kopischke, CPPB
Acquisitions Supervisor
50 Sherburne Avenue
112 State Administration Building
St. Paul, MN 55155
Fax: 651.297.3996
Email: bernie.kopischke@state.mn.us

To Contractor:

Dell Marketing L.P.
Attention: Public Contracts
Stephanie D. Shipp
One Dell Way, RR8-8707
Round Rock, TX 78682
Email: stephanie_shipp@dell.com

44. Reporting and Fees

A. Administration Reporting and Fees

1. The Contractor agrees to provide monthly utilization reports to the WSCA/NASPO PC Contracts Reporting person and the WSCA/NASPO Contract Administrator by the 15th of the month following the end of the previous month. (Ex. Purchases during January are reported by the 15th of February; purchases made during February are reported by the 15th

of March; etc.). The report shall be in the format developed by the Lead State and supplied to the Contractor.

2. The Contractor agrees to provide quarterly Administrative Fee check payable to WSCA/NASPO for an amount equal to one-twentieth of one percent (0.0005) of the net sales for the period. The form to be submitted with the check, as well as the mailing address, has been supplied to the Contractor. Payment shall be made in accordance with the following schedule:

<u>Period End</u>	<u>Fee Due</u>
June 30	July 31
September 30	October 31
December 31	January 31
March 31	April 30

3. The Contractor agrees to include all Reseller Agent sales in the monthly utilization reports described above. In addition, the Contractor agrees to provide a supplemental Reseller Agent utilization report of the net sales for the period subtotaled by Purchasing Entity name, within Purchasing Entity state name by Reseller Agent Name.
4. The Contractor agrees to provide with the utilization report as well as a supplemental report of the number and type of units taken back in a format to be mutually agreed to. Contractor agrees to add EPEAT and/or Energy Start environmental information to utilization reports as the information becomes available as consumable reporting data.
5. The utilization reports shall be submitted to the WSCA/NASPO PC Contracts Reporting person and the WSCA/NASPO Contract Administrator via electronic mail in a Microsoft Excel spreadsheet format, or other methods such as direct access to Internet or other databases.
6. If requested by the WSCA/NASPO Contract Administrator, the Contractor agrees to provide supporting Purchase Order detail records on mutually agreed magnetic media in a mutually agreed format. Such request shall not exceed twelve per year.
7. The failure to file the utilization reports and fees on a timely basis shall constitute grounds for the removal of the Contractor's primary representative, suspension of this Agreement or termination of this Agreement for cause.
8. The WSCA/NASPO Contract Administrator shall be allowed access to all reports from all Purchasing Entities.

B. Participating Entity Reports and Fees

1. Participating Entities may require an additional fee be paid directly to the State on purchases made by Purchasing Entities within that State. For all such requests, the fee level, payment method and schedule for such reports and payments shall be incorporated in to the Participating Addendum that is made a part of this Agreement. The Contractor may adjust PSS pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of that State. All such agreements shall have no affect whatsoever on the WSCA fee or the prices paid by the Purchasing Entities outside the jurisdiction of the State requesting the additional fee.

2. Purchasing Entities will be encouraged to use the reporting format developed by the lead State for their reporting needs. However, the Contractor agrees to provide additional reports to Purchasing Entities upon agreement by both parties as to the content and delivery methods of the report. Methods of delivery may include direct access to Internet or other databases.

3. Each State Purchasing Entity shall be allowed access to reports from all entities within that State.

45. Default and Remedies

- A. Any of the following shall constitute cause to declare this Agreement or any order under this Agreement in default:
1. Nonperformance of contractual requirements; or
 2. A material breach of any term or condition of this Agreement.
- B. A written notice of default, and an opportunity to cure within 30days of the written notification, shall be issued by the party claiming default, whether the Lead State (in the case of breach of the entire Agreement), a Participating Entity (in the case of a breach of the participating addendum), the Purchasing Entity (with respect to any order), or the Contractor. Time allowed for cure shall not diminish or eliminate any liability for liquidated or other damages.
- C. If the default remains after the opportunity for cure, the non-defaulting party may:
1. Exercise any remedy provided by law or equity;
 2. Terminate the Agreement, a Participating Addendum, or any portion thereof, including any Purchase Orders issued against the Agreement;
 3. Impose liquidated damages, as specified in a Participating Addendum;
 4. In the case of default by the Contractor, and to the extent permitted by the law of the Participating State or Purchasing Entity, suspend Contractor from receiving future solicitations.
 5. Charge the defaulting Contractor the full increase in cost and administrative handling to purchase the equivalent product or equivalent

service from another Contractor.

D. The MMD reserves the right, upon approval of the WSCA Directors, to develop and implement a step-by-step process to deal with Contractor failure to perform issues.

46. Audits

A. Website Audits

The Contractor agrees to assist the WSCA/NASPO Contract Administrator or designee with web site Product and pricing audits based on mutually acceptable procedures, described in **Exhibit E**, Audit Guidelines. The Contractor will review web pricing on a monthly basis to ensure discounts continue to be equal to or better than those required by the Agreement.

1. The product audit will closely monitor the products and services listed on the website to insure they comply with the approved products and services. The addition of products or services not approved by the WSCA/NASPO Contract Administrator will not be tolerated and may be considered a material breach of this Agreement.

B. Sales Audits

The Contractor further agrees to perform sales audits based on the sample formulas described in **Exhibit E**, Audit Guidelines.

C. Upon request, the Contractor agrees to assist Participating Entities with invoice audits to ensure that the Contractor is complying with this Agreement in accordance with mutually agreed procedures set forth in the Participating Addendum.

47. Extensions

If specifically authorized by provision in a Participating Addendum, Contractor may, at the sole discretion of Contractor and in compliance with the laws of the Participating State, offer Products and services to non-profit organizations, private schools, Native American governmental entities, government employees and students within the governmental jurisdiction of the entity completing the Participating Addendum with the understanding that the governmental entity has no liability whatsoever concerning payment for products or services.

48. Sovereign Immunity

The State does not waive its sovereign immunity by entering into this Contract and fully retains all immunities and defenses provided by law with regard to any action based on this Contract.

49. Ownership

A. Ownership of Documents/Copyright. Any reports, studies, photographs,

negatives, or other documents, whether in tangible or electronic forms, prepared by the Contractor in the performance of its obligations under the Contract and paid for by the State shall be the exclusive property of the State and all such material shall be remitted to the State by the Contractor upon completion, termination or cancellation of the Contract. The Contractor shall not use, willingly allow or cause to allow such material to be used for any purpose other than performance of the Contractor's obligations under the Contract without the prior written consent of the State.

- B. **Rights, Title and Interest.** All rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trade marks, and service marks in the said documents that the Contractor conceives or originates, either individually or jointly with others, which arise out of the performance of the Contract, will remain the property of the Contractor. Where applicable, works of authorship created by the Contractor, specifically for the State shall be considered "works for hire" as defined in the U.S. Copyright Act. Nothing in the Agreement shall be construed as transferring any right, title, or interest in any of the Contractor's or their third party's confidential information, trademarks, copyrights, intellectual property or other proprietary interest.

50. Prohibition Against Gratuities

- A. The State may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this Contract if it is found by the State that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor or any employee, agent, or representative of the Contractor to any officer or employee of the State with a view toward securing this Contract, or securing favorable treatment with respect to the award or amendment of this Contract, or the making of any determinations with respect to the performance of this Contract.
- B. The Contractor certifies that no elected or appointed official or employee of the State has benefited or will benefit financially or materially from this Contract. This Contract may be terminated by the State if it is determined that gratuities of any kind were either offered to or received by any of the aforementioned individuals from the Contractor, its agent, or its employees.

51. Antitrust

By entering into a Contract, the Contractor agrees to consider, in the Contractor's discretion, all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the State, relating to the particular goods or services purchased or acquired by the State under said Contract. For any cause of action taken herein by Contractor, the State, at the State's discretion, may participate in any such action. In the event that Contractor desires to participate in such action, the Contractor shall not oppose the State's request to join such action so long as the interests/positions of the State are not adverse to the interests/positions of the Contractor.

52. Right to Publish

- A. Any publicity given to the program, publications or services provided resulting from the Contract, including but not limited to notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor, or its employees individually or jointly with others, or any subcontractors or resellers shall identify the State as the sponsoring agency and shall not be released, unless such release is a specific part of an approved work plan included in the Contract prior to its approval by the WSCA/NASPO Contract Administrator.
- B. The Contractor shall not make any representations of the State's opinion or position as to the quality or effectiveness of the products and/or services that are the subject of this Contract without the prior written consent of the WSCA/NASPO Contract Administrator. Representations include any publicity, including but not limited to advertisements, notices, press releases, reports, signs, and similar public notices.

53. Performance While Dispute is Pending

Notwithstanding the existence of a dispute, the parties shall continue without delay to carry out all of their responsibilities under this Contract that are not affected by the dispute. If a party fails to continue without delay to perform its responsibilities under this Contract, in the accomplishment of all undisputed work, any additional cost incurred by the other parties as a result of such failure to proceed shall be borne by the responsible party.

54. Hazardous Substances

To the extent that the goods to be supplied to the Purchasing Entity by the Contractor contain or may create hazardous substances, harmful physical agents as set forth in applicable State and federal laws and regulations, the Contractor must provide the Purchasing Entity, upon request, with Material Safety Data Sheets regarding those substances (including mercury).

55. Customer Satisfaction/Complaint Resolution

- A. The Contractor's process for resolving complaints concerning products, support, and billing problems is attached as **Exhibit B**.
- B. The Contractor will survey its customers in each Participating State approximately two (2) months prior to the annual meeting with the Contract Administrator using, at a minimum, the survey questions provided by the State.

56. Value Added Services

The Contractor is expected to provide such services as installation, training, and software imaging upon request of the Purchasing Entity. Additional Value Added Services offered by the Contractor are attached as **Exhibit C**.

57. E-Rate Program

The Contractor's E-Rate identification number is: #143004340.

E-Rate eligibility depends upon who uses the equipment, how it is used and where it is located. In general terms, equipment located on school property and that is necessary for e-mail and Internet access in classrooms is eligible for E-Rate support.

The Contractor shall make every effort to continue its involvement in this program and to add products as applicable.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date of execution by the State of Minnesota Commissioner of Administration, below.

1. DELL MARKETING L.P.

The Contractor certifies that the appropriate person(s) have executed this Agreement on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

By: Stephanie D. Shipp Stephanie D. Shipp

Title: Contract Strategist

Date: June 11, 2009

By: Jane McKenzie Jane McKenzie

Title: Senior Manager Contracts

Date: June 11, 2009

2. MATERIALS MANAGEMENT DIVISION

In accordance with Minn. Stat. § 16C.03, Subd. 3.

By: Bernadette Kopischke

Title: Acquisitions Supervisor

Date: 6/15/09

3. COMMISSIONER OF ADMINISTRATION

Or delegated representative.

By: Brenda Willard

Date:

Original signed

JUN 15 2009

By Brenda Willard

EXHIBIT A – ADDITIONAL WARRANTIES

ProSupport for IT

Designed for IT Professionals and customers with their own helpdesk/service desk facilities, ProSupport for IT has stripped out the duplication that can occur with basic support packages and delivers the elements that IT professionals need, including the entitlement for your certified IT staff to receive Dell training and accreditation in order to qualify for Fast Track Dispatch. Also NASPO/WSCA's staff benefit from:

- Entitlement to enroll in Fast Track dispatch for Dell certified Customer Technicians
- Direct Access to Dell Expert Centers
- 24x7 Expert Center Support:

ProSupport for End Users

Designed for Customers with limited or no internal IT resource, ProSupport for end-users provides support in the areas that end-users typically encounter issues. The service is available 24 x 7. ProSupport for End Users also gives "Getting started" advice such as remote configuration or set up assistance associated with simple networks (including wired and wireless networks) and configuration assistance with common task small business applications such as:

- Symantec Endpoint Protection
- Microsoft Office
- Microsoft SBS
- QuickBooks
- Adobe Photoshop
- Adobe Acrobat

Service Options

1. Speed of Service Response

Mission Critical

The Mission Critical option includes either a 4 hour or 8 hour response, with the option of a 2 hour response service if your site falls within the service coverage area. Dell has 5 Global Command Centres for around the clock coverage around the world.

Dell's Critical Situation Process for severity 1 incidents provides:

- Ongoing, scheduled situation updates to keep you informed every step of the way
- Problem replication in Dell's simulation labs (as needed)
- Prioritized production in the event of a natural disaster

We will also provide emergency dispatch that allows simultaneous phone and on-site troubleshooting. In addition hardware fault monitoring is available on select server and storage platforms.

Same Day Response Service

Same day response/4-hour on-site service includes:

- After phone-based troubleshooting, a Dell-trained technician arrives on-site within 4 hours of problem determination, depending on location

- On-site service technicians coordinate incident resolution and troubleshooting directly with Dell's Expert Centers

Specialized On-site Service Options

With this module of ProSupport NASPO/WSCA can choose from a range of robust options tailored to your unique needs. Options include:

- On-site Service Delivery Manager
- On-site Escalation Manager
- On-site Service Engineer
- Scheduled On-site Service
- On-site Diagnosis Service

2. Premium Proactive

Maintenance

A study conducted in North America during 2007 showed that a massive 70% of IT budgets are spent on ongoing operations and maintenance. Our ProSupport Proactive Maintenance services have been designed to address this expenditure by reducing the cost and complexity of ongoing maintenance. Proactive maintenance includes:

- Proactively maximize availability
- Help reduce unplanned downtime
- Help reduce recovery time in the event of a technical incident by reducing the number of variables to diagnose and troubleshoot
- Minimize maintenance costs while maximizing uptime

Premium Proactive maintenance is available on select server and storage platforms.

Enterprise Wide Contract

A ProSupport Enterprise Wide Contract from Dell has been proven to reduce technical incidents by as much as 37%. This ProSupport option includes:

- Designated Service Delivery Manager
- On boarding support assessment & comprehensive planning
- Monthly management reviews
- Incident status and defined reporting
- Dell Fast-Track dispatch (with certification)
- 7x24x365 access to Dell Expert Centers
- Technical training and certification program
- Escalation management
- Global Command Centers
- Collaborative support for hardware and software
- Next-Business-Day on-site service

Your designated Service Delivery Manager service includes:

- On boarding support assessment
- Comprehensive planning
- Monthly management reviews
- Incident status and defined reporting

Remote Advisory Options

Remote advisory assistance is designed to support your specialized applications and solutions. It is ideal for ongoing support of Dell Infrastructure Consulting Services deployed solutions or for additional configuration and optimization needs. Customers can select remote advisory services that cover the following specialist areas:

- Virtualization
- Exchange
- Systems Management
- Storage Technology
- Backup and Recovery

Fast Track Dispatch Program

This program is included for customers who choose the ProSupport for IT service model.

Fast Track Dispatch provides the ability for certified IT staff to dispatch parts and/or labor without having to go through scripted phone troubleshooting. The necessary online technical training and certification for major Dell product families is included in the program. IT professionals have access to technical support tips and in-depth hardware and software information. Also, they have direct phone access to expert technicians who can assist with more complex issues when needed.

3. Protection

CompleteCare

Protect assets from inevitable mishaps with CompleteCare Accidental Damage cover to ensure an easy and flexible repair and replacement service for most accidental damage. CompleteCare helps to save time, money and resources in the event of unplanned events such as:

- Spills
- Drops
- Breakages
- Electrical surges

For notebooks and mobile workstations CompleteCare Theft protection is available.

CompleteCare Multi-cover provides both Accidental Damage and Theft Protection under in one easy package.

CompleteCare is essential investment protection for systems that are exposed to high-risk multi-use, high mobility, multiple users and harsh environments.

EXHIBIT B – COMPLAINT RESOLUTION

A dedicated member of your Account Team, your Sales Representative is the owner for any procurement, pricing, or supply issues that may arise. Your Sales Representative has a clearly defined escalation path for issues which includes routing them through an Inside Sales Manager, up through to the appropriate Regional Director. Your Sales Representative is directly accountable to NASPO/WSCA and will keep you apprised of issue resolution and progress.

In the rare case an issue cannot be resolved through standard channels; the escalation process would be directed to the level of Sales Vice President.

The Dell Account Teams provide Executive Business Reviews on a quarterly basis. This tool is like a bank statement that provides purchase history information, tracks our performance against Service Level Agreements and develops specific action plans where needed to meet your objectives. The goal is to use the benefits of our direct relationship to provide you with unprecedented accountability on the products, services and support you want and give you as proactive analysis of what's working and what's not.

Invoicing Resolution

Purchase order management helps Dell maintain our commitment to excellence by allowing us to process orders accurately and efficiently. In support of these goals, Dell assigns a Finance/Accounting Associate to each account. This individual is responsible for resolution of disputed invoices. The Associate will work with NASPO/WSCA's Accounts Payable, Procurement or other necessary departments to resolve disputes.

Your Dell Customer Care representative will help with errors such as duplicate invoices, wrong product shipped, etc. If needed, the dedicated Finance/Accounting Associate for NASPO/WSCA will resolve billing issue.

If NASPO/WSCA is set up for monthly consolidated invoicing, Dell requires that you pay undisputed item(s) and follow the above procedures for error correction.

Dell provides the following solutions to customers in resolving their most common invoicing issues:

If a customer didn't receive original copy in the mail, or it is delayed or lost in the customer's mailroom, Dell makes available round-the-clock access to online copies for all Dell invoices – paid and unpaid – for 24 months. The online invoices look just like the original hard-copy invoices and include service tag numbers for simplified comparisons. Dell can also provide email notification of invoices.

If a customer wants one invoice per purchase order, Dell's collections team can set the customer up for consolidated invoicing. Or, if the request is just for one PO, Dell's customer care or collections team can request a manual consolidated invoice.

If a customer wants their invoice to match their purchase order, Dell's customer care or collections team can request manual invoice.

EXHIBIT C – VALUE-ADDED SERVICES

Contact Dell for further details on these programs:

Custom Factory Integration

Parts Replacement Program

Asset Management Services

Image Management Services

Asset Recovery Services

Managed Deployment Services

Modular Services

Automated Deployment

Training Services

Dell Virtualization Services

Assessment, Design & Implementation Services

EXHIBIT D - LEASING

Individual Purchasing Entities may enter in to lease agreements for the products covered in this Master Price Agreement, if they have the legal authority to enter into these types of agreements without going through a competitive process. The lease agreements were not reviewed or evaluated as part of the RFP evaluation process. A sample agreement can be found at: www.dell.com/naspowsca

EXHIBIT E – AUDIT GUIDELINES

Website Audits:

1. Websites need to be accurate with both pricing and part numbers
2. Manufacturers **MUST** have a mechanism in place for periodic and random internal auditing of pricing on the website
3. WSCA will randomly audit websites for accurate pricing
4. Upon request, Contractor will provide documentation of pricing and discounts accuracy

Sales Audits

Sample Guidelines

Frequency: Quarterly

Scope: one tenth of one percent (.001) of purchase orders – at least one if any sales, no more than 100 audits

- Up to 1,000 sales = 1 audit
- 10,000 sales = 10 audits
- Up to 100,000 sales = 100 audits
 - Random sample of purchase orders-invoices
- Can offer several different statistical methods for such small samples

Documentation:

- Contractor to test and keep documentation internally. Noting any actions to correct findings, as necessary.
- Periodic summary report to WSCA/NASPO containing audit findings as summary numbers **ONLY**

Addendum to Master Price Agreement

Between

Dell Marketing, L.P.

And

State of Minnesota, Materials Management Division

Representing the Western States Contracting Alliance (WSCA) and

the National Association of State Procurement Officials (NASPO)

Lead State Contract #: B27160

Executed on: June 15, 2009

August 12, 2009

Page 1 of 2

This Master Price Agreement Addendum governs Dell Marketing, L.P. (hereinafter "CONTRACTOR") use of the NASPO/WSCA name and logo during the term of this Master Price Agreement and amendments to this Master Price Agreement. CONTRACTOR may use the name and logo only as set forth below. Any use not expressly permitted herein is prohibited, and such use constitutes a material breach of the Master Price Agreement with the Lead State and all Participating States.

1. CONTRACTOR may display the NASPO/WSCA name and logo on the face of the Master Price Agreement, including all electronic and hard copy versions.
2. CONTRACTOR and its subcontractors, resellers, and agents may display the NASPO/WSCA names and logos on a web site as a "click on" link to the Master Price Agreement and/or as otherwise approved for posting on the CONTRACTOR's approved NASPO/WSCA website. No other use of the logos or names is permitted on any web site, except as permitted in paragraphs 1 and 3.
3. With, and only with, prior written approval of the Lead State Contract Administrator, CONTRACTOR may advertise the Master Price Agreement in publications and promotional materials aimed at state and local government entities eligible to use the Master Price Agreement. The sole focus and intent of such advertisements must be to increase participation in the Master Price Agreement. The NASPO/WSCA names may be used and the logos displayed in the advertisement ONLY as it relates to the Master Price Agreement. The Lead State Contract Administrator's approval must encompass the content and appearance of the advertisement and the media in which the advertisement will appear.
4. CONTRACTOR may not make explicit or implicit representations concerning the opinion of NASPO/WSCA, the Lead State, or any Participating State regarding CONTRACTOR or its products or services. This restriction includes general use of the NASPO/WSCA names and logos NOT directly linked to or related to this Master Price Agreement.
5. CONTRACTOR must ensure that its authorized sub-contractors, authorized resellers, and/or authorized agents adhere to the terms of this Addendum, and CONTRACTOR is responsible for any breach by these entities.
6. CONTRACTOR must immediately cease all use of the NASPO/WSCA names and logos if directed to do so in writing by the Lead State Contract Administrator, and CONTRACTOR must ensure that its authorized sub-contractors, authorized re-sellers, and/or authorized agents immediately cease all use.
7. CONTRACTOR shall not make, or permit its authorized subcontractors, authorized resellers, or authorized agents to make, any alterations to NASPO's or WSCA's names or logos (including characters, style and colors) and CONTRACTOR shall not use or permit the use of NASPO's or WSCA's names or logos in a manner or context that could adversely affect NASPO's/WSCA's integrity, goodwill, or reputation.
8. Upon termination or expiration of the Master Price Agreement, CONTRACTOR and its authorized sub-contractors, authorized re-sellers, and authorized agents must cease all use of the NASPO/WSCA names and logos; except that, CONTRACTOR may use the NASPO/WSCA names for reference purposes in a description of its prior experience.

Signatures to follow on Separate Page

Addendum to Master Price Agreement

Between

Dell Marketing, L.P.

And

State of Minnesota, Materials Management Division

Representing the Western States Contracting Alliance (WSCA) and
the National Association of State Procurement Officials (NASPO)

Lead State Contract #: B27160

Executed on: June 15, 2009

August 12, 2009

Page 2 of 2

Acknowledged:

DELL MARKETING L.P.:

The Contractor certifies that the appropriate person(s) have executed this agreement on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances:

Stephanie D. Shipp Signature Stephanie D. Shipp

Title Contract Strategist

Title

12 August 2009 Date 102

LEAD STATE:

In accordance with state statutes or rules.

Bernadette Kopischke Signature

Acq. Supvr. Title

8/17/09 Date

EXHIBIT B
TO
COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
DELL MARKETING LIMITED PARTNERSHIP

[State Addendum]

See following pages.

WSCA/NASPO PC Contracts 2009-2014
Computer Equipment, Peripherals, and Related Services



PARTICIPATING ADDENDUM

Between

Dell Marketing L.P.
and
State of Arizona

Master Price Agreement Number B27160
State of Arizona Contract Number: ADSPO10-0000010

1. Scope

This Addendum covers the WSCA/NASPO PC Contracts 2009-2014 (Computer Equipment, Peripherals and Related Services) led by the State of Minnesota for use by state agencies and other entities located in the Participating State authorized by that state's statutes to utilize state contracts. This Participating Addendum (PA) to the Western States Contracting Alliance (WSCA) Computer contract is for the elective use of the State of Arizona, its departments, agencies, commissions and boards. In addition, eligible universities, political subdivisions and nonprofit educational or public health institutions may participate at their discretion. In order to participate, a university, political subdivision, or nonprofit educational or public health institution must have entered into a cooperative purchasing agreement with the State Procurement Office as required by the A.R.S. 41-2632.

2. Participation

Use of specific WSCA/NASPO cooperative contract by state agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

Using Agencies shall include Arizona State agencies, boards and commissions and members of the State Purchasing Cooperative. An up-to-date list of State Purchasing Cooperative members may be found at http://www.azdoa.gov/agencies/spo/api_coop.asp.

3. Changes

3.1. Additions

3.1.1. State of Arizona Terms and Conditions

(See Attachment 3.1), attached and incorporated herein by reference.

3.1.2. Federal Immigration and Nationality Act

By entering into the Contract, the Contractor warrants compliance with the Federal Immigration and Nationality Act (FINA) and all other Federal immigration laws and regulations related to the immigration status of its employees. The Contractor shall obtain statements from its subcontractors certifying compliance and shall furnish the statements to the Procurement Officer upon request. These warranties shall remain in effect through the term of the Contract. The Contractor and its subcontractors shall also maintain Employment Eligibility Verification forms (I-9) as required by the U.S. Department of Labor's Immigration and Control Act, for all employees performing work under the Contract. I-9 forms are available for download at USCIS.GOV. The State may request verification of compliance for any Contractor or subcontractor performing work under the Contract. Should the State suspect or find that the Contractor or any of its subcontractors are not in compliance, the State may pursue any and 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. All costs necessary to verify compliance are the responsibility of the Contractor.

3.1.3. IT 508 Conformance

Unless specifically authorized in the Contract, any electronic or information technology offered to the State of Arizona under this solicitation shall comply with A.R.S. 41-2531 and 2532 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.

3.1.4. Offshore Performance of Work Prohibited

Due to security and identity protection concerns, Direct Services (as defined in the next sentence) under this contract shall be performed within the borders of the United States. Direct Services shall mean those services that

**PARTICIPATING ADDENDUM
Dell Marketing L.P.**

State of Arizona Contract Number: ADSP010-00000010

Page 2 of 5

are (i) described in the specifications or scope of work that directly serve the State of Arizona or its clients and (ii) involve access to secure or sensitive data or personal client data or development or modification of software for the State shall be performed within the borders of the United States. Unless specifically stated otherwise in the specifications, this definition 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. In no event will the State or its clients grant access and/or provide to Contractor any secure or sensitive data or personal client data or require software development services.

3.1.5. Pandemic Contractual Performance.

3.1.5.1. Contractor represents that it has business continuity of operations policies and procedures in place to address Contractor's performance in the event of a medical pandemic. The Participating State may require a general overview of the plan, on an annual basis, by written request to Contractor. Any disclosure of Contractor's plan is at Contractor's discretion and disclosure of the plan or an overview will be subject to Contractor's imposed restrictions. The plan may include alternative methods to ensure there are products in the supply chain through Contractor's resellers, or purchase recommendations.

3.1.5.2. In the event of a medical 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 right after the official declaration of a pandemic to temporarily void the contract(s) in whole or specific sections if the contractor cannot perform to the standards agreed upon in the initial terms. In such event the State shall not incur any liability for undelivered orders 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).

3.1.6. Business Operations in Iran and Sudan

In accordance with A.R.S. 35-397, the Contractor hereby certifies that the contractor does not have scrutinized business operations in Iran. In accordance with A.R.S. 35-397, the Contractor hereby certifies that the contractor does not have scrutinized business operations in Sudan.

3.1.7. Compliance Requirements for A.R.S. § 41-4401, Government Procurement: E-Verify Requirement

3.1.7.1. The contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section ARS § 23-214, Subsection A. (That subsection reads: "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program.)

3.1.7.2. A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the contract and the contractor may be subject to penalties up to and including termination of the contract.

3.1.7.3. Failure to comply with a State audit process to randomly verify the employment records of contractors and subcontractors shall be deemed a material breach of the contract and the contractor may be subject to penalties up to and including termination of the contract.

3.1.7.4. The State Agency retains the legal right to inspect the papers of any employee who works on the contract to ensure that the contractor or subcontractor is complying with the warranty under paragraph 1.

3.1.8. Purchase Order Citation Requirement

All purchase orders issued by purchasing entities with the jurisdiction of this Addendum must include the Participating State contract number EPS100001-01, and the Master Price Agreement Number B27160.

3.1.9. Compliance with reporting requirements of the "American Recovery and Reinvestment Act of 2009" ("ARRA")

If or when Contractor is notified by ordering entity that a specific purchase or purchases are being made with ARRA funds, Contractor agrees to comply with the data element and reporting requirements that are legally required of providers of goods and related services (aka Vendors, or herein Contractor) as required of Vendors under ARRA. Ordering entity is responsible for informing Contractor as soon as the ordering entity is aware that ARRA funds are being used for a purchase or purchases. Contractor will provide any required report to the ordering entity as

**PARTICIPATING ADDENDUM
Dell Marketing L.P.**

State of Arizona Contract Number: ADSPO10-00000010

Page 3 of 5

required by law. The Contractor, as it relates to purchases under this contract, is not a subcontractor or subgrantee, but simply a provider of goods and related services. With respect to Contractor's sale of goods and related services under this Contract and to the extent required of Contractor under the final rules promulgated by the Federal Government under ARRA, Contractor agrees to comply with requirements of the Act as necessary.

3.1.9.1 Purchase Order Requirements. Recipient/Subrecipient of funds shall specify on the first line of each purchase order placed with Contractor utilizing ARRA funds that ARRA funds are being used to fund the purchase order. Recipient/Subrecipient may NOT co-mingle ARRA funds and non-ARRA funds in a single purchase order and if ARRA funds and non-ARRA funds are co-mingled by Recipient/Subrecipient in a single purchase order, Recipient/Subrecipient acknowledges that Contractor will not separate such funds. The total purchase amount of all funds on any such co-mingled purchase order will be included in any report provided by Contractor for ARRA purposes.

3.2. Deletions

3.2.1. Band 5 Equipment

Notwithstanding any future amendments, this PA is limited to servers, desktops, laptops, printers and storage. PDA's will not be procured by the State of Arizona under this contract.

3.2.2. Wireless

No wireless services shall be purchased under this PA.

3.2.3. Software

Software other than the Operating System is not available under this PA. Imaging of Software purchased and licensed from other State accepted sources is permitted under the PA.

3.2.4. Product leases

Lease agreements for products are not available under this PA for State Agencies, any other authorized purchasers may do so.

3.3. Revisions

3.3.1. Software Licensing

Notwithstanding any future amendments, this PA is limited to the sale of computer hardware, peripherals and all licensed software and operating system software included therein. All applications and operating system software shall be purchased by the manufacturer either through their own pricing agreement or through a separate contract between the State and a Software Value Added Reseller (SVAR).

3.3.2. Servicing subcontractors

Notwithstanding any future amendments, all acceptable subcontractors that may do business in the State of Arizona under this contract shall be listed in this PA or on the webpage set up for purchasing under this PA. Placement of Orders and shipment of Order directly from Dell will remain unchanged in the PA. All orders and payments are to be issued directly to: Dell Marketing L.P.

Only those Dell Authorized subcontractors and/or resellers and service providers ("Servicing Subcontractors") attached hereto or as listed on the Arizona Premier Page are eligible to support the Participating Addendum. Servicing Subcontractors shall not be added to or removed from this list without notice to the State. An amendment for this purpose shall not be necessary. The listing shall include the authorized subcontractor and/or reseller's name and contact information and small businesses, women-owned business enterprises, and minority-owned business enterprises shall be clearly indicated. Orders and payments are to be handled by Dell directly.

All purchase orders issued by purchasing entities with the jurisdiction of this Addendum must include the Participating State contract number: ADSPO10-00000010 and the Master Price Agreement Number B27160.

Upon approval by the State, Contractor wishes to identify Servicing Subcontractor(s) ("WSCA Agent") to market Contractor's Products and Services, as identified on Contractor's Products & Services Schedule ("PSS"), on behalf of Contractor. The Participating Entity may utilize WSCA Agents pursuant to the Contractor defined WSCA Agent program as defined in a separate written Agreement between Contractor and WSCA Agent.

WSCA Agents authorized within the State will have their names identified on the State's respective www.Dell.com/naspowsca Dell state store page.

**PARTICIPATING ADDENDUM
Dell Marketing L.P.**

State of Arizona Contract Number: ADSP010-00000010

Page 4 of 5

3.3.3. Reporting and Fees

3.3.3.1. Reporting

The contractor shall be required to furnish quarterly contract usage reports to the State Procurement Office (SPO), in a format that is mutually agreed upon, at no additional cost to the State.

3.3.3.2. Administrative Fee

Contractor shall assess administrative fees in the amount of one percent (1%) of all sales occurring under this Addendum, not including taxes, to members of the State Purchasing Cooperative. An updated list of State Purchasing Cooperative members may be found at the following URL: <http://azdoa.gov/spo/agency-resources/az-purchasing-coop/arizona-purchasing-cooperative>. At its option, the State may expand the applicability of this fee with prior written notice and mutual agreement of Contractor. Contractor shall not assess the administrative fee in the form of a line item in their invoices. Rather, the Contractor shall include the amount of the administrative fee in their unit prices for all products and services available under the Addendum. The Contractor's WSCA pricing to the Participating Entity shall be adjusted to offset for the equivalent fee amount. All administrative fees shall be remitted to the State Procurement Office at 100 N. 15th Avenue, Suite 104, Phoenix, AZ 85007, no later than thirty (30) days following the end of the calendar quarter in which the fee was assessed. Calendar quarters shall include the months of January through March, April through June, July through September, and October through December. Contractor's failure to collect or remit administrative fees in a timely manner may result in the State exercising any recourse available under the Contract or as provided by law.

3.3.4. Term of Contract

Notwithstanding any future amendments, this PA shall begin on September 1, 2009 and continue for three (3) years, through August 31, 2012. The State, at its sole option, may extend the PA for two (2) additional one-year terms, or one additional two-year term, if the Master Price Agreement is still valid.

3.3.5. Travel

When requested, in writing, from the Using Agency to perform work that requires overnight accommodations, the Using Agency will reimburse the contractor in accordance with the current rates specified in the Rules and Regulations applicable to State employee's travel. The contractor shall itemize all per diem and lodging charges. State rates may be located at www.gao.state.az.us.

4. Primary Contacts

The primary contact individuals for this Addendum are as follows (or their named successors):

Lead State

Name: Bernadette Kopischke
Address: 50 Sherburne Ave., 112 Admin Bldg, St Paul, MN 55155
Telephone: (651) 201-2450
Fax: (651) 297-3996
E-mail: bernie.kopischke@state.mn.us

Contractor – Lead for Master

Name: Stephanie Miller
Address: One Dell Way, Mail Stop 8708, Round Rock, TX 78682
Telephone: (512) 723-4355
Fax: (512) 283-9092
E-mail: stephanie_g_miller@dell.com

Contractor - State Contract Manager:

Name: Scott Loras
Address: One Dell Way, Mail Stop 8708, Round Rock, TX 78682
Telephone: 512-728-8857

PARTICIPATING ADDENDUM

Dell Marketing L.P.

State of Arizona Contract Number: ADSP010-00000010

Page 5 of 5

Fax: (512) 283-9092

E-mail: Scott_Loras@dell.com

State of Arizona

Name: Maureen L. McGovern
Address: State Department of Administration, State Procurement Office
100 North 15th Avenue #104, Phoenix AZ 85007
Telephone: 602.542.9125
Fax: 602.542.5508
E-mail: maureen.mcgovern@azdoa.gov

5. Services:

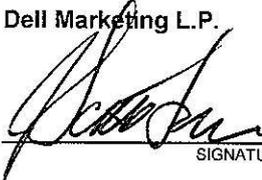
The terms of the Agreement shall apply each time Customer engages Dell to provide services. All services provided will be described in one or more of the following: (i) "Service Descriptions" used to describe any services purchased by an entity; (ii) any mutually agreed upon "Statement of Work" ("SOW") executed by the parties; or (iii) any "Technical Specification Form" approved by the parties

This Addendum and the Master Price Agreement together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Master Price Agreement and its exhibits, shall not be added to or incorporated into this Addendum or the Master Price Agreement, together with its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Master Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms. This Addendum applies only in the jurisdiction of the Participating State or Participating Entity which has executed this Addendum.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by Contractor below.

Signatures as required by State Statutes, Rules or Policies

Dell Marketing L.P.



SIGNATURE

Scott Loras
Contracts Senior Consultant

State of Arizona



SIGNATURE

James Scarboro
Deputy State Procurement Administrator

AUGUST 31, 2009

DATE

AUGUST 31, 2009

DATE

Attachment 3.1

State of Arizona Terms and Conditions

1. Definition of Term

As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:

"Attachment" means any item specifically referenced herein and required to be included as a part of this Participating Addendum.

"Contract Means" means the terms and conditions set forth in Amendment 3.1 and are hereby incorporated into the Participating Addendum

"Contract Amendment" means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.

"Contractor" or "Manufacturer" means the Hewlett Packard Company.

"Days" means calendar days unless otherwise specified.

"Exhibit" means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.

"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.

"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.

"Participating State" or "Participating Entity" means the State of Arizona.

"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.

"Purchasing Entity" means a Participating State or another legal entity, such as a political subdivision, properly authorized by the Participating State to enter into an agreement for the purchase of goods and/or services described in this contract.

"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.

"State" means the State of Arizona and Department or Agency of the State that executes the Contract.

"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. 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.

2.4. 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.

2.5. 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.

2.6. 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

Contractor shall comply with the requirements of A.R.S. § 35-214 and § 35-215.

3.2. Non-Discrimination

The Contractor shall comply with State Executive Order No. 99-4 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.

3.3. Audit

Contractor shall comply with the requirements of ARS § 35-214.

3.4. Facilities Inspection and Materials Testing

In the event of pre-payment, the Contractor agrees to permit access into its facilities and, subcontractor facilities, at reasonable times for inspection of the materials provided 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 material noncompliance of the materials ordered under a particular purchase order, the Contractor shall be responsible for the payment of all reasonable costs incurred by the State for testing and inspection.

3.5. 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.

3.6. Property of the State; Ownership of Documents

Any reports, computer programs, studies, photographs, negatives, databases, computer programs, or other documents ("Created Materials") first created by Contractor in the performance of its obligations under this Contract and paid for by the State are the sole property of the State. Created Materials shall not include the preexisting intellectual property or modifications thereto of the Contractor. The Contractor is not entitled to a patent or copyright on those Created 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. Notwithstanding the foregoing, Contractor shall be entitled to a worldwide, irrevocable, royalty-free license to use and modify any Created Materials that directly pertain to information technology infrastructure.

3.7. Ownership of Intellectual Property

Reference Section 12 of MPA

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 in accordance with the MPA, the Contractor shall submit a complete and accurate invoice for payment from the State for payment within thirty (30) days of invoice date.

4.2. Delivery

Reference Section 10A of MPA

4.3. Applicable Taxes

4.3.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes arising under this Contract that are normally attributable to the Contractor.

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. To the extent that Contractor fails to pay for such taxes normally attributable to 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. The State agrees to give prompt written notice to the Contractor in the event it is notified regarding taxes due that are attributable to Contractor.

4.3.4. IRS W9 Form. In order to receive payment the Contractor shall have a current IRS 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

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. The State is deemed to have accepted Servicing Subcontractors authorized by the Contractor and subcontractors that are properly identified under any applicable Statement of Work.

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.

Reference Section 10 of MPA

6.2. Indemnification

Reference Section 24 of MPA

6.3. Indemnification - Patent and Copyright

Reference Section 12 of MPA

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 third party liens and shall remain free of liens.

7.2. Quality

Reference Section 11A of MPA

7.3. Fitness

Reference Section 11A3 of MPA

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 materials provided such inspection or testing does not violate the express restrictions of the accompanying warranty 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 licenses and permit requirements.

7.6. Survival of Rights and Obligations after Contract Expiration or Termination

7.6.1. Contractor's Representations and Warranties. All warranties made by the Contractor under this Contract shall survive the expiration or termination of the Contract for the original duration of the term of the warranty. 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, prior to the time of shipment of ordered Equipment, 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. The duration of the Stop Work Order shall be reasonable in length and for cause.

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 materially comply with the relevant terms of the Contract. The delivery of materials or services or a substantial portion of the materials or services that do not materially comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may, after written notice to the designated representative of the Contractor that provides a reasonable period of time for Contractor to provide a cure of the non-compliance, terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under this Agreement or pursue any other right or remedy available to it.

8.5. Right of Offset

As limited by the limitation of liability, the State shall be entitled to offset against any sums due the Contractor, any reasonable expenses or costs incurred by the State, or damages awarded to the State concerning the Contractor's non-conforming and uncured performance or material breach of performance under the Contract.

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 interests 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. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted delivered before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply. Vendor shall have the right to terminate for convenience in the event the Master Price Agreement is terminated. If the Vendor terminates the MPA for convenience, Vendor shall provide the State of Arizona the same notice period as given to the Lead State. 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 materially comply with any material 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 along with a reasonable period of time to provide a cure.

9.5.2. Upon termination under this paragraph, all deliverable materials, documents, data and reports first created by the Contractor pursuant to performing under the Contract shall become the property of and be delivered to the State upon demand and payment for same.

9.5.3. The State may, upon termination of a Purchase Order of this Contract for cause, procure, on terms and in the manner that it deems appropriate, materials or services to replace those in default under a Purchase Order of 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 to the extent that such excess costs do not exceed the limitation of liability in cases where indemnification liability does not apply and the State has first allowed the Contractor a reasonable opportunity to cure the default.

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 there under.

11. Arbitration

The parties to this Contract may agree to resolve all disputes arising out of or relating to this contract between the parties 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. Insurance

12.1. Indemnification

Reference Section 24 of MPA

12.2. INSURANCE REQUIREMENTS

Vendor shall procure and maintain, until all of their obligations, 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 purchase and or use of the commodity.

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 Vendor from liabilities that might arise out of the purchase and use of the commodities sold under this Contract by the Vendor, his agents, representatives, employees or subcontractors and Vendor is free to purchase such additional insurance as may be determined necessary.

12.2.1. SCOPE AND LIMITS OF INSURANCE

Contractor shall provide coverage at least as broad and with limits of liability as those stated below.

12.2.1.1. Commercial General Liability — Occurrence Form

Policy shall include bodily injury, property damage, personal injury and broad form contractual liability.

General Aggregate	\$2,000,000
Products — Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Fire Legal Liability	\$50,000
Blanket Contractual Liability —Written and Oral	\$1,000,000
Each Occurrence	\$1,000,000

The policy shall, by blanket endorsement, include the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.

12.2.1.2. Automobile Liability

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

Combined Single Limit (CSL)	\$1,000,000
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The policy shall, by blanket endorsement, include the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees 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.

12.2.1.3. 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

This requirement shall not apply to: Separately, EACH contractor or subcontractor exempt under A.R.S. 23-901, and Men such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

12.3. ADDITIONAL INSURANCE REQUIREMENTS

The policies are to contain, or be endorsed by blanket endorsement to contain, the following provisions:

12.3.1. The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees wherever additional insured status is required such additional insured shall be included up to the full limits of liability purchased by the Contractor.

12.3.2. The Contractor's insurance coverage shall be primary insurance with respect to all other available sources.

12.3.3. Coverage provided by the Contractor shall not be limited by the liability assumed under the indemnification provisions of this Contract.

12.3. NOTICE OF CANCELLATION

Each insurance policy required by the insurance provisions of this Contract shall not be suspended, voided, cancelled, reduced in coverage or in limits without Contractor endeavoring to provide thirty (30) days prior written notice to the State of Arizona. Such notice shall be sent directly to the State of Arizona Primary Contact identified in the PA and shall be sent by certified mail, return receipt requested.

12.4. ACCEPTABILITY OF INSURERS

Insurance is to be placed with duly licensed or approved non-admitted insurers in the State of Arizona with an "A.M. Best" rating of not less that A- VII, except for its wholly owned captives. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Vendor from potential insurer insolvency.

12.5. 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 a person authorized by that insurer to bind coverage on its behalf.

All certificates and blanket 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 State of Arizona's Primary Contact. The State of Arizona project/contract number and project description are to be noted on the certificate of insurance. The State of Arizona reserves the right to require complete summaries of all insurance policies required by this Contract at any time. DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATE OF ARIZONA'S RISK MANAGEMENT SECTION.

12.6. APPROVAL

Any modification or variation from the insurance requirements in this Contract must have prior approval from the State of Arizona Department of Administration, Risk Management Section, whose decision shall be final. Such action will not require a formal contract amendment, but may be made by administrative action.

12.7. 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 then none of the above shall apply.

EXHIBIT C
TO
COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
DELL MARKETING LIMITED PARTNERSHIP

[Equipment Order(s)]

See following pages (to be attached subsequent to execution).

CITY OF AVONDALE

REQUISITION NO.

BILLING ADDRESS

Accounts Payable
 11465 West Civic Center Drive, Suite 290
 Avondale, Arizona 85323
 632-333-2000

VENDOR ADDRESS

Dell Marketing LP V#10138
One Dell Way, MS RR8-16
Round Rock, TX 78682

DELIVERY ADDRESS

Information Technology Department
11465 W. Civic Center Dr.
Avondale, AZ 85340

ITEM #	QUANTITY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL PRICE	FUNDING INFORMATION	
						ACCOUNT	AMOUNT
1	2	Ea	Dell OptiPlex 990 Minitower Quote 594420161 Asset Tag No. xxx & xxx	1,624.75	3,249.50	101-5900-00-7085	849.50
						603-5120-00-7085	2,400.00
2	3	Ea	Dell P2210, 22" Monitor Quote 594419964	188.81	566.43	503-9230-00-7085	377.62
						101-6175-00-7085	188.81
3	2	Ea	Dell OptiPlex 990 Small Form Factor Quote 594419528	1,081.88	2,163.76	503-9230-00-7085	2,163.76
4	4	Ea	Dell Latitude E6420 ATG Quote 594420685	3,311.17	13,244.68	501-9122-00-7085	13,244.68
5					0.00		

Requested By: <u>Mark Neerings</u>	Date: <u>August 17, 2011</u>	Sub Total	19,224.37	Cross Check	19,224.37
Reviewed By: <u>Pilar Aguilar</u>	Date: <u>August 18, 2011</u>	Freight/S&H			
Approved By: _____	Date: _____	Tax % Rate	9.10%		
		Tax Amount	1,749.42		
		Total Requisition	20,973.88		

En 101-5900-00-7085

Replacement Fund

DELL

QUOTATION

QUOTE #: 594420161

Customer #: 32129236

Contract #: WN98ABZ

Customer Agreement #: ADSP010-00000010

Quote Date: 8/16/11

Date: 8/16/11 3:27:11 PM

Customer Name: CITY OF AVONDALE

TOTAL QUOTE AMOUNT:	\$3,512.69		
Product Subtotal:	\$3,249.50		
Tax:	\$263.19		
Shipping & Handling:	\$0.00		
Shipping Method:	Ground	Total Number of System Groups:	1

GROUP: 1	QUANTITY: 2	SYSTEM PRICE: \$1,624.75	GROUP TOTAL: \$3,249.50
Base Unit:	OptiPlex 990 Minitower EPA (225-0421)		
Processor:	Core i7-2600, 3.4GHz, 8M, VT-x, 95W, Optiplex 990 (317-6591)		
Memory:	8GB, Non-ECC, 1333MHz DDR3, 2x4GB, Dell OptiPlex 990 (317-6782)		
Keyboard:	Dell USB Entry Keyboard, No Hot Keys, English, OptiPlex (331-2024)		
Monitor:	No Monitor Selected, OptiPlex (320-3704)		
Video Card:	DUAL 1GB AMD RADEON HD 6450 Graphics w/ Single DP/DVI, Full Height, OptiPlex 990 (320-2093)		
Hard Drive:	128GB 2.5, Solid State SATA 3.0Gb/s and 8MB DataBurst Cache, Dell OptiPlex 990 Minitower (342-2292)		
Operating System:	Windows 7 Professional, Media, 64-bit, Optiplex, English (421-5608)		
Operating System:	Windows 7 Label, Optiplex, Fixed Precision, Vostro Desktop (330-6228)		
Operating System:	Dell Client System Update (Updates latest Dell Recommended BIOS, Drivers, Firmware and Apps), OptiPlex (421-5334)		
Mouse:	Dell MS111 USB Optical Mouse, OptiPlex and Fixed Precision (330-9458)		
TBU:	Intel vPro Technology Enabled, Dell OptiPlex 990 (331-1134)		
CD-ROM or DVD-ROM Drive:	16X DVD+-RW SATA, Data Only, Dell OptiPlex 990 Desktop or Minitower, Black (318-0546)		
CD-ROM or DVD-ROM Drive:	Roxio Creator Starter, Media, Dell OptiPlex, Latitude and Precision Workstation (421-4540)		
Sound Card:	Heat Sink, Performance, Dell OptiPlex 990 Minitower (331-1133)		
Speakers:	Internal Speaker, Optiplex 990 (318-0319)		
Cable:	OptiPlex 990 Minitower Up to 90 Percent Efficient Power Supply (331-1568)		
Cable:	Dell Data Protection Access, OptiPlex (421-5078)		
Cable:	Enable Low Power Mode for EUP Compliance, Dell OptiPlex (330-7422)		
Cable:	Regulatory label, Mexico, for OptiPlex 990 Mini Tower (331-2480)		
Documentation Diskette:	Power Cord, 125V, 2M, C13, Dell OptiPlex (330-1711)		
Documentation Diskette:	Documentation, English, Dell OptiPlex (331-2030)		
Bundled Software:	No Productivity Software, Dell OptiPlex, Precision and Latitude (421-3872)		
Controller Option:	No RAID, Dell OptiPlex (341-8036)		
Factory Installed Software:	Dell Energy Smart Power Management Settings Enabled, This Item is Not EStar Qualified, OptiPlex (330-4817)		
Feature	Resource DVD contains Diagnostics and Drivers for Dell OptiPlex 990 Vista (331-1571)		
Service:	Basic Hardware Service: Next Business Day Limited Onsite Service After Remote Diagnosis 3 Year Extended (928-1033)		
Service:	Basic Hardware Service: Next Business Day Limited Onsite Service After Remote Diagnosis Initial Year (951-4670)		

Service:	Dell Limited Hardware Warranty Plus Service Extended Year(s) (935-2098)
Service:	Dell Limited Hardware Warranty Plus Service Initial Year (929-6267)
Dirline:	Keep Your Hard Drive, 4 Year (981-3953)
Misc:	Chassis intrusion switch, DellOptiPlex (310-6719)
Misc:	No Quick Reference Guide,Dell OptiPlex (310-9444)
Misc:	Shipping Material for System,Minitower,Dell OptiPlex 990 (331-1268)
	Core i7 vPro Sticker (331-1563)
	CFI Titan Code for CFI FIDA orBypass SI (364-1846)
	CFI,Information,Val, SI Video,Allowed (364-3161)
	CFI,Information, Validation,Select Any Microsoft OS (364-4107)
	CFI Routing SKU (365-0257)
	CFI,Rollup,Integration ServiceTag or Label,Only - No Other CFI Services (366-1036)
	CFI,Information Client,Only (371-0941)
	CFI,B68S,Information,Label, Medium,Factory Install (372-8608)
	CFI,Information,CSRouting,Eligible,Factory Install (375-3088)

SALES REP:	Lee Pieper	PHONE:	888-977-3355
Email Address:	lee_pieper@dell.com	Phone Ext:	

Please review this quote carefully. If complete and accurate, you may place your order online at www.dell.com/qto (use quote number above). POs and payments should be made to **Dell Marketing L.P.**

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For certain products shipped to end-users in California, a State Environmental Fee will be applied. For Asset Recovery/Recycling Services, visit www.dell.com/assetrecovery.

WR-WW

503-9230-00-7105 x2

PD

101-6175-00-6990 x1

DELL

QUOTATION

QUOTE #: 594419964

Customer #: 32129236

Contract #: WN98ABZ

Customer Agreement #: ADSP010-00000010

Quote Date: 8/16/11

Date: 8/16/11 3:27:10 PM

Customer Name: CITY OF AVONDALE

TOTAL QUOTE AMOUNT:	\$612.31		
Product Subtotal:	\$566.43		
Tax:	\$45.88		
Shipping & Handling:	\$0.00		
Shipping Method:	Ground	Total Number of System Groups:	0

SOFTWARE & ACCESSORIES			
Product	Quantity	Unit Price	Total
DELL P2210, 22 inch VIS Professional Widescreen, Flat Panel, OptiPlex, Precision Latitude, Customer In (320-8103)	3	\$188.81	\$566.43
3YR Limited Warranty Monitor, Advanced Exchange (986-4872)	3	\$0.00	\$0.00
Number of S & A Items: 2		S&A Total Amount: \$566.43	

SALES REP: Lee Pieper	PHONE: 888-977-3355
Email Address: lee_pieper@dell.com	Phone Ext:

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If your order includes services, visit www.dell.com/servicecontracts for service descriptions and terms.

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WR-ww

503-9230-00-7165

DELL

QUOTATION

QUOTE #: 594419528

Customer #: 32129236

Contract #: WN98ABZ

Customer Agreement #: ADSPO10-00000010

Quote Date: 8/16/11

Date: 8/16/11 3:27:09 PM

Customer Name: CITY OF AVONDALE

TOTAL QUOTE AMOUNT:	\$2,339.01		
Product Subtotal:	\$2,163.76		
Tax:	\$175.25		
Shipping & Handling:	\$0.00		
Shipping Method:	Ground	Total Number of System Groups:	1

GROUP: 1	QUANTITY: 2	SYSTEM PRICE: \$1,081.88	GROUP TOTAL: \$2,163.76
Base Unit:	OptiPlex 990 Small Form Factor EPA (225-0461)		
Processor:	Core i5-2400, 3.1GHz, 6M, VT-x, 95W, OptiPlex 990 (317-6592)		
Memory:	4GB, Non-ECC, 1333MHz DDR3, 2X2GB, Dell OptiPlex 990 (317-6987)		
Keyboard:	Dell USB Entry Keyboard, No Hot Keys, English, OptiPlex (331-2024)		
Monitor:	No Monitor Selected, OptiPlex (320-3704)		
Video Card:	Integrated Video, HD Graphics 2000, OptiPlex 990 (320-2260)		
Hard Drive:	250GB 2.5, SATA 3.0Gb/s and 16MB Data Burst Cache, Dell OptiPlex 990 Small Form Factor/Desktop (342-2465)		
Operating System:	Windows 7 Professional, Media, 64-bit, OptiPlex, English (421-5608)		
Operating System:	Windows 7 Label, OptiPlex, Fixed Precision, Vostro Desktop (330-6228)		
Operating System:	Dell Client System Update (Updates latest Dell Recommended BIOS, Drivers, Firmware and Apps), OptiPlex (421-5334)		
Mouse:	Dell MS111 USB Optical Mouse, OptiPlex and Fixed Precision (330-9458)		
TBU:	Intel vPro Technology Enabled, Dell OptiPlex 990 (331-1134)		
CD-ROM or DVD-ROM Drive:	8X DVD+/-RW, Slimline, Data Only, OptiPlex 790/990 Small Form Factor (318-0620)		
CD-ROM or DVD-ROM Drive:	Roxio Creator Starter, Media, Dell OptiPlex, Latitude and Precision Workstation (421-4540)		
CD-ROM or DVD-ROM Drive:	Cyberlink Power DVD 9.5.1, Media, Dell OptiPlex, Latitude and Precision Workstation (421-5095)		
Sound Card:	Heat Sink, Performance/Mainstream, Dell OptiPlex Small Form Factor (331-1198)		
Speakers:	Dell AX210 Universal Serial Bus, 1.2W Stereo SPKR WW, Dell OptiPlex, Precision, Latitude (313-7414)		
Cable:	OptiPlex 990 Small Form Factor Up to 90 Percent Efficient Power Supply (331-1983)		
Cable:	Dell Data Protection Access, OptiPlex (421-5078)		
Cable:	Enable Low Power Mode for EUP Compliance, Dell OptiPlex (330-7422)		
Cable:	Regulatory label, Mexico, for OptiPlex 990 Small Form Factor (331-2483)		
Documentation Diskette:	Documentation, English, Dell OptiPlex (331-2030)		
Documentation Diskette:	Power Cord, 125V, 2M, C13, Dell OptiPlex (330-1711)		
Bundled Software:	No Productivity Software, Dell OptiPlex, Precision and Latitude (421-3872)		
Controller Option:	No RAID, Dell OptiPlex (341-8036)		
Factory Installed Software:	Dell Energy Smart Power Management Settings Enabled, This Item is Not EStar Qualified, OptiPlex (330-4817)		
Feature:	Resource DVD contains Diagnostics and Drivers for Dell OptiPlex 990 Vista (331-1571)		
Service:	Basic Hardware Service: Next Business Day Limited Onsite Service After Remote Diagnosis 3 Year Extended (928-1033)		
Service:	Basic Hardware Service: Next Business Day Limited Onsite Service After Remote Diagnosis Initial		

	Year (951-4670)
Service:	Dell Limited Hardware Warranty Plus Service Extended Year(s) (935-2098)
Service:	Dell Limited Hardware Warranty Plus Service Initial Year (929-6267)
Dirline:	Keep Your Hard Drive, 4 Year (981-3953)
Misc:	Chassis Intrusion Switch,Optiplex 990 SFF (317-6625)
Misc:	No Quick Reference Guide,Dell OptiPlex (310-9444)
Misc:	Shipping Material for System,Small Form Factor,Dell OptiPlex 990 (331-1270)
	Core i5 vPro Sticker (331-1564)
	CFI Titan Code for CFI FIDA orBypass SI (364-1846)
	CFI,Information,Val, SI Video,Allowed (364-3161)
	CFI,Information, Validation,Select Any Microsoft OS (364-4107)
	CFI Routing SKU (365-0257)
	CFI,Rollup,Integration ServiceTag or Label,Only - No Other CFI Services (366-1036)
	CFI,Information Client,Only (371-0941)
	CFI,B68S,Information,Label, Medium,Factory Install (372-8608)
	CFI,Information,CSRouting,Eligible,Factory Install (375-3088)

SALES REP:	Lee Pieper	PHONE:	888-977-3355
Email Address:	lee_pieper@dell.com	Phone Ext:	

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DELL

QUOTATION

QUOTE #: 594420685

Customer #: 32129236

Contract #: WN98ABZ

Customer Agreement #: ADSPO10-00000010

Quote Date: 8/16/11

Date: 8/16/11 3:27:12 PM

Customer Name: CITY OF AVONDALE

TOTAL QUOTE AMOUNT:	\$14,317.50		
Product Subtotal:	\$13,244.68		
Tax:	\$1,072.82		
Shipping & Handling:	\$0.00		
Shipping Method:	Ground	Total Number of System Groups:	1

GROUP: 1	QUANTITY: 4	SYSTEM PRICE: \$3,311.17	GROUP TOTAL: \$13,244.68
Base Unit:	Dell Latitude E6420 ATG (225-0702)		
Processor:	Intel Core i7-2620M, 2.70GHz, 4MB Cache, Dell Latitude E6X20 (317-5996)		
Memory:	4.0GB, DDR3-1333MHz SDRAM, 1 DIMM, Dell Latitude (317-4722)		
Keyboard:	Internal Backlit Dual Pointing English Keyboard, Dell Latitude E (331-1201)		
Keyboard:	Tech Setup Guide, English, Dell Latitude E6420 ATG (331-1715)		
Keyboard:	Documentation (English/French), Dell Latitude E-Family/Mobile Precision (331-2169)		
Video Card:	Intel HD Graphics 3000, Dell Latitude E6420 ATG (318-0512)		
Hard Drive:	128GB Dell Mobility Solid State Drive, 2.5MM, Dell Latitude E (342-1980)		
Hard Drive Controller:	Internal Fingerprint Reader and contactless smartcard reader, Dell Latitude E6420 ATG (331-2713)		
Floppy Disk Drive:	LCD Cover, with Touchscreen, Dell Latitude E6420 ATG (318-0511)		
Floppy Disk Drive:	14.0 in HD(1366x768) Anti-Glare LED, Touchscreen, Dell Latitude E6420 ATG (320-2142)		
Operating System:	Genuine Windows 7 Professional, 32-bit, with Media, Latitude, English (421-8052)		
Operating System:	Genuine Windows 7 Label, Latitude, Vostro and Mobile Precision Notebooks (330-6322)		
NIC:	Dell Wireless 375 Bluetooth Module, Dell Latitude E (430-3982)		
NIC:	Bluetooth Cable, Dell Latitude E6420/ATG/XFR (331-1430)		
Modem:	No Modem, Dell Latitude E (331-1221)		
TBU:	90W 3-Pin, AC Adapter, Dell Latitude E (331-1719)		
TBU:	US - 3 foot Flat Power Cord, Dell Latitude (330-4016)		
CD-ROM or DVD-ROM Drive:	8X DVD+-RW, Dell Latitude E (318-0330)		
CD-ROM or DVD-ROM Drive:	Cyberlink Power DVD 9.5.1,Media, Dell OptiPlex, Latitude and Precision Workstation (421-4822)		
CD-ROM or DVD-ROM Drive:	Roxio Creator Starter,Media, Dell OptiPlex, Latitude and Precision Workstation (421-4540)		
CD-ROM or DVD-ROM Drive:	8X DVD+-RW Bezel, Dell Latitude E6320/E6420/E6520/ATG (318-0466)		
Sound Card:	Integrated webcam with single digital microphone, Dell Latitude E6420/ATG (318-0436)		
Sound Card:	Dell Webcam Central Software Dell Latitude/Mobile Precision (421-1201)		
Processor Cable:	Intel Centrino Advanced-N + WIMAX 6250 802.11a/b/g/n and 802.16e Half Mini Card, Lat E (430-3962)		
Documentation Diskette:	Intel vPro Technology Advanced Management Features, Dell Latitude E6X20 (331-1227)		
Bundled Software:	No Productivity Software, Dell OptiPlex, Precision and Latitude (421-3872)		
Feature	6-Cell (60WH) Primary Lithium Ion Battery for Latitude (312-1151)		
Feature	Carrying Handle, Latitude E6420 ATG (331-1713)		
Service:	Basic Hardware Service: Next Business Day Limited Onsite Service After Remote Diagnosis 3 Year Extended (928-0793)		
Service:	Basic Hardware Service: Next Business Day Limited Onsite Service After Remote Diagnosis Initial		

	Year (951-4120)
Service:	Dell Limited Hardware Warranty Plus Service Extended Year(s) (934-9528)
Service:	Dell Limited Hardware Warranty Plus Service Initial Year (929-3587)
Extended Service:	Extended Battery Service for Years 2 and 3 of System Life (988-5542)
Dirtline:	Keep Your Hard Drive, 4 Year (981-5693)
Support:	Accidental Damage Service, 4 Year (928-0953)
Support:	Info, Complete Care (988-7689)
Misc:	Dell Wireless 5630 Multi-Mode EVDO-HSPA Mini-Card with A-GPS for Latitude and Mobile Precision (318-0407)
Misc:	E/Port Plus, Advanced Port Replicator for Latitude E-Family/Mobile Precision (430-3096)
Misc:	Energy Star Enabled/E-PEAT/Gold, Latitude E6420/ATG (331-1931)
	Intel Core i7 vPro Processor (331-1639)
	CFI Titan Code for CFI FIDA or Bypass SI (364-1846)
	CFI, Information, Val, SI Video, Allowed (364-3161)
	CFI, Information, Validation, Select Any Microsoft OS (364-4107)
	CFI Routing SKU (365-0257)
	CFI, Rollup, Integration Service Tag or Label, Only - No Other CFI Services (366-1036)
	CFI, Information Client, Only (371-0941)
	CFI, B68S, Information, Label, Medium, Factory Install (372-8608)
	CFI, Information, CS Routing, Eligible, Factory Install (375-3088)

SALES REP:	Lee Pieper	PHONE:	888-977-3355
Email Address:	lee_pieper@dell.com	Phone Ext:	

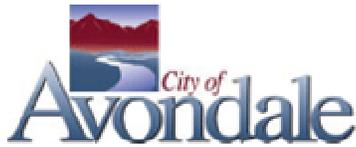
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CITY COUNCIL REPORT

SUBJECT:

First Amendment to Purchase Agreement - Life, Inc. for the Avondale Taxi Subsidy Program

MEETING DATE:

September 19, 2011

TO: Mayor and Council

FROM: Pier Simeri, Community Relations Director (623) 333-1611

THROUGH: Charlie McClendon, City Manager

PURPOSE:

City Council will consider a request to approve the first amendment to the Purchase Agreement with Life, Inc. to extend the term of the agreement, add a renewal provision to the agreement, increase the compensation to the Contractor for the services and provide renewal compensation amounts. This service provides subsidized taxi service to residents for medical and dialysis treatments.

BACKGROUND:

Avondale initiated the Taxi Subsidy program as a more cost effective alternative to Dial-a-Ride for residents that require transportation to obtain specific medical services such as dialysis, chemotherapy or other recurring medical treatments. The Southwest Valley Dial-a-Ride provides special needs individuals with general transportation service but along with being a more expensive option, the service area does not cover the entire City of Avondale.

The Avondale Taxi Subsidy program has been in place since July 2009 and is tailored to provide transportation for persons to obtain medical treatments. During Fiscal Year 10/11 the Taxi Subsidy program was used for 2,028 trips.

The City of Glendale competitively bid the taxi program services and found Life, Inc. was the most responsive bid, with the lowest cost and good coverage in the West Valley. Avondale can purchase services using Glendale's contract.

DISCUSSION:

The Taxi Subsidy Program provides transportation for Avondale residents with non-emergency medical transportation needs, who receive recurring treatments such as dialysis and chemotherapy.

BUDGETARY IMPACT:

The funding for this contract was budgeted in the Transit Account line item 215-5113-00-6180. Staff anticipates spending approximately \$24,000 in FY11/12.

RECOMMENDATION:

Staff recommends that the City Council authorize a first amendment to the Purchase Agreement with Life, Inc. to extend the term of the agreement, add a renewal provision to the agreement, increase the compensation to the Contractor for the services and provide renewal compensation amounts and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

ATTACHMENTS:

[Click to download](#)

**FIRST AMENDMENT
TO
PURCHASE AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
LIFE, INC.**

THIS FIRST AMENDMENT TO PURCHASE AGREEMENT (this "First Amendment") is made as of September 6, 2011, between the City of Avondale, an Arizona municipal corporation (the "City") and Life, Inc., an Arizona non-profit corporation ("Contractor").

RECITALS

A. The City and the Contractor entered into a Purchase Agreement, Contract No. 13143 dated November 1, 2010 (the "Agreement") for the Contractor to administer the City's taxi subsidy transportation program (the "Services"). The Agreement is attached hereto as Exhibit 1 and incorporated herein by reference.

B. The City has determined that it is necessary to extend the Agreement with the Contractor for the Services.

C. The City and the Contractor desire to enter into this First Amendment to (i) extend the term of the Agreement, (ii) add a renewal provision to the Agreement, (iii) increase the compensation to the Contractor for the Services and (iv) provide renewal compensation amounts.

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 City and the Contractor hereby agree to amend the Contract as follows:

1. Term. The term of the Agreement is hereby extended and shall remain in full force and effect until October 31, 2011 (the "Initial Term") unless terminated as otherwise provided pursuant to the terms and conditions of the Agreement or the Glendale Contract. After the expiration of the Initial Term, this Agreement may be renewed for up to three successive one-year terms (each a "Renewal Term") if (i) it is deemed in the best interests of the City, subject to availability and appropriation of funds for renewal in each subsequent year, (ii) the term of the Glendale Contract has been extended pursuant to its renewal options, (iii) at least 30 days prior to the end of the then-current term of the Agreement, the Contractor requests in writing to extend the Agreement for an additional one-year term, and (iv) the City approves the additional one-year term in writing (including any price adjustments approved as part of the Glendale Contract), as evidenced by the City Manager's signature thereon, which approval may be withheld by the City for any reason. The Contractor's failure to seek a renewal of this Agreement shall cause the Agreement to terminate at the end of the then-current term of this Agreement; provided, however, that the City may, at its discretion and with the agreement of the

Contractor elect to waive this requirement and renew this Agreement. The Initial Term and any Renewal Term(s) are collectively referred to herein as the "Term." Upon renewal, the terms and conditions of this Agreement shall remain in full force and effect.

2. Scope of Work. Contractor shall administer the Services under the terms and conditions of the Agreement, attached hereto as Exhibit 1.

3. Compensation. For the Initial Term, the City shall increase the compensation to the Contractor by \$25,000.00 from \$45,000.00 to an aggregate amount not to exceed \$70,000.00 for the Services. Thereafter, for each subsequent Renewal Term, if any, the City shall pay the Contractor an annual aggregate amount not to exceed \$70,000.00 for the Services at the unit rates set forth in the Agreement, attached hereto as Exhibit 1. The maximum aggregate amount for this Agreement shall not exceed \$280,000.00.

4. Effect of Amendment. In all other respects, the Agreement is affirmed and ratified and, except as expressly modified herein, all terms and conditions of the Agreement shall remain in full force and effect.

4. Non Default. By executing this First Amendment, the Contractor affirmatively asserts that (i) the City is not currently in default, not has been in default at any time prior to this Second Amendment, under any of the terms or conditions of the Agreement and (ii) any and all claims, known and unknown, relating to the Agreement and existing on or before the date of this Second Amendment are forever waived.

4. Conflict of Interest. This First Amendment and the Agreement may be cancelled pursuant to ARIZ. REV. STAT. § 38-511.

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

[SIGNATURES ON THE FOLLOWING PAGES]

“City”

CITY OF AVONDALE, an Arizona
municipal corporation

By: _____
Charles P. McClendon, City Manager

ATTEST:

Carmen Martinez, City Clerk

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on _____, 2011,
by Charles P. McClendon, the City Manager of the CITY OF AVONDALE, an Arizona
municipal corporation, on behalf of the City of Avondale.

Notary Public in and for the State of Arizona

(affix notary seal here)

“Contractor”

LIFE, INC. an Arizona non-profit corporation

By: _____

Name: _____

Title: _____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on _____, 2011,
by _____ as _____ of LIFE, INC., an
Arizona non-profit corporation, on behalf of the corporation.

Notary Public in and for the State of Arizona

(affix notary seal here)

EXHIBIT 1
TO
FIRST AMENDMENT
TO
PURCHASE AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
LIFE, INC.

[Agreement]

See following pages.

**PURCHASE AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
LIFE, INC.**

THIS PURCHASE AGREEMENT (this "Agreement") is entered into as of November 1, 2010, between the City of Avondale, an Arizona municipal corporation (the "City") and Life, Inc., an Arizona non-profit corporation ("Contractor").

RECITALS

A. After a competitive procurement process, the City of Glendale entered into a Contract, resulting from Solicitation No. RFP 11-10, dated as of September 2, 2010, with the Contractor to provide for the administration of a taxi subsidy program (the "Glendale Contract"). The Glendale Contract is attached hereto as Exhibit A and incorporated herein by reference.

B. The City is permitted by Section 25-24 of the City Code to make purchases under the Glendale Contract without any further public bidding when, in the opinion of the purchasing director, a separate bidding process is not likely to result in a lower price than would be available under the Glendale Contract.

C. The purchasing director has made the determination that a separate bidding process is not likely to result in a lower price than would be available under the Glendale Contract. The City desires to utilize the services of the Contractor for a lower cost than would otherwise be available.

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 is hereby acknowledged, the parties hereby agree as follows:

1. Term of Agreement. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until June 30, 2011.

2. Scope of Work. Contractor shall administer the City's taxi subsidy transportation program (the "Services") under the terms and conditions of the Glendale Contract, attached hereto as Exhibit A.

3. Compensation. The City shall pay Contractor an aggregate amount not to exceed \$45,000.00 for the Services, at rates set forth on Exhibit A.

4. Payments. The City shall pay the Contractor based upon work performed and completed to date, and upon submission and approval of invoices. All invoices shall document and itemize all work completed to date. The invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment.

5. Records and Audit Rights. Contractor's and its subcontractor's books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any Contractor and its subcontractors' employees who perform any work or Services pursuant to this Agreement to ensure that the Contractor and its subcontractors are complying with the warranty under Section 6 below (all the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the City, to the extent necessary to adequately permit (a) evaluation and verification of any invoices, payments or claims based on Contractor's and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (b) evaluation of the Contractor's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in Section 6 below. To the extent necessary for the City to audit Records as set forth in this subsection, Contractor and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the City shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the City to Contractor pursuant to this Agreement. Contractor and its subcontractors shall provide the City with adequate and appropriate workspace so that the City can conduct audits in compliance with the provisions of this subsection. The City shall give Contractor or its subcontractors reasonable advance notice of intended audits. Contractor shall require its subcontractors to comply with the provisions of this subsection by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

6. E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Contractor and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Contractor's or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

7. Scrutinized Business Operations. Pursuant to ARIZ. REV. STAT. §§ 35-391.06 and 35-393.06, the Contractor certifies that it does not have scrutinized business operations in Sudan or Iran. For the purpose of this subsection the term "scrutinized business operations" shall have the meanings set forth in ARIZ. REV. STAT. § 35-391 or 35-393, as applicable. If the City determines that Contractor submitted a false certification, the City may impose remedies as provided by law including terminating this Agreement pursuant to the Glendale Contract.

8. Conflict of Interest. This Agreement may be cancelled by the City pursuant to ARIZ. REV. STAT. § 38-511.

9. Applicable Law; Venue. In the performance of this Agreement, Contractor shall abide by and conform to any and all laws of the United States, State of Arizona and City of Avondale, including but not limited to, federal and state executive orders providing for equal employment and procurement opportunities, the Federal Occupational Safety and Health Act and any other federal or state laws applicable to this Agreement. This Agreement shall be governed

by the laws of the State of Arizona and a suit pertaining to this Agreement may be brought only in courts in the State of Arizona.

10. Indemnification; Insurance. The City shall be afforded all of the rights, privileges and indemnifications afforded to Glendale under the Glendale Contract, and such rights, privileges and indemnifications shall accrue and apply with equal effect to the City under this Agreement including, but not limited to, the Contractor's obligation to provide the indemnification and insurance.

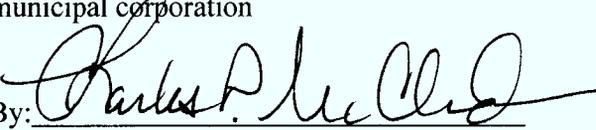
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first set forth above.

“City”

“Contractor”

CITY OF AVONDALE, an Arizona
municipal corporation

LIFE, INC. an Arizona non-profit
corporation

By: 
Charles P. McClendon, City Manager

By: 

ATTEST:

Name: Cole Arnold


Carmen Martinez, City Clerk

Title: Program Director

(ACKNOWLEDGEMENTS)

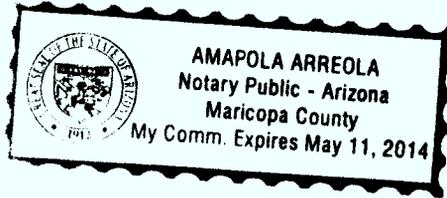
STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on November 9, 2010, by Charles P. McClendon, the City Manager of the CITY OF AVONDALE, an Arizona municipal corporation, on behalf of the City of Avondale.


Notary Public in and for the State of Arizona

My Commission Expires:

May 11, 2014



STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on December 14, 2010, by Cole K Arnold as Program Director of LIFE, INC., an Arizona non-profit corporation, on behalf of the corporation.


Notary Public in and for the State of Arizona

My Commission Expires:

July 19, 2013

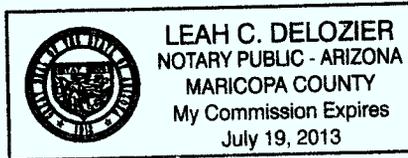


EXHIBIT A
TO
PURCHASE AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
LIFE, INC.

[Glendale Contract]

See following pages.

Contract No. C- _____

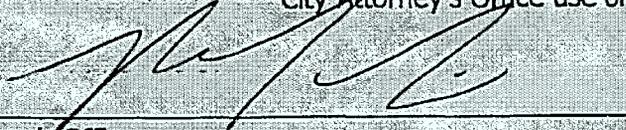
CONTRACT - SIGNATURE ROUTING FORM

Retain Signature Routing Form with contract throughout the entire process. If you have any questions, call the City Clerk's Office at x6152.

To Council:	No <input type="checkbox"/>	Yes <input checked="" type="checkbox"/>	Mtg Date: 08-31-10
Contract Title/Description:	Taxi Subsidy Program		
Vendor Name & Number (if known):	Life, Inc.		
Contact Person: Jim Swaziek	Extension: 2867	Dept of Contact: Budget-Mat Man	Date: 07-19-10

*****City Attorney's Office use only*****

Approved:



9/2/10

City Attorney's Office

Date

Ordinance/Resolution required?

Yes, attached _____

No

Chw
chw

Contract submitted to City Clerk's Office for contract numbering and signature routing.

*** Routing by City Clerk's Office ONLY ***

Contract number assigned C-				
Signatures(if applicable)		Date	Signed by	Return to City Clerk
Mayor	<input type="checkbox"/>			
City Manager	<input type="checkbox"/>			
Deputy City Manager	<input type="checkbox"/>			
Attorney	<input type="checkbox"/>			
Department Head	<input type="checkbox"/>			
City Clerk	<input type="checkbox"/>			
		Date	Initial	
<input type="checkbox"/>	Number of original contracts (minimum of 3 originals) _____			
<input type="checkbox"/>	If recording is required, one original contract is digitally recorded by the City Clerk's Office. Upon completion, a copy of the recorded document and two originals are sent back to the originating department.			
<input type="checkbox"/>	Two original contracts sent to back to originating department.			
<input type="checkbox"/>	One original contract sent to Records Dept for retention. If recorded, send copy of contract with Recording Number also.			

Comments: _____

**AGREEMENT FOR
PROFESSIONAL PROGRAM MANAGEMENT AGREEMENT**

This Agreement for Professional Program Management Agreement ("Agreement") is entered into and effective between CITY OF GLENDALE, an Arizona municipal corporation ("City") and Life, Inc., a[n] Arizona nonprofit corporation ("Contractor"), authorized to do business in the State of Arizona, as of the ____ day of _____, 2010 ("Effective Date").

RECITALS

- A. City intends to undertake a project for the benefit of the public and with public funds that is more fully set forth in Exhibit A, or an excerpt thereof (the "Project"); and
- B. City desires to retain the services of Contractor to perform all professional architectural services ("Services") and produce the specific work as set forth in the attached Project; and
- 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 Professional Services. Contractor will provide all Services necessary to assure the Project is completed timely and efficiently consistent within Project requirements, including, but not limited to, working in close interaction and interfacing with City and its designated employees, and working closely with others, including other contractors or consultants, retained by City. Additional conditions of the Project include:

- (A) Contractor will conduct up to six site visits to the Project site during the performance of duties under this Agreement.
- (B) No site work is part of this Agreement except as required to connect buildings to electrical services.

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; and
- (2) The City must approve the designated Project Manager.

(B) Project Team.

- (1) The Project Manager and all other employees assigned to the Project by 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 Exhibit A.

(2) Contractor will not discharge, reassign, replace or diminish the responsibilities of any of the employees assigned to the Project who have been approved by City without City's prior written consent unless that person leaves the employment of 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.

(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. 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.

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 \$85,000 as specifically detailed 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.
 - (A) Adjustments to Compensation require a written amendment to this Agreement and may require City Council approval.
 - (B) Additional services which are outside the scope of the Project contained in this Agreement may not be performed by the Contractor without prior written authorization from the City.

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.

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 15 days following the date of delivery.

- (A) Contractor will be equitably compensated for 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 Services 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 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 \$1,000,000.00 per occurrence and \$ 500,000.00 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 \$1,000,000.00 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) Professional Liability. A professional errors and omissions liability policy providing a minimum limit of \$0.00 for each claim and a \$0.00 annual aggregate.
- (D) Auto. A business auto policy providing a liability limit of at least \$1,000,000.00 per accident for Contractor and \$1,000,000.00 per accident for Sub-contractors and covering owned, non-owned and hired automobiles.
- (E) Workers' Compensation and Employer's Liability. A workers' compensation and employer's liability policy providing at least the minimum benefits required by Arizona law.
- (F) Notice of Changes. Contractor's Policies must provide for not less than 30 days' advance written notice to City Representative of:
 - (1) Cancellation or termination of Contractor or Sub-contractor's Policies;
 - (2) Reduction of the coverage limits of any of Contractor or and Sub-contractor's Policies; and
 - (3) Any other material modification of Contractor or Sub-contractor's Policies related to this Agreement.
- (G) Certificates of Insurance.
 - (1) Within 10 business days after the execution of the Agreement, Contractor must deliver to City Representative certificates of insurance for each of Contractor and Sub-contractor's Policies, which will confirm the existence or issuance of Contractor and Sub-contractor's Policies in accordance with the provisions of this Section, and copies

of the endorsements of Contractor and Sub-contractor's Policies in accordance with the provisions of this Section.

- (2) City is and will be under no obligation either to ascertain or confirm the existence or issuance of Contractor and Sub-contractor's Policies, or to examine Contractor and Sub-contractor's Policies, or to inform Contractor or Sub-contractor in the event that any coverage does not comply with the requirements of this Section.
 - (3) Contractor's failure to secure and maintain Contractor Policies and to assure Sub-contractor policies as required will constitute a material default under the Agreement.
- (H) 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).
- (I) 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 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 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 this Section is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
- 9.3 City retains the legal right to inspect the papers of any Contractor or subcontractor employee who performs work under this Agreement to ensure that the Contractor or any subcontractor is compliant with the warranty under this Section.
- 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 this Section. 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. Prohibitions. Contractor certifies under A.R.S. §§ 35-391 *et seq.* and 35-393 *et seq.*, that it does not have, and during the term of this Agreement will not have, "scrutinized" business operations, as defined in the preceding statutory sections, in the countries of Sudan or Iran.

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 (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:

Cole Arnold, Director - Life, Inc.
 1818 East Southern Avenue
 Mesa, Arizona 85214

- (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 Cathy Colbath, Transit Administrator
 6210 West Myrtle Avenue
 Glendale, Arizona 85301

With required copy to:

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

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

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

- 13.1 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, the response or any excerpts attached as 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. Electronic signature blocks do not constitute execution for purposes of this Agreement. 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 and continues for a one 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 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. Price adjustments will only be reviewed during the Agreement renewal period. There are no automatic renewals of this Agreement.
- 15. 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.

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

(Signatures appear on the following Page.)

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

City of Glendale,
an Arizona municipal corporation

By: Ed Beasley
Its: City Manager

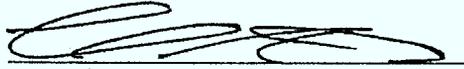
ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

Life, Inc.,
a[n] Arizona nonprofit corporation



By: Cole Arnold
Its: Director

EXHIBIT A
Request of Proposal 11-10

PROJECT

[see attached]

EXHIBIT A – PROJECT / SPECIFICATIONS
Service Agreement
RFP 11-10

1 CONTRACTOR PROVIDED (REQUIRED) SERVICES

Contractor will provide the following services:

- 1.1 Administer and operate the Program per guidelines set forth in this document.
- 1.2 Implement and monitor Program as required under this Agreement.
- 1.3 Review customer applications for the medical component and make determinations of eligibility per program standards
- 1.4 Design and print approved vouchers. Voucher designs are subject to approval by the designated City contact.
- 1.5 Issue vouchers to medical-needs transportation customers.
- 1.6 Work with City's Victim Assistance Unit to issue vouchers to provide taxi service to victims of domestic violence.
- 1.7 Market program to target customer groups for medical transportation needs.
- 1.8 Respond to customer requests and complaints pertaining to the Program.
- 1.9 Maintain complete and accurate records of all vouchers used under the terms of this Agreement.
- 1.10 Provide a quarterly report that shows the total number of rides provided per month for the quarter, customer feedback (complaints/comments, etc.), customer satisfaction (as identified in Program Evaluation section), and marketing efforts of the Program.
- 1.11 Provide an annual report of Program usage and effectiveness per guidelines.
- 1.12 Attend quarterly meetings with City of Glendale staff to review the program.

2 QUALIFIED TAXI FIRM PROVIDED (REQUIRED) SERVICES

- 2.1 "Qualified Taxi Firm" means any taxi company that is licensed and complies with city, county, or state regulations. At a minimum, the Qualified Taxi Firm must address evidence of the following:
 - 2.1.1 Sufficient numbers of vehicles in use by the taxicab company to provide the service required under the contract.
 - 2.1.2 Sufficient staff to operate the vehicles to provide the service required under the contract.

EXHIBIT A – PROJECT / SPECIFICATIONS
Service Agreement
RFP 11-10

- 2.1.3 Approved taxi meter rates for the general public.
- 2.1.4 Adequate automobile liability insurance in regard to any local, county, state, or federal requirements.
- 2.2 Contractor must have Qualified Taxi Firms accomplish the following services:
 - 2.2.1 Provide personnel and vehicles needed to satisfy the requirements of the Program.
 - 2.2.2 Respond in a timely and efficient manner to eligible Customers for an authorized special needs transportation request.
 - 2.2.3 Upon Customer request, pick up the eligible customer within 30 minutes of service request.
 - 2.2.4 Accept vouchers authorized by City as payment for taxi service.
 - 2.2.5 Collect twenty-five percent (25%) of total ride cost from Customer for each medical-needs transportation service provided with a trip cost not to exceed \$15.00. Customer is responsible for any trip cost overrun exceeding \$15.00.
 - 2.2.6 Require each medical-needs transportation Customer to show picture identification to the driver and verify voucher information.
 - 2.2.7 At the end of the taxi ride, drivers shall enter the meter fare, distance of the ride, amount paid by Customer on the voucher, sign the voucher, and have the passenger verify and sign the voucher.
 - 2.2.8 Services are not limited to 2.2.1 through 2.2.7 listed above. Other services may be required.

3 SPECIAL CONSIDERATIONS

The Taxi Subsidy Program is an ongoing program. Services are provided on the basis of demand from the Taxi Subsidy Program participants.

4 MEDICAL-NEEDS SERVICE - PROGRAM INFORMATION GUIDELINES

4.1 Contractor shall issue applications and receive and review applications from Glendale residents requesting to use the medical-needs transportation service. Contractor shall determine eligibility status based on Program eligibility requirements:

- 4.1.1 Glendale resident

EXHIBIT A – PROJECT / SPECIFICATIONS
Service Agreement
RFP 11-10

- 4.1.2 Person with a disability requiring repetitive medical therapies such as dialysis, chemotherapy, and some physical therapies which can be classified as a medical-needs service, for example, stroke rehabilitation.
 - 4.1.3 All medical-needs trips shall be limited to service within Glendale city limits (origin and destination within Glendale city limits). Requests for transportation outside of Glendale shall be referred to Maricopa County Special Transportation Services, which provides service for trips going outside of Glendale.
 - 4.1.4 All customers requesting medical-needs service must be medically stable. Medical-needs service shall not be used to provide emergency medical transportation.
 - 4.1.5 Contractor shall provide City with indemnification against any claims related to program eligibility or selection for inclusion within the program.
- 4.2 Program Subsidy Methodology – The Program will provide a subsidy not to exceed \$15.00 per trip for taxi rides. The customer will pay 25% of the fare. The Program will pay 75% of the fare, up to \$15.00. If a trip cost exceeds the maximum amount of \$15.00, the customer will be responsible for any amount over \$15.00. The Program will also pay an additional 15% gratuity of the actual trip cost, based on the maximum allowed trip cost of \$15.00.
- 4.3 Cost for gratuities paid to taxi company by Contractor which may be up to 15% per ride cost with a maximum trip cost of \$15.00 for medical trips and maximum trip cost of \$35.00 for domestic violence assistance rides.
- 4.4 Trip Limits – The number of trips shall be limited to 30 one-way trips per month per customer. Trips can only be made to and from customer residence and designated treatment facilities.
- 4.5 Vouchers – Customers must obtain vouchers prior to using the service. Eligible customer's name must be printed on the voucher. Origin and destination must be printed on the voucher for the voucher to be valid. The voucher should be easy to use and read and include an information table on the back showing the cost of the customer's (25%) trip cost. The voucher shall also clearly waive any and all claims or lawsuits that could be presented to the City, the Contractor, or the taxi company by the customer that are associated in any manner with the customer's medical condition. The customer must request vouchers from Contractor. No more than 30 coupons (one-month's worth) should be issued to a customer at one time. Customer must have used at least half of the coupons issued prior to requesting another supply of coupons. Contractor shall print origin and destination, and customer name on the voucher prior to sending to customer. Customer will hand a valid voucher to taxi driver at time of ride (along with their share of trip cost) and provide identification. Taxi driver shall complete required information which includes number of trip miles, total trip cost, amount paid by customer, sign the voucher, and have the passenger verify and sign

EXHIBIT A – PROJECT / SPECIFICATIONS
Service Agreement
RFP 11-10

voucher. The taxi company shall return completed vouchers to Contractors for reimbursement. Vouchers shall be sent to the City at the end of each month along with an itemized invoice for services. Vouchers shall have no cash value. Vouchers shall have an expiration date of 6 months from date of issue. The date of issue and the expiration date are to be indicated on the voucher.

- 4.6 Identification of participating taxi companies – Contractor shall identify and provide a current list of participating taxi companies to program customers. Customers can choose which taxi company they prefer to provide the service. Customers will call the taxi company directly for service.
- 4.7 The Contractor must hold semi-annual meetings with all taxi companies to emphasize customer satisfaction and go over any issues that need to be addressed. A sign-in sheet documenting attendance must be provided to the City of Glendale within two weeks of those meetings.
- 4.8 The Contractor shall seek out and coordinate with not for profit agencies that relate to and will enhance this service.

5 DOMESTIC VIOLENCE ASSISTANCE SERVICE - PROGRAM INFORMATION GUIDELINES

- 5.1 Contractor shall work with the City's Victim Assistance Unit to provide this service.
- 5.2 The Contractor shall be responsible for creating and distributing vouchers (approved by the City) and assuring that the Victim's Assistance Unit has vouchers available as needed. The vouchers must state the cost of the trip will be reimbursed by the Program and the total cost of the trip shall not exceed \$35.00. An additional 15% gratuity will apply to these trips up to a maximum trip cost of \$35.00. Gratuity cost is not to exceed \$5.25. The gratuity will be paid by Contractor when reimbursing the taxi company for rides. The Contractor will include this amount in the invoice when seeking reimbursement from the City.
- 5.3 The Victim's Assistance Unit caseworker will provide vouchers on a one-time case-by-case basis.
- 5.4 Contractor shall provide Victim's Assistance caseworkers with a list of current participating taxi providers. Customer can decide which taxi company to use and will use the voucher to pay for the trip up to \$35.00 maximum.
- 5.5 The taxi company shall complete the required information, including cost of trip, mileage of trip and date of trip.
- 5.6 Vouchers used for domestic violence assistance shall be numbered instead of requiring customer names.

EXHIBIT A – PROJECT / SPECIFICATIONS
Service Agreement
RFP 11-10

- 5.7 Vouchers shall include spaces for trip information including date of service, number of trip miles, driver signature, date and signature from Victim's Assistance caseworker issuing voucher. Vouchers shall have no cash value.

6 PAYMENT

- 6.1 Vouchers must be submitted to the City no longer than 90 days after their use or they shall not be eligible for reimbursement.
- 6.2 Vouchers received after 90 days shall be considered null and void.
- 6.3 Contractor shall invoice the city monthly for:
- 6.3.1 Administrative services related to Program broken down into categories
 - 6.3.2 Costs for taxi rides
- 6.4 Cost for gratuities paid to the taxi company by contractor may be up to 15% per ride cost –with maximum trip cost of \$15.00 for medical trips and maximum trip cost of \$35.00 for domestic violence assistance rides.
- 6.5 Contractor must submit all invoices used in a month within 90 days of that month's end. For example, vouchers used for trips taken in January must be submitted to the City of Glendale by the last day in March. The Contractor shall engage in best efforts to submit all vouchers used in June by July 15. The Contractor shall also keep copies of vouchers for at least one year after use.
- 6.6 Used vouchers shall be returned to City as verification of rides provided.
- 6.7 Vouchers must include all completed information.

7 OPTIONAL EXPANDED PROGRAM

At any time City may choose to expand or cease expansion of the taxi subsidy program to allow for trips beyond Glendale's borders. A thirty-day (30) notice will be given if City will expand/cease the expansion. The expanded program shall meet all the specifications of the normal program, except with the following changes:

- 7.1 All residents requesting transportation outside of Glendale must be approved by the City.
- 7.2 City must approve any trip purpose for trips outside Glendale.
- 7.3 Program Subsidy Methodology - the program will provide a subsidy not to exceed \$15.00 (plus tip – see below) per trip for taxi rides. The passenger will pay the first

EXHIBIT A – PROJECT / SPECIFICATIONS
Service Agreement
RFP 11-10

\$5.00 of the trip charge. The program will pay a fee towards the trip cost in an amount not to exceed \$15.00. Any additional trip cost will be paid by the customer. The Program will also pay an additional 15% gratuity of the actual trip cost, capped at a \$15.00 trip cost, or a maximum tip of \$2.25.

- 7.4 The Contractor must seek Qualified Taxi Firms to collect a \$5.00 per trip charge from Customer for each trip plus any amount over a \$15.00 subsidy. Customer is responsible for any trip cost overrun exceeding their \$5.00 fee plus the \$15.00 City subsidy.
- 7.5 The Contractor shall invoice the City monthly for the Costs for taxi rides and gratuities paid to Taxi Company by Contractor at up to 15% per ride cost, capped at a \$15.00 per trip cost. Used vouchers shall be returned to City as verification of rides provided. Vouchers must include all completed information.
- 7.6 Customers must obtain vouchers prior to using the service, and a 72 hour notice is required.
- 7.7 Vouchers – Eligible customer's name must be printed on voucher. Origin and destination must be printed on voucher to be valid. Voucher shall read that the passenger shall pay the first \$5.00 of the trip charge, plus any costs over a \$20 dollar trip cost (\$5.00 passenger fee, \$15.00 city subsidy). There is no information table required on the back of the voucher. All other elements of the voucher will remain the same pursuant to 1.7.5.

8 PROGRAM EVALUATION

- 8.1 Contractor shall provide monthly statistics indicating number of rides provided for each Program component broken down by Weekday, Saturday, and Sunday/Holiday. A list of all holidays for that year will be submitted to the Contractor prior to the new fiscal year.
- 8.2 Contractor shall obtain customer feedback and provide quarterly evaluations of Program focusing on customer satisfaction including:
 - 8.2.1 On-time performance
 - 8.2.2 Driver courtesy
 - 8.2.3 Vehicle condition
 - 8.2.4 Customer perceived value of program
 - 8.2.5 Overall level of service
 - 8.2.6 Overall satisfaction with service
 - 8.2.7 Customer access to other forms of transportation options
 - 8.2.8 Marketing effort awareness
- 8.3 Contractor shall provide quarterly evaluation reports within the Program to determine if Program participants prefer taxi or Dial-A-Ride, and why.

EXHIBIT A – PROJECT / SPECIFICATIONS
Service Agreement
RFP 11-10

- 8.4 Contractor shall provide a report at the end of the initial contract period evaluating overall Program effectiveness based on items listed in 1.11.2 and recommending Program changes to improve Program.

9 PROGRAM AUDIT AND INSPECTION OF RECORDS

- 9.1 Contractor shall maintain complete and accurate records with respect to actual time and allowable costs incurred under this Agreement.
- 9.2 All such records shall be maintained on a generally accepted accounting basis and shall be clearly identified.
- 9.3 Contractor shall provide reasonable access to the representatives of City, or its designees, including representatives of the applicable government agencies if this Agreement is funded in whole or in part with state or federal funds, to such books and records and any other books, documents, papers or records of the Contractor that are related to this Agreement.
- 9.4 City of Glendale, the State, the State Auditor, FHWA, FTA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations shall have the right to examine and audit such books and records and to make transcripts or copies from them as necessary.
- 9.5 Contractor shall allow inspection of all work data, documents, proceedings, and activities related to this Agreement for a period of five (5) years from the date of final payment under this Agreement.
- 9.6 If requested, Contractor shall provide copies of financial records/balance sheets to monitor financial stability.
- 9.7 This article must be included in any subcontract entered into as a result of this Agreement.

10 PROGRAM PAYMENT

- 10.1 Subject to the other provisions of the document, the Contractor shall be reimbursed for its reasonable costs in performing the services contained in these specifications provided, however, that costs do not exceed \$85,000 for the initial contract period of this Agreement.
- 10.2 To receive payment, Contractor shall present to the City an accurate and properly itemized invoice.

EXHIBIT A – PROJECT / SPECIFICATIONS
Service Agreement
RFP 11-10

- 10.3 Invoices shall be presented monthly and include used vouchers as verification of taxi service provided.
- 10.4 City shall not be liable for any purchases or contracts entered into by the Contractor in anticipation of receiving payments under this Agreement.

EXHIBIT B
Request for Proposal 11-10
COMPENSATION

METHOD AND AMOUNT OF COMPENSATION

N/A.

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 \$85,000 (for the initial term of the contract).

DETAILED PROJECT COMPENSATION

N/A.

EXHIBIT C
Request for Proposal 11-10

DISPUTE RESOLUTION

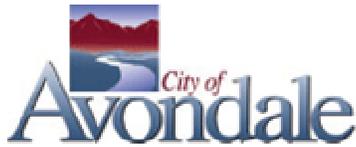
1. Disputes.

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

2. Arbitration.

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

- 2.4 **Award.** At the arbitration hearing, each Party will submit its position to the arbitrator, evidence to support that position, and the exact award sought in this matter with specificity. The arbitrator must select the award sought by one of the parties as the final judgment and may not independently alter or modify the awards sought by the parties, fashion any remedy, or make any equitable order. The arbitrator has no authority to consider or award punitive damages.
 - 2.5 **Final Decision.** The Arbitrator's decision should be rendered within 15 days after the arbitration hearing is concluded. This decision will be final and binding on the Parties.
 - 2.6 **Costs.** The prevailing party may enter the arbitration in any court having jurisdiction in order to convert it to a judgment. The non-prevailing party shall pay all of the prevailing party's arbitration costs and expenses, including reasonable attorney's fees and costs.
3. **Services to Continue Pending Dispute.** Unless otherwise agreed to in writing, Contractor must continue to perform and maintain progress of required Services during any Dispute resolution or arbitration proceedings, and City will continue to make payment to Contractor in accordance with this Agreement.
 4. **Exceptions.**
 - 4.1 **Third Party Claims.** City and Contractor are not required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defense of a third-party who is not obligated by contract to arbitrate disputes with City and Contractor.
 - 4.2 **Liens.** City or Contractor may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice, but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Arizona Law, including, without limitation, an action under A.R.S. § 33-420, without the necessity of initiating or exhausting the procedures of this Exhibit.
 - 4.3 **Governmental Actions.** This Exhibit does not apply to, and must not be construed to require arbitration of, any claims, actions or other process filed or issued by City of Glendale Building Safety Department or any other agency of City acting in its governmental permitting or other regulatory capacity.



CITY COUNCIL REPORT

SUBJECT:

Resolution 3003-911 - Energy, Environment and Natural Resources Commission Bylaws

MEETING DATE:

September 19, 2011

TO: Mayor and Council
FROM: Carmen Martinez, City Clerk (623) 333-1214
THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is recommending Council adoption of a resolution approving the renaming of the Environmental Affairs Commission to the Energy, Environment and Natural Resources Commission and amending the Commission's bylaws to reduce the number of members, standardize the format and update and clarify the language as needed.

BACKGROUND:

Staff reviewed in detail the proposed amendments at the Council meeting of September 6, 2011.

DISCUSSION:

In addition to format changes, the following changes are included in the attached revised bylaws as presented to Council on September 6th.

1. Eliminate subcommittees to instead allow for the establishment of ad-hoc committees as needed
2. Reduce membership from 13 to 9 and add one alternate position
3. Designate the Youth position as one-year appointment to coincide with the school year. The young person appointed to this position will be encouraged to assist in the recruitment of his/her replacement
4. Rename the Environmental Affairs Commission to the ENERGY, ENVIRONMENT AND NATURAL RESOURCES COMMISSION to more accurately reflect the goals established by the commission and provide more a succinct focus

RECOMMENDATION:

Staff recommends Council adoption of a resolution approving the renaming of the Environmental Affairs Commission to the Energy, Environment and Natural Resources Commission and amending the Commission's bylaws to reduce the number of members, standardize the format and update and clarify the language as needed.

ATTACHMENTS:

Click to download

 [Resolution 3003-911](#)

RESOLUTION NO. 3003-911

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, RENAMING THE ENVIRONMENTAL AFFAIRS COMMISSION TO THE ENERGY, ENVIRONMENT AND NATIONAL RESOURCES COMMISSION AND ADOPTING THE ENERGY, ENVIRONMENT AND NATIONAL RESOURCES COMMISSION BYLAWS.

WHEREAS, on October 6, 2008, the Council of the City of Avondale (the “City Council”) adopted bylaws for the Environmental Affairs Commission (the “EAC Bylaws”); and

WHEREAS, the City Council desires to rename the Environmental Affairs Commission to the Energy, Environment and Natural Resources Commission and adopt the Energy, Environment and Natural Resources Commission Bylaws (the “EENRC Bylaws”) to replace the EAC Bylaws.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. The recitals above are hereby incorporated as if fully set forth herein.

SECTION 2. The Environmental Affairs Commission is hereby renamed the Energy, Environment and Natural Resources Commission.

SECTION 3. The EAC Bylaws are hereby repealed.

SECTION 4. The EENRC Bylaws are hereby adopted in the form attached hereto as Exhibit A, and incorporated herein by reference.

SECTION 5. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps necessary to carry out the purpose and intent of this Resolution.

[SIGNATURES ON FOLLOWING PAGE]

PASSED AND ADOPTED by the Council of the City of Avondale, September 19, 2011.

Marie Lopez Rogers, Mayor

ATTEST:

Carmen Martinez, City Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 3003-911

[EENRC Bylaws]

See following pages.

CITY OF AVONDALE
ENERGY, ENVIRONMENT AND NATURAL RESOURCES COMMISSION
BYLAWS

- I. Name.
The name of this advisory body shall be the *Energy, Environment and Natural Resources Commission* (the “Commission”).

- II. Powers and Duties of the Commission.
The purpose of the Commission shall be to help identify specific resource conservation goals and environmental practices to reduce costs and support sustainability and to advise the City Council on these and other related issues. The Commission shall submit all projects requiring capital expenditure to the City Council for approval as part of the budget and capital improvement program process each fiscal year.
 - A. Advisory Body. The Commission shall act as an advisory body to the City Council, City Manager, Public Works Director, City Engineer and Development Services Director and Finance and Budget Director and shall provide the same with guidance in the areas of environmental policy, environmental operations, and environmental education.

 - B. Ad Hoc Committees. The Commission may appoint ad hoc committees as necessary to accomplish the Commissions purpose and duties. Ad hoc committees may work with other Boards, Commissions or Committees as necessary. Such Ad Hoc Committees shall automatically dissolve when their work is done and after their final report has been accepted by the Committee.

- III. Membership and Composition.
 - A. Number of Commission Members. The Commission shall be composed of nine voting members (collectively, the “Members”), including one youth member, who may be a representative of the Avondale Youth Advisory Commission or an interested youth from the community (the “Youth Member”). The Commission shall also have up to two alternate members (“Alternate Members”) who shall attend and may participate in Commission meetings but shall not vote in any Commission meeting.

 - B. Membership Eligibility and Appointment. Members and Alternate Members shall meet all eligibility criteria as outlined in the City Council Rules of Procedure (except for the Youth Member who may be younger than 18 years old). Appointment of Members and Alternate Members shall be conducted according to the City Council Rules of Procedure.

 - C. Term. Unless appointed to fill a vacancy mid-term, each Member’s term of office, except for the Youth Member, shall be three years, unless the Member resigns sooner or is removed from his/her position. The Youth Member’s term shall be one year, commencing on August 1 of each year and terminating the following year on July 31.

- D. Term Limits. No Member may serve more than two consecutive terms; provided, however, that a Member appointed to fill a vacancy may serve two consecutive terms after the conclusion of the unexpired term to which he or she was appointed.
- E. Vacancy. Any vacancy on the Commission shall be filled for the unexpired term by the Alternate Member if one has been appointed by the City Council per the established procedures or by the first Alternate Member if more than one Alternate Member has been appointed by the City Council. If an Alternate Member has not been so appointed, the position shall remain vacant until a new Member is appointed by the City Council to fill the vacancy. In cases of a vacancy due to the expiration of a Member's term, the Member shall remain seated until a successor is appointed.
- F. Attendance. All Members and Alternate Members are required to attend all Commission meetings unless excused by the Chairperson. Three consecutive unexcused or unexplained absences from any regular or special meeting shall result in a vacancy in the position and the member shall be deemed to have resigned her/his position.
- G. Removal. Any Member or Alternate Member may be removed upon a vote of not less than five City Council members for any cause as determined by the City Council.

IV. Commission Officers and Staff.

- A. Chairperson and Vice-Chairperson. At the first regularly scheduled Commission meeting of each calendar year, the Commission shall elect a Chairperson and Vice-Chairperson from among the Members. The Chairperson and Vice-Chairperson shall assume responsibilities at the next scheduled meeting. The term of the Chairperson and Vice-Chairperson shall be for one year. Any Member serving as Chairperson or Vice-Chairperson shall be eligible for re-election; provided, however, that each Member may serve no more than two terms per office.
- B. Duties of the Chairperson and Vice-Chairperson. The Chairperson shall (i) preside at all Commission meetings, (ii) decide all points of order and procedure, (iii) appoint Commissions if necessary and coordinate the work of the Commissions, (iv) serve as a representative of the Commission to other governmental units on such matters as have been approved and designated by the Commission and (v) perform any duties as required by law, ordinance or these Bylaws. The Chairperson shall have the right to vote on all matters before the Commission and shall have the right to make or second motions in the absence of a motion or a second. The Vice-Chairperson shall act as an aid to the Chairperson and shall perform the duties of the Chairperson in his or her absence or inability to serve. In the absence of the Chairperson and the Vice-Chairperson, the City Staff Liaison shall call the meeting to order and a simple majority of the Members then present shall select an acting Chairperson for the meeting. If the Commission Members present are unable to select an acting Chairperson, the City Staff Liaison shall act as the Chairperson for the meeting but without voting privileges.

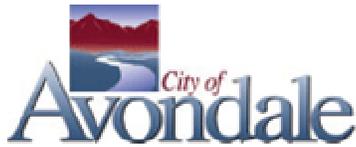
- C. Vacancy. A vacancy in the office of Chairperson shall be filled by the Vice-Chairperson. A vacancy in the office of Vice-Chairperson shall be filled by a vote of the Commission at the next meeting of the Members.
- D. Removal. The Chairperson or Vice-Chairperson may be removed from office at any time at a meeting of the Members by an affirmative vote of a three-fourths majority of Members, who must be present to vote.
- E. City Staff Liaison. The City Manager shall appoint a staff member to serve as the staff liaison to furnish support to the Commission as requested or as required to advise and furnish professional and technical advice.
- F. Legal Counsel. The Commission may request that the City Attorney, or authorized designee provide, legal advice and rulings on points of order, procedure, or other matters related to the Commission's duties.

V. Commission Meetings.

- A. Frequency. Commission meetings shall be held no less frequently than quarterly and shall be held at the City of Avondale Civic Center, Avondale, Arizona, unless posted differently at least 24 hours in advance.
- B. Additional Commission Meetings. Additional Commission meetings may be held on the call of the Chairperson or the request of two or more Members, or by giving notice to all the Members and Alternate Members by telephone or personal delivery or by verbal comment during a regular meeting. All notices shall be given, and posted according to the Arizona Open Meeting Law at least 24 hours before the meeting.
- C. Ad Hoc Committee Meetings. Shall be held on an as-needed basis and shall be posted in compliance with the Arizona Open Meeting Law at least 24 hours before the meeting.
- D. Participation by the Public. Commission meetings shall be open to the public. For any matter under consideration, any person may submit written comments and if attending in person, may speak to the issue upon being recognized by the Chairperson and stating his or her name and, if applicable, the names of any person or organization on whose behalf he or she is appearing.
- E. Quorum. A Commission meeting where a majority of its Members are present shall constitute a quorum. A majority vote of those Members present shall be required to take official action. No action shall be taken at any meeting in absence of a quorum, except to adjourn the meeting to a subsequent date. Alternate Members may not vote at any Commission meeting.
- F. Agenda. The agenda shall be prepared by the City Staff Liaison, reviewed by the Chairperson, and posted no less than 24 hours before the Commission meeting in accordance with the Arizona Open Public Meeting Law.

- G. Minutes. Minutes of the proceedings shall be retained and filed with the City Clerk's Department who will, in turn, file and post the minutes according to applicable law.
- H. Open Meeting Law. The Commission is subject to the Arizona Open Public Meeting Law.

VI. Amendments.
Recommendations for amendments to these Bylaws must be approved by the affirmative vote of a majority of the Members. The Commission will then forward the recommendations for amendments to the Bylaws to the City Council for its approval.



CITY COUNCIL REPORT

SUBJECT:

Resolution 3004-911 - Intergovernmental Agreement with Regional Public Transit Authority for ADA Services

MEETING DATE:

September 19, 2011

TO: Mayor and Council

FROM: Rogene Hill, Assistant City Manager (623) 333-1012

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council adopt a Resolution approving an Intergovernmental Agreement with the Regional Public Transit Authority (RPTA) for FY 2012 Paratransit Services.

BACKGROUND:

This IGA provides funding through the RPTA for ADA transit services. This agreement provides partial reimbursement of ADA costs with funds provided through Proposition 400. This program allocates a portion of the funds to cities and towns in Maricopa County for ADA service over the life of the twenty-year program.

DISCUSSION:

RPTA was legislatively mandated to implement the transit element of the Regional Transportation Plan, which includes bus operations, bus capital and rail capital. The RPTA Board of Directors oversees the implementation of the transit element of the plan, also known as the Transit Life Cycle Program. In addition to representation at the Board level, staff attends monthly operational meetings to advise the RPTA Executive Director on issues related to the implementation of the TLCP.

BUDGETARY IMPACT:

The costs for providing ADA services are included in the Transit Operating budget. This agreement with RPTA provides for reimbursement of ADA paratransit expenses up to \$136,273 for FY 2011-2012.

RECOMMENDATION:

Staff recommends that the City Council adopt a resolution approving the third amendment to the Intergovernmental Agreement with the Regional Public Transit Authority for FY11-12 ADA services and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

ATTACHMENTS:

Click to download

[📄 Resolution 3004-911](#)

RESOLUTION NO. 3004-911

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING THE FOURTH AMENDMENT TO THE ADA PARATRANSIT SERVICE AGREEMENT WITH THE REGIONAL PUBLIC TRANSIT AUTHORITY.

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

SECTION 1. The Fourth Amendment to the ADA Paratransit Service Agreement (Contract #106-34-2012) with the Regional Public Transit Authority relating to ADA services (the “Fourth Amendment”) is hereby approved in substantially the form attached hereto as Exhibit A and incorporated herein by reference.

SECTION 2. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps necessary to cause the execution of the Agreement and to take all steps necessary to carry out the purpose and intent of this Resolution.

PASSED AND ADOPTED by the Council of the City of Avondale, September 19, 2011.

Marie Lopez Rogers, Mayor

ATTEST:

Carmen Martinez, City Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 3004-911

(Fourth Amendment)

See following pages.

ADA PARATRANSIT SERVICE AGREEMENT AMENDMENT

Contract # 106-34-2012

As of the 1st day of July 2011, this amends the following items of the ADA Paratransit Service Agreement entered into between the City of Avondale (the "City") and the Regional Public Transportation Authority (the "RPTA"), dated the 1st day of July, 2007, as amended July 1, 2008, July 1, 2009 and July 1, 2010 (collectively, the "Agreement")

The following section is added to the Agreement:

SECTION 4: CITY RESPONSIBILITY

- 4.7 CITY has agreed to participate in the Valley Metro ADA Platinum Pass Program. The ADA Platinum Pass program allows free use of fixed route bus and light rail by ADA certified CITY residents. During its participation, the City will be responsible for the cost of reduced fares on local service and full express fare on express service for eligible ADA certified individuals. Participation in the ADA Platinum Pass Program is voluntary and the CITY may cancel its participation by providing a ninety (90) calendar day written notice to RPTA. Participation in the ADA Platinum Pass Program reduces ADA operational costs by encouraging ADA certified passengers to use fixed route service in-lieu of more traditional ADA paratransit services. Each eligible ADA certified passenger that opts to participate will receive a reduced fare ADA Platinum Pass to be used at rail fare vending machines and at bus fare boxes for the payment of reduced local fare, as defined by the Valley Metro RPTA Board approved fare policy in effect. RPTA shall maintain current fare information at http://www.valleymetro.org/paying_your_fare/fare_options/. RPTA shall administer this program on behalf of CITY. RPTA shall provide a report to the CITY on usage and costs incurred by eligible ADA certified individuals within the CITY's corporate limits within 15 calendar days from the receipt of a detailed billing report from the City of Phoenix. When applicable, the CITY's ADA-PTF account shall be debited, for all pass uses by ADA certified CITY residents, on an annual basis up to the monthly capped amount of the individual reduced fare of the Platinum Pass and/or express fare Platinum Pass.

The following schedule A replaces and supersedes the Schedule A of the Agreement dated July 1, 2010.

The following Schedule is added to the Agreement:

The attached Schedule B.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the _____ day
of _____, 2011.

By: _____
Marie Lopez Rogers
Mayor

By: _____
David A. Boggs
Executive Director

ATTEST: _____
Avondale City Clerk

ATTEST: _____
Jon Medwin
Contracts and Procurement
Manager

ATTEST: _____
Michael Taylor
Acting Deputy Executive
Director Finance

INTERGOVERNMENTAL AGREEMENT DETERMINATION

In accordance with the requirements of A.R.S. Section 11-952(D), each of the undersigned attorneys acknowledge that: (1) they have reviewed the above Agreement on behalf of their respective clients and (2) 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.

For the City of Avondale

Attorney for RPTA

SCHEDULE A

For the period of July 1, 2011 to June 30, 2012 it is estimated that the City of Avondale may request reimbursement from Regional Public Transportation Authority for a maximum of \$136,273.00 for service consumed by RPTA ADA certified paratransit riders in Avondale. Eligible ADA Paratransit expenses include only expenses associated with trips completed by passengers certified as ADA eligible using jurisdictionally approved alternatives to fixed route transit. This amount is contingent upon approval of RPTA's fiscal year 2011-2012 budget by the RPTA Board of Directors.

Total reimbursements to the City will not exceed the net amount that factors in estimated and actual costs associated with operating RPTA's In-Person Eligibility Determination Facility and ADA Certification office.

Reimbursements must be requested by CITY on a PTF Reimbursement Request Form, attached hereto as Attachment A, and certified by the CITY's chief financial officer or designee. RPTA will reimburse the CITY within thirty (30) business days based upon availability of funds. The CITY may request that reimbursements be made electronically. Wire transfers must be pre arranged through the RPTA Finance Department.

SCHEDULE B

VALLEY METRO ADA PLATINUM PASS PROGRAM

It is estimated that CITY's ADA PTF annual allocation for the ADA Platinum Pass Program shall incur a cost of \$5,100.00 in FY2011-12. In all cases, the CITY shall only be responsible for the actual costs incurred by its eligible ADA certified residents. Residency is determined at the time the ADA card is issued and verified annually thereafter. In the event that the CITY does not use its estimated ADA Platinum Pass Program funding, the City may direct such remaining funding to other ADA programs approved by RPTA, including but not limited to, funding of dial-a-ride and other alternative transportation programs for ADA certified users within CITY.

ATTACHMENT A

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

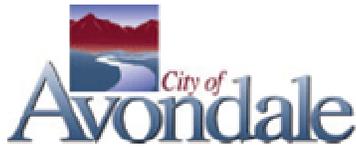
I certify the financial expenditures submitted for reimbursement with this report, including supporting documentation, are eligible and allowable expenditures consistent with the project goals and requirements, have not been previously requested, and that payment is due. I also certify that all matching 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.

Date request received:	<i>For RPTA use only</i>
Approved for funds availability	Life cycle compliance review (signature/date)
	10
	Date of funds transfer



CITY COUNCIL REPORT

SUBJECT:

Resolution 3005-911 and Ordinance 1469-911 -
Adopting the 2010-11 Amendments to the Tax
Code of the City of Avondale

MEETING DATE:

September 19, 2011

TO: Mayor and Council

FROM: Kevin Artz, Finance & Budget Director (623) 333-2011

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council adopt a resolution declaring as a public record "The 2010-11 Amendments to the Tax Code of the City of Avondale" and an ordinance relating to the Business Privilege Tax (Sales Tax) and adopting "The 2010-11 Amendments to the Tax Code of the City of Avondale" by reference.

BACKGROUND:

The League of Arizona Cities and Towns has forwarded the 2010-11 amendments to the Model Cities Tax Code for the City of Avondale. The amendments are housekeeping items, that when adopted, will bring the City Tax Code into conformance with State law, clarifies medical marijuana sales are taxable, extends the sunset date for an exemption on construction of solar devices, and prohibits cities from taxing commercial rentals between two corporations with at least 80% common ownership (this does not impact Avondale, as the City had previously selected the model option that exempted this from City tax).

Following each legislative session Arizona cities and towns, through the Unified Audit Committee (UAC), review new State laws to determine areas of the Model City Tax Code that require adjustment to maintain conformity with State law. As the UAC prepares and approves tax code changes they are forwarded to the business community for comment, and then to the Municipal Tax Code Commission for final approval before presenting them to city councils for adoption.

The 2010-11 amendments are incorporated in the Avondale Tax Code as follows:

- **Section 1-** This section adds language to the existing definitions of "Food" and "Prosthetic", and creates a new definition for the phrase "Medical marijuana". These changes were made for the purpose of specifically excluding medical marijuana from those definitions, and thus excluding sales of medical marijuana from the related exemptions available under the Retail classification of the Model City Tax Code (MCTC). The additional language makes it clear that medical marijuana sales are taxable at the regular Retail tax rate in all cities and towns. This section shall be effective from and after June 1, 2011.
- **Sections 2-4-** The changes in these sections are to comply with the 2010 regular legislative session passage of HB 2700. HB 2700 changed the sunset date under Contracting in A.R.S. 42-5075(B)(14) for installed solar energy devices, extending the deadline from January 1, 2011 to 2017. The three affected sections of the MCTC have the same language and these changes align the sunset date in the MCTC with the State statute. A technical correction adding reference to the Arizona Revised Statutes is also being added to the exemption for

development fees in each section. These sections shall be effective from and after July 29, 2010.

- **Section 5-** New subsection 445(s) is added to incorporate HB2510, passed during the 2010 regular legislative session, which prohibited cities and towns from taxing commercial rentals between two corporations when either the landlord or lessor corporation owns at least 80% of the voting stock of the other corporation. Also allows exemption if a third corporation owns 80% of both the landlord and the lessor corporations, and treats a “reciprocal insurer” as if it were a “corporation” for purposes of the exemption. This section shall be effective from and after July 29, 2010.
- **Section 6-** The changes in this section were made based on cooperation and compromise between the Unified Audit committee and banking interests. The changes address the treatment of successor privilege tax liability in the event of a foreclosure. The new language allows for the deferral of payment of the delinquent privilege tax until after the creditor subsequently sells the property, aligning the cash flow related to the property with payment of the tax liability. In addition, this amendment will allow for the creditor's tax base to be based on their subsequent selling price, and also provides for tax credits in the event the debtor comes forward to pay their liability after the creditor's payment. This section shall be effective from and after May 1, 2010.
- **Section 7-** During the 2009 regular legislative session, SB1196 created a use tax exemption for school districts and charter schools which was not previously incorporated into the MCTC. This preemption in A.R.S. 42-6004(F) exempts the storage, use, or consumption of tangible personal property by a school district or charter school. This section shall be effective from and after September 30, 2009

With these changes, the City's tax code will conform with the Model City Tax Code. The intent to modify the City tax code has been posted on the City's web site for the required 60 days.

RECOMMENDATION:

Staff recommends the Mayor and Council:

1. Adopt a resolution declaring as a public record “The 2010-11 Amendments to the Tax Code of the City of Avondale” and
2. Adopt an ordinance relating to the Business Privilege Tax (Sales Tax) and adopting “The 2010-11 Amendments to the Tax Code of the City of Avondale” by reference.

ATTACHMENTS:

Click to download

- 📄 [Resolution 3005-911](#)
- 📄 [Avondale Tax Code Amendments](#)
- 📄 [Ordinance 1469-911](#)

RESOLUTION NO. 3005-911

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE CITY CLERK AND ENTITLED THE "2010-11 AMENDMENTS TO THE TAX CODE OF THE CITY OF AVONDALE."

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

SECTION 1. That certain document entitled the "2010-11 Amendments to the Tax Code of the City of Avondale" of which three copies each are on file in the office of the City Clerk and open for public inspection during normal business hours, is hereby declared to be a public record, and said copies are ordered to remain on file with the City Clerk.

PASSED AND ADOPTED by the Council of the City of Avondale, September 19, 2011.

Marie Lopez Rogers, Mayor

ATTEST:

Carmen Martinez, City Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, City Attorney

**2010-2011 AMENDMENTS TO THE
TAX CODE OF THE CITY OF AVONDALE**

Section 1. Section 13A-100 of the Tax Code of the City of Avondale is amended to read:

Sec. 13A-100. General definitions.

For the purposes of this Chapter, the following definitions apply:

"Assembler" means a person who unites or combines products, wares, or articles of manufacture so as to produce a change in form or substance of such items without changing or altering component parts.

"Broker" means any person engaged or continuing in business who acts for another for a consideration in the conduct of a business activity taxable under this Chapter, and who receives for his principal all or part of the gross income from the taxable activity.

"Business" means all activities or acts, personal or corporate, engaged in and caused to be engaged in with the object of gain, benefit, or advantage, either direct or indirect, but not casual activities or sales.

"Business Day" means any day of the week when the Tax Collector's office is open for the public to conduct the Tax Collector's business.

"Casual Activity or Sale" means a transaction of an isolated nature made by a person who neither represents himself to be nor is engaged in a business subject to a tax imposed by this Chapter. However, no sale, rental, license for use, or lease transaction concerning real property nor any activity entered into by a business taxable by this Chapter shall be treated, or be exempt, as casual. This definition shall include sales of used capital assets, provided that the volume and frequency of such sales do not indicate that the seller regularly engages in selling such property.

"Combined Taxes" means the sum of all applicable Arizona Transaction Privilege and Use Taxes; all applicable transportation taxes imposed upon gross income by this County as authorized by Article III, Chapter 6, Title 42, Arizona Revised Statutes; and all applicable taxes imposed by this Chapter.

"Commercial Property" is any real property, or portion of such property, used for any purpose other than lodging or lodging space, including structures built for lodging but used otherwise, such as model homes, apartments used as offices, etc.

"Communications Channel" means any line, wire, cable, microwave, radio signal, light beam, telephone, telegraph, or any other electromagnetic means of moving a message.

"Construction Contracting" refers to the activity of a construction contractor.

"Construction Contractor" means a person who undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish any building, highway, road, railroad, excavation, or other structure, project, development, or improvement to real property, or to do any part thereof. "Construction contractor" includes subcontractors, specialty contractors, prime contractors, and any person receiving consideration for the general supervision and/or coordination of such a construction project except for remediation contracting. This definition shall govern without regard to whether or not the construction contractor is acting in fulfillment of a contract.

"Delivery (of Notice) by the Tax Collector" means "receipt (of notice) by the taxpayer".

"Delivery, Installation, or Other Direct Customer Services" means services or labor, excluding repair labor, provided by a taxpayer to or for his customer at the time of transfer of tangible personal property; provided further that the charge for such labor or service is separately billed to the customer and maintained separately in the taxpayer's books and records.

"Engaging", when used with reference to engaging or continuing in business, includes the exercise of corporate or franchise powers.

"Equivalent Excise Tax" means either:

- (1) a Privilege or Use Tax levied by another Arizona municipality upon the transaction in question, and paid either to such Arizona municipality directly or to the vendor; or
- (2) an excise tax levied by a political subdivision of a state other than Arizona upon the transaction in question, and paid either to such jurisdiction directly or to the vendor; or
- (3) an excise tax levied by a Native American Government organized under the laws of the federal government upon the transaction in question, and paid either to such jurisdiction directly or to the vendor.

"Federal Government" means the United States Government, its departments and agencies; but not including national banks or federally chartered or insured banks, savings and loan institutions, or credit unions.

"Food" means any items intended for human consumption as defined by rules and regulations adopted by the Department of Revenue, State of Arizona, pursuant to A.R.S. Section 42-5106. Under no circumstances shall "food" include alcoholic beverages or tobacco, or food items

purchased for use in conversion to any form of alcohol by distillation, fermentation, brewing, or other process. UNDER NO CIRCUMSTANCES SHALL "FOOD" INCLUDE AN EDIBLE PRODUCT, BEVERAGE, OR INGREDIENT INFUSED, MIXED, OR IN ANY WAY COMBINED WITH MEDICAL MARIJUANA OR AN ACTIVE INGREDIENT OF MEDICAL MARIJUANA.

"Hotel" means any public or private hotel, inn, hostelry, tourist home, house, motel, rooming house, apartment house, trailer, or other lodging place within the City offering lodging, wherein the owner thereof, for compensation, furnishes lodging to any transient, except foster homes, rest homes, sheltered care homes, nursing homes, or primary health care facilities.

"Job Printing" means the activity of copying or reproducing an article by any means, process, or method. "Job printing" includes engraving of printing plates, embossing, copying, micrographics, and photo reproduction.

"Lessee" includes the equivalent person in a rental or licensing agreement for all purposes of this Chapter.

"Lessor" includes the equivalent person in a rental or licensing agreement for all purposes of this Chapter.

"Licensing (for Use)" means any agreement between the user ("licensee") and the owner or the owner's agent ("licensor") for the use of the licensor's property whereby the licensor receives consideration, where such agreement does not qualify as a "sale" or "lease" or "rental" agreement.

"Lodging (Lodging Space)" means any room or apartment in a hotel or any other provider of rooms, trailer spaces, or other residential dwelling spaces; or the furnishings or services and accommodations accompanying the use and possession of said dwelling space, including storage or parking space for the property of said tenant.

"Manufactured Buildings" means a manufactured home, mobile home or factory built building, as defined in A.R.S. Section 41-2142.

"Manufacturer" means a person engaged or continuing in the business of fabricating, producing, or manufacturing products, wares, or articles for use from other forms of tangible personal property, imparting to such new forms, qualities, properties, and combinations.

"MEDICAL MARIJUANA" MEANS "MARIJUANA" USED FOR A "MEDICAL USE" AS THOSE TERMS ARE DEFINED IN A.R.S. SECTION 36-2801.

"Mining and Metallurgical Supplies" means all tangible personal property acquired by persons engaged in activities defined in Section 13A-432 for such use. This definition shall not include:

- (1) janitorial equipment and supplies.
- (2) office equipment, office furniture, and office supplies.
- (3) motor vehicles licensed for use upon the highways of the State.

"Modifier" means a person who reworks, changes, or adds to products, wares, or articles of manufacture.

"Nonprofit Entity" means any entity organized and operated exclusively for charitable purposes, or operated by the Federal Government, the State, or any political subdivision of the State.

"Occupancy (of Real Property)" means any occupancy or use, or any right to occupy or use, real property including any improvements, rights, or interests in such property.

"Out-of-City Sale" means the sale of tangible personal property and job printing if all of the following occur:

- (1) transference of title and possession occur without the City; and
- (2) the stock from which such personal property was taken was not within the corporate limits of the City; and
- (3) the order is received at a permanent business location of the seller located outside the City; which location is used for the substantial and regular conduct of such business sales activity. In no event shall the place of business of the buyer be determinative of the situs of the receipt of the order.

For the purpose of this definition it does not matter that all other indicia of business occur within the City, including, but not limited to, accounting, invoicing, payments, centralized purchasing, and supply to out-of-City storehouses and out-of-City retail branch outlets from a primary storehouse within the City.

"Out-of-State Sale" means the sale of tangible personal property and job printing if all of the following occur:

- (1) The order is placed from without the State of Arizona; and
- (2) the property is delivered to the buyer at a location outside the State; and
- (3) the property is purchased for use outside the State.

"Owner-Builder" means an owner or lessor of real property who, by himself or by or through others, constructs or has constructed or reconstructs or has reconstructed any improvement to real property.

"Person" means an individual, firm, partnership, joint venture, association, corporation, estate, trust, receiver, syndicate, broker, the Federal Government, this State, or any political subdivision or agency of this State. For the purposes of this Chapter, a person shall be considered a distinct and separate person from any general or limited partnership or joint venture or other association with which such person is affiliated. A subsidiary corporation shall be considered a separate person from its parent corporation for purposes of taxation of transactions with its parent corporation.

"Prosthetic" means any of the following tangible personal property if such items are prescribed or recommended by a licensed podiatrist, chiropractor, dentist, physician or surgeon, naturopath, optometrist, osteopathic physician or surgeon, psychologist, hearing aid dispenser, physician assistant, nurse practitioner or veterinarian:

(1) any man-made device for support or replacement of a part of the body, or to increase acuity of one of the senses. Such items include: prescription eyeglasses; contact lenses; hearing aids; artificial limbs or teeth; neck, back, arm, leg, or similar braces.

(2) insulin, insulin syringes, and glucose test strips sold with or without a prescription.

(3) hospital beds, crutches, wheelchairs, similar home health aids, or corrective shoes.

(4) drugs or medicine, including oxygen.

(5) equipment used to generate, monitor, or provide health support systems, such as respiratory equipment, oxygen concentrator, dialysis machine.

(6) durable medical equipment which has a Federal Health Care Financing Administration common procedure code, is designated reimbursable by Medicare, can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of illness or injury and is appropriate for use in the home.

(7) UNDER NO CIRCUMSTANCES SHALL "PROSTHETIC" INCLUDE MEDICAL MARIJUANA REGARDLESS OF WHETHER IT IS SOLD OR DISPENSED PURSUANT TO A PRESCRIPTION, RECOMMENDATION, OR WRITTEN CERTIFICATION BY ANY AUTHORIZED PERSON.

"Qualifying Community Health Center"

(1) means an entity that is recognized as nonprofit under Section 501(c)(3) of the United States Internal Revenue Code, that is a community-based, primary care clinic that has a community-based board of directors and that is either:

(a) the sole provider of primary care in the community.

(b) a nonhospital affiliated clinic that is located in a federally designated medically underserved area in this State.

(2) includes clinics that are being constructed as qualifying community health centers.

"Qualifying Health Care Organization" means an entity that is recognized as nonprofit under Section 501(c) of the United States Internal Revenue Code and that uses, saves or invests at least eighty percent (80%) of all monies that it receives from all sources each year only for health and medical related educational and charitable services, as documented by annual financial audits prepared by an independent certified public accountant, performed according to generally accepted accounting standards and filed annually with the Arizona Department of Revenue. Monies that are used, saved or invested to lease, purchase or construct a facility for health and medical related education and charitable services are included in the eighty percent (80%) requirement.

"Qualifying Hospital" means any of the following:

(1) a licensed hospital which is organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(2) a licensed nursing care institution or a licensed residential care institution or a residential care facility operated in conjunction with a licensed nursing care institution or a licensed kidney dialysis center, which provides medical services, nursing services or health related services and is not used or held for profit.

(3) a hospital, nursing care institution or residential care institution which is operated by the federal government, this State or a political subdivision of this State.

(4) a facility that is under construction and that on completion will be a facility under subdivision (1), (2) or (3) of this paragraph.

"Receipt (of Notice) by the Taxpayer" means the earlier of actual receipt or the first attempted delivery by certified United States mail to the taxpayer's address of record with the Tax Collector.

"Remediation" means those actions that are reasonable, necessary, cost-effective and technically feasible in the event of the release or threat of release of hazardous substances into the environment such that the waters of the State are or may be affected, such actions as may be necessary to monitor, assess and evaluate such release or threat of release, actions of remediation, removal or disposal of hazardous substances or taking such other actions as may be necessary to prevent, minimize or mitigate damage to the public health or welfare or to the waters of the State which may otherwise result from a release or threat of release of a hazardous substance that will or may affect the waters of the State. Remediation activities include the use of biostimulation with indigenous microbes and bioaugmentation using microbes that are nonpathogenic, nonopportunistic and that are naturally occurring. Remediation activities may include community information and participation costs and providing an alternative drinking water supply.

"Rental Equipment" means tangible personal property sold, rented, leased, or licensed to customers to the extent that the item is actually used by the customer for rental, lease, or license to others; provided that:

- (1) the vendee is regularly engaged in the business of renting, leasing, or licensing such property for a consideration; and
- (2) the item so claimed as "rental equipment" is not used by the person claiming the exemption for any purpose other than rental, lease, or license for compensation, to an extent greater than fifteen percent (15%) of its actual use.

"Rental Supply" means an expendable or nonexpendable repair or replacement part sold to become part of "rental equipment", provided that:

- (1) the documentation relating to each purchased item so claimed specifically itemizes to the vendor the actual item of "rental equipment" to which the purchased item is intended to be attached as a repair or replacement part; and
- (2) the vendee is regularly engaged in the business of renting, leasing, or licensing such property for a consideration; and
- (3) the item so claimed as "rental equipment" is not used by the person claiming the exemption for any purpose other than rental, lease, or license for compensation, to an extent greater than fifteen percent (15%) of its actual use.

"Repairer" means a person who restores or renews products, wares, or articles of manufacture.

"Resides within the City" means in cases other than individuals, whose legal addresses are determinative of residence, the engaging, continuing, or conducting of regular business activity within the City.

"Restaurant" means any business activity where articles of food, drink, or condiment are customarily prepared or served to patrons for consumption on or off the premises, also including bars, cocktail lounges, the dining rooms of hotels, and all caterers. For the purposes of this Chapter, a "fast food" business, which includes street vendors and mobile vendors selling in public areas or at entertainment or sports or similar events, who prepares or sells food or drink for consumption on or off the premises is considered a "restaurant", and not a "retailer".

"Retail Sale (Sale at Retail)" means the sale of tangible personal property, except the sale of tangible personal property to a person regularly engaged in the business of selling such property.

"Retailer" means any person engaged or continuing in the business of sales of tangible personal property at retail.

"Sale" means any transfer of title or possession, or both, exchange, barter, conditional or otherwise, in any manner or by any means whatsoever, including consignment transactions and auctions, of property for a consideration. "Sale" includes any transaction whereby the possession of such property is transferred but the seller retains the title as security for the payment of the price. "Sale" also includes the fabrication of tangible personal property for consumers who, in whole or in part, furnish either directly or indirectly the materials used in such fabrication work.

"Solar Daylighting" means a device that is specifically designed to capture and redirect the visible portion of the solar beam, while controlling the infrared portion, for use in illuminating interior building spaces in lieu of artificial lighting.

"Solar Energy Device" means a system or series of mechanisms designed primarily to provide heating, to provide cooling, to produce electrical power, to produce mechanical power, to provide solar daylighting or to provide any combination of the foregoing by means of collecting and transferring solar generated energy into such uses either by active or passive means, including wind generator systems that produce electricity. Solar energy systems may also have the capability of storing solar energy for future use. Passive systems shall clearly be designed as a solar energy device, such as a trombe wall, and not merely as a part of a normal structure, such as a window.

"Speculative Builder" means either:

- (1) an owner-builder who sells or contracts to sell, at **any time**, improved real property (as provided in Section 13A-416) consisting of:

~~A)(a)~~ custom, model, or inventory homes, regardless of the stage of completion of such homes; or

~~B)(b)~~ improved residential or commercial lots without a structure; or

(2) an owner-builder who sells or contracts to sell improved real property, other than improved real property specified in subsection (1) above:

~~A)(a)~~ prior to completion; or

~~B)(b)~~ before the expiration of twenty-four (24) months after the improvements of the real property sold are substantially complete.

"Substantially Complete" means the construction contracting or reconstruction contracting:

1. has passed final inspection or its equivalent; or
2. certificate of occupancy or its equivalent has been issued; or
3. is ready for immediate occupancy or use.

"Supplier" means any person who rents, leases, licenses, or makes sales of tangible personal property within the City, either directly to the consumer or customer or to wholesalers, jobbers, fabricators, manufacturers, modifiers, assemblers, repairers, or those engaged in the business of providing services which involve the use, sale, rental, lease, or license of tangible personal property.

"Tax Collector" means the City Council or their designee or agent for all purposes under this Chapter.

"Taxpayer" means any person liable for any tax under this Chapter.

"Taxpayer Problem Resolution Officer" means the individual designated by the City to perform the duties identified in Sections 13A-515 and 13A-516. In cities with a population of 50,000 or more, the Taxpayer Problem Resolution Officer shall be an employee of the City. In cities with a population of less than 50,000, the Taxpayer Problem Resolution Officer need not be an employee of the City. Regardless of whether the Taxpayer Problem Resolution Officer is or is not an employee of the City, the Taxpayer Problem Resolution Officer shall have substantive knowledge of taxation. The identity of and telephone number for the Taxpayer Problem Resolution Officer can be obtained from the Tax Collector.

"Telecommunication Service" means any service or activity connected with the transmission or relay of sound, visual image, data, information, images, or material over a communications channel or any combination of communications channels.

"Transient" means any person who either at the person's own expense or at the expense of another obtains lodging space or the use of lodging space on a daily or weekly basis, or on any other basis for less than thirty (30) consecutive days.

"Utility Service" means the producing, providing, or furnishing of electricity, electric lights, current, power, gas (natural or artificial), or water to consumers or ratepayers

Section 2. Section 13A-415 of the Tax Code of the City of Avondale is amended to read:

Sec. 13A-415. Construction contracting: construction contractors.

(a) The tax rate shall be at an amount equal to two and one-half percent (2.5%) of the gross income from the business upon every construction contractor engaging or continuing in the business activity of construction contracting within the City.

(1) However, gross income from construction contracting shall not include charges related to groundwater measuring devices required by A.R.S. Section 45-604.

(2) (Reserved)

(3) gross income from construction contracting shall not include gross income from the sale of manufactured buildings taxable under Section 13A-427.

(4) For taxable periods beginning from and after July 1, 2008, the portion of gross proceeds of sales or gross income attributable to the actual direct costs of providing architectural or engineering services that are incorporated in a contract is not subject to tax under this Section. For the purposes of this subsection, "direct costs" means the portion of the actual costs that are directly expended in providing architectural or engineering services.

(b) Deductions and exemptions.

(1) Gross income derived from acting as a "subcontractor" shall be exempt from the tax imposed by this Section.

(2) All construction contracting gross income subject to the tax and not deductible herein shall be allowed a deduction of thirty-five percent (35%).

(3) The gross proceeds of sales or gross income attributable to the purchase of machinery, equipment or other tangible personal property that is exempt from or deductible from privilege or use tax under:

(A) Section 13A-465, subsections (g) and (p)

(B) Section 13A-660, subsections (g) and (p)

shall be exempt or deductible, respectively, from the tax imposed by this Section.

(4) The gross proceeds of sales or gross income that is derived from a contract entered into for the installation, assembly, repair or maintenance of income-producing capital equipment, as defined in Section 13A-110, that is deducted from the retail classification pursuant to Section 13A-465(g), that does not become a permanent attachment to a building, highway, road, railroad, excavation or manufactured building or other structure, project, development or improvement shall be exempt from the tax imposed by this Section. If the ownership of the realty is separate from the ownership of the income-producing capital equipment, the determination as to permanent attachment shall be made as if the ownership was the same. The deduction provided in this paragraph does not include gross proceeds of sales or gross income from that portion of any contracting activity which consists of the development of, or modification to, real property in order to facilitate the installation, assembly, repair, maintenance or removal of the income-producing capital equipment. For purposes of this paragraph, "permanent attachment" means at least one of the following:

(A) to be incorporated into real property.

(B) to become so affixed to real property that it becomes part of the real property.

(C) to be so attached to real property that removal would cause substantial damage to the real property from which it is removed.

(5) The gross proceeds of sales or gross income received from a contract for the construction of an environmentally controlled facility for the raising of poultry for the production of eggs and the sorting, or cooling and packaging of eggs shall be exempt from the tax imposed under this Section.

(6) The gross proceeds of sales or gross income that is derived from the installation, assembly, repair or maintenance of cleanrooms that are deducted from the tax base of the retail classification pursuant to Section 13A-465, subsection (g) shall be exempt from the tax imposed under this Section.

(7) The gross proceeds of sales or gross income that is derived from a contract entered into with a person who is engaged in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this State for the construction, alteration, repair, improvement, movement, wrecking or demolition or addition to or subtraction from any building, highway, road, excavation, manufactured building or other structure, project, development or improvement used directly and primarily to prevent, monitor, control or reduce air, water or land pollution shall be exempt from the tax imposed under this Section.

(8) The gross proceeds of sales or gross income received from a post construction contract to perform post-construction treatment of real property for termite and general pest control, including wood destroying organisms, shall be exempt from tax imposed under this section.

(9) Through December 31, 2009, the gross proceeds of sales or gross income received from a contract for constructing any lake facility development in a

commercial enhancement reuse district that is designated pursuant to A.R.S. § 9-499.08 if the contractor maintains the following records in a form satisfactory to the Arizona Department of Revenue and to the City:

(A) The certificate of qualification of the lake facility development issued by the City pursuant to A.R.S. § 9-499.08, subsection D.

(B) All state and local transaction privilege tax returns for the period of time during which the contractor received gross proceeds of sales or gross income from a contract to construct a lake facility development in a designated commercial enhancement reuse district, showing the amount exempted from state and local taxation.

(C) Any other information considered to be necessary.

(10) Any amount attributable to development fees that are incurred in relation to the construction, development or improvement of real property and paid by the taxpayer as defined in the model city tax code or by a contractor providing services to the taxpayer. For the purposes of this paragraph:

(A) the attributable amount shall not exceed the value of the development fees actually imposed.

(B) the attributable amount is equal to the total amount of development fees paid by the taxpayer or by a contractor providing services to the taxpayer and the total development fees credited in exchange for the construction of, contribution to or dedication of real property for providing public infrastructure, public safety or other public services necessary to the development. The real property must be the subject of the development fees.

(C) "development fees" means fees imposed to offset capital costs of providing public infrastructure, public safety or other public services to a development and authorized pursuant to [A.R.S. Section 9-463.05](#), [A.R.S. Section 11-1102](#) or [A.R.S. Title 48](#) regardless of the jurisdiction to which the fees are paid.

(11) For taxable periods beginning from and after July 1, 2008 and ending before January 1, ~~2014~~2017, the gross proceeds of sales or gross income derived from a contract to provide and install a solar energy device. The contractor shall register with the department of revenue as a solar energy contractor. By registering, the contractor acknowledges that it will make its books and records relating to sales of solar energy devices available to the department of revenue and the city, as applicable, for examination.

(c) "Subcontractor" means a construction contractor performing work for either:

(1) a construction contractor who has provided the subcontractor with a written declaration that he is liable for the tax for the project and has provided the subcontractor his City Privilege License number.

(2) an owner-builder who has provided the subcontractor with a written declaration that:

(A) the owner-builder is improving the property for sale; and

(B) the owner-builder is liable for the tax for such construction contracting activity; and

(C) the owner-builder has provided the contractor his City Privilege License number.

(3) a person selling new manufactured buildings who has provided the subcontractor with a written declaration that he is liable for the tax for the site preparation and set-up; and provided the subcontractor his City Privilege License number.

Subcontractor also includes a construction contractor performing work for another subcontractor as defined above.

Section 3. Section 13A-416 of the Tax Code of the City of Avondale is amended to read:

Sec. 13A-416. Construction contracting: speculative builders.

(a) The tax shall be equal to two and one-half percent (2.5%) of the gross income from the business activity upon every person engaging or continuing in business as a speculative builder within the City.

(1) The gross income of a speculative builder considered taxable shall include the total selling price from the sale of improved real property at the time of closing of escrow or transfer of title.

(2) "Improved Real Property" means any real property:

(A) upon which a structure has been constructed; or

(B) where improvements have been made to land containing no structure (such as paving or landscaping); or

(C) which has been reconstructed as provided by Regulation; or

(D) where water, power, and streets have been constructed to the property line.

(3) "Sale of Improved Real Property" includes any form of transaction, whether characterized as a lease or otherwise, which in substance is a transfer of title of, or equitable ownership in, improved real property and includes any lease of the property for a term of thirty (30) years or more (with all options for renewal being included as a part of the term). In the case of multiple unit projects, "sale" refers to the sale of the entire project or to the sale of any individual parcel or unit.

(4) "Partially Improved Residential Real Property", as used in this Section, means any improved real property, as defined in subsection (a)(2) above, being developed for sale to individual homeowners, where the construction of the residence upon such property is not substantially complete at the time of the sale.

(b) Exclusions.

(1) In cases involving reconstruction contracting, the speculative builder may exclude from gross income the prior value allowed for reconstruction contracting in determining his taxable gross income, as provided by Regulation.

(2) Neither the cost nor the fair market value of the land which constitutes part of

the improved real property sold may be excluded or deducted from gross income subject to the tax imposed by this Section.

(3) (Reserved)

(4) A speculative builder may exclude gross income from the sale of partially improved residential real property as defined in (a)(4) above to another speculative builder only if all of the following conditions are satisfied:

(A) The speculative builder purchasing the partially improved residential real property has a valid City privilege license for construction contracting as a speculative builder; and

(B) At the time of the transaction, the purchaser provides the seller with a properly completed written declaration that the purchaser assumes liability for and will pay all privilege taxes which would otherwise be due the City at the time of sale of the partially improved residential real property; and

(C) The seller also:

(i) maintains proper records of such transactions in a manner similar to the requirements provided in this chapter relating to sales for resale; and

(ii) retains a copy of the written declaration provided by the buyer for the transaction; and

(iii) is properly licensed with the City as a speculative builder and provides the City with the written declaration attached to the City privilege tax return where he claims the exclusion.

(5) For taxable periods beginning from and after July 1, 2008, the portion of gross proceeds of sales or gross income attributable to the actual direct costs of providing architectural or engineering services that are incorporated in a contract is not subject to tax under this section. For the purposes of this subsection, "direct costs" means the portion of the actual costs that are directly expended in providing architectural or engineering services.

(c) Tax liability for speculative builders occurs at close of escrow or transfer of title, whichever occurs earlier, and is subject to the following provisions, relating to exemptions, deductions and tax credits:

(1) Exemptions.

(A) The gross proceeds of sales or gross income attributable to the purchase of machinery, equipment or other tangible personal property that is exempt from or deductible from privilege or use tax under:

(i) Section 13A-465, subsections (g) and (p)

(ii) Section 13A-660, subsections (g) and (p)

shall be exempt or deductible, respectively, from the tax imposed by this Section.

(B) The gross proceeds of sales or gross income received from a contract for the construction of an environmentally controlled facility for the raising of poultry for the production of eggs and the sorting, or cooling and packaging of eggs shall be exempt from the tax imposed under this

Section.

(C) The gross proceeds of sales or gross income that is derived from the installation, assembly, repair or maintenance of cleanrooms that are deducted from the tax base of the retail classification pursuant to Section 13A-465, subsection (g) shall be exempt from the tax imposed under this section.

(D) The gross proceeds of sales or gross income that is derived from a contract entered into with a person who is engaged in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this state for the construction, alteration, repair, improvement, movement, wrecking or demolition or addition to or subtraction from any building, highway, road, excavation, manufactured building or other structure, project, development or improvement used directly and primarily to prevent, monitor, control or reduce air, water or land pollution shall be exempt from the tax imposed under this Section.

(E) any amount attributable to development fees that are incurred in relation to the construction, development or improvement of real property and paid by the taxpayer as defined in the model city tax code or by a contractor providing services to the taxpayer shall be exempt from the tax imposed under this section. For the purposes of this paragraph:

(i) the attributable amount shall not exceed the value of the development fees actually imposed.

(ii) the attributable amount is equal to the total amount of development fees paid by the taxpayer or by a contractor providing services to the taxpayer and the total development fees credited in exchange for the construction of, contribution to or dedication of real property for providing public infrastructure, public safety or other public services necessary to the development. The real property must be the subject of the development fees.

(iii) "development fees" means fees imposed to offset capital costs of providing public infrastructure, public safety or other public services to a development and authorized pursuant to [A.R.S. Section 9-463.05](#), [A.R.S. Section 11-1102](#) or [A.R.S. Title 48](#) regardless of the jurisdiction to which the fees are paid.

(2) Deductions.

(A) All amounts subject to the tax shall be allowed a deduction in the amount of thirty-five percent (35%).

(B) The gross proceeds of sales or gross income that is derived from a contract entered into for the installation, assembly, repair or maintenance of income-producing capital equipment, as defined in Section 13A-110, that is deducted from the retail classification pursuant to Section 13A-465(g), that does not become a permanent attachment to a building,

highway, road, railroad, excavation or manufactured building or other structure, project, development or improvement shall be exempt from the tax imposed by this Section. If the ownership of the realty is separate from the ownership of the income-producing capital equipment, the determination as to permanent attachment shall be made as if the ownership was the same. The deduction provided in this paragraph does not include gross proceeds of sales or gross income from that portion of any contracting activity which consists of the development of, or modification to, real property in order to facilitate the installation, assembly, repair, maintenance or removal of the income-producing capital equipment. For purposes of this paragraph, "permanent attachment" means at least one of the following:

(i) to be incorporated into real property.

(ii) to become so affixed to real property that it becomes part of the real property.

(iii) to be so attached to real property that removal would cause substantial damage to the real property from which it is removed.

(C) For taxable periods beginning from and after July 1, 2008 and ending before January 1, ~~2014~~2017, the gross proceeds of sales or gross income derived from a contract to provide and install a solar energy device. The contractor shall register with the department of revenue as a solar energy contractor. By registering, the contractor acknowledges that it will make its books and records relating to sales of solar energy devices available to the department of revenue and the city, as applicable, for examination.

(3) Tax credits.

The following tax credits are available to owner-builders or speculative builders, not to exceed the tax liability against which such credits apply, provided such credits are documented to the satisfaction of the tax collector:

(A) A tax credit equal to the amount of city privilege or use tax, or the equivalent excise tax, paid directly to a taxing jurisdiction or as a separately itemized charge paid directly to the vendor with respect to the tangible personal property incorporated into the said structure or improvement to real property undertaken by the owner-builder or speculative builder.

(B) A tax credit equal to the amount of privilege taxes paid to this City, or charged separately to the speculative builder, by a construction contractor, on the gross income derived by said person from the construction of any improvement to the real property.

(C) No credits provided herein may be claimed until such time that the gross income against which said credits apply is reported.

Section 4. Section 13A-417 of the Tax Code of the City of Avondale is amended to read:

Sec. 13A-417. Construction contracting: owner-builders who are not speculative builders.

(a) At the expiration of twenty-four (24) months after improvement to the property is substantially complete, the tax liability for an owner-builder who is not a speculative builder shall be at an amount equal to two and one-half percent (2.5%) of:

- (1) the gross income from the activity of construction contracting upon the real property in question which was realized by those construction contractors to whom the owner-builder provided written declaration that they were not responsible for the taxes as prescribed in subsection 13A-415(c)(2); and
- (2) the purchase of tangible personal property for incorporation into any improvement to real property, computed on the sales price.

(b) For taxable periods beginning from and after July 1, 2008, the portion of gross proceeds of sales or gross income attributable to the actual direct costs of providing architectural or engineering services that are incorporated in a contract is not subject to tax under this section. For the purposes of this subsection, "direct costs" means the portion of the actual costs that are directly expended in providing architectural or engineering services.

(c) The tax liability of this Section is subject to the following provisions, relating to exemptions, deductions and tax credits:

(1) Exemptions.

(A) The gross proceeds of sales or gross income attributable to the purchase of machinery, equipment or other tangible personal property that is exempt from or deductible from privilege or use tax under:

- (i) Section 13A-465, subsections (g) and (p)
- (ii) Section 13A-660, subsections (g) and (p)

shall be exempt or deductible, respectively, from the tax imposed by this Section.

(B) The gross proceeds of sales or gross income received from a contract for the construction of an environmentally controlled facility for the raising of poultry for the production of eggs and the sorting, or cooling and packaging of eggs shall be exempt from the tax imposed under this Section.

(C) The gross proceeds of sales or gross income that is derived from the installation, assembly, repair or maintenance of cleanrooms that are deducted from the tax base of the retail classification pursuant to Section 13A-465, subsection (g) shall be exempt from the tax imposed under this Section.

(D) The gross proceeds of sales or gross income that is derived from a contract entered into with a person who is engaged in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this state for the construction, alteration, repair, improvement, movement, wrecking or demolition or addition to or subtraction from any building, highway, road,

excavation, manufactured building or other structure, project, development or improvement used directly and primarily to prevent, monitor, control or reduce air, water or land pollution shall be exempt from the tax imposed under this Section.

(E) Any amount attributable to development fees that are incurred in relation to the construction, development or improvement of real property and paid by the taxpayer as defined in the model city tax code or by a contractor providing services to the taxpayer shall be exempt from the tax imposed under this section. For the purposes of this paragraph:

(i) the attributable amount shall not exceed the value of the development fees actually imposed.

(ii) the attributable amount is equal to the total amount of development fees paid by the taxpayer or by a contractor providing services to the taxpayer and the total development fees credited in exchange for the construction of, contribution to or dedication of real property for providing public infrastructure, public safety or other public services necessary to the development. The real property must be the subject of the development fees.

(iii) "development fees" means fees imposed to offset capital costs of providing public infrastructure, public safety or other public services to a development and authorized pursuant to [A.R.S. Section 9-463.05](#), [A.R.S. Section 11-1102](#) or [A.R.S. Title 48](#) regardless of the jurisdiction to which the fees are paid.

(2) Deductions.

(A) All amounts subject to the tax shall be allowed a deduction in the amount of thirty-five percent (35%).

(B) The gross proceeds of sales or gross income that is derived from a contract entered into for the installation, assembly, repair or maintenance of income-producing capital equipment, as defined in Section 13A-110, that is deducted from the retail classification pursuant to Section 13A-465(g), that does not become a permanent attachment to a building, highway, road, railroad, excavation or manufactured building or other structure, project, development or improvement shall be exempt from the tax imposed by this Section. If the ownership of the realty is separate from the ownership of the income-producing capital equipment, the determination as to permanent attachment shall be made as if the ownership was the same. The deduction provided in this paragraph does not include gross proceeds of sales or gross income from that portion of any contracting activity which consists of the development of, or modification to, real property in order to facilitate the installation, assembly, repair, maintenance or removal of the income-producing capital equipment. For purposes of this paragraph, "permanent attachment" means at least one of the following:

(i) to be incorporated into real property.

(ii) to become so affixed to real property that it becomes part of the real property.

(iii) to be so attached to real property that removal would cause substantial damage to the real property from which it is removed.

(C) For taxable periods beginning from and after July 1, 2008 and ending before January 1, ~~2014~~2017, the gross proceeds of sales or gross income derived from a contract to provide and install a solar energy device. The contractor shall register with the department of revenue as a solar energy contractor. By registering, the contractor acknowledges that it will make its books and records relating to sales of solar energy devices available to the department of revenue and the city, as applicable, for examination.

(3) Tax credits.

The following tax credits are available to owner-builders and speculative builders, not to exceed the tax liability against which such credits apply, provided such credits are documented to the satisfaction of the tax collector:

(A) A tax credit equal to the amount of city privilege or use tax, or the equivalent excise tax, paid directly to a taxing jurisdiction or as a separately itemized charge paid directly to the vendor with respect to the tangible personal property incorporated into the said structure or improvement to real property undertaken by the owner-builder or speculative builder.

(B) A tax credit equal to the amount of privilege taxes paid to this City, or charged separately to the speculative builder, by a construction contractor, on the gross income derived by said person from the construction of any improvement to the real property.

(C) No credits provided herein may be claimed until such time that the gross income against which said credits apply is reported.

(d) The limitation period for the assessment of taxes imposed by this Section is measured based upon when such liability is reportable, that is, in the reporting period that encompasses the twenty-fifth (25th) month after said unit or project was substantially complete. Interest and penalties, as provided in Section 13A-540, will be based on reportable date.

(e) (Reserved)

Section 5. Section 13A-445 of the Tax Code of the City of Avondale is amended to read:

Sec. 13A-445. Rental, leasing, and licensing for use of real property.

(a) The tax rate shall be at an amount equal to two and one-half percent (2.5%) of the gross income from the business activity upon every person engaging or continuing in the

business of leasing or renting real property located within the City for a consideration, to the tenant in actual possession, or the licensing for use of real property to the final licensee located within the City for a consideration including any improvements, rights, or interest in such property; provided further that:

(1) Payments made by the lessee to, or on behalf of, the lessor for property taxes, repairs, or improvements are considered to be part of the taxable gross income.

(2) Charges for such items as telecommunications, utilities, pet fees, or maintenance are considered to be part of the taxable gross income.

(3) However, if the lessor engages in telecommunication activity, as evidenced by installing individual metering equipment and by billing each tenant based upon actual usage, such activity is taxable under Section 13A-470.

(b) If individual utility meters have been installed for each tenant and the lessor separately charges each single tenant for the exact billing from the utility company, such charges are exempt.

(c) Charges by a qualifying hospital, qualifying community health center or a qualifying health care organization to patients of such facilities for use of rooms or other real property during the course of their treatment by such facilities are exempt.

(d) Charges for joint pole usage by a person engaged in the business of providing or furnishing utility or telecommunication services to another person engaged in the business of providing or furnishing utility or telecommunication services are exempt from the tax imposed by this Section.

(e) (Reserved)

(f) (Reserved)

(g) (Reserved)

(h) (Reserved)

(i) Exempt from the tax imposed by this Section is gross income derived from the rental, leasing, or licensing of real property to a corporation; provided that the lessor's aggregate holdings in the lessee corporation amount to at least eighty percent (80%) of the voting stock of the lessee corporation.

(j) Exempt from the tax imposed by this Section is gross income derived from the activities taxable under Section 13A-444 of this code.

(k) (Reserved)

(l) (Reserved)

(m) (Reserved)

(n) Notwithstanding the provisions of Section 13A-200(b), the fair market value of one (1) apartment, in an apartment complex provided rent free to an employee of the apartment complex is not subject to the tax imposed by this Section. For an apartment complex with more than fifty (50) units, an additional apartment provided rent free to an employee for every additional fifty (50) units is not subject to the tax imposed by this Section.

(o) Income derived from incarcerating or detaining prisoners who are under the jurisdiction of the United States, this State or any other state or a political subdivision of this State or of any other state in a privately operated prison, jail or detention facility is

exempt from the tax imposed by this Section.

(p) Charges by any hospital, any licensed nursing care institution, or any kidney dialysis facility to patients of such facilities for the use of rooms or other real property during the course of their treatment by such facilities are exempt.

(q) Charges to patients receiving "personal care" or "directed care", by any licensed assisted living facility, licensed assisted living center or licensed assisted living home as defined and licensed pursuant to Chapter 4 Title 36 Arizona Revised Statutes and Title 9 of the Arizona Administrative Code are exempt.

(r) Income received from the rental of any "low-income unit" as established under Section 42 of the Internal Revenue Code, including the low-income housing credit provided by IRC Section 42, to the extent that the collection of tax on rental income causes the "gross rent" defined by IRC Section 42 to exceed the income limitation for the low-income unit is exempt. This exemption also applies to income received from the rental of individual rental units subject to statutory or regulatory "low-income unit" rent restrictions similar to IRC Section 42 to the extent that the collection of tax from the tenant causes the rental receipts to exceed a rent restriction for the low-income unit. This subsection also applies to rent received by a person other than the owner or lessor of the low-income unit, including a broker. This subsection does not apply unless a taxpayer maintains the documentation to support the qualification of a unit as a low-income unit, the "gross rent" limitation for the unit and the rent received from that unit.

(S) THE GROSS PROCEEDS OF SALES OR GROSS INCOME DERIVED FROM A COMMERCIAL LEASE IN WHICH A RECIPROCAL INSURER OR A CORPORATION LEASES REAL PROPERTY TO AN AFFILIATED CORPORATION. FOR THE PURPOSES OF THIS PARAGRAPH:

(1) "AFFILIATED CORPORATION" MEANS A CORPORATION THAT MEETS ONE OF THE FOLLOWING CONDITIONS:

(A) THE CORPORATION OWNS OR CONTROLS AT LEAST EIGHTY PER CENT OF THE LESSOR.

(B) THE CORPORATION IS AT LEAST EIGHTY PER CENT OWNED OR CONTROLLED BY THE LESSOR.

(C) THE CORPORATION IS AT LEAST EIGHTY PER CENT OWNED OR CONTROLLED BY A CORPORATION THAT ALSO OWNS OR CONTROLS AT LEAST EIGHTY PER CENT OF THE LESSOR.

(D) THE CORPORATION IS AT LEAST EIGHTY PER CENT OWNED OR CONTROLLED BY A CORPORATION THAT IS AT LEAST EIGHTY PER CENT OWNED OR CONTROLLED BY A RECIPROCAL INSURER.

(2) FOR THE PURPOSES OF SUBSECTION (1), OWNERSHIP AND CONTROL ARE DETERMINED BY REFERENCE TO THE VOTING SHARES OF A CORPORATION.

(3) "RECIPROCAL INSURER" HAS THE SAME MEANING AS PRESCRIBED IN A.R.S. SECTION 20-762.

Section 6. Section 13A-595 of the Tax Code of the City of Avondale is amended to read:

Sec. 13A-595. Collection of taxes when there is succession in and/or cessation of business.

(a) In addition to any remedy provided elsewhere in this City Code that may apply, the Tax Collector may apply the provisions of subsections (b) through (d) below concerning the collection of taxes when there is succession in and/or cessation of business.

(b) The taxes imposed by this Chapter are a lien on the property of any person subject to this Chapter who sells his business or stock of goods, or quits his business, if the person fails to make a final return and payment of the tax within fifteen (15) days after selling or quitting his business.

(c) Any person who purchases, or who acquires by foreclosure, by sale under trust deed or warranty deed in lieu of foreclosure, or by any other method, improved real property or a portion of improved real property for which the Privilege Tax imposed by this Chapter has not been paid shall be responsible for payment of such tax as a speculative builder or owner builder, as provided in Sections 13A-416 and 13A-417.

(1) ANY PERSON WHO IS A CREDITOR OR AN AFFILIATE OF CREDITOR, WHO ACQUIRES IMPROVED REAL PROPERTY DIRECTLY OR INDIRECTLY FROM THE CREDITOR'S DEBTOR BY ANY MEANS SET FORTH IN THIS SUBSECTION, SHALL PAY THE TAX BASED ON THE AMOUNT RECEIVED BY THE CREDITOR OR ITS AFFILIATE IN A SUBSEQUENT SALE OF SUCH IMPROVED REAL PROPERTY TO A PARTY UNRELATED TO THE CREDITOR, REGARDLESS OF WHEN SUCH SUBSEQUENT SALE TAKES PLACE. SUCH TAX SHALL BE DUE IN THE MONTH FOLLOWING THE MONTH IN WHICH THE SALE OF THE IMPROVED REAL PROPERTY BY THE CREDITOR OR ITS AFFILIATE OCCURS. NOTWITHSTANDING THE FOREGOING, IF THE REAL PROPERTY MEETS THE DEFINITION OF PARTIALLY IMPROVED RESIDENTIAL REAL PROPERTY IN SECTION 13A-416(A)(4) AND ALL OF THE REQUIREMENTS OF SECTION 13A-416(B)(4) ARE MET BY THE PARTIES TO THE SUBSEQUENT SALE TRANSACTION, THEN THE TAX SHALL NOT APPLY TO THE SUBSEQUENT SALE.

(2) IN THE EVENT A CREDITOR OR ITS AFFILIATE USES THE ACQUIRED IMPROVED REAL PROPERTY FOR ANY BUSINESS PURPOSE, OTHER THAN OPERATING THE PROPERTY IN THE MANNER IN WHICH IT WAS OPERATED, OR WAS INTENDED TO BE OPERATED, BEFORE THE ACQUISITION OR IN ANY OTHER MANNER UNRELATED TO SELLING THE PROPERTY, THE TAX SHALL BE DUE. THE GROSS INCOME UPON WHICH THE TAX SHALL BE DETERMINED PURSUANT TO SECTIONS 13A-416 AND 13A-417 SHALL BE THE FAIR MARKET VALUE OF THE IMPROVED REAL PROPERTY AS OF THE DATE OF ACQUISITION. THE TAX SHALL BE DUE IN THE MONTH FOLLOWING

THE MONTH IN WHICH SUCH FIRST BUSINESS USE OCCURS. WHEN APPLICABLE, THE CREDIT BID SHALL BE DEEMED TO BE THE FAIR MARKET VALUE OF THE PROPERTY AS OF THE DATE OF ACQUISITION.

(3) ONCE THE SUBSEQUENT SALE BY THE CREDITOR OR ITS AFFILIATE HAS OCCURRED AND THE CREDITOR OR ITS AFFILIATE HAS PAID THE TAX DUE FROM IT PURSUANT TO THIS SUBSECTION, NEITHER THE CREDITOR NOR ITS AFFILIATE, NOR ANY FUTURE OWNER, SHALL BE LIABLE FOR ANY OUTSTANDING TAX, PENALTIES OR INTEREST THAT MAY CONTINUE TO BE DUE FROM THE DEBTOR BASED ON THE TRANSFER FROM THE DEBTOR TO THE CREDITOR OR ITS AFFILIATE.

(4) IF THE TAX LIABILITY IMPOSED BY EITHER SECTION 13A-416 OR SECTION 13A-417 ON THE TRANSFER OF THE IMPROVED REAL PROPERTY TO THE CREDITOR OR ITS AFFILIATE, OR ANY PART THEREOF, IS PAID TO THE TAX COLLECTOR BY THE DEBTOR SUBSEQUENT TO PAYMENT OF THE TAX BY THE CREDITOR OR ITS AFFILIATE, THE AMOUNT SO PAID MAY CONSTITUTE A CREDIT, AS EQUITABLY DETERMINED BY THE TAX COLLECTOR IN GOOD FAITH, AGAINST THE TAX IMPOSED ON THE CREDITOR OR ITS AFFILIATE BY EITHER PARAGRAPH 1 OR PARAGRAPH 2 OF THIS SUBSECTION.

(5) NOTWITHSTANDING ANYTHING IN THIS CHAPTER TO THE CONTRARY, IF A CREDITOR OR ITS AFFILIATE IS SUBJECT TO TAX AS DESCRIBED IN PARAGRAPH 1 OR PARAGRAPH 2 OF THIS SUBSECTION AND SUCH CREDITOR OR AFFILIATE HAS NOT PREVIOUSLY BEEN REQUIRED TO BE LICENSED, SUCH CREDITOR OR AFFILIATE SHALL BECOME LICENSED NO LATER THAN THE DATE ON WHICH THE TAX IS DUE.

(d) A person's successors or assignees shall withhold from the purchase money an amount sufficient to cover the taxes required to be paid, and interest or penalties due and payable, until the former owner produces a receipt from the Tax Collector showing that all City tax has been paid or a certificate stating that no amount is due as then shown by the records of the Tax Collector. The Tax Collector shall respond to a request from the seller for a certificate within fifteen (15) days by either providing the certificate or a written notice stating why the certificate cannot be issued.

(1) If a subsequent audit shows a deficiency arising before the sale of the business, the deficiency is an obligation of the seller and does not constitute a liability against a buyer who has received a certificate from the Tax Collector.

(2) If the purchaser of a business or stock of goods fails to obtain a certificate as provided by this Section, he is personally liable for payment of the amount of taxes required to be paid by the former owner on account of the business so purchased, with interest and penalties accrued by the former owner or assignees.

Section 7. Section 13A-660 of the Tax Code of the City of Avondale is amended to read:

Sec. 13A-660. Use tax: exemptions.

The storage or use in this City of the following tangible personal property is exempt from the Use Tax imposed by this Article:

- (a) tangible personal property brought into the City by an individual who was not a resident of the City at the time the property was acquired for his own use, if the first actual use of such property was outside the City, unless such property is used in conducting a business in this City.
- (b) tangible personal property, the value of which does not exceed the amount of one thousand dollars (\$1,000) per item, acquired by an individual outside the limits of the City for his personal use and enjoyment.
- (c) charges for delivery, installation, or other customer services, as prescribed by Regulation.
- (d) charges for repair services, as prescribed by Regulation.
- (e) separately itemized charges for warranty, maintenance, and service contracts.
- (f) prosthetics.
- (g) income-producing capital equipment.
- (h) rental equipment and rental supplies.
- (i) mining and metallurgical supplies.
- (j) motor vehicle fuel and use fuel which are used upon the highways of this State and upon which a tax has been imposed under the provisions of Article I or II, Chapter 16, Title 28, Arizona Revised Statutes.
- (k) tangible personal property purchased by a construction contractor, but not an owner-builder, when such person holds a valid Privilege License for engaging or continuing in the business of construction contracting, and where the property acquired is incorporated into any structure or improvement to real property in fulfillment of a construction contract.
- (l) sales of motor vehicles to nonresidents of this State for use outside this State if the vendor ships or delivers the motor vehicle to a destination outside this State.
- (m) tangible personal property which directly enters into and becomes an ingredient or component part of a product sold in the regular course of the business of job printing, manufacturing, or publication of newspapers, magazines or other periodicals. Tangible personal property which is consumed or used up in a manufacturing, job printing, publishing, or production process is not an ingredient nor component part of a product.
- (n) rental, leasing, or licensing for use of film, tape, or slides by a theater or other person taxed under Section 13A-410, or by a radio station, television station, or subscription television system.
- (o) food served to patrons for a consideration by any person engaged in a business properly licensed and taxed under Section 13A-455, but not food consumed by owners, agents, or employees of such business.
- (p) tangible personal property acquired by a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property is in fact

used in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512.

(q) food purchased with food stamps provided through the food stamp program established by the Food Stamp Act of 1977 (P.L. 95-113; 91 Stat. 958.7 U.S.C. Section 2011 et seq.) or purchased with food instruments issued under Section 17 of the Child Nutrition Act (P.L. 95-627; 92 Stat. 3603; and P.L. 99-669; Section 4302; 42 United States Code Section 1786).

(r)(Reserved)

(1) (Reserved)

(2) (Reserved)

(3) (Reserved)

(4) (Reserved)

(s) groundwater measuring devices required by A.R.S. Section 45-604.

(t) (Reserved)

(u) aircraft acquired for use outside the State, as prescribed by Regulation.

(v) sales of food products by producers as provided for by A.R.S. Sections 3-561, 3-562 and 3-563.

(w) (Reserved)

(x) (Reserved)

(y) (Reserved)

(z) (Reserved)

(aa) tangible personal property used in remediation contracting as defined in Section 13A-100 and Regulation 13A-100.5.

(bb) materials that are purchased by or for publicly funded libraries including school district libraries, charter school libraries, community college libraries, state university libraries or federal, state, county or municipal libraries for use by the public as follows:

(1) printed or photographic materials.

(2) electronic or digital media materials.

(cc) food, beverages, condiments and accessories used for serving food and beverages by a commercial airline, as defined in A.R.S. § 42-5061(A)(49), that serves the food and beverages to its passengers, without additional charge, for consumption in flight. For the purposes of this subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.

(dd) wireless telecommunication equipment that is held for sale or transfer to a customer as an inducement to enter into or continue a contract for telecommunication services that are taxable under Section 13A-470.

(ee) (Reserved)

(ff) alternative fuel as defined in A.R.S. § 1-215, by a used oil fuel burner who has received a Department of Environmental Quality permit to burn used oil or used oil fuel under A.R.S. § 49-426 or § 49-480.

(gg) food, beverages, condiments and accessories purchased by or for a public educational entity, pursuant to any of the provisions of Title 15, Arizona Revised

Statutes; to the extent such items are to be prepared or served to individuals for consumption on the premises of a public educational entity during school hours. For the purposes of this subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.

(hh) personal hygiene items purchased by a person engaged in the business of and subject to tax under Section 13A-444 of this code if the tangible personal property is furnished without additional charge to and intended to be consumed by the person during his occupancy.

(ii) the diversion of gas from a pipeline by a person engaged in the business of operating a natural or artificial gas pipeline, for the sole purpose of fueling compressor equipment to pressurize the pipeline, is not a sale of the gas to the operator of the pipeline.

(jj) food, beverages, condiments and accessories purchased by or for a nonprofit charitable organization that has qualified as an exempt organization under 26 U.S.C Section 501(c)(3) and regularly serves meals to the needy and indigent on a continuing basis at no cost. For the purposes of this subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.

(kk) sales of motor vehicles that use alternative fuel if such vehicle was manufactured as a diesel fuel vehicle and converted to operate on alternative fuel and sales of equipment that is installed in a conventional diesel fuel motor vehicle to convert the vehicle to operate on an alternative fuel, as defined in A.R.S. § 1-215.

(LL) THE STORAGE, USE OR CONSUMPTION OF TANGIBLE PERSONAL PROPERTY IN THE CITY OR TOWN BY A SCHOOL DISTRICT OR CHARTER SCHOOL.

ORDINANCE NO. 1469-911

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, RELATING TO THE PRIVILEGE LICENSE TAX; ADOPTING THE "2010-2011 AMENDMENTS TO THE TAX CODE OF THE CITY OF AVONDALE" BY REFERENCE; ESTABLISHING AN EFFECTIVE DATE; PROVIDING FOR SEVERABILITY AND PROVIDING PENALTIES FOR VIOLATIONS.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. That certain document known as the "2010-2011 Amendments to the Tax Code of the City of Avondale" (the "2010-11 Amendments") three copies of which are on file in the office of the City Clerk of the City of Avondale, which document was made a public record by Resolution No. 3005-911 of the City of Avondale, is hereby referred to, adopted and made a part hereof as if fully set out in this Ordinance.

SECTION 2. Any person found guilty of violating any provision of the 2010-11 Amendments shall be guilty of a class one misdemeanor. Each day that a violation continues shall be a separate offense punishable as herein above described.

SECTION 3. If any section, subsection, sentence, clause, phrase or portion of this Ordinance or the 2010-11 Amendments is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the 2010-11 Amendments.

SECTION 4. The provisions of Section 1 of the 2010-11 Amendments shall be effective from and after June 1, 2011. The provisions of Sections 2 through 5 of the 2010-11 Amendments shall be effective from and after July 29, 2010. The provisions of Section 6 of the 2010-11 Amendments shall be effective from and after May 1, 2010. The provisions of Section 7 of the 2010-11 Amendments shall be effective from and after September 30, 2009.

SECTION 5. The 2010-11 Amendments are hereby incorporated into and amend the Tax Code of the City of Avondale.

SECTION 6. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps necessary to carry out the purpose and intent of this Ordinance.

PASSED AND ADOPTED by the Council of the City of Avondale, September 19, 2011.

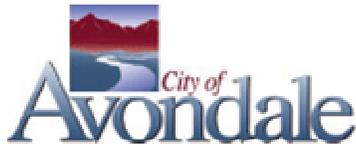
Marie Lopez Rogers, Mayor

ATTEST:

Carmen Martinez, City Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, City Attorney



CITY COUNCIL REPORT

SUBJECT:
Proposal for New Murals in the Pioneer Cemetery

MEETING DATE:
September 19, 2011

TO: Mayor and Council
FROM: Rogene E. Hill, Assistant City Manager (623) 333-1012
THROUGH: Charlie McClendon, City Manager

PURPOSE:

Ballet Folklorico Nueva Esperanza is seeking council direction regarding their proposal to add murals to the Pioneer Cemetery. The group is proposing to add three murals. The first would be on the back of the existing mural. The second and third murals would be on the front and back of an existing mural wall that is currently blank. This item is for discussion and direction.

BACKGROUND:

Ballet Folklorico Nueva Esperanza is a local non-profit devoted to preserving the culture and heritage of the Hispanic workers who were early settlers of this area. They have adopted the Pioneer Cemetery as their community service project. Each year Ballet Folklorico Nueva Esperanza organizes community volunteers for two clean-up events at the cemetery. In addition, this group sponsors a fundraising event to augment the Cemetery Trust Fund that is used for ongoing operation and maintenance of the cemetery.

A local artist, Aztec Smurf, has offered to donate his time and skills to paint three murals at the cemetery. The first mural, proposed for the back of the existing mural, will be Mariachi Players and Ballet Folkloric Dancers with a theme of Dia de los Muertos, or Day of the Dead. A second mural will be a book on one side of the currently blank wall. The back side will be a page in the book with a poem written by a local community artist known as Vprolific.

The Dancers will not be wearing the traditional masks. However, the general theme of the mural is a Dia de los Muertos or Day of the Dead celebration.

DISCUSSION:

The Ballet Folklorico volunteer committee has reviewed the proposed murals and poem. It was at their suggestion that the masks were removed from the dancers. With that alteration they recommended the project. The Avondale Municipal Art Committee also reviewed the proposed murals and has also recommended the project.

The artist estimates that it will take approximately \$600 in materials for the murals. Staff recommends that this cost be paid with funds raised by the Annual Ballet Folklorico Nueva Esperanza Pioneer Cemetery Fundraiser.

RECOMMENDATION:

For Discussion & Direction.

ATTACHMENTS:

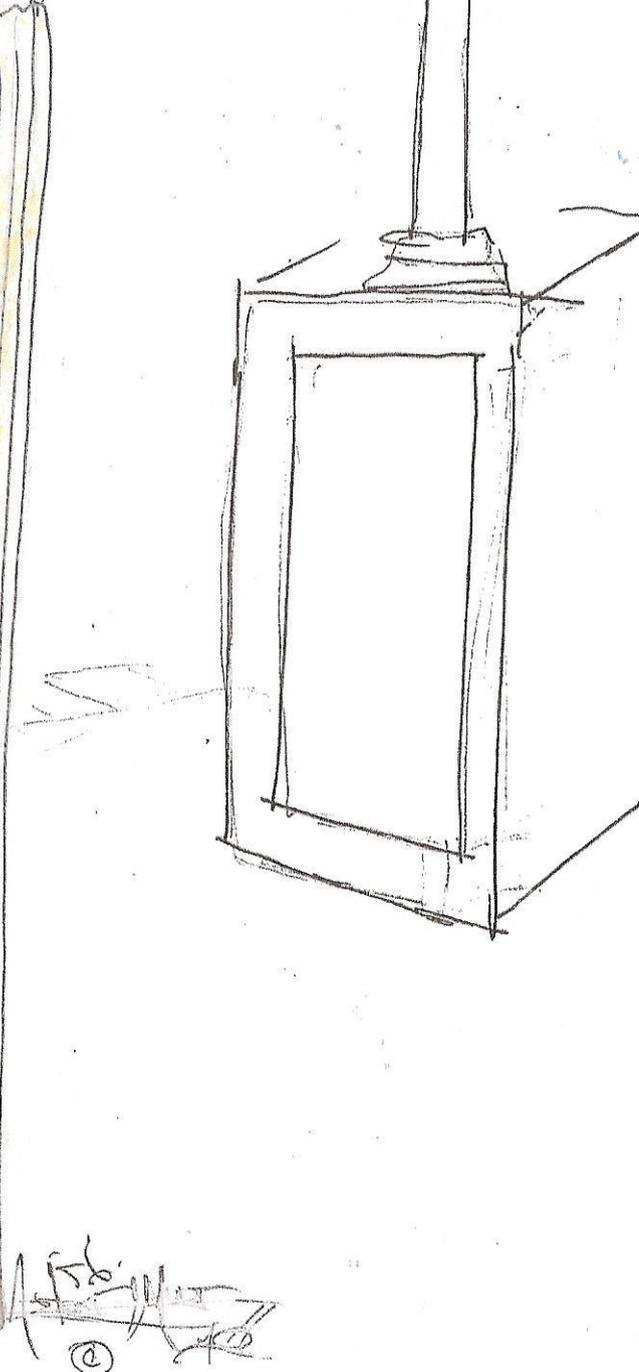
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[Mural 1](#)

▣ [Mural 2](#)

▣ [Mural 3](#)





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We are only promised
a few things but one is
remembered. And since that's got
promised, I ask, I ask, I ask. Cause I know
One hour you have the next minute
you're gone. But just because you're gone
.....

